

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Williamsburg County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY ANDERSON,

APPELLANT

APPELLATE CASE NO. 2019-001406

RECORD ON APPEAL

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

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
11-GS-45-00140

ANTHONY ANDERSON,)

DEFENDANT.)

May 12 – May 14, 2014
Kingstree, South Carolina

B E F O R E :

THE HONORABLE CLIFTON NEWMAN, JUDGE;
AND JURY

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

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Circuit Court Reporter

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1 THE COURT: What do we have?

2 MS. BARR: Judge, we've got a Blair
3 hearing to begin with. May it please the Court,
4 Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. BARR: The first matter before you
7 concerns indictment number 2011-GS-45-140. It's the
8 State v. Anthony Anderson. It's an indictment for
9 two counts of murder and possession of a weapon
10 during the commission of a violent crime.
11 Mr. Anderson is represented by Mr. Steve McKenzie.
12 And Judge, this is the case that's scheduled for
13 trial this week. Judge, one of the matters that the
14 Court will need to address concerns the defendant's
15 competency to stand trial. I have made a copy of
16 the evaluator's report Court's Exhibit Number 1.
17 And Your Honor, for the record, the defendant was
18 evaluated for competency and capacity to stand trial
19 on August 5th, 2013, and I'll also hand you the
20 indictment, Your Honor.

21 THE COURT: All right, the man's name is
22 Mr. Anthony Anderson. Is he anywhere nearby?

23 MS. BARR: Yes, sir.

24 MR. MCKENZIE: He's coming, Your Honor.
25 And Your Honor, Mat Burgess is my cocounsel with me

1 today.

2 THE COURT: Burgess? Mat Burgess?

3 MR. MCKENZIE: Mat Burgess.

4 MR. BURGESS: Yes, Your Honor.

5 THE COURT: All right, yes, sir.

6 (Defendant is brought in the courtroom.)

7 MR. MCKENZIE: Defense is ready to
8 proceed, Your Honor.

9 THE COURT: All right, sir.

10 MS. BARR: Your Honor, at this time the
11 State would call Doctor Richard Frierson.

12 THE CLERK: Come up here. Place your left
13 hand on the Bible, raise your right hand.

14 WHEREUPON,

15 **RICHARD FRIERSON,**
16 having been duly affirmed by the Clerk, testified as
17 follows:

18 THE CLERK: If you will have a seat up
19 there in the witness stand.

20 **DIRECT EXAMINATION**

21 BY MS. BARR:

22 Q Good morning, Doctor Frierson.

23 A Good morning.

24 Q State your full name for the Court and
25 spell your last name for us please.

1 A My name is Richard Lesane Frierson,
2 F-R-I-E-R-S-O-N.

3 Q All right. And tell us where you are
4 employed.

5 A I am employed by the University of South
6 Carolina School of Medicine.

7 Q All right. And what is it that you do
8 there?

9 A I am a professor of psychiatry and I run
10 the forensic psychiatry fellowship.

11 Q All right. And sir, can you give us a
12 little information in terms of your educational
13 background and your training.

14 A Sure. My undergraduate degree is a
15 Bachelor of music degree from the University of
16 South Carolina which I received in 1984. I
17 completed medical school at the University of South
18 Carolina School of Medicine in 1988. I completed
19 four years of training in psychiatry at William S.
20 Hall Psychiatric Institute in 1992, and I completed
21 a one year fellowship in forensic psychiatry in
22 1993.

23 Q Okay. And sir, prior to today's date have
24 you ever testified in courts of this state with
25 regard to your opinions whether or not a person has

1 the capacity to stand trial?

2 A Yes.

3 Q You've been declared an expert witness?

4 A Yes.

5 Q On approximately how many occasions?

6 A Several hundred. I've testified in every
7 county except for, I think, Allendale.

8 MS. BARR: Okay. Your Honor, at this time
9 we would tender Doctor Frierson as an expert in the
10 field of psychiatry.

11 THE COURT: All right.

12 MR. MCKENZIE: No objection, Your Honor.

13 THE COURT: All right, so qualified.

14 BY MS. BARR:

15 Q Now, sir, pursuant to a court order did
16 you evaluate or participate in the evaluation of
17 Mr. Anthony Anderson back on August the 5th of 2013?

18 A Yes.

19 Q All right. And the purpose of that
20 evaluation was?

21 A We had received a court order requesting
22 an evaluation of his competency to stand trial.

23 Q Okay. Now, sir, were you the primary
24 examiner ---

25 A Yes.

1 Q ---for Mr. Anderson?

2 A Yes.

3 Q All right. Tell us how you began the
4 process of your evaluation.

5 A Well, first of all, we review records that
6 were provided to us from -- I guess it was your
7 office or, I'm not sure if it was your office or the
8 defense attorney. But we reviewed the police
9 reports, arrest warrants, indictments, statements
10 given by several people, Joani Burroughs and Joseph
11 Cuzick, medical records from the Williamsburg
12 Medical Center on one of the victims. We reviewed
13 SLED reports, transcribed interview the police
14 conducted with the defendant, a transcribed
15 interview with Ms. Burroughs, the defendant's
16 mother, the prior criminal record of the defendant,
17 social history that we had completed by one of our
18 social workers, Carol Dagood, with his mother as the
19 primary informant, and medical records from the
20 Medical University of South Carolina from 1995 for
21 the defendant which were quite significant, and
22 school records on the defendant.

23 Q All right. Tell us why the medical
24 records of the defendant from MUSC in 1995 were
25 significant.

1 A Well, in 1995 Mr. Anderson sustained a
2 pretty severe head injury ---

3 Q Yes, sir.

4 A ---in a motor vehicle accident.
5 Apparently he flipped his car and was found on the
6 side of the road the next morning in a ditch. He
7 had numerous multiple fractures. Hold on a second
8 please. He had fractures of his left femur, of his,
9 open fracture of his left humerus, his -- one of his
10 hands had lost blood supply and had to be repaired.
11 He fractured a vertebra. And then an MRI of his
12 brain, a brain scan, showed evidence of a brain
13 contusion and some diffuse injury to his frontal
14 lobes. As a result of that, he was hospitalized in
15 MUSC from September 23rd of 1995 through
16 October 13th. Following that he was transferred to
17 Healthsouth Rehabilitation Hospital in Florence
18 where he was hospitalized for almost a year.

19 Q Okay.

20 A Approximately one year. And he had
21 significant deficits. We don't have those records
22 because they've been destroyed.

23 Q Yes, sir.

24 A According to his mother he had to learn to
25 walk again, to talk again. I mean, this was not a

1 benign head injury.

2 Q All right. Now in terms of his school
3 records from Williamsburg County was there anything
4 of interest with regard to those records?

5 A We note that he was in regular classes and
6 dropped out in order to assist his mother and that
7 he does not have a GED, but he was not in special
8 education classes.

9 Q Okay. Now were there any other records
10 that you reviewed or you relied on in formulating
11 your opinion?

12 A In regards to competency I think I've been
13 over pretty much what we looked at and relied on. I
14 may have not mentioned medical records from Waccamaw
15 Mental Health Center; we have those as well.

16 Q All right now, sir, tell us how you began
17 your evaluation after having reviewed the records.
18 Tell the Court what you did.

19 A Okay. First of all, we explained to the
20 defendant the purpose of our evaluation, make sure
21 he understands what we are there to do. We have an
22 information form that describes what we are doing
23 that we asked him to read. He was able to read
24 that, although he read it fairly slowly. We asked
25 him questions about that to make sure he understood,

1 and he appeared to understand basically what he had
2 read. Then we just take a general history, I mean,
3 how's he doing in the jail, what medicines is he on,
4 how are things going for him. We asked him about
5 symptoms that his mother had reported. He had
6 sometimes talked about his mood, his sleep, his
7 appetite. Then we talk about a psychiatric history,
8 have you ever been treated for mental illness, if
9 so, where, ever been hospitalized. Then we take a
10 medical history to understand what medical issues
11 he's had. We take an alcohol and drug use history.
12 We take a family history. I understand if there's
13 any family history of mental illness. We take a
14 social history to understand about his birth where
15 he was raised, who raised him, his childhood,
16 whether he's been married or not, any work history,
17 and his current living situation prior to being
18 arrested. Then we do a mental status examination
19 which is a formal way of assessing memory
20 concentration, fundamental knowledge, higher
21 cognitive skills, his judgment, mood, and other
22 symptoms.

23 And finally, we ask him a series of
24 questions related to the legal system and courtroom
25 procedure to see if he has a factual and rational

1 understanding of the legal system and sufficient
2 present ability to work with his attorney.

3 Q All right. Now as it relates to his
4 medications let's start there. What was he taking
5 or what did he represent to you that he was taking
6 at the time that you did your evaluation in August
7 of 2013?

8 A He indicated to me that he was taking, I
9 think, four medications. He was taking two
10 medications — Lisinopril and propranolol are blood
11 pressure medications.

12 Q Okay.

13 A He was taking Omeprazole, which is for
14 acid reflux. We also know it as Prilosec. And then
15 he was taking a psychiatric medication Olanzapine;
16 that's known as Zyprexa.

17 Q. Okay.

18 A. And that is a medicine for psychotic
19 symptoms.

20 Q All right now, in terms of the history of
21 hospitalizations for mental illness you indicated
22 that you asked him questions regarding that. What
23 information did you receive as a result of posing
24 that question?

25 A He has never been hospitalized for mental

1 health reasons.

2 Q Okay. And as far as the history
3 concerning any use of alcohol or illegal drugs what
4 information, if any, were you given about that?

5 A He denied use of alcohol or illicit drugs.
6 He said he may have used them in the past, ---

7 Q Okay.

8 A ---but that he doesn't remember.

9 Q Okay. Did you receive any other
10 information from any other source regarding any
11 illicit or illegal drug usage?

12 A I know that his mother expressed concerns
13 that he might have been using drugs because his
14 disability check would be gone fairly quickly.

15 Q All right. What about his marital
16 history?

17 A Did you say marital?

18 Q Yes, sir.

19 A He reported that he was married one time
20 to a Charsetta Coe and that lasted approximately one
21 year and they got a divorce because things were not
22 working out, and he said she liked to party.

23 Q Okay. Now tell us, if you will, about the
24 mental status exam.

25 A First of all, he was -- let me refer to my

1 reports.

2 Q Yes, sir.

3 A He was neatly groomed. He was
4 cooperative. He made good eye contact. He was
5 noted to have a, what we call blunted affect, which
6 means it's a relative lack of facial expression.

7 Q Okay.

8 A You know, the normal smiling or just
9 expression is somewhat blunted. That is consistent
10 with his head injury ---

11 Q Okay.

12 A ---that you would expect perhaps to see
13 that. He was oriented to person, place, month, day
14 of the week and the year. He did not know the exact
15 date. Once again, that is not unusual when people
16 are incarcerated. He was able to register three
17 objects, in other words, repeat three words that I
18 asked him; and then in five minutes he initially
19 could only recall one of them, but when I give him
20 prompts he was able to get the other two so there's
21 probably some indication there of memory impairment.

22 He was able to recall past personal
23 information. He performed a test of concentration
24 without difficulty. We asked him to spell the word
25 world backwards. He was unable to perform a

1 calculation. I asked him to subtract 57 cents from
2 a dollar and he came up with 45 cents rather than
3 43.

4 Q Okay.

5 A He was able to abstractly interpret a
6 proverb. In other words, can he think abstractly,
7 like, you can't judge a book by its cover, what does
8 that mean; and he was able to say, well, you can't
9 judge a person by their appearance.

10 Q Yes, sir.

11 A He described his -- I'm sorry, his
12 judgment to a hypothetical situation was fair. He
13 described his mood as a 7 on a scale of 1 to 10,
14 with 1 being severely depressed and 10 being sort of
15 euphoric.

16 Q Okay.

17 A He denied thoughts of suicide or homicide.

18 Q I'm sorry, he denied thoughts of --

19 A Yes, no thoughts of suicide or homicide.
20 He was sleeping well in the jail. He reports
21 variable appetite, but he'd gained significant
22 weight which is a common side effect of the
23 Zyprexa he's taking.

24 Q Okay.

25 A He denied hearing voices or seeing things,

1 but was able to gave a description of having had
2 those experiences in the past. He also related
3 paranoid thoughts about the alleged victims of his
4 crime. He discussed feeling paranoid around people
5 in general since his head injury. His thinking was
6 logical and goal directed. In other words, he had
7 no difficulty answering my questions and I was able
8 to understand what he was communicating.

9 Q Did you make a diagnosis based upon those
10 portions of the evaluation?

11 A Well, I made a diagnosis based on that and
12 also his history ---

13 Q Sure.

14 A ---and the overall picture from the
15 records.

16 Q Okay. What diagnosis did you make?

17 A First of all, he has a -- I made several.
18 He has a psychotic disorder due to his traumatic
19 brain injury. In other words, since his head injury
20 he has displayed symptoms of paranoia. He's thought
21 that airplanes might be spying on him. He's thought
22 that people might be trying to mess with his food.
23 These were not present prior to the head injury so
24 that would be considered a psychotic disorder due to
25 a traumatic brain injury.

1 He's also had periods of depression,
2 depressed mood, feeling sad, low energy, troubles
3 with sleeping, appetite. Those have been treated in
4 the past at the mental health center. I gave a
5 diagnosis of depressive disorder due to traumatic
6 brain injury because that didn't start until after
7 his head injury.

8 Q Okay.

9 A Finally, because he had a few memory
10 problems and there's some evidence of some cognitive
11 decline since his head injury, I diagnosed him with
12 a cognitive disorder not otherwise specified. It's
13 not so severe as to meet criteria for dementia, but
14 I wanted to note he probably had some memory decline
15 because of his head injury.

16 Q All right. Now in terms of the diagnosis
17 regarding paranoia, was any of the medications that
18 he was taking at the time of the evaluation designed
19 to treat symptoms related to depression and/or
20 paranoia?

21 A He was -- the Zyprexa that he's taking is
22 a medication that's used to treat that, yes.

23 Q All right. Now tell me what information
24 did you rely on in formulating your opinion
25 regarding whether or not he was competent to stand

1 trial.

2 A Basically his performance on our
3 assessment.

4 Q Okay. Tell us about that.

5 A I asked him do you know what he's charged
6 with. He said that he was charged with murder.
7 Initially, I asked him how many counts of murder and
8 he was unsure; and the reason was that was, he was
9 not initially certain that his grandmother had died.

10 Q Okay.

11 A But I asked him, here's the indictment for
12 the murder of your grandmother. He was trying to
13 think, he still thought she was alive. I said, if
14 they showed you pictures of her dead body would you
15 believe she's dead; he said, yes. So his beliefs
16 about his grandmother did not appear to be
17 delusional. He was educated about the possession of
18 a weapon during a violent crime charges and appeared
19 capable of understanding that. He states that, he
20 stated his attorney's name, said that his attorney
21 was there to provide him with a defense. He states
22 that the job of his attorney was to get the best he
23 can get for me and try to get me some help. He
24 states that he can talk to his attorney and tell his
25 attorney what he does remember about the alleged

1 offense and the allegations, although he does have
2 some periods of memory impairment. He realized it
3 was important to tell his attorney everything he
4 could so the attorney could help him. He was able
5 to state the maximum sentence that he is facing.

6 Q What did he say the maximum sentence he's
7 facing was?

8 A Life in prison.

9 Q Okay.

10 A He states that the job of the solicitor is
11 to try your case and see that you get locked up. He
12 said that the judge sits and listen and then sees
13 what he should do, sentence you or not. He --
14 sometimes I asked him is the judge for you or
15 against you or in the middle, and he said he didn't
16 know.

17 Q Okay.

18 A He was initially confused about the role
19 and the function of a jury, but later said that the
20 job of the jury is to see if you're guilty or not
21 guilty. He understood that there were twelve people
22 on a jury, that all of them had to agree.

23 Q He did understand that?

24 A Back then, yes.

25 Q Okay.

1 A And certainly when you talk to him about
2 any of this stuff he's able to understand what
3 you're telling him and incorporate that. He was
4 able to, I said what kind of evidence is there in
5 this case. He said, well, there's evidence could be
6 a gun and witnesses. He was able to state the
7 reasons why he was arrested for these charges. I
8 asked him what would you do if someone was lying
9 about you on the witness stand; and he said, well,
10 there's nothing I really could do. And I said, well
11 would you want to tell anybody; he said, yes, my
12 attorney.

13 Q Okay.

14 A. And then I said why and he said because
15 then the attorney could ask that person questions.
16 So he understands the role and function of a
17 witness. He demonstrated ability to appreciate the
18 strength of the evidence. He understands the pleas
19 of guilt or not guilty and understands what they
20 mean. He says when you plead guilty you give up
21 your rights.

22 I asked him to tell me what a plea bargain
23 was and he could not spontaneously do that. And
24 then I asked, well, have you ever heard of copping a
25 deal, and he said that's where it involves a deal

1 where they offer you how much time you're going to
2 get. And he understood that if he would accept that
3 deal, he would have to plead guilty. Then he said
4 some take it, some don't. It was our recommendation
5 that if that is to be part of his legal experience
6 that his attorney take extra time to explain that to
7 him.

8 Q All right. And, sir, as a result of the
9 information that he provided to you and as a result
10 of all the information that you considered, what was
11 your opinion regarding his competency to stand
12 trial?

13 A It was my opinion that despite his
14 limitations from his head injury he still has a
15 sufficient factual understanding of the legal system
16 and the rational ability to consult with attorney on
17 a defense so, therefore, it's my opinion that he is
18 competent.

19 Q All right. And earlier today did you meet
20 with Mr. Anderson prior to your testimony?

21 A I did.

22 Q All right. And what was the purpose of
23 that meeting?

24 A Just to see if anything had changed ---

25 Q Okay.

1 A ---since I saw him last.

2 Q All right. And did you have the
3 permission and consent of his attorney?

4 A I believe so, yes.

5 Q Okay, all right. And tell me in terms of
6 your speaking with him today, when you went over the
7 factors regarding the information that he provided
8 to you in terms of the legal system and having an
9 understanding of the process, did he have that same
10 understanding today?

11 A His performance today was not as good as
12 it was back in August, but I thought he had a
13 sufficient understanding today.

14 Q Okay.

15 A He's more depressed now than he was back
16 when I saw him.

17 Q Okay.

18 A He's worried about his case.

19 Q Is that normal?

20 A Yes, I mean, I would certainly expect as
21 trial approaches that someone would be more worried
22 about what's gonna happen.

23 Q Okay.

24 A He understood today right off the bat that
25 he's charged with two counts of murder. He's no

1 longer suggesting that his grandmother might be
2 alive.

3 Q Okay.

4 A So he seems to have accepted that fact.
5 He appreciates the seriousness of this charge. He
6 said he could get life in prison today. He
7 identified his attorney as Steven McKenzie and said
8 his job is to try to defend me and get the best
9 outcome. He said that he was able to tell me, he
10 said he's been locked up for about four years. He
11 required some assistance in fully understanding the
12 role of the solicitor. I had to explain that to
13 him, remember, she's the person against him. He
14 says, the judge decides what is going on and whether
15 you're guilty or not guilty. And I said, what
16 happens if you're found guilty, and he understood
17 that the judge decides the sentence.

18 Q Okay.

19 A He understands that the jury is there to
20 find him guilty or not guilty. He underestimated
21 the number of jurors on a jury today compared to
22 last time.

23 Q What did he say today?

24 A He initially said four.

25 Q Okay.

1 A He was able to state and define the pleas
2 of guilty or not guilty. Once again, he was able to
3 solve a hypothetical problem involving a lying
4 witness that he would tell as a lawyer. I said,
5 what would happen if you yelled out in court, and he
6 said the judge would get mad. So he understands the
7 appropriateness and importance of appropriate
8 courtroom behavior. He required some discussion
9 today about plea bargaining ---

10 Q Okay.

11 A ---but he was able to understand that.
12 And I think if a plea offer is explained to him by
13 his attorney in careful terms, he could make a
14 decision as to whether or not to accept or reject
15 such an offer.

16 Q Okay. Now in terms of the medications
17 that he's currently on, is he still taking the same
18 type of medication as related to his psychotic
19 symptoms back in August of 2013?

20 A Yes.

21 Q Okay.

22 A He's still taking Zyprexa.

23 Q Okay. And, sir, after having interviewed
24 him again this morning is it still your opinion that
25 he is competent to stand trial?

1 A Yes.

2 Q All right. And all the answers that
3 you've given to my questions have been to a
4 reasonable degree of medical certainty?

5 A Yes.

6 Q Thank you. Please answer any questions
7 that the Court or Defense counsel may have for you.

8 THE COURT: Mr. McKenzie.

9 MR. MCKENZIE: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. MCKENZIE:

12 Q Doctor Frierson, I think you gave a part
13 of your history and part of your exam— or
14 examination of the records that you had some records
15 from Waccamaw Mental Health?

16 A Yes.

17 Q Okay. And he was being treated prior to
18 this incident by Waccamaw Mental Health and the last
19 record that I have was February, I think, of 2011
20 where this incident would have happened in June of
21 2011. Is that your, is that the last records that
22 you have?

23 A If you'll give me one second to look at my
24 notes. I believe that is correct.

25 Q Okay. I stand corrected. I think my last

1 records were actually May of ---

2 A May of 2012. I have a May 29th of 2012 I
3 think.

4 Q Okay, so May 29th, 2012, I do not have a
5 copy of that. I have a May 25th, 2011. So May 20---
6 he was actually seen in jail?

7 A Well, that's the date on this, May 29th,
8 2012.

9 Q Okay, I do not have that record. My last
10 record is ---

11 A Is yours in the -- yeah.

12 Q He was seen in the jail?

13 A Yeah, 44 year old African American male
14 incarcerated for attempted murder 2011, last seen in
15 February of 2012.

16 Q Okay. And what was his diagnosis from
17 Waccamaw Mental Health at that time 'cause this
18 would have been ---

19 A They have the same diagnosis basically
20 that I do which is mood disorder due to traumatic
21 brain injury, psychotic disorder due to traumatic
22 brain injury, depressive disorder due to traumatic
23 brain injury.

24 Q Okay. And you also gave him a criminal
25 responsibility exam also; did you not?

1 A That was later.

2 Q Right.

3 A After the competency evaluation we
4 received an initial court order.

5 Q Right.

6 A And I saw him for criminal responsibility
7 evaluation on March 5th of this year.

8 Q And you found him, that he lacked capacity
9 to conform?

10 A Yes.

11 Q Okay. And that was based upon the
12 totality of his brain injury, the delusional
13 thoughts that he had, things of that nature; is that
14 correct?

15 A Yes, everything that had been contained
16 in, even the statements that he gave and his mother
17 gave.

18 Q Okay. Now did you have any-- you said
19 that he had no history of inpatient treatment?

20 A Psychiatric treatment, yes.

21 Q Okay. Did your mother -- or did his
22 mother ever tell you that he had spent three
23 different times in various state institutions, one
24 actually was in New Jersey?

25 A Well, she said that he had been to MUSC.

1 Q Okay.

2 A That's what she told us. She said he may
3 have been somewhere in Florence or Hartsville for
4 about two weeks, but she was not sure.

5 Q Okay. She didn't tell you about New
6 Jersey?

7 A No.

8 Q Okay. Does he have delusions and
9 hallucinations and that sort of thing?

10 A Yes.

11 Q He does?

12 A He has, yes.

13 Q Okay. I think you said today he was
14 oriented to person and place, month?

15 A Yes.

16 Q But couldn't recall the certain date.

17 A The date. He knew the day of the week,
18 but not the date.

19 Q Got you. And prior — you said, I think
20 you were discussing this, he had a accident where
21 the frontal lobe of his brain was injured?

22 A Oh, yes, yes.

23 Q Tell us about what the difference between
24 a frontal lobe brain injury would be and, say, the
25 back of the head or one of the —

1 A Well, the frontal lobe is where, first of
2 all, we modulate our emotions.

3 Q Right.

4 A Frontal lobe helps us control our anger.

5 Q Okay.

6 A It helps us plan, sequence, our behavior.

7 Q Uh-huh.

8 A Where you can plan, higher functioning of
9 your cognition is contained in the frontal lobe.
10 That's basically where we think.

11 Q And memory would be?

12 A Memory is not just frontal lobe. It's
13 also temporal lobes in other parts of the brain; but
14 with any head injury regardless of where it is, you
15 can have some memory impairment.

16 Q And I think you have said that he has had
17 memory impairment?

18 A I think so, yes. There are things he
19 doesn't remember very well.

20 Q Okay. So were you provided any other
21 documentation that you did not list upon your, the
22 extensive list of things that you did review, that
23 you've seen in this case? Do you recall me handing
24 you a statement from ---

25 A Yeah, you handed me something, yes.

1 Q Okay. And does that change your opinion
2 that someone else has given a confession in this
3 case?

4 A No.

5 Q Okay. But your opinion is based on upon
6 the fact that there were statements given by
7 Mr. Anderson at the onset of this trial that he
8 basically said he did these things?

9 A Yes.

10 Q Okay. If someone else is taking
11 responsibility for them wouldn't that go into the
12 delusional aspect of what's going on here? His
13 delusions, his paranoia, his memory loss?

14 A I don't know that I understand the
15 question. I think that we make an assumption when
16 we do a criminal responsibility evaluation that he
17 indeed committed the crime.

18 Q Right.

19 A That's an assumption that he committed the
20 act for which he is charged.

21 Q Right.

22 A Then we're looking to see did he know
23 right from wrong and could he conform. So, if
24 someone else confessed, then maybe that person
25 didn't, he didn't do it.

1 Q Right. So would that throw off your whole
2 assumption from the very beginning of the case?

3 A Well, I think that's an issue for the
4 trier of fact.

5 Q Okay. But I'm just saying to you, you
6 examined him and you made an assumption that he did
7 this.

8 A Right. Right.

9 Q So if you got somebody who's delusional,
10 who is paranoid, who has memory loss, and says I did
11 this, but someone else has confessed to it ---

12 A Well, his ---

13 MS. BARR: And Judge, just for the record,
14 I would object to this line of questioning. It goes
15 to the capacity to conform and criminal
16 responsibility, not to the issue of competency to
17 stand trial.

18 THE COURT: How about that?

19 MR. MCKENZIE: Your Honor, I asked him ---

20 THE COURT: I heard what you asked him.
21 How about the objection?

22 MR. MCKENZIE: Your Honor, I think that my
23 statement was whether or not it goes to his capacity
24 to stand trial because if the assumption at the
25 beginning of the evaluation was that Mr. Anderson

1 did it, then if we're going to go down that road, if
2 that changes the, Mr. Frier-- Doctor Frierson's
3 opinion regarding, if he, if the assumption was ---

4 THE COURT: Yeah, I, you're rearguing,
5 you're restating a question in effect in your
6 argument. She's objected that it goes to the
7 capacity to conform, not to competency to stand
8 trial.

9 MR. MCKENZIE: I understand, sir.

10 THE COURT: Your response to the objection
11 is what?

12 MR. MCKENZIE: Thank you. My response to
13 the objection is I'll withdraw the question, Your
14 Honor.

15 THE COURT: Okay.

16 MR. MCKENZIE: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. MCKENZIE: No further questions.

19 THE COURT: Ms. Barr.

20 MS. BARR: Judge, we don't have any other
21 questions of Doctor Frierson at this time.

22 THE COURT: Doctor, with regard to the,
23 Mr. McKenzie was asking you about some other
24 hospitalizations out of state that you -- were you
25 aware of them, and I didn't get the resolution of

1 that.

2 THE WITNESS: I was not aware.

3 THE COURT: All right. And through his
4 questioning did you become aware or as far as you
5 know doesn't exist? I mean ---

6 THE WITNESS: I would assume he's not
7 asking me a --- I'm assuming asking me a question
8 that he knows the answer to. There are something in
9 New Jersey. That was not provided to us by Mr.
10 Anderson or his mother when we talked to them so we
11 had no way of knowing that. We sometimes try to get
12 records if we are aware of hospitalizations. We did
13 that in this case. We were unable to get the
14 Healthsouth records because they had been destroyed.

15 THE COURT: And your first statement, your
16 clinical history, Mr. Anderson has no history of
17 prior inpatient psychiatric treatment, assuming
18 that's prior to the '95 wreck, where would you have,
19 how would you have made that determination?

20 THE WITNESS: Based on the information
21 that he provided, the information that his mother
22 provided to the social history, and computer search
23 of South Carolina Department of Mental Health
24 records. We certainly know when someone's been in
25 one of our own facilities.

1 THE COURT: All right. Anything further,
2 Ms. Barr?

3 MS. BARR: Not from the witness, Your
4 Honor.

5 THE COURT: Mr. McKenzie?

6 BY MR. MCKENZIE:

7 Q Doctor Frierson, if he had been in an
8 inpatient treatment at least three times would that
9 change your opinion here today?

10 A No. I don't think it would have changed
11 my competency opinion for sure because competency is
12 how is he functioning now, what's he able to do.
13 Regardless of what his diagnosis is, regardless
14 of — what could certainly change is what actual
15 diagnosis I would give him.

16 Q Okay.

17 A Like if he had a history of paranoia
18 before the head injury ---

19 Q Right.

20 A Then we might be dealing with a functional
21 mental illness, not something that's merely result
22 of the head injury.

23 Q So it would not change your opinion about
24 his capacity to stand trial?

25 A No.

1 Q Okay.

2 MR. MCKENZIE: That's all the questions I
3 have, Your Honor.

4 THE COURT: All right, thank you, sir.

5 MS. BARR: Your Honor, that's all the
6 testimony and evidence that we offer regarding the
7 issue of competency to stand trial.

8 THE COURT: All right, Mr. McKenzie.

9 MR. MCKENZIE: Your Honor, we have nothing
10 to offer. Based on the doctor's opinion in regards
11 to — I would have put the mother up to testify he
12 had been in inpatient treatment at least three
13 different times, but the doctor stated that would
14 not make any difference in opinion regarding the
15 capacity to stand trial.

16 THE COURT: Any argument on the issue by
17 the — first by the State?

18 MS. BARR: Judge, we would maintain that
19 under the statute based on the evidence that's
20 before the Court it is uncontradicted that the
21 defendant is currently competent to stand trial. He
22 was competent at the, in the opinion of Doctor
23 Frierson at the time of the initial evaluation in
24 August. Doctor Frierson interviewed him earlier
25 this morning to determine whether or not in his

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1 MR. MCKENZIE: Nothing from Defense, Your
2 Honor.

3 THE COURT: All right. Then we'll
4 reconvene at 9:30 tomorrow on this case and do
5 anything else that we might need to do here today.

6 (WHEREUPON, the proceedings were concluded
7 at 4:26 p.m. for the day and reconvened
8 on May 13, 2014.)

9 THE COURT: Okay.

10 (WHEREUPON, State Exhibits Nos. 1-49 were
11 marked for identification only and Court Exhibits
12 Nos. 2-4 were marked and made a part of the record.)

13 THE COURT: Ms. Barr, you may proceed.

14 MS. BARR: Thank you, Judge. With regard
15 to Jackson v. Denno hearing the State will call
16 Investigator Neil Frebowitz.

17 THE CLERK OF COURT: Place your left hand
18 on the Bible, raise your right hand.

19 WHEREUPON,

20 **NEIL FREBOWITZ,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 MS. BARR: May it please the Court.

24 THE COURT: Yes, ma'am.

25 **DIRECT EXAMINATION**

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1 BY MS. BARR:

2 Q Sir, state your name for the record.

3 A Neil Frebowitz. It's spelled F-R-E, B as
4 in Baker, O-W-I-T-Z.

5 MS. BARR: Your Honor, before I begin the
6 direct examination of Mr Frebowitz I have marked two
7 exhibits, exhibits number 2 being the transcribed
8 statement of the defendant and number 4 being his
9 Miranda warnings. Judge, if I may approach the
10 bench to give Your Honor a copy of those so that I
11 can give the court exhibits to the witness, Your
12 Honor.

13 THE COURT: All right.

14 BY MS. BARR:

15 Q Mr. Frebowitz, where were you employed
16 back on June 5, 2011?

17 A I was with the Horry County Police
18 Department.

19 Q And what was your position there?

20 A I was a detective assigned to the major
21 crimes unit.

22 Q And you are now retired?

23 A I am retired.

24 Q All right. And how long have you been in
25 law enforcement all together?

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1 A Forty years.

2 Q All right. And sir, back on June 5th of
3 2011 did you have an occasion to interview the
4 defendant Anthony Anderson?

5 A Yes, ma'am, I did.

6 Q For what purpose and how did you become
7 involved in the case?

8 A Horry County police received a call from
9 Mr. Anderson's mother that he had showed up at her
10 doorstep in our jurisdiction, a commonly section of
11 Horry County. I was on-call major crimes detective;
12 and after the patrol officers responded, they
13 determined that investigators were needed and I
14 responded out to the scene.

15 Q All right. And the defendant was
16 subsequently placed under arrest?

17 A He was in the back of the patrol car upon
18 my arrival.

19 Q Yes, sir.

20 A I interviewed his mother and then I
21 contacted, I believe, the Williamsburg County
22 investigators; and once they informed me the nature
23 of the crime, he was placed under arrest.

24 Q All right. And he was then taken to Horry
25 County Police Department, correct?

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1 A Yes, ma'am.

2 Q All right, for what purpose?

3 A He was wanted at the police department to
4 be interviewed.

5 Q And sir, of course, you were the
6 individual who interviewed him?

7 A Yes, ma'am.

8 Q All right, did you advise him of his
9 Miranda warnings?

10 A Yes, ma'am, I did.

11 Q And sir, does the Horry County Police
12 Department use a standard advisement of Miranda
13 rights forms?

14 A Yes, ma'am, they do.

15 Q I hand you what's been marked as Court's
16 Exhibit Number 4 and ask you if you recognize that
17 document.

18 A Yes, ma'am, that is the standard
19 advisement of Miranda forms.

20 Q And were those the warnings that you gave
21 the defendant?

22 A Yes, ma'am.

23 Q And would you read them out aloud please.

24 A Yes, ma'am. The advisement of Miranda
25 rights are: "You have the right to remain silent.

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1 Anything you say can and will be used against you in
2 a court of law. You have the right to talk to a
3 lawyer, talk with a lawyer, and have him present
4 with you while you're being questioned. If you
5 cannot afford to hire a lawyer one will be appointed
6 to represent you before any questioning if you so
7 desire. If you make any statement or answer any
8 questions you have the right to stop at any time."
9 The next line is a check box. It says, "Do you
10 understand your rights as I have read them to you."
11 It is checked yes. The next line says,
12 "Understanding your rights, do you wish to waive
13 them and make a statement or answer any questions at
14 any time?" It is checked yes. Underneath that is
15 the printed name that Mr. Anderson affixed to this
16 form, along with his signature directly underneath
17 it. Just to the left of that is our case number,
18 the date and the time, the location, and my
19 signature, which I recognize as mine.

20 Q All right. And, sir, as you're asking him
21 these questions did he appear to understand what you
22 were asking him?

23 A Yes, ma'am.

24 Q All right. Did he give responses that
25 were appropriate to the questions?

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1 A Yes, ma'am.

2 Q All right. Did he seem to express any
3 difficulty in understanding you?

4 A No, ma'am.

5 Q Did you have any difficulty in
6 understanding him?

7 A No, ma'am.

8 Q All right. Prior to him giving a
9 statement did you make any promises to him?

10 A No, ma'am.

11 Q Okay. Did you threaten him in any way?

12 A No, ma'am.

13 Q Did you coerce him in any way?

14 A No, ma'am.

15 Q All right. And, sir, in terms of the
16 method by which you interrogated the defendant, tell
17 us a little bit about the areas, specifically the
18 room where that interview took place.

19 A Well, it's an interview room. It's a,
20 it's relatively comfortable. There's padded chairs.
21 It's about the size of the Judge's bench area. One
22 table, two or three chairs. It's, there's a camera
23 and not much else.

24 Q All right. And was it the practice at
25 that time of the Horry County Police Department to

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1 record interviews of suspects?

2 A Yes, ma'am.

3 Q And was a interview recorded in connection
4 with this case?

5 A Yes, ma'am.

6 Q All right. Now how many people were in
7 the room, physically present, when the defendant
8 gave a statement?

9 A Just me.

10 Q Just you and the defendant?

11 A Yes, ma'am.

12 Q Okay, all right. Did you offer him
13 anything to drink or did you offer him anything to
14 eat?

15 A I recall that I offered him a beverage.

16 Q Okay, all right. You remember what time
17 it was that you began to sit down with the defendant
18 and take a statement?

19 A I believe I looked at the Miranda form, it
20 was just after 6:00 maybe.

21 Q In the morning?

22 A In the morning, yes, ma'am.

23 Q All right. Did he appear to be under the
24 influence of anything, whether it be medication or
25 alcohol or drugs, or anything to the effect that he

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1 couldn't understand you?

2 A He seemed to understand my questions.

3 Q All right. And, sir, approximately how
4 long did the interview take?

5 A About an hour I believe.

6 Q Okay. At any point in time during the
7 interview did he ask you to stop ---

8 A No, ma'am.

9 Q ---asking him questions?

10 A No, ma'am.

11 Q Did he request an attorney?

12 A No, ma'am.

13 Q Was he advised of the nature of the
14 interrogation, why you were questioning him?

15 A Yes, ma'am, I believe so.

16 Q So he was aware that it concerned the
17 killing of his grandmother and his uncle?

18 A I know we talked about it. I don't know
19 at what point in the interview that we actually
20 discussed the specifics of why we were being
21 interviewed, but there was a -- near the beginning
22 of the interview I remember we did discuss it, the
23 nature of the crime.

24 Q All right. And in terms of recording the
25 interview did you, how was that done?

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1 A There's a camera system.

2 Q Yes, sir.

3 A That's computer based digital camera
4 recorder.

5 Q Yes, sir.

6 A And there was also a backup tape recorder,
7 digital recorder I used in that room.

8 Q So where was the digital recorder?

9 A On the table between Mr. Anderson and
10 myself.

11 Q Could he see it?

12 A Absolutely.

13 Q He was aware that he was being recorded?

14 A Yes, ma'am.

15 Q All right. Now I'm gonna hand you what's
16 been marked as Court's Exhibit Number 2. Is that
17 the transcribed version of the interview or the
18 defendant's statement during the course of that
19 interview with you?

20 A Yes, ma'am, I reviewed this earlier. It
21 appears to be the transcript of the interview.

22 Q All right, sir. Based on the length of
23 the time that you were with the defendant and based
24 upon your personal observations of the defendant, do
25 you believe that the statement given to you was made

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1 by him freely?

2 A Yes, ma'am.

3 Q Voluntarily?

4 A Yes, ma'am.

5 Q Knowingly?

6 A Yes, ma'am.

7 Q All right, sir. That's all the questions
8 I have. If you will please answer any questions the
9 defendant may have or that Your Honor may have.

10 A Yes, ma'am.

11 **CROSS-EXAMINATION**

12 **BY MR. MCKENZIE:**

13 Q Detective, tell me your last name again.
14 I'm sorry, I'm terrible with names.

15 A Frebowitz.

16 Q Frebowitz?

17 A Yes, sir.

18 Q Detective Frebowitz, I'm looking at the
19 interview with Anthony Anderson that I think you
20 have a copy of.

21 A Yes, sir.

22 Q Can you hand me the Miranda form. I did
23 not get — I don't think I have a copy of that.
24 Signed Miranda form. All right. In your signed
25 Miranda form there's checkmarks that says yes. Did

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1 he check those marks or did you check those marks?

2 A I honestly don't recall.

3 Q You don't recall. Wouldn't it be -- I've
4 seen these before. Normally I think protocol would
5 be to have the person initial, yes, I understand
6 that, and yes, I waive my rights. You got --

7 A Right.

8 Q Is that not proper protocol in Horry
9 County?

10 A Our protocol is just to insure that they
11 understood the rights and how we annotate on there
12 is kind of up to us.

13 Q So going back to understanding those
14 rights, you met with Mr. Anderson's mother Joani
15 Burroughs prior to the interview; did you not?

16 A Yes, sir, I did.

17 Q And Ms. Burroughs indicated to you that
18 Mr. Anderson had a significant brain injury from an
19 automobile accident in 1995?

20 A I don't recall that specifically, no, sir.

21 Q All right. I'm gonna hand you -- I think
22 I'm gonna hand you if I can find it.

23 MR. MCKENZIE: The Court's indulgence,
24 Your Honor. I've got myself spread out here and I'm
25 thinking I thought I had everything in order, but I

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1 may not have.

2 BY MR. MCKENZIE:

3 Q It's -- and I'm gonna hand you a copy. I
4 think it says that you met with her at 5:30 and I
5 think you said you conducted this interview, I
6 think, at 6?

7 A Approximately 6:00, 6:30, yes, sir.

8 Q If you look through that recorded
9 statement, I guess the recorded statement because
10 she apparently came to the police department and
11 gave a statement there also?

12 A No, sir, I recorded this in the living
13 room of her house.

14 Q That was recorded in the living room of
15 her home so somebody transcribed that later on?

16 A It appears to be, yes, sir.

17 Q Okay. All right, so basically in that
18 interview, if you look through it she discusses with
19 you the fact that he's on medication?

20 A Yes, sir.

21 Q That he has a, had been in a significant
22 car accident in 1995. Do you see that in there?

23 A I don't see that particular passage. I
24 see where she discussed that he had some sort of --
25 and what I reflect in my notes is that, had a

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1 previous brain injury. The significance under
2 the -- I don't remember the medical diagnosis. I
3 remember she did, or my notes reflect that she did
4 discuss some sort of a brain injury.

5 Q And also in there she reported to you that
6 when he came to her home he was delusional, that he
7 was out of his mind basically and she told you,
8 informed you of all these things, right?

9 A Something like that, yes, sir.

10 Q Okay. And she told you also that he had
11 medication in a CVS bag that was on a table or
12 something in the house. That's in those records.
13 You remember that?

14 A I see that where it's --

15 Q And you actually took that with you
16 whenever you did the interview. Did she tell you
17 also that she had given him medication to calm down
18 his delusional episodes when he got home?

19 A I don't recall that.

20 Q Okay. So, but prior to you doing your
21 interview with him did you yourself give him or have
22 him take medication before you did the interview?

23 A No, sir.

24 Q Okay. So it's reported to you that he's
25 delusional, he's hallucinating, he had a brain

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1 injury in 1995, and he's on -- he's on medication
2 which you took with you, and I think I have a copy
3 of the medication list here that you, that somebody
4 inventoried from Horry County. Do you recognize
5 that?

6 A Yes, sir.

7 Q Okay. Was that your initials on there or
8 your ---

9 A Yes, sir, it is.

10 Q So you actually inventoried the -- can you
11 tell us what those drugs are, and we will not hold
12 you to the pronunciation of them.

13 A Well, it appears from this form that
14 Investigator Domogaer from CSI actually took
15 possession of these, and then I signed it into
16 evidence. But it's a pill bottle with
17 Mr. Anderson's name, it's Divan. There's another
18 pill bottle with Risperdal. There's another pill
19 bottle with Mirtazapine. Another pill bottle with
20 Omeprazole and Naprosyn.

21 Q Do you know what Risperdal is?

22 A Yes, sir, I do.

23 Q Okay, what is Risperdal?

24 A It's an antipsychotic.

25 Q And so you had in your information that

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1 day that he was on antipsychotic drugs and he was
2 not, he had not taken that antipsychotic drug; is
3 that correct?

4 A I don't know if he took it or not.

5 Q Okay. But whenever you arrested
6 Mr. Anderson you had been told and informed that he
7 was delusional, that he had been in a significant
8 car injury and had brain damage as a result of that,
9 that he was on Risperdal which you know is a
10 antipsychotic drug. All of these things you knew,
11 and yet you still felt it was proper to sit him down
12 in a room, give him his Miranda warnings, and have
13 him then talk to you about what he believed to be
14 happening when his mother had reported to you that
15 he was delusional?

16 MS. BARR: Objection, compound question,
17 Your Honor.

18 THE COURT: Yes.

19 MR. MCKENZIE: I can break that up.

20 THE COURT: The question contained many
21 statements and many questions so I'll sustain the
22 objection.

23 MR. MCKENZIE: I'll break that up, Your
24 Honor.

25

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1 BY MR. MCKENZIE:

2 Q So you knew he was delusional, right?

3 A I was told he was delusional, but I didn't
4 see him being delusional.

5 Q You did not see him, observe him being
6 delusional?

7 A No, sir.

8 Q. But you didn't know Mr. Anderson before?

9 A No, sir.

10 Q Okay. And so this is the first time you
11 met him so you don't know whether, what a delusional
12 episode that he would be in would look like?

13 A I know what a delusional episode looks
14 like, but he didn't appear to have one.

15 Q Did he seem to be anxious?

16 A Yes, sir.

17 Q Okay. Did he seem to be -- 'cause I've
18 looked at this statement and it appears that he
19 does, is nonresponsive to some of your statements.
20 Did he appear to be engaged with you?

21 A Yes, sir, he did.

22 Q Okay. So your opinion was -- and what's
23 the protocol for Horry County whenever you have
24 someone who is a minor, for example, or who is, has
25 mental, diminished mental capacity, what's your

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1 procedure for Miranda warnings for those people?

2 A Well, for a minor, again, depending on the
3 age ---

4 Q Right.

5 A ---there are different protocols. Again,
6 depending on the age.

7 Q Right. What about people with mental
8 health issues?

9 A They're entitled to Miranda warnings prior
10 to the interview.

11 Q And then you interview them anyway?

12 A Interview them anyway.

13 Q So, but all those things that we talked
14 about, you knew he was on medication Risperdal which
15 is an antipsychotic, you knew his mother reported
16 him being delusional, right?

17 A I knew that he'd been prescribed the
18 medicine; I saw it. I didn't know, I didn't know if
19 he'd been taking it or not taking it. I knew what
20 his mother had told me. But my own observations
21 indicated that he understood the questions, he
22 understood the nature of what I was asking him and
23 he was able to provide competent responses to my
24 questions.

25 Q Okay. So it's your opinion based on your

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1 40 years experience that he understood exactly what
2 was going on when he gave these answers?

3 A I wouldn't -- he understood what was going
4 on. He was able to answer my questions in a
5 responsive manner that directly answered the
6 questions.

7 Q Okay. Now one of the things that he said
8 in his statement was that he used a shotgun to kill
9 his uncle and his grandmother.

10 A Yes, sir.

11 Q Okay. And he told you exactly where he
12 threw the shotgun out.

13 A Not exactly. He said it was
14 approximately -- and again, I can go through the
15 transcript and recall it, but. He said he was
16 driving. He was on his way to Conway, threw it out
17 a window near a store. In fact, I believe I asked
18 him specifically to take us back to help us locate
19 the weapon and he declined.

20 Q Okay. And did you go look for the weapon?

21 A It was outside of our jurisdiction. I am
22 pretty sure I notified the proper jurisdiction.

23 Q And so, but that weapon was never
24 recovered, do you understand that?

25 A I have no idea.

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1 Q You have no idea, okay. So in Horry
2 County it's the protocol that even if someone is on
3 medication for antipsychotic behavior -- and the
4 medication was in his name; is that correct?

5 A Yes, sir.

6 Q Okay. And the mother told you, the people
7 who knew him best, told you that he was delusional,
8 you still went ahead and gave him his Miranda
9 warnings and felt it was okay to interrogate him?

10 A Yes, sir.

11 Q Okay. And you believe this is a knowing
12 and voluntary waiver of the rights even if he had
13 diminished capacity?

14 MS. BARR: Judge, we're gonna object to
15 question and facts not in evidence.

16 MR. MCKENZIE: Well, let me pose it in a
17 hypothetical.

18 THE COURT: All right.

19 BY MR. MCKENZIE:

20 Q If he had diminished capacity would you
21 have gone forward with the interrogation?

22 A I've conducted hundreds of interviews, and
23 I don't really like calling them interrogations
24 'cause they're not; they're interviews. I make a
25 determination whether or not an individual is

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1 capable of understanding my questions and giving me
2 an appropriate response. I've had times where the
3 person clearly wasn't and I've not interviewed them.
4 This Mr. Anderson appeared to understand my
5 questions, was able to give me a response, and
6 therefore I continued the interview and believed he
7 understood his Miranda rights.

8 Q Okay. There's a passage in the, on page
9 19 in the -- you see that where it says and it's
10 starting with, and it appears that the defendant
11 himself is discussing his mental condition and ---

12 MS. BARR: Your Honor, I'm sorry, can ask
13 counsel ---

14 MR. MCKENZIE: Page 19.

15 MS. BARR: Of the defendant's statement?

16 MR. MCKENZIE: Yes, defendant's statement,
17 I'm sorry. Page 19.

18 BY MR. MCKENZIE:

19 Q At the beginning of that page and line 1,
20 the answer to question -- and I guess we have to go
21 back to page 18 but. It says -- and this is
22 assuming Mr. Anderson's answer. It says, "I mean,
23 I'm going to work on trying to communicate. I'm
24 actually antisocial." And you said, "Okay. You
25 said antisocial. Somebody told you that?" "No,

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1 that's a word that just comes up." And then the
2 answer again, "No, but it's like I see, not see, but
3 I've been around and I'm antisocial, means like be
4 yourself." "Right." And then -- Court's
5 indulgence, Your Honor. If you look on page 21, --
6 I'm sorry, go to page 20 at the bottom of page 20.
7 And it's starting at line 19. You and he are having
8 a discourse in regards to, I guess, the uncle
9 putting his hands on him. And then it says, "No."
10 And the question was, "Okay." And then the answer,
11 "I don't know how long it's going to take to get
12 therapy or counseling." That's your answer to him.
13 You see that?

14 A Yes, I see it.

15 Q Okay. And he says, "Uh-huh." And then on
16 page 21 he asked you, "How long will that take?" So
17 he's actually asking you for counseling or help at
18 that point in time. You see that?

19 A Yes, sir.

20 Q Okay. And your response was, "I don't
21 know. I can't diagnose you."

22 A Correct.

23 Q Okay. "I took some psychology classes in
24 college, but I'm not capable of telling you that.
25 People I know have counseling and sometimes it goes

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1 on a long time. It's up to the doctors. That's the
2 most important thing." And then his answer was, "My
3 doctor's in Kingstree." And you said, "In
4 Kingstree?" "Yeah." And he said, "Okay. It's like
5 Doctor Ellis this month. I'm supposed to go in.
6 Oh, boy, I'm going to go in." So he's excited about
7 going to see his doctor. He apparently to you he's
8 telling you that he needs to go see a doctor is that
9 point in time. Do you not think at that point in
10 time that you should have stopped this and said we
11 need to get a psychological evaluation of this
12 person to see if he's capable of understanding
13 what's going on here?

14 MS. BARR: Your Honor, objection, compound
15 question.

16 THE COURT: I overrule the objection.

17 THE WITNESS: The answer to your question
18 is no.

19 BY MR. MCKENZIE:

20 Q Okay. So even though the defendant
21 himself brings up the issue of his mental capacity,
22 even though you've been told by the mother that he
23 has a problem with his mental capacity, you still
24 think it's okay to go along with and give and
25 interrogate him in this case?

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1 A The -- I use this as a standard. I've
2 interviewed individuals who have been diagnosed as
3 psychotic, treated psychotic. They did not know
4 they were psychotic. The fact that he thought he
5 might need help indicated to me that he was aware of
6 his surroundings, aware of what his mental issues
7 were. I was able to overcome at least for the
8 limited purpose of the interview.

9 Q But you understand the whole purpose of
10 Miranda is that he has to knowingly and voluntarily
11 waive his rights?

12 A Yes, sir.

13 Q And if he's asking you for help in the
14 middle of giving this statement do you think it's
15 appropriate as a law enforcement officer to continue
16 to question him even though he's asking for help?
17 He may not ask for a lawyer. He's saying, I want to
18 see my doctor.

19 A Right. And Miranda gives him a right to
20 stop talking and ask for a lawyer, not a doctor.

21 Q But people who are delusional, antisocial,
22 on antipsychotic drugs, they don't have the same
23 capacity as you and I do. Would that be a fair
24 statement?

25 A I'm not a psychologist or psychiatrist to

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1 diagnose, and everybody is different.

2 Q Okay. So at no point in time did you feel
3 uncomfortable with the statements that he was giving
4 and the fact that of all the history that you had
5 knowing that he was on antipsychotic drugs, knowing
6 that his mother reported him being delusional and
7 paranoid whenever you picked him up, you felt it was
8 okay and appropriate to continue to question him?

9 A During the time of our interview he seemed
10 to knowingly understand the Miranda rights. He
11 seemed to have knowingly waived the Miranda rights.
12 He was able to answer my questions in a clear,
13 concise, and appropriate manner, and I found no
14 reason to believe he didn't understand them.

15 Q Okay.

16 MR. MCKENZIE: Thank you, Your Honor.

17 THE COURT: Ms. Barr.

18 MS. BARR: Just a couple of followup
19 questions, if I may.

20 **REDIRECT EXAMINATION**

21 BY MS. BARR:

22 Q Mr. Frebowitz, would you turn to page 17
23 of the transcribed statement of Mr. Anderson. Let
24 me know when you're there.

25 A Yes, ma'am, I'm here.

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1 Q Starting at line 15, or 14. Well, I'm
2 sorry, let's go to 12. He says, yeah, I'm going to
3 Waccamaw for mental health; is that correct?

4 A That's correct.

5 Q And then what's your question to him?

6 A It was, "Are you".

7 Q Are you?

8 A "Are you?"

9 Q Okay. And then he responds, "I was taking
10 medication to help control my temper," correct?

11 A Correct.

12 Q And what's your follow-up question to him?

13 A "So you take medicine to control your
14 temper?"

15 Q And his answer is, "Yeah"?

16 A Yeah.

17 Q Then what's your follow-up question?

18 A "And you know that if you don't take your
19 medication your temper gets out of control" was the
20 question. "Yeah, I thought it all right."

21 Q And he says, "Yeah, I thought it was all
22 right"?

23 A "Yeah, thought it was all right."

24 Q And then what's your next question?

25 A "So you would stop taking your medicine?"

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1 Q And his answer is, "For a little bit. I
2 didn't take it that morning". Correct?

3 A Correct.

4 Q And then what did you say?

5 A I acknowledge it saying okay.

6 Q You say okay. And then he then further
7 answer said, "It was that night that I did, but one
8 thing led to another"?

9 A Yes, ma'am.

10 Q All right. And essentially he's saying I
11 didn't take it that morning, but I took it that
12 night?

13 A Correct.

14 Q At any point in time did he express any
15 delusions to you, reported hearing anything, or
16 seeing anything that wasn't there?

17 A No, ma'am.

18 Q All right, those are all the questions
19 that I have.

20 THE COURT: Mr. McKenzie, anything else?

21 MR. MCKENZIE: Nothing else, Your Honor.

22 THE COURT: All right, thank you, sir.

23 THE WITNESS: Thank you, Your Honor.

24 MS. BARR: Your Honor, that will be all
25 the State has to offer on the issue of

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1 voluntariness and knowingly issue concerning the
2 statement he gave to law enforcement.

3 THE COURT: All right, Mr. McKenzie.

4 MR. MCKENZIE: Your Honor, we call Joani
5 Burroughs to the stand.

6 THE CLERK OF COURT: Place your left hand
7 on the Bible and raise your right hand.

8 WHEREUPON,

9 **JOANI BURROUGHS,**
10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. MCKENZIE:

14 Q Ms. Burroughs, how are you doing today?

15 A I'm good.

16 Q And you are the mother of Anthony
17 Anderson?

18 A Yes.

19 Q Okay. And on the night of June 5th did
20 Mr. Anderson show up at your home?

21 A Yes.

22 Q Okay. And where had he been living prior
23 to him coming to your home?

24 A With my momma.

25 Q Okay. And when he got to your home can

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1 you describe to the Court his state of mind?

2 A He was delusional. He was crying that
3 something happened, but he never come in the house.
4 He just was crying and was telling me to call the
5 police kind of like saying what happened, and he
6 just saying call the police and crying and just
7 paranoid.

8 Q Okay. Have you seen him delusional
9 before?

10 A Yes.

11 Q Okay. Tell us about his 1994 car acc--
12 1995 car accident.

13 A Well, the 1995 car accident they find
14 him -- one Saturday morning, he had a accident that
15 Friday night. They find him in the ditch that
16 morning, and they take him to MUSC. He was in a
17 coma. And he couldn't talk or anything. And then
18 when he did get out of the coma he didn't know, he
19 didn't know me, he didn't know anybody. He didn't
20 know one, two, or three, or ABC. He, they take him
21 to south ---

22 Q Healthsouth?

23 A Healthsouth.

24 Q Okay. Did he have to learn to walk again?

25 A He had to learn to walk.

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1 Q Talk.

2 A He had to learn to talk. He had to learn
3 ABC. He had to learn his name.

4 Q Was he significantly different after the
5 accident ---

6 A Yes.

7 Q ---than he was before?

8 A Yes.

9 Q Did he live in group homes in regards to
10 having to be 24/7 care?

11 A He lived in a mental health facility in
12 Myrtle Beach where they would counsel him on maybe a
13 weekly base. He could go and come, but they would
14 always -- he had to be in by certain time of night.

15 Q Okay.

16 A And it was the doctor always there on
17 call.

18 Q Was he on significant medication for his
19 mental deficiencies?

20 A Yes.

21 Q And whenever the officer Frebowitz got to
22 your home -- and you live in Conway; is that
23 correct?

24 A Yes.

25 Q When he got to your home and your son was

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1 still present, is that correct, he was still there?

2 A He was in the back of the car in the yard.

3 Q He was sitting in the back of the car?

4 A Yes.

5 Q And did you tell the officer the history
6 of your son and in regards to his delusional
7 episodes, his paranoid episodes, his hallucinations?

8 A Yes.

9 Q And did you also direct the officer to the
10 medication that your son was on?

11 A Yes. He was so hallucinational I give him med
12 about 5:00 before the investigator come over.

13 Q Uh-huh.

14 A And after I give him the medication,
15 that's when they got the call, said it really was a
16 tragic at my mom house.

17 Q And Anthony never told you what happened,
18 right?

19 A No.

20 Q Okay. But would you, would you say that
21 he was manic at that point in time?

22 A Manic.

23 MS. BARR: Objection as to leading.

24 BY MR. MCKENZIE:

25 Q So you described his condition, okay. You

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1 described the fact that you told Officer Frebowitz
2 what was going on in regards to Anthony; is that
3 correct?

4 A Yes.

5 Q And now you've known, you knew Anthony
6 prior to his, him being arrested, I'm sorry, prior
7 to his accident in 1995?

8 A Yes.

9 Q And you knew him afterwards?

10 A Yes.

11 Q Does he, did he have diminished mental
12 capacity?

13 A Yes.

14 Q Okay. Was it significant diminished
15 mental capacity?

16 A Yes, it was completely not Anthony.

17 Q Okay.

18 A He always feel like someone following him.
19 He always, two times he run away on a missing person
20 in New Jersey. They find him in Florence and take
21 him to a mental facility.

22 Q How many times was he in a mental
23 facility?

24 A Three time in New Jersey. He had cut his
25 wrist and he was threatening mental health and about

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1 six week they keep him there.

2 Q Six weeks in New Jersey mental facility?

3 A Yes.

4 Q And what other mental facilities was he
5 in?

6 A In Columbia it was -- I forgot the name.
7 Anyway, he had run away, jump in my car. My keys
8 was in the car and he was keep driving. And I got a
9 call from the mental facility telling me that
10 Anthony was there, and I come down and pick him up.

11 Q Okay. And was he put into a mental
12 institution for that?

13 A Yeah.

14 Q Where was that?

15 A In Columbia. I think it was, I can't
16 remember the name.

17 Q Okay. How long did he stay in Columbia?

18 A He stay about three weeks.

19 Q Three weeks. Is there another time that
20 he was institutionalized?

21 A Yeah. When he run away he stated to the
22 police when he was missing and they find him in
23 Florence, and they take him to a place called the
24 Lighthouse.

25 Q The Lighthouse in Florence?

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1 A Yeah. And they keep them there about
2 three weeks.

3 Q About three weeks?

4 A Yeah.

5 Q And then I think that he was, he's getting
6 disability for his mental condition?

7 A He was -- before he got in the car
8 accident he was already on disability for a drunk
9 driver hit him.

10 Q Okay. And I think he was hit as a
11 pedestrian, right?

12 A Yes.

13 Q And a drunk driver actually ran over him?

14 A Yes.

15 Q And he had trauma from that; is that
16 correct?

17 A Yes, yes.

18 Q Okay. And so, and then in 1959 he had a
19 one car accident --

20 A Yeah.

21 Q ---where he had this significant brain
22 trauma?

23 A Yes.

24 Q And do you know what his diagnosis in
25 regards to his brain? Is he psychotic?

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1 A. Yes.

2 Q. Is that one of the diagnoses?

3 A Yes.

4 MS. BARR: Judge, I hate to keep
5 interrupting, but obviously I would object to
6 leading.

7 BY MR. MCKENZIE:

8 Q Do you know what his diagnosis is?

9 A One of them is psychotic due to a trauma
10 brain injury and depress, depression due to brain
11 injury.

12 Q Now you are his mother. Can you tell the
13 Court, do you believe that Anthony the night that
14 this event occurred was rational and able to
15 understand what was going on?

16 A No, he didn't.

17 Q Okay. Thank you.

18 MR. MCKENZIE: That's all the questions I
19 have, Your Honor.

20 THE COURT: All right, Ms. Barr.

21 **CROSS-EXAMINATION**

22 BY MS. BARR:

23 Q Ms. Burroughs, you indicated that Anthony,
24 your son, did not tell you what he had done,
25 correct?

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1 A No, he didn't.

2 Q But didn't you tell the police that he
3 told you that, I killed them, and told you to call
4 police?

5 A No.

6 Q You did not tell the police that?

7 A No.

8 MS. BARR: Your Honor, permission to
9 approach the witness.

10 THE COURT: Yes.

11 BY MR. MCKENZIE:

12 Q Do you recognize this handwritten
13 voluntary statement?

14 A Yes.

15 Q Okay. And that's a statement, that's your
16 handwriting, correct?

17 A Right.

18 Q That's the statement that you gave to the
19 detective, correct?

20 A Yes.

21 Q And in that statement you tell the
22 detectives that he came and knocked at your door and
23 told you, "I killed them, call the police," correct?

24 A I don't know about the statement because
25 when I write this note I was crying.

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1 Q All right. Tell me what it says.

2 A It says, knocked at the door.

3 Q Wait a minute, I'm sorry, slow down for
4 me. Say again.

5 A "I knocked at the door. He said, I killed
6 them, call the police."

7 Q And when you said, "I knocked at the
8 door." I said kill them -- "I killed them, call the
9 police." You're talking about your son told you
10 that, right?

11 A Yes, I'm -- but at that time I really
12 didn't know what I was writing 'cause I was crying.

13 Q Okay, all right. And you didn't believe
14 him and that's why you said he was delusional,
15 right? You didn't believe that he had killed your
16 mother and your brother, right?

17 A Right, and I don't believe it now.

18 Q Okay. But you know, of course, they were
19 murdered, right?

20 A Yes, by someone.

21 Q Assuming for argument sake, ma'am, that he
22 had in fact killed your mother and your brother, if
23 he told you that he wouldn't have been delusional,
24 right?

25 A If he told me that.

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1 Q Right.

2 A If he told me that.

3 Q Yes, ma'am.

4 A Yeah.

5 Q You'd agree with me, right?

6 A Yes.

7 Q If he killed your mother and your brother
8 and he came that night and he said, I killed them,
9 call the police, he would have been telling the
10 truth if we assume that he actually is guilty,
11 right?

12 A Yes, if he told me that.

13 Q Thank you. That's all the questions I
14 have.

15 THE COURT: All right, ma'am, have you had
16 any medical training?

17 THE WITNESS: Me?

18 THE COURT: Yes.

19 THE WITNESS: Not in mental.

20 THE COURT: Medical training as in medical
21 school or studied medicine.

22 THE WITNESS: No.

23 THE COURT: And you said you gave him
24 medicine at 5:00?

25 THE WITNESS: Yes.

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1 THE COURT: And what's the effect,
2 typically when you give him medicine what does that
3 do?

4 THE WITNESS: It supposed to calm him
5 down.

6 THE COURT: Does it typically calm him
7 down?

8 THE WITNESS: It didn't, but I thought it
9 would.

10 THE COURT: And when did the police take
11 him away?

12 THE WITNESS: They took him away maybe
13 about 30 minutes after.

14 THE COURT: So he takes the medicine while
15 at work or?

16 THE WITNESS: Yes. I really don't know
17 how long it take to work because when I give him, he
18 takes his medicine, I don't see a difference.

19 THE COURT: All right. Thank you.

20 Any other questions, Mr. McKenzie, or
21 Ms. Barr?

22 MR. MCKENZIE: No other questions, Your
23 Honor.

24 MS. BARR: Judge, I'm sorry, can I ask her
25 some more questions.

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1 THE COURT: Where are you going, ma'am?

2 BY MS. BARR:

3 Q Ma'am, did you see your son after he was
4 taken into custody by the Horry County Police
5 Department?

6 A No.

7 Q You didn't see him anymore that day?

8 A No.

9 Q All right. He owns his own vehicle;
10 doesn't he?

11 A Yeah.

12 Q He drove to your house that day, right?

13 A No, he walked to my house. The car was
14 someplace else.

15 Q Okay. But he drove from Salters to
16 Conway, correct?

17 A I think so. I didn't see him.

18 MS. BARR: That's all the questions I
19 have, Judge. Thank you.

20 THE COURT: Thank you, ma'am. You may
21 step down.

22 MR. MCKENZIE: Your Honor, looking back on
23 my Rule 5 discovery, I did not receive a handwritten
24 statement from -- I don't see a handwritten
25 statement on here from Joani Burroughs. There's a

1 transcribed statement of Joani Burroughs dated 6/5
2 which is 124 pages, but no handwritten statement in
3 my Rule 5; and I'd ask the Court to exclude that,
4 not consider it.

5 THE COURT: Well, you have it now to
6 review. She just acknowledged it. Is this part of
7 your presentation of witnesses, or are you
8 abandoning this issue to pursue another one?

9 MR. MCKENZIE: No, sir. I'm just saying
10 that, you know, that's part of the case.

11 THE COURT: Well, it's not part of the
12 hearing that we're dealing with now. We're dealing
13 with the hearing and the motion to suppress.

14 MR. MCKENZIE: No, sir, that will be part
15 of my, that will be -- I'll make that motion at the
16 appropriate time.

17 THE COURT: All right. Do you have any
18 other witnesses on this issue?

19 MR. MCKENZIE: I do not.

20 THE COURT: All right. Any argument by
21 counsel? The State has the burden.

22 MS. BARR: Yes, sir, Your Honor. Judge,
23 although it's been quite apparent through the
24 testimony of Doctor Frierson and the defendant's
25 mother that the defendant does have a history of

1 mental illness, that in and of itself does not make
2 his statement to the police involuntary. The
3 evidence before the Court is that the defendant was
4 not delusional at the time he gave the statement to
5 law enforcement. If, in fact, Ms. Burroughs gave
6 him medication with the intent to calm him down,
7 certainly by the time he had the interview with
8 Investigator Frebowitz the medication seemed to have
9 worked. The two of them were the only two
10 individuals in the room at the time he gave the
11 statement. Investigator Frebowitz indicated that he
12 had not been promised anything, he had not been
13 threatened in any way. He gave responses that were
14 appropriate to the questions. And certainly, Judge,
15 there's nothing in the record to suggest that at
16 point in time the defendant was delusional.

17 Ms. Burroughs makes just simply a
18 conclusory assertion saying that the defendant was
19 delusional, but offered no specific instances in
20 which he was delusional that night. And I
21 understand that as a mother she does not believe
22 that her son is guilty of the charges that are
23 currently before the Court, but if he came to her
24 and told her that he had killed her mother and her
25 brother, and Judge, if the jury believes that's, in

1 fact, the case, then that would just make him an
2 individual that was telling the truth, not somebody
3 suffering from delusions.

4 And so Your Honor, we believe that under
5 the criteria set forth in Jackson versus Denno that
6 the statement given by the defendant to Investigator
7 Frebowitz was made freely, knowingly, and
8 voluntarily. We ask that the Court deny defendants'
9 motion to suppress the statement.

10 THE COURT: Mr. McKenzie.

11 MR. MCKENZIE: Thank you, Your Honor.
12 Your Honor, under U.S. versus Christobal -- it's 293
13 Fed 3rd, 134 Fourth Circuit Court of Appeals 2002
14 case.

15 THE COURT: How do you spell that word?

16 MR. MCKENZIE: Christobal is
17 C-R-I-S-T-O-B-A-L. It's in my brief, Your Honor.
18 B-A-L, I think. In that case there was this very
19 question that came up about a defendant's competency
20 to give a statement who had the -- they knew the
21 defendant was suffering from fatigue, mental
22 illness, emotional turmoil, and psychological
23 instability. What in that case the court found that
24 a statement was voluntarily given because the police
25 took extra cautions to make sure of that. And one

1 of the things they did was they actually prior to
2 him given the Miranda warnings they actually had a
3 nurse come by and make sure that he was okay and
4 able to give a sufficient warning or give a
5 sufficient statement. And so prior to conducting
6 the interview they did not find that the answers
7 were suggestive or delusional or incomprehensible in
8 that case; but the Court of Appeals said once you're
9 put on notice and that knowing, intelligently waiver
10 issue comes up, then the police have an obligation
11 to go a little bit further than they normally do
12 with just run-of-the-mill Joe Blow off the street
13 who's given his Miranda statement. Once they
14 have -- and there's no question that Detective
15 Frebowitz knew that Mr. Anderson had a psychological
16 problem, that his mother reported he was delusional
17 prior to him interrogating him, and that he was on
18 significant antipsychotic medication that should
19 have alerted Detective Frebowitz that maybe he
20 should have backed down and received somebody, a
21 nurse, anybody that would have been -- and he stated
22 in court today he's not a professional in this. So
23 how did he know, how could he know that my client's
24 answers to his questions are not delusional answers
25 if he's not an expert and can't tell us what

1 delusional answers look like. And so that's what I
2 think Christobal tells us is that if you have this
3 knowledge going into this interrogation, -- it'd be
4 one thing if he didn't have the knowledge, but he
5 did, and he's admitted that freely. He has this
6 knowledge going into it, then you've got to be able
7 to have, come into court and say, Your Honor, it's
8 knowingly and intelligently waived.

9 The problem with my client, as you have
10 heard testimony from Doctor Frierson yesterday, he
11 has significant frontal lobe damage which we don't
12 know what effect that would have had on him knowing
13 what Miranda even meant or said, and that's why I
14 asked that question about the Miranda form. I
15 normally see a Miranda form where the defendant
16 initials every part of the Miranda warnings; but
17 that's not what Horry County did in this case and
18 maybe that's their policy and that's the way they do
19 things. But if you read from the very beginning of
20 the statement from Detective Frebowitz, and it
21 starts on page 3 and I don't know if Your Honor has
22 a copy of it or not.

23 THE COURT: I do.

24 MR. MCKENZIE: It starts on page 3. It
25 says, Detective Frebowitz is giving him the kind of

1 cursory questions or responses; but then it goes in
2 and says, you're a nice man, she told me that --
3 talking about his mother. So I promised her that I
4 would take your side of the story. We just won't
5 hear one side, but I got to read, I got to read
6 those Miranda rights like you see on TV. You can
7 follow along with me if you like because it says
8 right here you have the right to remain silent,
9 anything you say -- and he gives him Miranda rights.
10 There's no absolute. And then the one statement
11 that Anthony Anderson says after that, "Do you
12 understand that?" "Yeah." Okay. And if you look
13 throughout his statement most of his answers are
14 yeah or yes. And it's only when you get to those
15 pages where he starts asking for, to see somebody
16 about his mental health issues, that he really
17 starts going into detail about I need, I would like
18 to see somebody about, you know, see my doctor, I've
19 been under care for, you know, mental health issues.
20 And again, that issue is brought up in the actual
21 Miranda or the statement that was given pursuant to
22 Miranda.

23 So Your Honor, I think the totality of the
24 circumstances is what the Court has to look at here,
25 and the totality of the circumstances would dictate

1 to me that Detective Frebowitz knew that the
2 defendant was delusional from the statements from
3 the mother, knew that he was on antipsychotic
4 medication, knew that, knew that defendant had a
5 significant head injury from a 1995 automobile
6 accident. And taking all that into consideration, I
7 do not see how Anthony Anderson can give a knowing
8 and freely waiver of his Miranda rights. Thank you,
9 Your Honor.

10 THE COURT: All right, Ms. Barr.

11 MS. BARR: Judge, the only other thing
12 that I would add in followup is under case law State
13 versus Hill 361 SC 297, 2004, Supreme Court opinion
14 that specifically says that -- and in this
15 particular case the defendant had actually had a
16 bullet wound to his head and he was questioned by
17 law enforcement at the hospital. He was given his
18 Miranda warnings, but the Supreme Court held that a
19 defendant's mental condition in and of itself does
20 not render a statement involuntary in violation of
21 due process. Absent, of course, if police conduct
22 causally related to a confession there is no basis
23 for a finding, for finding a confession
24 constitutionally involuntary and under state law a
25 confession is not inadmissible because of mental

1 deficiency alone. Judge, the Supreme Court also
2 noted that in that case there was no testimony in
3 the record that the defendant felt coerced by the
4 State. And again, it goes on to hold that
5 appellant's mental condition alone does not support
6 a finding of involuntariness absent evidence of
7 police coercion. As it just says here, Judge, no
8 evidence of police coercion in this case, and we
9 believe that this is a matter that should be given
10 and addressed to the jury for its consideration and
11 give it the appropriate weight deemed necessary.

12 THE COURT: All right. I see we have
13 Doctor Frierson is here.

14 MS. BARR: Yes, sir.

15 THE COURT: All right. Doctor Frierson,
16 we're gonna call you back to the witness stand as
17 the Court's witness. You're still under oath, sir.
18 WHEREUPON,

19 **RICHARD FRIERSON,**
20 having been previously sworn by the Clerk, testified
21 as follows:

22 **EXAMINATION BY THE COURT**

23 Q Doctor Frierson, when was it that you saw
24 Mr. Anderson, the date?

25 A The first time was August 5th, 2013.

1 Q August 5th, 2013. And the date of his
2 arrest was?

3 MS. BARR: June 5th, 2013.

4 BY THE COURT:

5 Q You saw him two months afterwards?

6 A Two years.

7 Q Two years afterwards, all right. And do
8 you have an opinion as to whether or not the, based
9 on your examination of him, when you did, do you
10 have an opinion as to his ability to understand the
11 Miranda warnings that was given to him?

12 A I don't have an opinion, Your Honor.

13 Q Well, based on your general knowledge
14 regarding persons with this defendant's mental
15 condition, is he, does he have a condition that
16 would be categorized as being mental retardation or
17 something else?

18 A No, it would not be characterized as
19 mental retardation. He has cognitive deficits that
20 are a result of his head injury. They're not so
21 severe as to qualify for a diagnosis of dementia.
22 If they were worse that would be dementia, but he's
23 still able to drive to function. Now he's not able
24 to work, but he can take care of himself.

25 Q Well, based on your general knowledge

1 regarding persons with his degree of cognitive
2 deficit, would he have the ability to understand the
3 implications of Miranda?

4 A I have not asked him that so I really
5 don't know. Historically, we used to at these
6 evaluations give him Miranda rights before we did
7 the evaluation and we stopped that many years ago.
8 That was a policy change that was not necessary. I
9 would say you have the right to remain silent, can
10 you tell me what that means. You'll be surprised as
11 how many people with cognitive limitations think
12 that means be quiet, not that you don't have to
13 speak but just like you're telling them to be quiet.
14 I have not asked Mr. Anderson those questions about
15 his statement. That was not the focus of,
16 obviously, my evaluation of him. That's not
17 something that routinely the Department of Mental
18 Health is asked to do.

19 Q Was he able to understand his
20 communications with you?

21 A I can tell you this, on a mental status,
22 from reading the statement he appears to understand
23 the questions and giving answers to the questions.
24 Like, sometimes I'll have very mentally ill people,
25 if you read their statement and some of their

1 answers, you're like, it's clearly -- I can think of
2 a case here in Williamsburg County Joseph Brandt,
3 you know, you read his statement, his transcribed
4 interview, some of his answers were not even
5 responsive to the questions. That's not the case
6 here. But I don't know, you know, when I saw
7 Mr. Anderson, too, he was on medication. I know he
8 was supposed to be on medication at the time of his
9 statement. I'm not sure ---

10 Q His wife said she gave him the medication
11 the night before.

12 A I mean, when I say on medication I mean
13 consistently. I mean, taking one pill isn't gonna
14 have a tremendous effect. Mental health medicines
15 work differently. They require that you take them
16 over time. For example, if you have psychosis or
17 depression, giving you one pill is not gonna make
18 that go away. It's over days or weeks that those
19 symptoms become controlled.

20 Q All right.

21 THE COURT: Anything further by the State
22 or Defense?

23 **CROSS-EXAMINATION**

24 BY MS. BARR:

25 Q Doctor Frierson, it's certainly possible

1 that an individual who suffers from psychotic
2 disorder, generally speaking, can give a
3 intelligent, freely, voluntarily statement to police
4 officers, correct?

5 A That is possible, yes.

6 Q All right. That's all the questions I
7 have.

8 **REDIRECT EXAMINATION**

9 BY MR. MCKENZIE:

10 Q Doctor Frierson, and if you — I think you
11 were sitting in here to hear the testimony of his
12 mother. His mother said he was delusional,
13 hallucinating, all those things, and those things
14 were told to the officer. Do you think it's
15 appropriate at that point in time for additional
16 medical evaluation prior to him giving a statement?

17 A I don't have an opinion on that. I don't
18 know what is standard police protocol in that
19 situation. I will say I think that some of the
20 thoughts that he presented during his statement are
21 consistent with delusional thinking, especially that
22 they wanted to harm him in some way.

23 Q Right.

24 A To get him out the picture so they could
25 collect on insurance money.

1 Q And it goes in great detail about over a
2 33-dollar insurance policy.

3 A Yes.

4 Q And he really got really fixated on that.

5 A Well, I don't know what the payout was for
6 if he dies, but the premium was 33-dollars.

7 Q The premium was 33-dollars so it couldn't
8 have been a whole lot, but it was over a 33-dollar
9 premium insurance policy, and he really gets, he's
10 really paranoid in that statement about that.

11 A Yes.

12 Q And you would, you would characterize that
13 as a paranoid statement in the statement?

14 A Yes.

15 Q Okay.

16 MR. MCKENZIE: Thank you, Your Honor.

17 THE COURT: All right, thank you, sir.

18 Well, I was handed a motion to suppress
19 yesterday afternoon. I was handed the statement
20 this morning, haven't read it. I heard the
21 testimony this morning. I'm not prepared to rule on
22 the issue at this time. Y'all want to recess or you
23 want me to take it under advisement and proceed?

24 MS. BARR: Your Honor, obviously we'll do
25 whatever the Court wants, but we're prepared to call

1 part of the evidence in the case. It's now been
2 disclosed. I don't find any prejudice by it being
3 disclosed at this time.

4 MR. MCKENZIE: Thank you, Your Honor.

5 MS. BARR: Your Honor, also, I just wanted
6 to let the Court know that we've marked State's
7 Exhibits 9 through 36 and they're crime scene photos
8 and I believe they're without objection by Defense.
9 I just want to make sure Your Honor can see them.

10 MR. MCKENZIE: No objection.

11 THE COURT: All right. Well, I've had
12 sufficient amount of time to review the statement of
13 the defendant, the advisement of the Miranda rights,
14 the advisement of Miranda rights contained in
15 indication by the defendant that he understood the
16 rights that had been explained to him, that he
17 wishes to waive them and make a statement and answer
18 questions to law enforcement officer. And he's
19 given a statement in which it appears that he
20 clearly understood all questions that and he gave
21 appropriate responses such that he was communicating
22 meaningfully with the officer. There is always a
23 question and there's a question in this case as to
24 whether or not his, the defendant had the mental
25 ability to understand the implications of Miranda,

1 the medical testimony doesn't help very much in
2 assessing that determination. It's very difficult
3 for the Court to in any case to, where there is a
4 statement or confession to make an assessment as to
5 the degree of understanding of any defendant as to
6 what might be the consequences of giving a
7 confession or statement. Of course, the Miranda
8 warning itself warns the individual that the
9 statement may be used against them in court.

10 I think given the totality of the
11 circumstances and whether as close to and looking at
12 the entire matter here, it appeared that
13 Mr. Anderson sufficiently understood the nature of
14 Miranda warnings. There's no coercion whatsoever by
15 law enforcement, that he made a free and voluntary
16 statement after having been informed of his
17 constitutional right to remain silent, so the State
18 has established by a preponderance of the evidence
19 that the statement should be admitted. The State
20 still has the burden of proof beyond a reasonable
21 doubt to the jury that the statement is a free and
22 voluntary statement and should the State fail to
23 meet that burden in the jury's eyes, the jury's eye,
24 then the statement should be disregarded all
25 together, that's a jury issue, a jury question. So

1 I deny the motion to suppress. Does that change
2 your waiting on the closing, Mr. ---

3 MR. MCKENZIE: I understand, Your Honor.

4 THE COURT: All right.

5 MR. MCKENZIE: Thank you.

6 THE COURT: Okay, you can bring them in.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 11:23 a.m., and the
9 following proceedings commenced in open court.)

10 THE COURT: Good morning. Welcome back.
11 We're been here since 9:30, but we had to tend to
12 some matters before having you come in. Now that
13 you're in, you're ready to go, I need you to stand
14 to be sworn.

15 THE CLERK OF COURT: Please raise your
16 right hand.

17 (WHEREUPON, the jury was sworn at 11:25 a.m.)

18 THE CLERK OF COURT: I need you to respond
19 by saying I do.

20 (Jurors responded.)

21 THE CLERK OF COURT: You may be seated.

22 THE COURT: Well, ladies and gentlemen,
23 you've now been sworn to well and duly try this case
24 and render a true verdict according to the law and
25 according to the evidence so help you God. If you

1 the jury.

2 In just a minute we'll have opening
3 statements by the State Ms. Barr, followed by
4 opening statements by Mr. McKenzie on behalf of the
5 defendant, should he elect to give an opening
6 statement. Then we will proceed with the testimony
7 in the case.

8 Ms. Barr.

9 MS. BARR: Thank you, Your Honor, may it
10 please the Court.

11 THE COURT: Yes.

12 MS. BARR: Ladies and gentlemen. Help,
13 help, help, help, help, my nephew just killed me and
14 my momma. Good morning, ladies and gentlemen. I'm
15 Kimberly Barr, and the words that I've just spoken
16 to you were among the last words that were ever
17 uttered by Theward McCray. Mr. McCray is unique in
18 this case because although he's not here with us
19 anymore, he is a witness and he, you will hear from
20 him. He in no uncertain terms identifies
21 his killer. And ladies and gentlemen of the jury,
22 the reason why you all are here this week is because
23 you'll learn that back on June the 5th, 2011, at
24 about a little after one in the morning, I believe
25 it was a Saturday night going up until a Sunday

1 morning, Theward McCray was 52 years old. He and
2 his mother resided in Salters community of
3 Williamsburg County. His mother Rosa Lee McCray was
4 one month shy of her 90th birthday. She had lived a
5 nice, long life. That life and the life of her son
6 came to an abrupt devastating tragic end at the
7 hands of defendant Anthony Anderson. The evidence
8 is gonna show that Mr. Anderson was the grandson of
9 Rosa McCray and the nephew of Theward McCray. The
10 evidence is gonna show that both of them died as a
11 result of shotgun wounds.

12 Folks, I'm not gonna be long. I recognize
13 that we've kept you all waiting and I'm ready to get
14 started with the trial of the case. I'm sure you
15 all are ready as well, but I did want to take just a
16 few moments to kind of let you know what the trial
17 is about, let you know what you all can expect. But
18 before I do that, I want to thank you for your
19 service as we recognize that out of all the places
20 in the world this week, serving on a jury on a
21 murder case was probably not at the top of your
22 list, but we appreciate your commitment to the
23 process. Because y'all remember when we selected
24 you guys on yesterday some people got picked and
25 some people didn't, and there is somewhat of a

1 method to the badness in terms of lawyers deciding
2 who they want in the case; and I think Mr. McKenzie,
3 who's Mr. Anderson's lawyer, can agree on this part
4 of what I'm gonna tell you. And that is, that as
5 lawyers, even though we're on different sides of the
6 fence we want jurors who are gonna be fair, who are
7 gonna be attentive, and who's going to, who are
8 gonna render a verdict that speaks the truth in this
9 case, and that's all we can ask for. Now we're not
10 gonna agree on much else beyond that, but we
11 certainly agree that when we went through that whole
12 jury selection process on yesterday, we believe that
13 we got the individuals in this case who are gonna be
14 fair, who are gonna be attentive, and who are gonna
15 win their justice in the case.

16 Now the defendant is charged with three
17 counts in the indictment. He's charged with the
18 murder of his grandmother Rosa McCray. He's charged
19 with the murder of his uncle Theward McCray. And
20 he's charged with possession of a weapon during the
21 commission of a violent crime. Now as it relates to
22 murder, once you all have heard all the evidence in
23 the case the Judge is gonna tell you what it means
24 by South Carolina law when we talk about murder.
25 Murder is the unlawful killing of another person

1 with malice aforethought. In some instances it
2 involves planning. In some instances not so much
3 planning, but it requires enough planning that
4 obviously a person is aware of what they're doing
5 and recognizes that what they're doing is wrong.
6 He's also charged with the possession of a weapon
7 during the commission of a violent crime. So at the
8 conclusion of the case if you all find that he's
9 guilty of either murder or both murders -- and of
10 course, in South Carolina murder is considered a
11 violent crime. If you find that he's guilty plea of
12 one or both murders, then I would submit to you at
13 the end of the case that you should also find him
14 guilty of possession of a weapon during the
15 commission of a violent crime.

16 Again, I'm gonna be un-lawyer like and I'm
17 gonna just stop talking at this point in time; but I
18 did, again, want to thank you all for your time. I
19 want to thank y'all most importantly for your
20 attention. And once the case is concluded I get the
21 opportunity to stand before you again one final time
22 before you begin your deliberations, and folks, I'm
23 sure at that time I'll be thanking you for a third
24 time. But I'll also be asking you based on the
25 evidence you've heard and based on the law as the

1 judge will give it to you, I'll be asking you to
2 find him guilty on each and every count of the
3 indictment. Again, thank y'all.

4 THE COURT: Mr. McKenzie.

5 MR. MCKENZIE: Thank you, Ms. Barr, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. MCKENZIE: Ladies and gentlemen of the
9 jury. I talked to you yesterday. My name is Steve
10 McKenzie. Mat Burgess and myself represent Mr.
11 Anderson over here. Help, that's a very good word
12 in this case. Mr. Anderson, what you didn't hear
13 from the Solicitor is that Mr. Anderson in 1995 was
14 in a significant one car accident. He had
15 diagnosed, he had significant damage to his frontal
16 lobe, and you're gonna hear some testimony later on
17 in the trial from Doctor Frierson who's seated over
18 here about what that means when someone damages
19 their frontal lobe.

20 And you've got to think, when we decided
21 upon you as jurors we knew that you would bring your
22 common sense, your every day experiences into this
23 courtroom. And you guys all have and I have and we
24 hope everybody in this courtroom with the exception
25 of Mr. Anderson has a frontal lobe in their brain

1 that is working normally. Now what does that mean?
2 It means that he has, he does not have the ability
3 to rationally think the way we do. So when you're
4 thinking about this trial you need to think about
5 yourself and think about the way Mr. Anderson sees
6 the world. He has been diagnosed with significant
7 brain trauma. You're gonna hear from Doctor
8 Frierson that he did not have the ability to conform
9 his actions at the time of this event. Now what
10 does that simply mean? He can't, he couldn't make a
11 decision like you or I or anybody in this courtroom
12 could make where they can say, stop, I need to cool
13 down or I need to do something differently. His
14 inability, his paranoia, his hallucinations, his
15 delusions that he had -- and you'll hear about those
16 during the course of this trial -- kept him from
17 having the ability to understand that he had to stop
18 what he was doing and could not go forward with it.

19 It is an absolute tragedy that two people
20 are dead. And I asked, when I first stood up here I
21 said help. The one thing that Mr. Anderson has been
22 trying to get since 1995 is help. You'll hear that
23 he's on disability. Prior to 1995 he actually was
24 run over by an automobile. That put him on social
25 security disability. Then he gets in a one car

1 accident, gets significant impairment to his frontal
2 lobe. Has, after that has paranoid delusions, on
3 antipsychotic medication. He is not the normal
4 defendant that would be sitting over here accused of
5 murder. He is someone who is special. He is
6 someone that whenever I was growing up your family
7 took care of people like Anthony Anderson. Today
8 you'll see that he was put into a group home. They
9 tried to get him special housing. The State has
10 tried to do things. He's been institutionalized
11 three different occasions because of his mental
12 illness, and you will hear all about that as we go
13 along with this trial.

14 Now again, as the Solicitor stated, we
15 brought you in here today because we knew that you
16 could be fair, impartial, and you would listen to
17 the facts of this case. Now the Solicitor wants you
18 to say Mr. Anderson is guilty of this crime. I want
19 you to say that Mr. Anderson is not guilty of this
20 crime because he is not like us. He is not like,
21 he's not unlike a child. And we don't, in this
22 country we made a conscious decision and we have a
23 constitution that says we don't imprison children,
24 we don't imprison mentally ill people. We do
25 alternative things for them. And so what I'm asking

1 you today is to keep an open mind about the facts
2 and circumstances that surround in this case and
3 about all that was going on in Mr. Anderson's life.
4 Does not diminish the fact that two people are dead
5 and we can't bring them back. And one of those, my
6 client's mother Joani Burroughs who's seated behind
7 me, she lost her mother and her brother, and you
8 will hear testimony that her son was the one who
9 caused it. Now, she will tell you and she's gonna
10 testify in this courtroom about the problems that
11 Mr. Anderson had and they included things of people
12 trying to kill him; he believed that in his mind.
13 And again, you got to understand. You've got to say
14 to yourself put away your preconceived notions of
15 what sane people think about. Most of us don't go
16 around being obsessed every day that someone is out
17 to kill us or that airplanes are following us
18 around. And not every one of us walks every day
19 from Andrews to Conway to check their mail. You'll
20 hear these kind of things. And then at the end of
21 this case I'm asking you to bring back a verdict of
22 not guilty by reason of insanity because my client
23 could not, whenever he was having these delusional
24 episodes, could not distinguish or stop himself from
25 going any further. And that's what I think you need

SW - Y. WILSON - DIRECT

1 to understand in this case and you need to put away
2 your preconceived notions of is this a murder or is
3 this a mentally ill person, a insane person, a
4 person who needs an alternative to prison.

5 I thank you for your time here today.
6 This is a great inconvenience upon you to be away
7 from your families, your loved ones, and be here
8 today. But this is my client's only day in court,
9 and what you decide here today affects him. It
10 affects a family that has been torn apart over the
11 loss of a beloved grandmother, mother, and uncle and
12 brother. And you have to look at all of the facts
13 in this case, and at the end of this case the judge
14 will tell you the burdens of proof in regards to
15 whether or not you can prove guilt as Ms. Barr wants
16 you to. And the judge will tell you that's beyond a
17 reasonable doubt. That means there's any doubt in
18 your mind you must acquit my client. And the
19 preponderance of the evidence standard to determine
20 insanity, not guilty by reason of insanity, is a
21 preponderance of the evidence and those are two
22 different standards and the judge will explain that
23 to you. But keep all of this in mind as you go
24 through this case. Listen to the facts of the case,
25 listen to what comes from that witness stand, listen

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1 and look at the evidence that's put in. No one's
2 denying that two people were killed. No one's
3 denying that two people were killed tragically.

4 A tragedy in this case also is Anthony
5 Anderson, and we can't help that he has a mental
6 illness. And there are people among us with mental
7 illness, but as a society, as a civilized society,
8 are we going to, say, put these people away in some
9 place that they don't need to be, or are we gonna
10 put them in some place that they need to be to get
11 help. And that's your decision today. Thank you.

12 THE COURT: First witness.

13 MS. BARR: The State calls Yvonia Wilson.

14 THE CLERK: Place your left hand on the
15 Bible, raise your right hand.

16 WHEREUPON,

17 **YVONIA WILSON,**
18 having been duly sworn by the Clerk, testified as
19 follows:

20 MS. BARR: May it please the Court.

21 THE COURT: Yes.

22 **DIRECT EXAMINATION**

23 BY MS. BARR:

24 Q Ms. Wilson, state your name for the record
25 and spell your first name for us.

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1 A Yvonia Wilson, Y-V-O-N-I-A.

2 Q And tell the ladies and gentlemen of the
3 jury where you work.

4 A I'm with the Williamsburg County emergency
5 services, the 9-1-1 division.

6 Q All right. And what do you do there?

7 A I process calls. I take calls and I
8 dispatch them to the appropriate agencies.

9 Q Okay. And so, of course you are what we
10 commonly refer to as a 9-1-1 dispatcher?

11 A Correct.

12 Q And how long have you been working there?

13 A Fourteen years.

14 Q All right. Have you ever testified in
15 court before?

16 A Never.

17 Q This your first time?

18 A Yes.

19 Q All right. And ma'am, just give us an
20 overall picture of what it is that you do day-to-day
21 for E-911.

22 A Again, take calls, process them for EMS,
23 fire, and law enforcement.

24 Q Okay.

25 A And documentate, document the actual

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1 events during that call.

2 Q Okay. All right, now as part of your
3 employment are you familiar with how 9-1-1 calls are
4 received and stored?

5 A Yes.

6 Q Okay. And is it the policy of
7 Williamsburg County E-911 to record all incoming
8 calls?

9 A Yes.

10 Q And they do that in their ordinary course
11 of business?

12 A Yes.

13 Q Okay. And ma'am, you were working back
14 during the early morning hours of June the 5th of
15 2011?

16 A Yes.

17 Q All right. And you took a call from [REDACTED]
18 Seward Avenue in Salters, South Carolina?

19 A Yes.

20 Q Now the residence from which that call was
21 placed is located in Williamsburg County?

22 A Yes, it is.

23 Q All right. And do you feel approximately
24 what time the call came in?

25 A I don't recall approximately what time.

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1 Q If I showed you the CAD report would that
2 help?

3 A Yes.

4 Q Okay.

5 MS. BARR: Judge, may I approach the
6 witness?

7 THE COURT: Yes.

8 BY MS. BARR:

9 Q Does that help him you in terms of time?

10 A Yes, approximately.

11 Q Okay. And what time approximately did the
12 call come in?

13 A 1:35.

14 Q A.m.?

15 A A.m.

16 Q Yes, ma'am. And I need you to make sure
17 you keep your voice up for me. What was the nature
18 of the call?

19 A There was a gentleman on the other line
20 asking for help.

21 Q Okay, all right. Now, ma'am, prior to
22 your testimony here today did you have an
23 opportunity to listen to that 9-1-1 recording?

24 A Yes.

25 Q Okay. Is your voice on that 9-1-1

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1 recording?

2 A Yes.

3 Q All right. And is the voice of the
4 gentleman who had called in asking for help on that
5 9-1-1 recording?

6 A Yes.

7 Q And there is another female dispatcher on
8 there as well who comes in behind you?

9 A Yes.

10 Q Okay. And what's her name?

11 A Ms. Brown.

12 Q Okay. How long have you known Ms. Brown?

13 A Approximately 25 years or so.

14 Q So you're very familiar with her voice?

15 A Yes.

16 Q All right. And what's Ms. Brown's first
17 name?

18 A Deloris.

19 Q Deloris, her voice is on there in response
20 to the same individual calling back in?

21 A That's correct. On the second call.

22 Q All right. I'm gonna hand you what's been
23 marked as State's Exhibit Number 1. Is that the
24 9-1-1 call that you listened to in connection with
25 this case?

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1 A Yes.

2 Q All right. And ma'am, have there been any
3 changes or any editing done to this recording?

4 A No, it hasn't.

5 MS. BARR: Your Honor, we would move
6 State's Exhibit Number 1 in at this time.

7 THE COURT: Any objection?

8 MR. MCKENZIE: No objection, Your Honor.

9 THE COURT: It's admitted.

10 MS. BARR: Move to publish.

11 (WHEREUPON, State Exhibit No. 1 was
12 admitted into evidence.)

13 BY MS. BARR:

14 Q All right, ma'am, what I'm gonna do is I'm
15 gonna play the 9-1-1 recording and then I'll stop it
16 at the appropriate time and ask questions, but don't
17 speak while it's playing, okay?

18 (State's Exhibit No. 1 was published to the jury.)

19 BY MS. BARR:

20 Q Ma'am, during the course of that call it
21 looks like the call is interrupted or disconnected?

22 A Yes.

23 Q Okay. Do you know why that was?

24 A I do not know. I do not know.

25 Q Is contact then reinitiated between 9-1-1

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1 and the gentleman on the other side of the phone?

2 A I immediately dialed back, re-dialed back.

3 Q Okay. And when you dialed back what
4 happened?

5 A It was busy.

6 Q Okay, all right. Do you try again or does
7 any other member of the 9-1-1 team call back?

8 A No, I did not call back. He was in the
9 process of calling back. That's why it was busy.

10 Q Yes, ma'am. All right.

11 (Publishing of State's Exhibit No. 1 continued.)

12 BY MS. BARR:

13 Q Ms. Wilson, was that the extent of the
14 communication that 9-1-1 had with the gentleman on
15 the other line of the phone?

16 A Yes, it was.

17 Q All right. Now the tape goes on, but the
18 communication that goes on in the tape is between
19 which agency or which persons?

20 A Ms. Deloris Brown and law enforcement.

21 Q And law enforcement, okay, all right. And
22 it appears that during portions of the 9-1-1 call
23 both you and Ms. Brown are asking the gentleman
24 what's wrong, what do you need, please tell me. Did
25 you all have — just speak for yourself. Did you

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1 have a difficult time understanding what the
2 gentleman was saying?

3 A Yes, it was difficult. It was very
4 difficult.

5 Q All right.

6 A I knew he was in distress.

7 Q Could you make out the address that he was
8 giving you?

9 A Yes.

10 Q What address was that?

11 A [REDACTED] Seward Avenue.

12 Q All right. Could you make out any names
13 of any persons that he was giving you?

14 A Anthony. That's what we could pick up
15 from the recording thereafter.

16 Q Okay. Now ma'am, could you tell from the
17 9-1-1 recording whether or not this gentleman made
18 reference to himself and his mother, or his momma as
19 he described it? Do you remember that part of the
20 9-1-1 tape?

21 A Yes.

22 Q What did you hear him say?

23 A That he killed his mother and shot him.

24 Q That who killed his mother and shot him?

25 A It seems like he was saying nephew.

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1 Q Okay, all right. Now as a result of you
2 receiving that call and then later Ms. Deloris Brown
3 receiving the call, what did the two of y'all do as
4 result of that information?

5 A Okay. It was given to law enforcement
6 because we did not know what help he actually
7 needed. So in the event that if someone is in
8 distress and we do not know what's going on exactly
9 at the time ---

10 Q Yes, ma'am.

11 A ---our protocol is to basically send law
12 enforcement because when, if we had sent the
13 ambulance and something was wrong, they would not
14 have gone into that scene anyway.

15 Q And is that what you did in this case?
16 You dispatched law enforcement out?

17 A Yes.

18 Q Okay. And that was, those are members of
19 Williamsburg County Sheriff's Office?

20 A That's correct.

21 Q All right. Now did you have any other
22 involvement in the case?

23 A No, just recording or documenting their
24 times of arrival and what was said between us
25 through the radio communications.

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1 Q Yes, ma'am. All right, ma'am, thank you.
2 That's all the questions I have. Please answer any
3 either questions by Mr. McKenzie or by the Court.

4 **CROSS-EXAMINATION**

5 BY MR. MCKENZIE:

6 Q Ms. Wilson.

7 A Yes.

8 Q How are you doing today?

9 A All right.

10 Q And I think the solicitor's been over
11 this, but I just want to make sure. Your job is
12 take the call. You took a call. Somebody on the
13 other end who identified himself as Theward McCray
14 and gave you an address and said that he had been
15 killed; is that correct?

16 A His mother.

17 Q He and his mother had been killed?

18 A His mother.

19 Q His mother had been killed?

20 A And he had been shot.

21 Q And he had been shot, okay.

22 A Yes.

23 Q And he said his nephew was the one who did
24 it?

25 A Yes.

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1 Q Okay. Do you know how many nephews
2 Mr. Theward McCray has?

3 A No.

4 Q Okay. So you don't know who he would have
5 been referring to in regards to his nephew?

6 A He did make reference to Anthony.

7 Q But that was later on and that was not the
8 same context was it? I can show you a copy of the
9 transcript.

10 A That's correct.

11 Q You just said Anthony Anderson later on in
12 the transcript, I mean, in the statement, but he
13 didn't say Anthony Anderson killed me. He did not
14 say that did he? Or kill my mother?

15 A Not at the time when I answered that call.

16 Q Okay. Did he make it some other time?
17 Did he answer, somebody else answer the call?

18 A Ms. Brown also took the second call from
19 Mr. Seward [sic].

20 Q An is there a transcript of that or a
21 telephone transcript of that?

22 A That's the one that you have.

23 Q Okay. And so but your testimony today is
24 that he only said that his nephew had shot him and
25 killed his mother?

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1 A And that's listening back at the call
2 because when I first stated, me in my first
3 statement, it was hard to understand exactly what he
4 was saying; but in listening to the recording again,
5 ---

6 Q Uh-huh.

7 A ---then that's what's on the recording.

8 Q Okay. And on the recording it is, again,
9 remind me. Tell me what it says.

10 A That he needed help and his, he made
11 reference to Anthony and that his mother was shot,
12 killed, and she was in the bed, and he needed help.

13 MR. MCKENZIE: The Court's indulgence,
14 Your Honor. Can I approach the witness, Your Honor.

15 THE COURT: Yes.

16 BY MR. MCKENZIE:

17 Q Can you read me what it says in regards to
18 lines 1 through 20. And it says central dispatcher.
19 That would be you I'm assuming, right?

20 A That's correct.

21 Q Can you read, "9-1-1, do you have an
22 emergency?"

23 A Do you have an emergency, dispatch 9-1-1.

24 Q And Theward McCray ---

25 A Is saying help, help, help, help, help.

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1 Q Dispatcher.

2 A What's wrong.

3 Q Theward McCray.

4 A Help, help, I been shot, my nephew killed
5 me and my momma.

6 Q All right. So it didn't say shot me, he
7 said killed me and my momma, right? What's the next
8 response? Dispatcher.

9 A He said, I been shot. Okay, then said you
10 were what? Hello, hello.

11 Q Okay.

12 A Then the dial tone, that's ---

13 Q Show me anywhere in there he says Anthony
14 Anderson shot him.

15 A He did call his name.

16 Q Call his name later on ---

17 A Yes.

18 Q ---but he did not say Anthony Anderson
19 shot me. He said my nephew shot me.

20 A In his opening he said, I been shot. My
21 nephew killed me and my momma and number 25 stated
22 Anthony Anderson.

23 Q But that's not in response to a question
24 about being shot, is it? Read the lines going up to
25 that. "What's your name, sir? Please. Yes, what

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1 kind of help do you need?" Am I reading it
2 correctly?

3 A You're reading it correctly.

4 Q "Do you need EMS, do you need law
5 enforcement, [REDACTED] Seward Avenue. Sir, what's the
6 problem, what kind help do you need?" And then he
7 said, "Anthony Anderson," and that's all he says.
8 He does not say Anthony Anderson shot him, does he?

9 A Not on that line, no.

10 Q Okay.

11 MR. MCKENZIE: Okay, that's all the
12 questions I have, Your Honor.

13 THE COURT: Any redirect?

14 MS. BARR: No, Your Honor. Can I ask the
15 witness be excused?

16 THE COURT: You may step down and be
17 excused. Your next witness.

18 MS. BARR: We call Sergeant Cheyenne
19 Monteith.

20 WHEREUPON,

21 **STEVEN MONTEITH,**
22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 **DIRECT EXAMINATION**

25

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1 BY MS. BARR:

2 Q Good afternoon, Sergeant Monteith.

3 A Good afternoon.

4 Q State your full name for me.

5 A Steven Monteith.

6 Q All right. And spell your last name.

7 A M-O-N-T-E-I-T-H.

8 Q And certainly, sir, we see that we have,
9 that you have a uniform on; but just for the record,
10 kind of tell the ladies and gentlemen of the jury
11 where you work and what you do for a living.

12 A I work with Williamsburg County Sheriff's
13 Office. I'm sergeant on patrol, supervisor.

14 Q All right. And you are a certified police
15 officer?

16 A Yes, ma'am.

17 Q And how long have you been in law
18 enforcement?

19 A A little over 18 years.

20 Q Okay. And sir, you were working back on
21 the early morning hours of June the 5th of 2011; is
22 that correct?

23 A Yes, ma'am.

24 Q All right. And what were your job duties
25 or your assignment at that time in June of 2011?

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1 A I was a shift supervisor at that time. My
2 job duties were basic patrol duties, as well as
3 managing the officers that are on my shift.

4 Q All right. And sir, of course you were in
5 court when Ms. Wilson testified about the 9-1-1
6 call.

7 A Yes, ma'am.

8 Q And did you, as well as other members of
9 the Sheriff's Office respond to [REDACTED] Seward Avenue in
10 Salters in response to that 9-1-1 call?

11 A Yes, ma'am.

12 Q All right. Who else from the Sheriff's
13 Office, if you can remember, came to the scene as a
14 result of that call?

15 A Deputy Steve Dukes and Mike McBride were
16 the first two on the scene and then myself and
17 Deputy Hyman responded afterwards.

18 Q All right. And in terms of the rank, if
19 you will, who would have been the supervisory
20 officer at that time? That's between you, Steve
21 Dukes, and Michael McBride.

22 A Myself.

23 Q Okay, all right. What time did you all
24 arrive at the scene?

25 A I have to have the report to refresh. I

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1 don't remember.

2 Q All right. Let me see if I can help you
3 with that. Is this a copy of the initial incident
4 report?

5 A Yes, ma'am.

6 Q All right. And what time does it reflect
7 that the call came in?

8 A It's showing at 1:00. I'm sorry,
9 dispatched at 1:36.

10 Q 1:36.

11 A A.m.

12 Q 1:36 a.m. And what time did you all. Law
13 enforcement first arrive at the scene?

14 A It's showing first officer arrived on
15 scene at 1:56 a.m.

16 Q So approximately 20 minutes later?

17 A Yes, ma'am.

18 Q All right. And when you arrived I'm
19 assuming that Deputy Dukes and Deputy McBride were
20 already there?

21 A Yes, ma'am.

22 Q All right. Tell us what you did and what
23 you observed when you arrived at the scene?

24 A When I arrived at the scene Deputy Dukes
25 met me at the door and explained to me what we had

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1 inside. He said that someone, two people had been
2 shot.

3 Q Okay.

4 A One of the, the mail subject was still
5 alive in the living room. The older female subject
6 in the bedroom that was deceased. Went into the
7 house, found male subject on the floor. He was
8 still alive and breathing. And went into the
9 bedroom and found a female had been, that was
10 deceased in the bed.

11 Q Let's talk about the male subject first.
12 You indicated that he was still alive and he was
13 still breathing?

14 A Yes, ma'am.

15 Q Was he conscious?

16 A Yes, ma'am.

17 Q All right. Could he speak?

18 A Yes, ma'am.

19 Q All right. Obviously you indicated that
20 he'd been shot. Did he appear to be in any pain?

21 A Yes, ma'am.

22 Q All right. And did you ask any questions
23 of him?

24 A Yes, ma'am.

25 Q And what did you ask him?

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1 A I asked him who shot him?

2 Q And what'd he say?

3 A Anthony.

4 Q All right. Sir, there were several crime
5 scene photos taken in this case?

6 A Yes, ma'am.

7 Q All right. Who took the initial crime
8 scene photos?

9 A I did.

10 Q And you had an opportunity to review the
11 photos that you took?

12 A Yes, ma'am.

13 Q All right. And it would be fair to say
14 that photos were taken before bodies were removed
15 from the house and after?

16 A Yes, ma'am.

17 Q All right. What's the purpose of taking
18 them at two different times, before the bodies are
19 removed and after?

20 A We take them to try to get them as soon as
21 we can before the bodies are removed, things of that
22 nature, to insure the actual crime scene in its
23 preservation before EMT or any other people come in
24 and contaminate the scene.

25 Q Okay. All right, and you collected

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1 evidence in the case?

2 A Yes, ma'am.

3 Q Tell us about the evidence you collected.

4 A We collected blood samples, pictures,
5 shotgun shells. I believe we collected bed clothing
6 from where the grandmother was laying.

7 Q Okay. All right, now you talked about the
8 position of the male subject. That male subject was
9 Theward McCray?

10 A Yes, ma'am.

11 Q Tell us about the position of the female
12 subject and tell us who she was.

13 A I don't know her name, older lady. She
14 was laying on her back in the bed adjacent to the
15 living room.

16 Q Is -- was she Rosa Lee McCray?

17 A Yes, ma'am.

18 Q Do you have a copy of -- do you still have
19 that police report up there with you?

20 A Yes, ma'am.

21 Q Okay.

22 MS. BARR: And Judge I believe that the
23 State's Exhibits 9 through 36 were, we're offering
24 them and as I understand they were without
25 objection?

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1 THE COURT: Any objection to 9 through 36?

2 MR. MCKENZIE: None, Your Honor.

3 THE COURT: Admitted without objection.

4 MS. BARR: Thank you, Your Honor. And we
5 move to publish.

6 THE COURT: You can do that.

7 (WHEREUPON, State Exhibits Nos. 9 through
8 36 were admitted into evidence.)

9 BY MS. BARR:

10 Q I'm gonna publish what's been admitted as
11 State's Exhibit Number 9. What I may do is just --
12 that may be a little better. The male subject that
13 you identified is that Mr. Theward McCray that's
14 laying there?

15 A Yes, ma'am, it is.

16 Q All right. And what room of the house is
17 that that he's in?

18 A I guess most people call it a living room
19 or den area.

20 Q Okay. And we're standing facing where he
21 is, there's a room behind name appears to be the
22 kitchen?

23 A Yes, ma'am.

24 Q All right. I'm gonna publish State's
25 Number 10. Tell us why you photographed that.

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1 Here? You see the injury to the bone?

2 A Yes, ma'am.

3 Q Okay. Is that the reason why you
4 photographed his hand there?

5 A Yes, ma'am.

6 Q Okay. All right, I'm gonna publish
7 State's Number 11. Is that the same scene with
8 Mr. McCray's body removed?

9 A Yes, ma'am, it is.

10 Q Okay. I have a question to ask you. Do
11 you recognize that object there?

12 A That's a telephone.

13 Q All right. Is that telephone off the hook
14 or on the hook?

15 A Off the hook.

16 Q All right, I'm gonna publish State's
17 Number 12. Now there is a yellow marker there with
18 a number 3 on it?

19 A Yes, ma'am.

20 Q Tell us what's the significance of that
21 placement of that marker there?

22 A The placement of the marker is to identify
23 some important piece of the picture for later
24 verification.

25 Q All right. And what's the importance part

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1 of this picture that you wanted to highlight with
2 placement of the number 3 marker there? Is it --
3 I'm sorry. Is it the pooling of blood here?

4 A That, I believe that's what it's for, yes,
5 ma'am.

6 Q And I'm gonna publish State's Exhibit
7 Number 13. Do you recognize the object that is
8 depicted in this picture?

9 A Yes, ma'am.

10 Q And what is, and what is this object here
11 that I'm pointing at?

12 A It appeared to be a box where they kept
13 fire wood.

14 Q All right. And you know what this object
15 is?

16 A Yes, ma'am.

17 Q What is it?

18 A It is a shotgun shell that had been fired.

19 Q All right. I'm gonna publish State's
20 Number 14. Is that what's also depicted by the
21 marker number 5?

22 A Yes, ma'am.

23 Q All right, now publishing State's 15. We
24 also see a pooling of blood depicted in this
25 photograph?

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1 A Yes, ma'am.

2 Q All right. And obviously there's a
3 television set here, correct?

4 A Yes, ma'am.

5 Q All right. And tell us what the marker
6 number 8, why that's placed there?

7 A We found a shotgun that was leaned up
8 against the wall next to a table there. I wasn't
9 sure if it had anything to do with the case or not;
10 it was just marked for evidence.

11 Q All right. Was this the shotgun that was
12 used in the shooting?

13 A No, ma'am.

14 Q I'm gonna publish State's Number 16. All
15 right, and we also see what looks like to be some
16 sort of -- I'm not sure if this is some sort of
17 wheelchair, some sort of, obviously a chair on
18 wheels obviously here, and we see your marker number
19 7 placed there as well?

20 A Yes, ma'am.

21 Q Is that correct?

22 A Yes, ma'am.

23 Q All right.

24 MS. BARR: Your Honor, beg the Court's
25 indulgence.

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1 BY MS. BARR:

2 Q I believe I left off at State's Exhibit
3 Number 16. I'm gonna publish Number 17.

4 Q Tell us what is depicted in that
5 photograph, Sergeant Monteith.

6 A It would be the shotgun in the wadding
7 shotgun shell.

8 Q And what is this item here?

9 A It's either a couch or a chair. I think,
10 I can't remember which one.

11 Q All right. And the shotgun wadding, is
12 that what's highlighted there?

13 A Yes, ma'am.

14 Q All right. And I'm publishing State's
15 Number 18. Did you get a closer view of the shotgun
16 wadding there?

17 A Yes, ma'am.

18 Q What is this white substance here, if you
19 know?

20 A I don't, do not know.

21 Q Okay. And publishing State's 19. Did you
22 place the marker 9 there to denote what?

23 A I believe it's the blood splatter maybe.

24 Q Is that the same sofa where you found the
25 shotgun wadding?

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1 A Yes, ma'am.

2 Q All right. So the 9 is denoted there for
3 the shotgun wadding?

4 A Yes, ma'am.

5 Q All right. All right, tell us about
6 State's Number 20.

7 A That was one of the other bedrooms that
8 were not involved in the incident.

9 Q Okay. Why was it photographed?

10 A To show it was not involved in the
11 incident.

12 Q Okay. Tell us about State's 21.

13 A I believe that's the bedroom where the
14 grandmother was found.

15 Q All right. And do you see what appears to
16 be her leg there?

17 A Yes, ma'am.

18 Q Now as relates to State's Number 21 we ask
19 you about some of the items that are depicted picked
20 in that photograph. Sir, on this picture according
21 to toward the end of bed on the floor, can you tell
22 what you see there?

23 A In the yellow bag?

24 Q Yes, sir.

25 A Yes, ma'am. That's look like paper

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1 towels.

2 Q Okay.

3 A Or maybe toilet paper, one of the two.

4 Q All right. Now I'm gonna publish State's
5 Number 22. Do you see what's depicted in that
6 photograph?

7 A Yes, ma'am.

8 Q All right. And what's depicted there?

9 A Spent shotgun shell.

10 Q All right. And do you see the yellow bag
11 that you referenced in the previous exhibit?

12 A Yes, ma'am.

13 Q All right. I'm also gonna publish State's
14 23. Is that the reason why you put the marker
15 number 1 there?

16 A Yes, ma'am.

17 Q To identify the shot shell?

18 A Yes.

19 Q I'm gonna publish State's 24. This is the
20 female victim that you've described?

21 A Yes, ma'am.

22 Q Ms. Rosa?

23 A Yes, ma'am, it is.

24 Q All right. Now is that the door to her
25 bedroom here?

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1 A Yes, ma'am.

2 Q Okay. And so in relation to where the
3 shotgun shell was found inside her bedroom, would it
4 be over here?

5 A It would be close to about where I was
6 standing to take the picture.

7 Q Okay. Now just very briefly, Sergeant
8 Monteith, was there anything unusual noted about her
9 dress or her appearance at the time?

10 A She was topless at the time.

11 Q I'm sorry?

12 A Topless. She didn't have anything on from
13 waist up.

14 Q All right, and I'm going to publish
15 State's Number 25. Is this the headboard for
16 Ms. Rosa McCray's bed?

17 A Yes, ma'am.

18 Q Do you see damage depicted here?

19 A Yes, ma'am.

20 Q And what was that damage, if you know?

21 A Appeared to be from a shotgun.

22 Q All right. And on State's 26 I'm assuming
23 you just put the marker number 2 there to denote
24 Ms. McCray's body?

25 A Yes, ma'am.

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1 Q All right, State's Exhibit Number 27,
2 that's obviously a bedroom. Is that correct?

3 A Yes, ma'am.

4 Q All right. Now did you know at the time
5 whose bedroom that belonged to?

6 A No, ma'am.

7 Q I'm gonna publish State's 29. Tell us why
8 you took a picture of the curtains in that room.

9 A It appeared that it'd been shot with a
10 shotgun. It looked like it had a shotgun pattern
11 blast where the pellets through the curtain and
12 there was blood splatter on the ---

13 Q Let me get you to do this, can you step
14 down off the witness stand for me please. What I'll
15 need for you to do is make sure to keep your voice
16 up first of all because your back is toward the
17 court reporter and use my pen to point out where you
18 said it indicated looked like blood splatter.

19 A The blood splatter would have been right
20 around this area here.

21 Q Okay. I'm gonna publish State's Number
22 33. Did you do a closer up view of what you
23 believed to be the blood spatter?

24 A Yes, ma'am.

25 Q And point that out for the jury please.

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1 A It would have been right around this area
2 here.

3 Q All right. Tell us about State's Number
4 34.

5 A That's gonna be the back side of the
6 window we just looked at with a sheet on, over it.

7 Q And why did you take a photograph of the
8 back side of the window?

9 A It showed the damage done to the window
10 from the shotgun blast.

11 Q And now publishing State's 35. Does that
12 also appear to be a bedroom?

13 A Yes, ma'am.

14 Q And I'm gonna publish State's 36. Is that
15 another view from that same bedroom?

16 A Yes, ma'am.

17 Q Now you do you know what these items are?

18 A They're bags of clothes.

19 Q All right, you can take your seat.

20 A (Complies.)

21 Q Sergeant Monteith, what happened to the
22 shotgun shells that you recovered from the scene?

23 A I collected them and turned them into
24 evidence.

25 Q Okay. And who was the evidence custodian

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1 at the time?

2 A It would have been Jeff Scott.

3 Q Okay. And Jeff Scott is the gentleman
4 that's seated right behind us with the blue jacket
5 on?

6 A Yes, ma'am.

7 Q And seated next to him is who?

8 A That will be Captain Cherod Timmons.

9 Q Is he the evidence custodian now?

10 A Correct.

11 Q In terms of your participation in this
12 case you never had a conversation with the defendant
13 or anyone other than Mr. Seward, or Theward McCray
14 that night, correct?

15 A Yes, ma'am, correct.

16 MS. BARR: Beg the Court's indulgence all
17 right.

18 BY MS. BARR:

19 Q All right, sir, that's all the questions I
20 have. Please answer any questions defense counsel
21 or the Court may have for you.

22 **CROSS-EXAMINATION**

23 BY MR. MCKENZIE:

24 Q Sergeant Monteith, do you have the
25 incident report that you said you were relying upon?

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1 A Yes, sir.

2 Q May I take a look at it?

3 A Absolutely.

4 MR. MCKENZIE: Court's indulgence, Your
5 Honor.

6 BY MR. MCKENZIE:

7 Q In this report it says there's a window
8 open on left to the entrance door?

9 A Yes, sir.

10 Q Is that the window that we were seeing a
11 second ago, or is that a different window?

12 A It's the same window you seen that was
13 open.

14 Q And that window had a shotgun blast?

15 A No, that was a totally different window.

16 Q The window that we were looking at
17 earlier, the shotgun blast you showed on the back
18 side, was that an entrance blast or an exit blast?

19 A Exit blast.

20 Q So from inside the house the shot ---

21 A Went out.

22 Q Went out, okay. Did you actually hear
23 Mr. Theward McCray say that Anthony Anderson was the
24 one who shot him?

25 A Yes, sir.

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1 Q Okay. So you were present when that
2 happened?

3 A Yes, sir, he said it several times.

4 Q Okay. And do you know Mr. Anthony
5 Anderson?

6 A No, sir.

7 Q Never met him before?

8 A No, sir.

9 Q How many gun casings were found?

10 A I can't recall exactly. I would say three
11 or four.

12 Q Three or four? And these are shotgun
13 shells; is that correct?

14 A Yes, sir.

15 Q And shotgun shells you would expect to see
16 gunshot residue on the person that shot the firearm
17 from the shotgun?

18 A I'm no expert on that.

19 Q You're no expert on that so you don't know
20 anything about that, but you don't know if there
21 were three or four shotgun shells that were located?

22 A Yes, sir.

23 Q And was it birdshot, buckshot?

24 A I have no idea.

25 Q Okay. It looked to me like it was low

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1 brass shells. That would indicate birdshot
2 probably?

3 A May have been.

4 Q But you're not an expert on that either?

5 A No, sir.

6 Q Okay.

7 MR. MCKENZIE: No other questions, Your
8 Honor.

9 THE COURT: Thank you. Redirect?

10 MS. BARR: No, Your Honor. Thank you.

11 THE COURT: You may step down.

12 Next witness.

13 MS. BARR: Your Honor, may counsel and I
14 approach.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: Ladies and gentlemen of the
18 jury, I'm gonna give you a break. Please do not
19 discuss the case. Please go to the jury room.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 12:29 p.m., and the following
22 proceedings commenced in open court.)

23 THE COURT: Yes, ma'am.

24 MS. BARR: Judge, our next witness will be
25 Detective Frebowitz, and we would want to play the

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1 THE COURT: All right, Ms. Barr.

2 MS. BARR: And Judge, what we would submit
3 to the Court is that the defendant in his statement
4 says that when he left his grandmother was
5 underneath the covers and so obviously that's
6 contradicted by photographs; and what had occurred
7 to me is that perhaps the defendant was trying to
8 stage the scene to throw police off of him by making
9 it appear as though something had happened to the
10 victim that did not happen. But obviously, when the
11 jury has to determine whether or not the defendant
12 is either mentally ill or legally insane, we believe
13 that evidence staged at the crime scene bears on
14 that issue; and it's certainly probative of the
15 defendant's state of mind at the time which is
16 obviously a big deal in this case, which in my view
17 belies someone who's more manipulative than
18 operating under some mental defect or disease. And
19 Judge, clearly he states in the statement that when
20 he left the grandmother was underneath the covers
21 and I believe Investigator Frebowitz asked, well,
22 how did she get under the covers if you said when
23 you came in the room and she was standing in the shy
24 (ph).

25 MR. MCKENZIE: Judge, we also have the

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1 issue of the — I made a motion back in August of
2 last year about compel, compulsory process in
3 regards — and it should be in your file. I filed
4 it with the Court.

5 THE COURT: I don't have a file.

6 MR. MCKENZIE: Okay, I'll hand it up.
7 There was a statement given by defendant in New York
8 that's exculpatory, exonerates my client, and says
9 he's the one who committed the murders, names of
10 people. Got some dates and times wrong, but other
11 than that gives great detail as to what occurred,
12 and that was sent to me by Ms. Barr's office; and if
13 we're gonna go into all this stuff about the, my
14 client trying to cover up the crime scene, I got
15 somebody in there who says, I got a client — I got
16 a witness who says he was the one who did it.

17 THE COURT: He's gonna testify?

18 MR. MCKENZIE: No, sir, I asked for them
19 to have him here and he's not here. And so I said
20 in the alternative he's not here, I'd like the
21 statement to come in. That was my motion a year
22 ago.

23 THE COURT: All right. Ms. Barr.

24 MS. BARR: Judge, as I understand it the
25 individual who gave the statement is a relative of

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1 the defendant's. His story was investigated by
2 whatever appropriate law enforcement agency there
3 was in Livingston County, New York, and his
4 statement was discredited in that at the time these
5 murders were committed it was determined he was
6 actually at work, and his wife verified that. Your
7 Honor, curiously his statement came about in
8 January, I'm sorry, December of 2012, which was very
9 shortly after we submitted Rule 5 material to the
10 defendant. But in any event, Your Honor, we're not
11 required to turn over Brady and other exculpatory
12 evidence, we've done that; but we're not required to
13 get the defendant's witness here.

14 And also, Judge, at the same time the
15 Defense can't have his cake and eat it too. They
16 can't say, well, he's not guilty by reason of
17 insanity and then also throw out an alternate theory
18 that he didn't commit the crime, somebody in New
19 York did. I mean, both of these things can't be
20 true at the same time.

21 THE COURT: Well, under this theory that's
22 in the voluntary statement he was in the house and
23 Anthony Anderson was in the house and he -- shooting
24 at Anthony, was gonna kill Anthony Anderson and he
25 ran out the door. And then he says that this, he

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1 believes this was in July and this murder occurred
2 June and these deaths occurred in June.

3 The statement appears to be to me to be
4 something close to wild speculation that attempts to
5 come close to what occurred in this case, but is not
6 on point. I don't know -- certainly the Court
7 denies the motion to allow the affidavit in because
8 the State cannot cross-examine the affidavit, and I
9 don't know of any burden the State would have to
10 require this person to be present since the State
11 does not believe anything that he said. I deny that
12 motion as well.

13 MR. MCKENZIE: But, Your Honor, my client
14 doesn't have a right to have, I mean, under the 6th
15 Amendment compulsory process, I mean, a man gave a
16 statement, said he killed these two people and it's
17 a nephew of Theward McCray.

18 THE COURT: Yeah. Well, you can bring
19 whatever witnesses you might want to bring in, your
20 -- but the State is not required to bring them. If
21 you have someone who wants to come in and confess,
22 then he can come and do it.

23 MR. MCKENZIE: But then, Your Honor, the
24 State has, if it's compulsory process component of
25 Sixth Amendment the State has the burden if there is

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1 exculpatory evidence then they have to bring this
2 person here.

3 THE COURT: Yeah, that's not, the evidence
4 is not exculpatory in my view and based on my
5 reading of the affidavit.

6 MR. MCKENZIE: Well, if he says, I did it.

7 THE COURT: As I said, it appears to be
8 wild speculation, attempts to simulate this, but
9 it's not exculpatory and the State is not required
10 to ---

11 MR. MCKENZIE: Your Honor, will you ---

12 THE COURT: ---follow it across the
13 country.

14 MR. MCKENZIE: Right. Your Honor, will
15 you note my objection regarding based on the fact
16 that I think the State is required to provide me
17 with a witness who has admitted to the crime; and
18 that if they don't provide me the witness, then the
19 statement that he gave wherein he admits to the
20 crime is a, is something for the jury to consider in
21 the totality of the circumstance and the weight of
22 the evidence.

23 THE COURT: All right, I note the
24 objection.

25 MR. MCKENZIE: Thank you, Your Honor.

1 THE COURT: All right. We'll be back at
2 1:45.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Okay. Anything before the
5 jury comes in?

6 MR. MCKENZIE: Your Honor, I would just
7 like to renew my motion regards to the statement. I
8 think there's several cases that are on point in
9 this case. I think the statement against penal
10 interest that was made by the other nephew. I'm
11 trying to think of his name. Mr. Headman. And if
12 you look at State v. Wannamaker, evidence the
13 co-defendant were murder defendants that had a
14 letter admitting she killed victim 'cause she was
15 jealous was not sufficiently corroborated to be
16 admissible as hearsay against interest where
17 defendant's roommate would have testified the
18 defendant delivered the letter which also threatened
19 to kill roommate. That case is a little bit
20 distinguishable simply because of the fact that
21 everybody is trying to pull everything in that case;
22 but we have a case here where a, here a statement
23 against interest has been sufficiently corroborated.
24 What we have is a statement that was taken by a law
25 enforcement office in New York, signed after the

1 defendant gave, was given his Miranda warnings. He
2 signed two pages, gave a detailed statement about
3 what occurred and how it occurred, even listing the
4 fact that the murder weapon was a shotgun, not a
5 pistol, even though he purchased a pistol to go
6 commit the murders. There's certain details in here
7 that only the murderer could have known.

8 THE COURT: Such as what?

9 MS. BARR: Sir?

10 THE COURT: Such as what?

11 MR. MCKENZIE: For example, the house is
12 one story, gray stone home. "When I got to the
13 house I walked up to the window to see if anyone was
14 inside. I didn't look and I went down." He put all
15 three of the people that were supposedly in the
16 home, Anthony, Theward McCray, and the grandmother
17 in the home. And he admitted killing Theward and
18 attempting to kill Anthony. So I'm not sure how
19 this does not come in under the exception.
20 Obviously declarant's in another state, we don't
21 have any subpoena powers over him. And I'm just not
22 sure how ---

23 THE COURT: You're offering evidence
24 during the State's case at this point. Is that what
25 you're doing? Is this part of your defense?

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1 MR. MCKENZIE: No, sir. I can offer it
2 At the proper time, but what I was trying to do is
3 to head, I mean, 'cause I think that the next
4 officer is going to testify is one of the officers
5 who received this statement.

6 THE COURT: Well, I can't -- what are you
7 asking me to do?

8 THE MR. MCKENZIE: I'll offer it at that
9 time, Your Honor.

10 THE COURT: All right. Bring the jury.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 1:50 p.m., and the
13 following proceedings commenced in open court.)

14 THE COURT: All right the jury is back.
15 Your next witness.

16 MS. BARR: We call Jill Domogaer.

17 THE CLERK OF COURT: Place your left hand
18 on the Bible, raise your right hand.

19 WHEREUPON,

20 **JILL DOMOGAER,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 MS. BARR: May it please the Court.

24 **DIRECT EXAMINATION**

25 BY MS. BARR:

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1 Q Ma'am, state your full name for me.

2 A Jill Domogaer.

3 Q All right. And help us out with the
4 spelling of your last name please.

5 A Yes, ma'am. D-O-M-O-G-A-E-R.

6 Q And where are you employed?

7 A I'm a crime scene investigator with Horry
8 County Police Department.

9 Q All right. And tell us what a crime scene
10 investigator does.

11 A It's almost like TV, but not that ---

12 Q Not that easy.

13 A Yeah, I know. I respond to crime scenes
14 or subsequent secondary scenes as they like to call
15 them. I process a scene by taking photographs,
16 photographs of either the scene, people, vehicles.
17 I gather evidence pertaining to the case, those
18 kinds of things.

19 Q I understand. How long have you been in
20 law enforcement?

21 A I've been in law enforcement for probably
22 almost 15 years.

23 Q All right. And ma'am, of course you were
24 working back on June 5th of 2011?

25 A That is correct.

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1 Q All right. And on that occasion you came
2 in contact with the defendant Anthony Anderson; is
3 that correct?

4 A Yes, ma'am.

5 Q Where did you first meet with him or see
6 him?

7 A May I please refer to my notes?

8 THE COURT: Yes.

9 THE WITNESS: I was called to respond to
10 [REDACTED] Juniper Drive in the Conway section of Horry
11 County.

12 BY MS. BARR:

13 Q All right. And is that the home of Joani
14 Burroughs?

15 A I believe that's the home of the mother.
16 I'm not quite sure what the names are, I'm sorry.

17 Q Sure. The defendant's mother?

18 A Yes, ma'am.

19 Q Okay, all right. And tell us what you did
20 when you arrived at that particular address.

21 A I conferred with Detective Frebowitz in
22 reference to we had obtained information that the
23 defendant had committed some crimes in Williamsburg
24 County, and we were there to try to secure the
25 evidence. A vehicle was down the street, and of

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1 course, any personal evidence and to do some
2 forensic processing to the subject himself.

3 Q All right. Now you mentioned the vehicle
4 was down the street. When you went to the home of
5 who you believed to be the defendant's mother, was
6 the vehicle that you're referencing at that address?

7 A No, ma'am, it was not.

8 Q Did you photograph just the exterior of
9 that address that you went to?

10 A Yes, I do that for a reference point.

11 Q All right. And did you subsequently find
12 the vehicle that you believed to be either
13 registered or driven or owned by the defendant?

14 A The vehicle was located.

15 Q Okay. And where was it located in
16 proximity to the home on Juniper Lane?

17 A On Juniper Drive, if you would go behind
18 it and maybe through a little small patch of woods
19 and a street over is an apartment complex. It was
20 inside that apartment complex of the parking lot.

21 Q Okay. You testified as part of your job
22 responsibilities you also photograph evidence or
23 potential evidence as the case may be.

24 A Yes.

25 Q All right. And I'm gonna hand you what's

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1 been marked for identification purposes as State's
2 Exhibits 37 through 49 and ask you if you recognize
3 what's depicted in those photographs.

4 A Yes, I recognize them.

5 Q And you took those photograph?

6 A Yes, these are my photographs.

7 Q And was that the, not the night of but the
8 morning, early morning hours of June 5th, 2011?

9 A Yes, it was.

10 Q All right.

11 MS. BARR: Your Honor, move to publish
12 State's Exhibits Number 37 through 49, move to admit
13 and move to publish.

14 THE COURT: What says the Defense?

15 (Mr. McKenzie reviews photographs.)

16 (WHEREUPON, State Exhibit No. 50 was
17 marked for identification only.)

18 MR. MCKENZIE: No objection, Your Honor.

19 MS. BARR: Judge, he said they're admitted
20 without objection.

21 THE COURT: They're admitted without
22 objection.

23 (WHEREUPON, State Exhibits Nos. 37 through
24 49 were admitted into evidence.)

25

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1 BY MS. BARR:

2 Q Ms. Domogaer, can I get you to step to the
3 witness chair for me please.

4 A (Complies.)

5 Q And if I can, let me get you to come on,
6 get you to come on this side so that you can see the
7 screen behind us, we're gonna publish State's 37.
8 Can you tell us what's depicted in the photograph
9 and the submission of the photograph?

10 A That's the numerical address in the front
11 of the house on Juniper Drive in Conway.

12 Q All right. And tell us about State's
13 Exhibit Number 38.

14 A That would be the numerical address that's
15 actually on the residence of the house on Juniper
16 Drive.

17 Q Okay. And 39 would simply be the longer
18 view of that same piece of property?

19 A Yes, it would be just an orientation shot
20 of the front of the residence.

21 Q All right, now, tell us about State's 40.

22 A If you see at the residence, you saw a
23 small little wood line. If you go through that wood
24 line you come to these apartment complexes on the
25 other side, a little parking lot area. There's a

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1 street in between them. That's the apartment
2 complex the vehicle was located in.

3 Q Okay. And does -- or do your records
4 reflect what type of vehicle that was?

5 A I would have to look at my notes.

6 Q Okay. You can bring it down with you,
7 ma'am.

8 A A 1992 Nissan pickup truck.

9 Q All right. And do you know who the
10 vehicle was registered to?

11 A Bear with me one moment, I apologize. If
12 I'm not mistaken, I believe it is registered to the
13 defendant.

14 Q Okay. Tell us about State's Exhibit
15 Number 41.

16 A That is a overview photograph of the
17 defendant that morning.

18 Q All right. And we obviously can see from
19 the exhibit that he's not wearing a shirt.

20 A No, ma'am.

21 Q All right. Is that how he presented when
22 you first had contact with him without a shirt?

23 A That's how he presented to me, yes, ma'am.

24 Q And what was the reason why you took this
25 particular photograph?

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1 A That's just normal procedure. We take
2 that of all victims or suspects showing any kind of
3 injury, if there were any injury, or any physical
4 evidence or lack of.

5 Q All right. And from this particular view
6 do you note any physical injuries to Mr. Anderson?

7 A Other than previous scarring of older
8 injuries or surgeries, no, ma'am.

9 Q And publishing State's 42. Tell us why
10 you took that picture.

11 A Again, it's a closeup of the face. We do
12 that, again, to depict any kind of injuries to the
13 victim or anything of evidentiary value.

14 Q Okay. All right, same thing with 43.

15 A Yes. We make them turn left and right so
16 we get both sides of the face.

17 Q All right.

18 A And the neck area.

19 Q And ma'am, if you will tell us about 145.

20 A We also photograph people with their palms
21 down and palms up, see their hands, see if there's
22 any injuries or debris or any evidence on their
23 hands, documentation.

24 Q All right. Do you also look for any blood
25 or anything like that?

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1 A If we can find it, yes, ma'am.

2 Q Did you see any blood on the ---

3 A No, ma'am.

4 Q ---victim -- the defendant's clothing or
5 on the hands?

6 A. No.

7 Q And you mentioned some old scars?

8 A Yes, ma'am.

9 Q I think it's State's Number 46. Is that
10 what you photographed there?

11 A I would -- yeah, that's also a closer shot
12 of each hand. We'll do hand by hand, but you can
13 see some old scarring perhaps from some -- nothing
14 fresh or any kind of injuries.

15 Q Also about 47.

16 A We also do the palm of the hands showing
17 the same thing, if there's any type of injuries or
18 evidence or anything of significance. That's normal
19 protocol for photographs.

20 Q Okay. And you got the other hand here
21 that's depicted in 48; is that correct?

22 A Yes.

23 Q And just for reference as to State's
24 Exhibit Number 49, did you all assign your own
25 separate agency case number?

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1 A Yes, we did. That 11052270 and the
2 address on Juniper Bay. That's my title card. It's
3 in reference to any picture I take. That's my first
4 shot that I always take is the title card showing
5 that I am the photographer and where and when and
6 what case number is associated with our department.

7 Q Thank you, ma'am. You can have your seat
8 back in the witness chair.

9 A (Complies.)

10 Q Other than photograph the defendant and
11 the home of his mother on the parking lot, did you
12 perform any other investigative services that night?

13 A That night, yes, ma'am. I gathered the
14 personal effects and clothing from the defendant.
15 We gave him what's called a tyvek jumpsuit. Male
16 officer was in there; I wasn't 'cause I'm a female.
17 And they made sure we got all of his clothing,
18 personal effects that he had on, and I also
19 completed what's called a gunshot residue kit on his
20 hands.

21 Q You said the first thing you gathered or
22 collected, or one of the male officers gave him you
23 say a tyvek jumpsuit?

24 A We did the gunshot residue kit first.

25 Q Okay.

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1 A That's always first. And then we gathered
2 his clothing and we give him a tyvek suit so you're
3 not naked.

4 Q Okay, fair enough. Now tell us about the
5 gunshot residue kit.

6 A We use a standard gunshot residue kit
7 that's provided to us by State Law Enforcement. It
8 is a sealed kit, comes to us sealed. I have to
9 breach the seal of the kit and inspect it prior to
10 administering the kit. If that integrity seal is in
11 any way shape or form out of place or messed up,
12 then I cannot use that kit; that kit would be then
13 destroyed and I would go to another integrity seal
14 kit. And I would perform the duties of the kit,
15 collecting swabs and the fingers and the hands, and
16 then also following up with -- you do the magnets
17 and then you do the swabs for gunshot residue.

18 Q And so, in that instance of course, you
19 were trying to collect gunshot residue if any were
20 on the defendant's hand?

21 A It is a standard procedure, yes, ma'am.
22 If a gun is involved in a crime, yes, ma'am.

23 Q All right. And was he cooperative with
24 you during that process?

25 A Oh, yes.

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1 Q Okay. And you mentioned something about
2 an integrity seal being compromised in any way. Was
3 there any compromise here in the integrity seal that
4 you used to take the GSR from the defendant?

5 A No, ma'am.

6 Q Okay. And after the GSR kit is collected
7 it goes where from there?

8 A I seal it again with another integrity
9 seal, and I believe I gave it to a Williamsburg
10 County sheriff's official.

11 Q All right. And ma'am, I'm gonna hand you
12 what's been marked for identification purposes as
13 State's Exhibit Number 50 and ask if you recognize
14 this exhibit.

15 A Yes, I do.

16 Q How is it that you recognize it?

17 A It has my name, my badge number, and the
18 county that I work for's case number, and my
19 initials. It's the GSR kit that I collected that
20 morning.

21 Q Okay. From Mr. Anthony Anderson?

22 A Yes.

23 Q Okay. Do you have any idea, Ms. Domogaer,
24 about the distance from the Juniper Drive address to
25 the parking lot where the defendant's vehicle was

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1 located?

2 A If I would have to guesstimate I would
3 probably say, using the courthouse if I can as a
4 reference point ---

5 Q. Sure.

6 A. ---from the front parking lot street to
7 the back where the police department's parking is
8 maybe, give or take a few. It's not that far, maybe
9 a two minute walk perhaps.

10 Q Okay. Now in terms of your actually
11 coming to the Juniper Drive address, was the
12 defendant at that residence when you got there or
13 was he someplace else? Was he in the car?

14 A He was not at the -- well, he was at the
15 address meaning he was there on location, but he was
16 in a vehicle at the time.

17 Q Was it his own vehicle or police vehicle?

18 A It was a law enforcement vehicle.

19 Q Okay. I thank you so much, ma'am. That's
20 all the questions I have for you at this time.
21 Please answer any questions Defense counsel has.

22 A Yes, ma'am.

23 **CROSS-EXAMINATION**

24 BY MR. MCKENZIE:

25 Q Detective, I apologize, pronounce your

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1 last name again from me.

2 A Domogaer.

3 Q Domogaer?

4 A Yes, sir.

5 Q Okay. All right, Detective Domogaer, you
6 took the GSR evidence off of my client's hands?

7 A Yes, sir, I did.

8 Q Okay. Do you know what the results of
9 that were?

10 A No, sir, I do not.

11 Q So you were not involved in the actual
12 seeing what the results were?

13 A I sealed the kit and then I presented to
14 Williamsburg and that's where's the report would go.

15 Q Are you familiar with GSR?

16 A Yes, I'm very familiar.

17 Q Okay. And have you taken classes on GSR
18 gunshot residue?

19 A I was taking classes in the scope of my
20 crime scene and forensic studies, yes, sir.

21 Q And would it be fair to say that shotgun
22 blasts leave more gunshot residue than handguns?

23 A I wouldn't say that, but you would try to
24 follow -- I guess the principle you're trying to
25 follow is the bigger the boom, the bigger the dust

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1 but ---

2 Q Right.

3 A It cannot -- it also depends on just the
4 type of weapon.

5 Q Well, a shotgun shell usually is about
6 that big, 12-gauge shotgun shell?

7 A Uh-huh.

8 Q Pistol rounds about that big, and a
9 shotgun shell obviously has a lot more gun powder in
10 it?

11 A I would agree with you there.

12 Q Okay. So you would expect a lot more gun
13 powder to be in the air, be on the hand, be on the
14 body, wherever; is that correct?

15 A Possibly in the -- I mean, I would say it
16 would be in the air or the hands, but there would be
17 more, if that's what you're asking.

18 Q Okay. So it's your testimony today that
19 you don't know anything about whether the gunshot
20 residue test came back to be negative or positive?

21 A I'm not quite sure, no, sir.

22 Q Okay. You took the pictures of my client?

23 A Yes, sir.

24 Q. What was his demeanor at the time?

25 A He seemed calm to me. He was very

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1 cooperative, very nice, respectable.

2 Q Okay. Didn't give you any hard times?

3 A Absolutely not.

4 Q Did he seem to be in his right mind?

5 A To me, yes. He answered and followed
6 instructions very well.

7 Q Okay. So you had no problems with him,
8 didn't seem to be someone who was distraught over
9 killing his grandmother and his uncle?

10 A No.

11 Q Not at all?

12 A Asked to go to the bathroom.

13 Q Right. Just completely, just there,
14 right?

15 A I would say, yes, like me or you sitting
16 right here.

17 Q Okay. Absolutely no problem at all,
18 didn't discuss that issue with you at all?

19 A No.

20 Q You didn't ask that issue?

21 A I don't ask any of those kind of
22 questions, no, sir.

23 Q But he was not crying, not upset, not —
24 just had no expression kind of like he's sitting
25 right now?

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1 A I don't, I mean, he had expressions. When
2 I would ask him a question he would respond. He did
3 tell me at one point in time that he really had to
4 go to the bathroom and kind of gave you the face of
5 someone who really had to go to the bathroom.

6 Q Okay.

7 A Understood why he had to wait for a few
8 moments and, of course, and we quickly -- he
9 understood everything else I was doing and...

10 Q But you saw no blood on him, no other
11 physical evidence in regards to he'd been in a fight
12 of any kind or any situation like that?

13 A Not that I can recall, no.

14 Q And you've investigated crime scenes
15 before. I think you said you're a certified crime
16 scene investigator?

17 A Yes, sir.

18 Q Okay. When someone shoots someone with a
19 shotgun do you expect there to be a large splatter
20 pattern of blood at close range?

21 A The spatter pattering would be conducive
22 of where the shooter is to the victim, how much
23 distance, anything in the way of it, garments that
24 people are wearing.

25 Q Right.

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1 A So there's too many variables just for me
2 to just give a simple answer to that.

3 Q Right, I understand that, but it's not
4 unusual to see blood spatter on the shooter and on
5 the victim obviously.

6 A You can have that. You can also have
7 someone walks away completely clean.

8 Q Okay. And so in this situation you found
9 no evidence of any blood splatter on my client
10 whatsoever?

11 A I did not find any blood spatter, no.

12 Q Okay, thank you.

13 MS. BARR: Judge, I don't have any
14 followup questions.

15 THE COURT: All right, thank you.

16 MS. BARR: The State calls Neil Frebowitz.
17 WHEREUPON,

18 **NEIL FREBOWITZ,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 MR. MCKENZIE: Your Honor, at this time I
22 renew my previous objection.

23 THE COURT: All right.

24 **DIRECT EXAMINATION**

25 BY MS. BARR:

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1 Q Sir, state your name for us.

2 A Yes, ma'am. Neil Frebowitz,
3 F-R-E-B-O-W-I-T-Z.

4 Q All right. And sir, back in June of 2011
5 where were you working?

6 A I was with the Horry County Police
7 Department.

8 Q And what was your position there?

9 A I was detective with the major crimes
10 unit.

11 Q All right. And you are now recently
12 happily retired?

13 A Yes, ma'am.

14 Q All right. How long have you been in law
15 enforcement?

16 A Almost 40 years.

17 Q Now, sir, can you give the jury just a
18 brief idea of what your day-to-day responsibilities
19 would have been in June of 2011 as relates to being
20 an investigator.

21 A Yes, ma'am. The major crimes unit is
22 responsible to investigate all homicides that occur
23 within Horry County. My unit also investigates
24 sexually based offenses. My specific job in the
25 matrix was I investigated child sexual abuse cases

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1 as well as homicide by child abuse cases, in
2 addition to general homicide.

3 Q All right. And of course, and you became
4 involved in the investigation of a homicide that
5 occurred back on June 5th, 2011, here in
6 Williamsburg County?

7 A Yes, ma'am.

8 Q Tell the ladies and gentlemen of the jury
9 how it is that you became involved in this case.

10 A Yes, ma'am. I was the on-call detective
11 for that weekend. Duty sergeant called me at home
12 about 4:00 in the morning, 4:30 in the morning. I
13 responded to the Juniper Drive address of [REDACTED]
14 Juniper Drive in Conway which is Horry County and at
15 the request of the patrol sergeant and the units of
16 the city.

17 Q Now when you arrived at that address was
18 Ms. Domogaer there, or do you recall?

19 A No, I called for CSI. Ms. Domogaer showed
20 up shortly after.

21 Q And was the defendant Anthony Anderson
22 there?

23 A Yes, ma'am, he was.

24 Q Where was he when you arrived?

25 A He was in the back of the patrol vehicle.

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1 Q Okay, all right. Who did the home belong
2 to?

3 A I believe it belonged to the defendant's
4 mother.

5 Q Okay. And ---

6 A Joani Burroughs.

7 Q Joani Burroughs, okay.

8 A Yes, ma'am.

9 Q Don't tell me what she said, but did you
10 have a conversation with her?

11 A Yes, ma'am, I did.

12 Q And as a result of that conversation did
13 you then have a conversation with the defendant?

14 A Yes, ma'am, I did.

15 Q All right, tell us about that, where it
16 took place, and the circumstances surrounding that
17 conversation.

18 A Well, there were -- I directed that the
19 defendant be transported back to our police station.
20 There's an interview room there. Plus, it's a
21 little more comfortable than talking to someone in
22 the back of a police car. With the handcuffs, we
23 get him out of the handcuffs, offer him something to
24 drink, just make sure he was okay, physically all
25 right. He was transported back to the interview

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1 room and I followed the patrol vehicle there in a
2 short amount of time. The next conversation I had
3 with him was in the interview room.

4 Q All right. And that interview was
5 recorded?

6 A Yes, ma'am, it was.

7 Q Video and audio?

8 A Yes, ma'am.

9 Q All right. Now prior to conducting the
10 interview did you advise the defendant of his
11 Miranda warnings?

12 A Yes, ma'am, I did.

13 Q All right.

14 MS. BARR: Can I have this marked as
15 State's 51.

16 (WHEREUPON, State Exhibit No. 51 was
17 marked for identification only.)

18 BY MS. BARR:

19 Q Sir, I'm gonna hand you what's been marked
20 as State's Exhibit Number 51. Is that the original
21 advisement of Miranda rights that you gave to the
22 defendant?

23 A Yes, ma'am, it is.

24 Q All right.

25 MS. BARR: Judge, we would move State's

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1 Exhibit Number 51 in at this time.

2 MR. MCKENZIE: No objection, Your Honor.

3 THE COURT: It's admitted without
4 objection.

5 (WHEREUPON, State Exhibit No. 51 was
6 admitted into evidence.)

7 BY MS. BARR:

8 Q And tell the ladies and gentlemen of the
9 jury what it is that you would have advised the
10 defendant of that morning.

11 A Yes, ma'am. There's already been one
12 television reference with this. It's just like on
13 television. "You have the right to remain silent.
14 Anything you say can and will be used against you in
15 a court of law. You have the right to talk with a
16 lawyer and have him present with you while you're
17 being questioned. If you cannot afford a lawyer,
18 one will be appointed to represent you before any
19 questioning if you so desire. If you make any
20 statement or answer any questions you have the right
21 to stop at any time." Those are the words annotated
22 on the form. Those are what I read to the
23 defendant.

24 Q Did he waive his rights to an attorney and
25 agree to talk with you?

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1 A Yes, he did. He acknowledged them by, the
2 next questions are: "Do you understand your rights
3 as I've read them to you?" Checked yes.
4 "Understanding your rights do you wish to waive them
5 and make a statement or answer questions at this
6 time?" Checked yes. The next part is he's actually
7 printed and then signed his name on the form
8 understanding he acknowledging his rights.

9 Q Now in terms of your interaction with Mr.
10 Anderson you described you all were sitting in a
11 room that was equipped with a camera.

12 A Yes, ma'am.

13 Q Was anyone else in the room other than the
14 two of you?

15 A No, ma'am.

16 Q All right. Now prior to asking him any
17 questions was he threatened in any way?

18 A No, ma'am.

19 Q Was he mistreated in any way?

20 A Absolutely not.

21 Q Did you specifically ask him whether or
22 not anybody else with the Horry County Police
23 Department had mistreated him in any way?

24 A I did.

25 Q And what was his response?

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1 A No.

2 Q Okay, all right. Were any promises made
3 to him?

4 A No, ma'am.

5 Q Now I would assume that there would have
6 been some verbal exchange between the two of you all
7 while you're going over the rights and so forth?

8 A Yes, ma'am.

9 Q Did he seem to understand the questions
10 that you were asking of him?

11 A Yes, he did.

12 Q And did he give appropriate responses to
13 those questions?

14 A He did.

15 Q All right. Did he ever at any point
16 appear to be hallucinating or delusional to you at
17 all?

18 A He -- I asked him questions; he gave me
19 appropriate responses.

20 Q Okay. Did he understand the reason why
21 you were questioning him?

22 A Yes, ma'am, he did.

23 Q Okay. And he voluntarily agreed to talk
24 with you?

25 A Yes, ma'am.

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1 Q Sir, I'm going to hand you what's been
2 previously marked as Court's Exhibit Number 3, which
3 is the defendant's interview from June 5th, 2011,
4 the DVD.

5 MS. BARR: Judge, at this time I'd like to
6 mark it as State's Exhibit Number 52.

7 (WHEREUPON, Court's Exhibit Number 3 was
8 re-marked as State Exhibit No. 52 for
9 identification only.)

10 MS. BARR: Judge, we would move to admit
11 State's Exhibit Number 52.

12 THE COURT: All right, Mr. McKenzie.

13 MR. MCKENZIE: No objection, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, State Exhibit No. 52 was
16 admitted into evidence.)

17 MS. BARR: Move to publish.

18 THE COURT: All right, you may.

19 BY MS. BARR:

20 Q Mr. Frebowitz, what I'm gonna do is I'm
21 going to allow the tape to play. I may pause it at
22 certain points and ask you questions. But while
23 it's playing, please don't testify to anything,
24 okay?

25 A Yes, ma'am.

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1 Q Thank you.

2 MR. MCKENZIE: Your Honor, just for the
3 record I would renew my objection to Miranda issue
4 that we had at pretrial.

5 THE COURT: All right, and I overrule the
6 objection.

7 MR. MCKENZIE: Thank you.

8 MS. BARR: What I'll do is, if it pleases
9 the Court, the time that's reflected on the tape is
10 6:36 and 36 seconds, I think, if I'm reading that
11 correctly. I'm gonna fast forward it just a little
12 bit to the very beginning of the defendant's
13 interview when he comes into the room, if Your Honor
14 please.

15 (Playing of State Exhibit No. 52.)

16 BY MS. BARR:

17 Q And let me stop it there. Do you
18 recognize the young lady that's in the videotape?

19 A I do.

20 Q Who is that?

21 A That's Investigator Domogaer.

22 Q The young lady that just testified?

23 A That's correct.

24 Q Thank you.

25 (Continued playing of State Exhibit No. 52.)

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1 BY MS. BARR:

2 Q Mr. Frebowitz, if you will identify the
3 person who are just coming to the room.

4 A That's myself and Mr. Anderson.

5 Q And in terms of the tyvek suit that Ms.
6 Domogaer talked about earlier, is that the suit he's
7 wearing now?

8 A Yes, ma'am, it is.

9 Q All right, thank you.

10 (Playing of State Exhibit No. 52 continued.)

11 BY MS. BARR:

12 Q Investigator Frebowitz, I'm not sure, some
13 of the other folks may be having a hard time
14 understanding what you were saying and what he was
15 saying. Tell us about the reference that he made to
16 an insurance policy.

17 A We asked just preliminary questions. Are
18 you upset about something? And he took out an
19 insurance policy. She asked me would I do it and I
20 said no, I have insurance already. He was upset
21 about some sort of insurance policy. I just
22 acknowledged that. He said, I looked for my papers
23 but she asked me, she pays 33-dollars for insurance
24 on me. I asked who. He said, my grandma. He
25 answered, yeah, I paid her back. I said, okay.

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1 "And that's how we got into an argument."

2 Q Hold ---

3 A And I asked about the argument. Said
4 there was an argument earlier in the day? And he
5 said, no, it was almost nighttime. Okay, about what
6 time was what I asked, and he said about five or
7 six.

8 Q Okay, all right.

9 (Playing of State Exhibit No. 52 continued.)

10 BY MS. BARR:

11 Q Detective Frebowitz, you asked him about a
12 gun?

13 A Yes, ma'am, I did.

14 Q All right. And where did he tell you he
15 got the gun from and who it belonged to?

16 A He said it was his uncle's gun and he got
17 it from -- I asked if the uncle had a gun. He
18 said -- I asked, did he have a gun? And I said,
19 where did he get it from? Was it his gun or do you
20 have it someplace in the house? He stated someplace
21 in the house. So where was it in the house? He
22 said it was in a closet. You know what kind of gun
23 it was? He says, a 12. And I inquired a 12-gauge?
24 He goes, yeah, it was a 12-gauge shotgun.

25 Q And where in the house did he say that --

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1 "he" being the defendant -- where did he get the
2 12-gauge shotgun from?

3 A From a closet.

4 Q Did he say which closet?

5 A No, ma'am.

6 (Playing of State Exhibit No. 52 continued.)

7 BY MS. BARR:

8 Q Detective Frebowitz, a couple of followup
9 questions. I think when I left off questioning you
10 about the location that where the defendant received
11 the gun and we started back playing the video. Does
12 he subsequently tell you where he retrieved the gun
13 from?

14 A He did.

15 Q Okay. Where did he tell you?

16 A From the uncle's bedroom closet.

17 Q And I believe you asked him whether or not
18 Mr. Seward or Theward McCray had a gun?

19 A Yes, ma'am.

20 Q And what was his response to that question
21 as to whether or not the victim was armed?

22 A No.

23 Q I'm sorry?

24 A No, ma'am.

25 Q He said that the victim was not armed?

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1 A Please refresh my ---

2 Q Sure.

3 A ---recollection from the transcript.

4 Q And I'm on page 9.

5 A Okay, thank you.

6 Q Line 9.

7 A Thank you.

8 Q Yes, sir.

9 A "At the time of the shooting was he
10 armed?" The answer is "No."

11 Q All right. And kind of tell us how he
12 described the actions that the grandmother took,
13 what did he say she did?

14 A It's his words. I don't want to misquote
15 them.

16 Q Sure.

17 A That's why ---

18 Q Sure.

19 A ---I'm referring to the transcript.

20 Q Sure.

21 A On page 15, starting on line 21, 22. "And
22 you shoot and then grandma who is in the living room
23 with you, she runs into the bedroom and slams the
24 door?" Answer is, "Yeah". "Okay. And the door was
25 locked when you went to the bedroom. And did you

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1 have to kick it in or anything?" He answers, "I
2 kicked it in." I asked, "You kicked it in?" He
3 says, "Yeah".

4 Q Okay. Now as it relates to after the
5 shooting, you asked him about the gun and whether or
6 not the shotgun used in the killing was still in his
7 car. Do you remember asking him those questions?

8 A Yes, ma'am, I did.

9 Q And what was his response?

10 A He said, "No, he threw it out of the car
11 on the way to Conway".

12 Q All right. And you requested or you
13 wanted for him to go back with you back to the crime
14 scene. Tell me why.

15 A Not so much the crime scene, but wanted to
16 retrace his steps as he fled the scene so that maybe
17 he could refresh his memory where he might have
18 thrown the gun out of the car. I explained to him,
19 you know, all honesty so (a) it was evidentiary
20 value obviously; but more importantly, some kid
21 could get a hold of it on the side of the road and
22 use it and get hurt. And I was hoping he would
23 trigger some humanity where he could show us where
24 the gun is, and he said no.

25 Q All right. At any point in time during

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1 this interview did he ever tell you where the gun
2 was or ever produce the gun or ever express a
3 willingness to go back and retrace his steps so that
4 you can get the gun?

5 A No, ma'am.

6 Q Now as a result of that interview did you
7 pass along any information then to the Williamsburg
8 County Sheriff's Office regarding the shooting?

9 A Yes, I did.

10 Q All right, and what did you share with
11 them?

12 A Everything to this point.

13 Q Okay. And Mr. Frebowitz, obviously to be
14 fair, did the defendant's speech sound unusual at
15 all?

16 A It was a little muffled, but that's not
17 all that unusual when I interview individuals who
18 committed horrific crimes. Sometimes they don't
19 want to voice they're sad, whether they got caught
20 or sad 'cause they got caught or sad, whether they
21 committed the crime, we're never able to find out.
22 But they're sad and they have a low, slow kind of
23 pattern, speech pattern, that just was very
24 consistent with what I saw with Mr. Anderson.

25 Q All right. But sitting there next to him

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1 did you have any problem understanding what he's
2 saying?

3 A No, ma'am, not at all.

4 Q Okay. Now did he later on in the
5 interview provide any information about where he, or
6 how he disposed of the weapon, if he disposed of it?

7 A Just that he threw it out of the car.

8 Q Did he give you a location about where
9 that might have happened?

10 A It was a general location next to near
11 some store, but I really -- it wasn't really our
12 jurisdiction so I passed it on to Williamsburg.

13 Q Okay. In terms of the, again, the
14 statement that he gave to you on that particular
15 day, did he at any point in time tell you that he
16 was hearing things or seeing things that were not
17 there?

18 A No, ma'am.

19 Q Okay. And I believe -- of course you were
20 in court when Ms. Domogaer testified about the
21 defendant appearing at the police department with no
22 shirt on, we've seen the pictures, correct?

23 A Yes, ma'am, that's correct.

24 Q All right. Did that surprise you when he
25 came in that state?

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1 A No, ma'am.

2 Q Did not surprise you?

3 A No, it didn't.

4 Q Now you -- let me ask you this. You
5 mentioned that you never recovered a firearm or he
6 never took you to a firearm. What about his shirt?
7 Did he ever tell you where his shirt was?

8 A No, ma'am, he never did.

9 MS. BARR: Beg the Court's indulgence.

10 BY MS. BARR:

11 Q All right. Sir, other than interviewing
12 Mr. Anderson did you provide any other assistance to
13 Williamsburg County in investigating the murder that
14 happened here in Williamsburg County?

15 A Just transferring over a copy of that
16 interview tape.

17 Q All right. Did you know Mr. Anderson
18 prior to that occasion or any of the parties
19 involved prior to that occasion?

20 A No.

21 Q I believe that's all the questions that I
22 have at this time. Please answer any questions
23 Defense counsel may have for you.

24 **CROSS-EXAMINATION**

25

SW - N. FREBOWITZ - CROSS

1 BY MR. MCKENZIE:

2 Q How are you this afternoon?

3 A Well, sir, thank you.

4 Q Good. Your job is to, was to interview my
5 client Mr. Anderson in this case; is that correct?

6 A Yes, sir.

7 Q Okay. And prior to the interview you
8 actually had some conversations with his mother?

9 A I did, sir.

10 Q And she discussed with you his mental
11 status; is that correct?

12 A Yes, sir.

13 Q Okay. And she made you aware of the fact
14 that he was on medication?

15 MS. BARR: Objection, Your Honor, calls
16 for hearsay.

17 MR. MCKENZIE: I think it goes to the
18 mental state of the defendant, Your Honor.

19 THE COURT: Ms. Barr.

20 MS. BARR: Judge, it still calls for
21 hearsay. I mean, the declarant is in the courtroom.

22 THE COURT: All right, ladies and
23 gentlemen, we're gonna have you go to the jury room
24 for a little break while we have a discussion.

25 (WHEREUPON, the jury was removed from the

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1 courtroom.

2 THE COURT: All right, let me hear about
3 it, hear the objection again, Ms. Barr.

4 MS. BARR: Your Honor, I believe the
5 question posed to the witness was whether or not the
6 defendant's mother made him aware that the defendant
7 was taking medication. And my objection was that it
8 was hearsay because it calls for the defendant, the
9 witness, to testify regarding statements that a
10 third party, the mother, made to the officer on that
11 night.

12 THE COURT: All right. Mr. McKenzie.

13 MR. MCKENZIE: Your Honor, I think this
14 goes to the whole point of whether or not -- I think
15 that the Court was correct. You made your ruling in
16 regards to the admissibility of the statement, but
17 the jury can also draw its own conclusions about
18 admissibility of the statement. In order to do that
19 they have to have all the information that's
20 available. I certainly can -- I'll call
21 Ms. Burroughs in my case, but then I would have to
22 ask the detective to sit around and ask him if those
23 statements were true. A lot of these statements are
24 covered by, I think, the exceptions. And there's a
25 statement from -- there's a statement of, from

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1 Ms. Burroughs in regards to the detective and I
2 think the very beginning of the statement here it
3 asks about the medication that he's on.

4 THE COURT: Can't you ask him the same
5 thing without asking him what'd his momma tell you.

6 MR. MCKENZIE: Yes, sir, I'll ask it that
7 way.

8 THE COURT: He obviously knows all about
9 the medicine but.

10 MR. MCKENZIE: Yes, sir.

11 THE COURT: The primary basis of the
12 objection -- she may have others, I don't know
13 but -- is did his momma tell you that he, and that's
14 where the hearsay comes in.

15 MR. MCKENZIE: I understand, Your Honor,
16 I'll ask him ---

17 THE COURT: Beyond that's still, I agree
18 with you he can assess that he understood Miranda
19 and the basis for what knowledge he had in making
20 that assessment is appropriate cross-examination.

21 MR. MCKENZIE: Thank you, Your Honor.

22 THE COURT: All right, we're gonna take a
23 few minutes break, about four minutes.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

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1 THE COURT: Bring them on.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 3:19 p.m., and the
4 following proceedings commenced in open court.)

5 THE COURT: All right, the objection is
6 sustained. You may proceed.

7 MR. MCKENZIE: Thank you, Your Honor.

8 BY MR. MCKENZIE:

9 Q Investigator Frebowitz, is it detective or
10 investigator? Either one?

11 A Either one.

12 Q Retired now, right?

13 A Neil works great.

14 Q Okay, great. Neil, whenever you first
15 came on to the scene with the Anderson case and was
16 talking with Mr. Anderson, you did a little
17 background information to find out about the person
18 you would be talking with; is that correct?

19 A Yes, sir, that's true.

20 Q And did your background investigation lead
21 you to find out some information about
22 Mr. Anderson's mental health condition?

23 A Yes, sir.

24 Q Okay. Can you tell the ladies and
25 gentlemen of the jury what you discovered about

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1 Mr. Anderson's mental health condition?

2 A I guess the most telling piece was that
3 mom, his mother at the house, handed me a series of
4 pill bottles to take with us. One of those, as we
5 inventoried them at the scene, was a medicine called
6 Risperidone which I was familiar with that is used
7 to treat psychiatric or mental health disorders.

8 Q And more specifically, antipsychotic drug?

9 A I believe that's true.

10 Q Okay. And so those, that medication was
11 given to you for him to administer to him at the
12 jail?

13 A Well, there were five separate pill
14 bottles that were taken into custody at the home and
15 they were subsequently released to the office of the
16 sheriff with him at the jail.

17 Q And his name was -- they were prescribed
18 to him; is that correct?

19 A That's correct, sir.

20 Q Okay. And I think during the, at the
21 interview Mr. Anderson actually asked you about
22 getting some mental health; is that correct?

23 A He did, sir.

24 Q Okay. And knowing all of this, you still
25 read him his Miranda rights, went through all that,

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1 and found his confession on the, on this issue to be
2 freely and voluntarily given?

3 A I did. He was very responsive to the
4 questions.

5 Q Okay. Let's talk about his responsiveness
6 to the questions, okay?

7 A Yes, sir.

8 Q On page 4 of your statement -- of his
9 statement.

10 A Yes, sir.

11 Q You do a good bit of talking, but I count,
12 for example, at line 12 his response -- I think you
13 talk until line 12. His response was yes, or yeah.

14 A Correct.

15 Q Further on down 18 I think you did some
16 more talking, his response was, yeah.

17 A Correct.

18 Q Okay. And 22, line 22 his response was,
19 uh-huh.

20 A To his name, that's correct.

21 Q Okay, all right. If we turn over to the
22 next page you ask him his address. I think you
23 spelled it and you actually spelled it incorrectly,
24 and he even said, yeah. You see that? Line 9 and
25 10?

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1 A Yes, sir.

2 Q Okay. You actually spelled it incorrectly
3 and he said, yeah?

4 A Appears so.

5 Q Is that a yes?

6 A. Yes.

7 Q. Okay. Line 15, you asked him another
8 question at 13 and 14, his response was yeah. You
9 see that?

10 A I do, sir.

11 Q Okay. Line 20 you asked him a question,
12 17, 18, 19 lines. His response was, uh-huh. You
13 see that?

14 A Lines?

15 Q Line 20 his -- or I guess the question
16 was, uh-huh.

17 A His answer was, "She wanted me to pay her.
18 I don't know. I owed it, I paid it. I got her as
19 beneficiary and I won't do it again." And I said,
20 uh-huh.

21 Q Okay, you said uh-huh?

22 A Uh-huh.

23 Q And he said, "I won't do it again." He's
24 talking about paying for the beneficiary or --

25 A Paying some insurance policy.

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1 Q Right. And so he's kind of, and during
2 this conversation he's really, during this whole
3 interrogation he's really obsessed about this
4 insurance issue; isn't he?

5 A It came up several times.

6 Q Okay. And again he's talking about -- on
7 page 6 he's talking about the insurance issue again,
8 about the argument over the insurance. He seems to
9 be really obsessed with this insurance situation?

10 A It came up several times.

11 Q And during your investigation about his
12 background did you learn that he was paranoid, had
13 been diagnosed with being paranoid and delusional?
14 Was that ever told to you?

15 A I don't believe so, no, sir.

16 Q So did you believe he had hallucinations?

17 A He didn't show any signs of hallucinations
18 when he was with me.

19 Q I understand he didn't go into it, but was
20 that a part of his history to?

21 A I didn't know that at the time.

22 Q All right, so if we go down again just
23 page 6 to line 11, he had, we talk about insurance
24 policy again. His answer was, yes.

25 A Correct.

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1 Q You see that?

2 A Yes, sir.

3 Q So a lot of his -- and then in line 16 you
4 get a question, uh-huh, and his answer was, I felt
5 sorry.

6 A That's correct.

7 Q And then his answer on line 19 was, yes.
8 His answer on line 24 was, yeah.

9 A Yes, sir, that's correct.

10 Q Okay. So a lot of this was you were
11 talking and he was giving you very, very short
12 answers, yes, no, uh-huh, yeah. Is that, would that
13 be a fair statement?

14 A Uh-huh.

15 Q Okay, that would be a fair statement,
16 okay. And then on line 7 you say something very
17 interesting. You're a 40 year veteran of the police
18 department, right?

19 A Yes, sir, of several police departments.

20 Q Several police departments. And your
21 question to him at line 13 says, "I don't know much
22 about guns."

23 A That's true.

24 Q You don't know much about guns?

25 A I don't carry one anymore.

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1 Q I understand you don't carry one now, but
2 you carried one for 40 years; didn't you?

3 A Yes, sir, I did.

4 Q "And you have to help me out because I
5 don't know. So you go into the closet and what
6 happened?" And he said, "It was in the bedroom".
7 He corrected you there, okay?

8 A Yes, sir.

9 Q "The bedroom closet?"

10 A Yes.

11 Q "Your bedroom closet or your uncle's
12 bedroom closet?"

13 A. "My uncle's bedroom closet."

14 Q So you're asking him questions, but again,
15 he's giving you very, very short answers; but
16 basically, the answers he's giving you are contained
17 in the question that you answered, asked him before.
18 You understand that, right?

19 A He would say something and I recognized
20 the fact that he had a low tone. I would say it
21 again to clarify what he meant so he could correct
22 me if he needed to. He didn't correct me; he just
23 confirmed what I had parroted back to him.

24 Q Okay. Again on page 8 we're back with the
25 insurance problem. At line 9 his answer was, "Yes,

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1 because he never gave up the insurance papers. They
2 never gave me the insurance man's name." Your
3 question was, "Really?" "Yeah, I kept asking and
4 kept putting it off." And you see that? And then
5 finally down he gives you a "yeah" answer. Then on
6 line 16 and 18, a "uh-huh" answer, and line 22 a
7 "yeah" answer. You see those?

8 A Yes, sir, I do.

9 Q Okay. On line, on page 10, line 18. This
10 is talking about when he allegedly shot his
11 grandmother, right? You see that?

12 A Yes, sir, I do.

13 Q And the answer on line 18 from him was, he
14 said, "I'm kind of confused on it", right? You see
15 that?

16 A I do. I'm trying to remember what the
17 question is.

18 Q Whether she was standing up, sitting
19 down ---

20 A Whether she was standing up or lying down,
21 where she was positioned when he shot her.

22 Q Right.

23 A He said ---

24 Q "I'm kind of confused on that issue,"
25 right?

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1 A That's correct, sir.

2 Q So at some, at any point during this
3 investigation or during his interrogation did you
4 determine that maybe this guy needs to be on some
5 medication, maybe he needs to be seeing somebody
6 else so they can give him an evaluation as to
7 determine whether or not he's competent to be even
8 giving this statement?

9 A That's not my area of expertise or
10 responsibility.

11 Q Okay.

12 A If -- and I, he didn't appear to be sick.
13 He did not appear to be injured. He appeared to
14 understand questions I was asking him and give me
15 competent responses. If any time it changed we'd
16 have, obviously have some different questions then.

17 Q Well, if we go back or if we go forward to
18 page 15, and we're still again talking about -- this
19 is where he's talking about the gun, when he loaded
20 the gun. Every question I believe, or every answer
21 on there except, "I looked and could see the
22 shelves." You start on at answer, and you said,
23 "You could see the shelves." "Yes." And then next
24 question, you ask a question, he says "Uh-huh". You
25 ask another question line 12, he said "yes". You

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1 asked a six page -- or six line question, he says
2 "Uh-huh." You see that?

3 A Yes, sir.

4 Q And then you ask another question and he
5 says, "What will we do"? He said, "Yeah." What
6 was -- what was that in response to? That seems to
7 be unresponsive to what he's, what the question was
8 before it?

9 A Earlier he had indicated the uncle -- he
10 and the uncle engaged in some dialogue before he
11 shot him and I was just repeating that. He said
12 what, would what he would do.

13 Q Uh-huh. And he just said yeah.

14 A Yeah.

15 Q Okay. And the next question is, "And you
16 shoot and then grandma who is in the living room
17 with you, she runs in the bedroom and slams the
18 door." Now that's inconsistent with the prior
19 statement he made about whether she was sitting down
20 or standing up when she was shot. Would you say
21 that's a fair statement?

22 A Yes, sir.

23 Q Okay. And he says, "Yeah," okay, so
24 that's your question there. And then on page 17 we
25 have this dialogue about his mental stability,

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1 right? You see that?

2 A Yes, I do.

3 Q Okay. And it says at line 9, will you
4 have -- "Well, will you have me in counseling?"
5 That's a question that he asked you.

6 A That's correct, sir.

7 Q And the answer was, "Yeah, don't you think
8 you need some counseling?" So obviously you thought
9 he needed counseling, is that correct?

10 A Well, I asked him the question what he
11 thought. I didn't ask him what I thought.

12 Q But you weren't denying that he needed
13 counseling in that statement?

14 A He asked me will I have him in counseling.
15 I asked him do you think you need some counseling.

16 Q Okay. And the answer was, "Yeah, I've
17 been going to Waccamaw Mental Health," right?

18 A That's correct.

19 Q And are you -- "And I was taking
20 medication to help control my temper."

21 A Yes, sir.

22 Q Okay. And then the next question is, "Oh,
23 okay. So you take medication to control your
24 temper"? "Yes." "And you know that if you don't
25 take your medication your temper gets out of

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1 control?" "Yeah, I thought I was all right." That
2 was his next response, right?

3 A Yes, sir, that's correct.

4 Q "So you should have stopped taking your
5 medication for a little bit, but I didn't take it
6 that morning, okay." Is that what was said next?

7 A No, I asked him, "So you had stopped
8 taking your medicine." And his answer was, "For a
9 little bit. I didn't take it that morning."

10 Q Right. So that's one of the ways you
11 found out he was on medication obviously, and also
12 the pill bottles; is that correct?

13 A That's correct.

14 Q Okay. So the next page he talks about,
15 "Yeah, I know I'm going to get some time. Well,
16 will you have counseling? I need counseling." "You
17 can get some help." "I'm on depression medication
18 already." Was that the first time you realized he
19 was on depression medication as opposed to the
20 Risperdal?

21 A Yes, sir.

22 Q Okay. He says, "I have a little flareup.
23 I don't know what, what they did with it. I don't
24 know what they did with it." "Okay, is there
25 everything else you want to talk to me about today?"

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1 That's -- you go on to the next question. And he
2 said on line 17, "Yeah, nobody listens." Is that
3 right?

4 A Yes, sir.

5 Q Okay. So at any point at any time here
6 did you think, you know, I've got some guy who's got
7 some significant mental issues that I might need to
8 stop and maybe get somebody else to talk to him
9 before I go any further?

10 A No, sir.

11 Q Okay. And there was a point, even though
12 you guys had confronted him and told him his
13 grandmother was dead he actually said -- and this is
14 confusing to me, and again, I think it should be
15 something that you probably should have caught up on
16 and you may have.

17 MS. BARR: Judge, I would move to strike
18 that.

19 THE COURT: All right.

20 MR. MCKENZIE: I'll ask the question, Your
21 Honor.

22 THE COURT: All right.

23 MR. MCKENZIE: Beg the Court's indulgence,
24 Your Honor. I'm just trying to find it in my notes.

25 BY MR. MCKENZIE:

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1 Q Okay, let's go to page 31. And this is
2 where you're talking to him about where the gun is.
3 Okay, and line 6, and you say, "It's in a wooded
4 area. Why'd you throw it in a wooded area instead
5 of maybe just someplace else?" And he goes, "I
6 don't know."

7 A Correct.

8 Q Okay. The next line you say, "You were
9 just trying to hide it and you knew you needed to
10 get rid of that gun." His answer was, "No, but."
11 And apparently either he just stopped or he was cut
12 off or whatever happened, but that's — he said,
13 "No, but." And then you came back with, "You watch
14 TV, you know how it goes." And his answer was, it
15 seems to be unresponsive for that. Again, it seems
16 to be a little bit off the beaten path. Can you
17 read that next response for us?

18 A Yes, sir. He answers, "No, but my
19 grandma, I miss her, but she forced that. She" —
20 then there's a pause. "Her and my uncle, she may be
21 asleep now."

22 Q Okay. So at that point in time did you
23 think that he may be a little bit delusional in
24 regards to the fact that you'd already told him that
25 his grandmother was dead and he comes back later on

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1 in the interview after you've been interviewing for
2 quite a while, and he now says to you that she's
3 asleep.

4 A I've made dozens of death notifications;
5 it's the hardest part of my job. And the way people
6 process the news of a loved one's passing is
7 different for everybody. And it runs a gamut of
8 people that take exceptions immediately and then
9 later on call me the next day and say she's just
10 asleep. This really wasn't all that unusual in my
11 book.

12 Q I understand. And your job is not to make
13 mental health decisions; but you, your job is to
14 interrogate people and if they are mentally ill,
15 then that's on the courts to determine, right?

16 A My job is, as I said to him and I said in
17 the transcript, my job is to find the truth.

18 Q Okay. And part of the truth that you
19 found out in this situation was that Mr. Anderson
20 had been in a significant car accident in 1995?

21 A I learned that subsequent, yes, sir.

22 Q Yes. And that he had had, he was on a
23 Risperdal which was a very high potency
24 antipsychotic drug?

25 A Yes, sir.

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1 Q Okay. And part of the truth that you
2 found out was that he was actually had ongoing
3 treatment at Waccamaw Mental Health; is that true?

4 A He disclosed that during the interview,
5 yes, sir.

6 Q So all those things that you knew about
7 while you were interviewing him for what we are
8 seeing here today?

9 A Somewhere during the interview that came
10 to light, yes, sir.

11 MR. MCKENZIE: Court's indulgence, Your
12 Honor.

13 BY MR. MCKENZIE:

14 Q Detective Frebowitz, I asked you during my
15 cross-examination were you aware that the defendant
16 had been hallucinating or had symptoms of
17 hallucinations and problems with his mental
18 stability, right?

19 A Yes, sir.

20 Q And your -- you said you understood that
21 you found out through your investigation that he had
22 mental problem, but that you deny the fact that you
23 knew he had been hallucinating that day?

24 A I didn't remember -- him hallucinating
25 that day?

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1 Q Yes.

2 A I wasn't aware he was hallucinating that
3 day.

4 Q Can I show you and hand you a copy of a
5 statement that you gave, that Joani Burroughs gave,
6 that you were the detective who took the statement.

7 MS. BARR: Your Honor, we're gonna object
8 to that as hearsay.

9 MR. MCKENZIE: Your Honor, I think it's
10 for impeachment purposes and I can show the Court
11 where and when 'cause he has testified that he was
12 unaware, no one told him that the defendant had been
13 hallucinating that day and he took the interview.

14 MS. BARR: Your Honor, he can't impeach
15 him respectfully with that statement 'cause that's
16 not his statement. He's trying to impeach him with
17 another witness' statement.

18 MR. MCKENZIE: I'm trying to impeach him
19 with a statement he took.

20 THE COURT: I sustain the objection.

21 BY MR. MCKENZIE:

22 Q Detective Frebowitz, do you wish to change
23 your testimony from what you said earlier?

24 MS. BARR: Your Honor, that'd be the same
25 objection.

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1 THE COURT: Well, I overrule the
2 objection.

3 THE WITNESS: Okay. There is a statement
4 I took, audiotape statement, that was given to me by
5 his mother; it's several pages long. And somewhere
6 in this statement there's third party reference
7 where somebody said somebody said somebody said that
8 he was hallucinating.

9 BY MR. MCKENZIE: .

10 Q Let me refer you to the passage I'm
11 talking about. If you will read on page 3 -- and
12 this is her statement to you and this is your
13 statement. You're taking down this statement or
14 either you're reading this statement.

15 A I'm recording this statement, yes, sir.

16 Q Can you read that paragraph for us.

17 MS. BARR: Judge, we still object. It's
18 hearsay.

19 THE COURT: All right, sustain the
20 objection.

21 BY MR. MCKENZIE:

22 Q So it's your position today you did not
23 know about my client had been hallucinating that day
24 earlier?

25 A I didn't. When I interviewed him I did

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1 not know, I did not remember.

2 Q You did not remember?

3 A I did not remember that.

4 MR. MCKENZIE: No other questions, Your
5 Honor.

6 THE COURT: Any redirect?

7 MS. BARR: Yes, just a few questions.

8 **REDIRECT EXAMINATION**

9 BY MS. BARR:

10 Q Detective Frebowitz, do you have a copy of
11 that statement of the defendant up there with you?

12 A The transcript?

13 Q Yes.

14 A Yes, ma'am, I do.

15 Q Let me just go through some things very,
16 very quickly. Turn to page 4 for me please on line
17 23.

18 A Yes, ma'am.

19 Q You asked him what with regard to line 23?

20 A Asked him for date of birth.

21 Q What'd he tell you?

22 A [REDACTED]

23 Q As far as you know is that his date of
24 birth?

25 A Yes, ma'am.

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1 Q Now the next page, beginning of page 5,
2 you all are talking about astrological science.

3 A That's correct.

4 Q What does he say he is?

5 A He said he's Pisces.

6 Q All right. And on page 5 starting at line
7 16. What do you ask him?

8 A I asked him what he was upset about.

9 Q And what did he tell you?

10 A "He took, he took out an insurance policy
11 on me. Right. She asked me would I do it. I said,
12 no, I already have insurance."

13 Q Okay, all right. Turn to page 6.

14 A Yes, ma'am.

15 Q And starting at line 20 what do you ask
16 him?

17 A "What happened next?"

18 Q And what does he say?

19 A "Then I got mad. I went and got the gun
20 and just shot."

21 Q Okay. Turn to page 7. Starting at line
22 7, what do you ask him?

23 A "Do you know what kind of gun it was?"

24 Q And what does he say?

25 A "12".

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1 Q Okay, and then what do you ask him?

2 A "12 gauge?"

3 Q And then what does he say?

4 A "Yeah."

5 Q Okay. Turn to page 9 for me, line 19.

6 What do you ask him?

7 A "And where did the shooting start taking
8 place, in what room of the house?"

9 Q And what does he say?

10 A "The living room."

11 Q Okay. Then what do you ask him?

12 A I asked, "The living room? So who did you
13 shoot first?"

14 Q What does he say?

15 A "My uncle."

16 Q All right, turn to page 10 for me.

17 Starting at the top of that page what do you say,
18 what do you ask him?

19 A "Your uncle was," and then I say, "Do you
20 know how many times you shot him?"

21 Q And what does he say?

22 A "One."

23 Q Okay. Starting at line 7 what'd you ask
24 him?

25 A "Grandma. And then you shot grandma?"

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1 Where was she at the time?"

2 Q And what did he say?

3 A "She was in her room."

4 Q And then what do you say?

5 A "She was in her room?" I repeated.

6 Q And what does he say?

7 A "Uh-huh," And he kept moving forward, back
8 and forth.

9 Q She kept moving back and forth?

10 A That's correct.

11 Q And then what do you ask him?

12 A "Okay, well, where was she in her room?

13 Was she standing up or sitting down?"

14 Q And what does he say?

15 A "I don't know. She was standing up."

16 Q Then what do you ask?

17 A I asked, "She was standing up?" He
18 writes, yeah. He says, "Yeah".

19 Q Okay, turn to page 12 for me. Starting at
20 line 2 what do you ask him?

21 A "So you go next door with the shotgun.
22 What did he say when he saw you with the shotgun?"

23 Q And you say what does he say when he saw
24 you with the shotgun, who are you talking about?
25 What does who say with who saw him with a shotgun?

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1 A Talking about going to room to room
2 previously?

3 Q Yes, sir.

4 A Referring to his uncle.

5 Q Yes, okay. You asked him what does the
6 uncle say?

7 A Did he say yes, referring to the uncle.

8 Q So you're asking Mr. Anderson what does
9 your uncle say when he sees you with a shotgun?

10 A That's correct.

11 Q And how did Mr. Anderson respond when he
12 said that?

13 A He said, "What am I doing?" I said, "I'm
14 getting tired of arguing with you."

15 Q Okay. And then what do you say?

16 A I repeat.

17 Q Okay.

18 A And the answer is, "I'm getting tired of
19 arguing with you. He walked towards me and I shot."

20 Q Okay. Then what do you say?

21 A I said, "okay, all right. Did he say
22 anything afterwards, or did he just go down or
23 what?" "No, he went down."

24 Q Okay. All right, then what did you ask
25 him at that point?

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1 A "Then what made you decide to go into
2 grandma's bedroom?" "She ran into the bedroom".

3 Q And what do you say?

4 A "She ran into the bedroom and slammed the
5 door."

6 Q And what did he say?

7 A "Yeah. I didn't really want to do it.
8 She was still pushing back and forth all this whole
9 year, this whole year pushing back and forth. I was
10 like, I felt I would get in trouble."

11 Q He said he felt he would get in trouble?

12 A He felt he would get in trouble.

13 Q All right. Turn to page 16 for me.
14 Starting at line 1, what are you asking?

15 A Okay. "And was the door locked when you
16 went to the bedroom, or did you have to kick it or
17 anything?"

18 Q What does he say?

19 A "I kicked it."

20 Q And what do you say?

21 A I repeat, "Oh, you kicked it in?"

22 Q What does he say?

23 A "Yeah."

24 Q All right. Then what are you asking?

25 A "Did it come off the hinges or anything

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1 like that?

2 Q What does he say?

3 A "No, it just opened."

4 Q And what did he say?

5 A I repeated, "It just opened?" "It just
6 opened after I kicked it."

7 Q Okay.

8 A Then I repeat, "After you kicked it? He
9 answered, "Yeah."

10 Q Okay.

11 A "And then grandma, she was, and then
12 grandma, was she standing there or did she get in
13 bed or what?"

14 Q And this the question you asked ---

15 A That's the question I asked him.

16 Q All right, so you asked him and then was
17 grandma just standing there or did she get in the
18 bed or what?

19 A Correct.

20 Q And what does he say?

21 A "She was standing."

22 Q All right. Then what are you asking him?

23 A "She was standing and you shot her?"

24 Q And what does he say?

25 A "Yeah."

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1 Q Okay. And then what do you say?

2 A "Okay."

3 Q And then what does he say?

4 A "I didn't want to."

5 Q And then what do you say?

6 A I say, "I know you didn't want to."

7 Q All right. And then what do you say?

8 A He says, "I messed my life up."

9 Q And then what do you say?

10 A "Well, you know, we all make mistakes."

11 And he answers, "This is a big one."

12 Q Okay. All right, start on page 17. What
13 are you telling him, what do you say to him?

14 A He -- well, we have to go back to 16 for
15 the whole ---

16 Q Yes, sir.

17 A ---sentence. Question, "Well, this is,
18 this is a big one." He said, "Well, it is." "It's
19 a problem for us. You know what, the good thing is
20 that you're taking responsibility. That's the first
21 step towards helping yourself," I say to him.

22 Q And what does he say?

23 A "Yeah, but I feel like a failure."

24 Q And what do you say?

25 A I say, "No." He says, "He, he kept

SW - N. FREBOWITZ - REDIRECT

1 pushing me."

2 Q When he says he kept pushing me ---

3 A He kept pushing me.

4 Q ---who is he referring to?

5 A The uncle.

6 Q Okay. And then?

7 A I said, "Right." And then he says, And he
8 kept talking to me to laugh at.

9 Q He kept talking to me or taking?

10 A Taking me the -- the transcript, I guess
11 it's taking me to laugh at.

12 Q Talking about the uncle?

13 A I guess so, yeah, his answer.

14 Q All right. I'm sorry, read the answer in
15 its entirety.

16 A Okay. "He kept taking me to laugh at. I
17 didn't like that." I think it's talking. "And he
18 kept talking me to laugh at. I didn't like that.
19 That what made me kill him."

20 Q Okay. The transcript reflects that he
21 told you, "He kept taking me to laugh at. I did not
22 like that. And that's what made me kill him."

23 A That's why -- "That's what made me kill
24 him."

25 Q And then you say, "Right," to him?

SW - N. FREBOWITZ - REDIRECT

1 A I do.

2 Q And then what does he say on the next
3 line?

4 A Next line is, "Will you have me in
5 counseling?"

6 Q "Will you have me in counseling" is what
7 he asked you?

8 A That's correct.

9 Q All right. And this is after he's
10 admitted to killing both his mother and his -- his
11 grandmother and his uncle, that he asked you to put
12 him in counseling?

13 A That's correct.

14 Q One last question, you asked about the
15 medication. You were asked about his medication on
16 cross-examination and you mentioned, I believe,
17 that -- starting on page 17 he may have told you
18 that, "I didn't take the medication that morning."
19 Is that correct? At the end of page 17? I think it
20 starts at line 23.

21 A The question was, "So you stopped taking
22 your medicine."

23 Q All right. And then was he -- how does he
24 respond to that?

25 A For a little bit. I didn't take it that

SW - N. FREBOWITZ - REDIRECT

1 morning.

2 Q Okay. Then what did he say?

3 A He said, "Okay." He answers, "It was the
4 other, it was that night I did, but one thing led to
5 another."

6 Q All right, so he says he didn't take his
7 medication that morning, but that night he did.

8 A "And one thing led to another."

9 Q All right. And stay with me on page 18.
10 I think this will be the last series of questions
11 that I have to ask you. When he says "one thing led
12 to another," what did you then say?

13 A That's when some -- I had said, "That's
14 what happens sometimes."

15 Q All right. And then what does he say?

16 A "Yeah, I know. I'm going to get some
17 time."

18 Q All right now, when somebody tells you,
19 yeah, I know I'm gonna get some time, what if
20 anything does that suggest to you?

21 A Well, they know they're probably going to
22 go to jail.

23 Q Okay. And after he made that statement to
24 you, "Yeah, I know I'm gonna get some time, does he
25 then again say that he needs counseling?

SW - N. FREBOWITZ - RECROSS

1 A He does.

2 Q Okay. That's all the questions I have.
3 Thank you, sir.

4 THE COURT: Yes, sir.

5 MR. MCKENZIE: Just couple of followup,
6 Your Honor.

7 **RECROSS-EXAMINATION**

8 BY MR. MCKENZIE:

9 Q Neil.

10 A Yes, sir.

11 Q Someone who's street savvy -- and you've
12 been doing this 40 years -- knows that he wouldn't
13 be just getting some time for killing two people,
14 would he?

15 MS. BARR: Objection, Your Honor.

16 MR. MCKENZIE: Your Honor, he testified
17 that he ---

18 THE COURT: He can answer yes or no.

19 THE WITNESS: Yes.

20 BY MR. MCKENZIE:

21 Q And somebody that has been told repeatedly
22 throughout this interrogation that his grandmother
23 is dead and at the end of interrogation says that
24 she's asleep, and you still think he's competent to
25 give a statement to you?

SW - R. FRIERSON - DIRECT

1 A Yes.

2

3 MR. MCKENZIE: That's all the questions I
4 have, Your Honor.

5 THE COURT: Thank you, sir. You may step
6 down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Next witness.

9 MS. BARR: We call Doctor Frierson.

10 THE COURT: Come forward to be sworn.

11 WHEREUPON,

12 **RICHARD FRIERSON,**
13 having been duly affirmed by the Clerk of Court,
14 testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. BARR:

17 Q Doctor Frierson, state your full name for
18 us.

19 A My name is Richard Lesane Frierson.

20 Q Okay. Do you have your case file and
21 everything up there with you straight, or you need
22 to get it sorted? Yes?

23 A I'm good.

24 Q You're good? All right, sir, tell us
25 where you work.

SW - R. FRIERSON - DIRECT

1 A I'm sorry?

2 Q Tell us where you work.

3 A Okay. I am a professor of psychiatry at
4 the University of South Carolina School of Medicine
5 in Columbia.

6 Q You are a physician?

7 A Yes, I'm an M.D.

8 Q How long have you had your medical
9 license?

10 A I've had my medical license since 1988.

11 Q All right. And, sir, of course you had
12 the occasion to testify as an expert witness in the
13 field of psychiatry previous to your testimony here
14 today?

15 A Yes, psychiatry and forensic psychiatry.

16 Q And how many times have you been qualified
17 as an expert in either the field of psychiatry alone
18 or specifically forensic psychiatry?

19 A It's in the hundreds.

20 Q Okay.

21 MS. BARR: Your Honor, at this time we
22 would tender Doctor Frierson as an expert in the
23 field of forensic psychiatry.

24 MR. MCKENZIE: No objection, Your Honor.

25 THE COURT: All right, he is so qualified.

SW - R. FRIERSON - DIRECT

1 BY MS. BARR:

2 Q Doctor Frierson, on August the 5th of last
3 year you had an occasion to conduct an evaluation on
4 the defendant Anthony Anderson; is that correct?

5 A Yes.

6 Q What was the purpose of that evaluation?

7 A The August 5th, 2013, evaluation was to
8 determine whether or not Mr. Anderson was competent
9 to stand trial.

10 Q Okay.

11 A Could he understand what's going on in
12 court and work with an attorney on his defense.

13 Q All right. And tell us how you conducted
14 that evaluation and what your opinion was as it
15 relates to that issue?

16 A Yes. In order to conduct the evaluation
17 we review all the police reports, witness
18 statements, arrest warrants, statements from
19 witnesses. We looked at the autopsy of the victims.
20 We looked at all of the medical records that I was
21 aware of Mr. Anderson. He has a history of numerous
22 medical treatments and some psychiatric treatment.
23 I looked at school records for the defendant and
24 then I conducted a 1 hour and 40 minute interview.
25 We also have a social worker that works with me.

SW - R. FRIERSON - DIRECT

1 She calls his mother and takes some collateral
2 information from a family member so we can get not
3 just what the defendant tells us. So we had all
4 that information, then I conducted an interview.

5 Q All right. And, sir, tell us about what
6 facts or factors did you rely on specifically in the
7 interview that you conducted of the defendant to
8 determine whether or not you believed he was
9 competent to stand trial?

10 A We asked him questions about how cases are
11 handled in court: What are you charged with, what
12 could happen to you if you get found guilty, is it a
13 serious charge, what does the judge do, what does
14 the solicitor or the prosecutor do in a courtroom,
15 what is your lawyer's job, can you talk to your
16 lawyer, have you been able to tell him what you know
17 about what you remember about what happened, what
18 does the jury do, how many people on a jury, how
19 many have to agree to find you guilty or not guilty.

20 Q Okay.

21 A How could you plead, what's a plea
22 bargain. We want to assess whether they can problem
23 solve within the legal system. In other words, I
24 said what would you do if someone was on the witness
25 stand and they start lying about you or saying

SW - R. FRIERSON - DIRECT

1 something that's not true, how would you handle
2 that. We look at their understanding of evidence,
3 can they appreciate the strength of the evidence
4 against them, all those sorts of things.

5 Q Okay. And based on your evaluation of the
6 defendant did he seem to understand the role of
7 prosecutor?

8 A Okay, let me go to that particular 'cause
9 I've done many ---

10 Q Yes, sir.

11 A ---interviews. He understood that you
12 would, you would be an adversarial party. He didn't
13 use that word. He said that the job of solicitor
14 was to try your case and see that you can get locked
15 up.

16 Q Okay. And did he understand the role of
17 his lawyer and the role of a jury?

18 A He was initially confused about the jury.

19 Q Okay.

20 A And he thought that they're there to see
21 how you plead or something. However, we educated
22 him and I had seen him -- at another point he'd said
23 that the job of the jury is to see if you were
24 guilty or not guilty.

25 Q Okay. Well, is that true, that it's the

SW - R. FRIERSON - DIRECT

1 job of a jury to see if the defendant is guilty or
2 not guilty?

3 A Yes, yes, yes. I mean, he's certainly
4 capable of understanding that and that's what I was
5 assessing. We get people with little legal
6 experience, and you know, they don't watch much
7 court TV and we have to sort of see if they're
8 capable of understanding.

9 Q Sure. Did he know how many members of the
10 jury would decide his fate?

11 A He initially thought there were seven.

12 Q Okay.

13 A And he was educated there were twelve.

14 Q Okay, all right. And Doctor Frierson,
15 based upon your education of him and his own
16 independent knowledge of the legal system, did you
17 form an opinion as to whether or not the defendant
18 was competent to stand trial and able to assist his
19 attorney?

20 A Yes.

21 Q Okay. And tell the ladies and gentlemen
22 of the jury what that opinion was.

23 A Yeah. Mr. Anderson does have some
24 intellectual limitations; but despite those, despite
25 any problems he has, it's my opinion that he is

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1 competent to stand trial.

2 Q All right. Now did you see the defendant
3 again in March of this year?

4 A I did.

5 Q All right, and what was the purpose of
6 that meeting?

7 A We had gotten another court order to do an
8 evaluation to determine his mental state at the time
9 of the offense.

10 Q Okay. Why is that important?

11 A That he was either what we call criminal
12 responsibility, that he, was he capable of
13 distinguishing right from wrong; or, if he could
14 distinguish right from wrong, was he capable of
15 controlling his behavior or conforming his conduct
16 to the requirements of the law.

17 Q Okay. When you talk about criminal
18 responsibility and whether or not he knew the
19 difference between right or wrong, have you ever
20 found a situation where you've done evaluations
21 where an individual could not distinguish right from
22 wrong and could not understand the difference
23 between right and wrong?

24 A Yes.

25 Q Okay. All right, and when you find

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1 individuals who cannot genuinely understand the
2 difference between right and wrong and distinguish
3 between the two, how do you classify those
4 individuals? If they ---

5 A Like what verdict would they be eligible
6 for, if that's what the ---

7 Q Correct.

8 A ---trier of fact found if they agreed with
9 me?

10 Q Correct.

11 A Okay. If a jury agreed with me or the
12 judge that someone could not distinguish right from
13 wrong, they would be eligible for a verdict of not
14 guilty by reason of insanity.

15 Q Okay. Now in this case you -- when you
16 did the evaluation in March you had the benefit of
17 all the information that was available when you did
18 the competency evaluation in August, is that right?

19 A Yes.

20 Q All right. And you had the police reports
21 and autopsy reports and all those things, correct?

22 A Yes.

23 Q All right. Did you have a copy of the
24 defendant's statement?

25 A The transcript?

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1 Q Yes.

2 A Transcribed statement, yes.

3 Q And sir, based upon all of the evidence
4 and information that you had available to you and
5 based upon your own interaction with the defendant
6 at the time in March, did you form an opinion to a
7 reasonable degree of medical certainty as to whether
8 or not the defendant at the time this crime was
9 committed, whether or not he knew the difference
10 between right and wrong?

11 A Yes.

12 Q All right. And what's that opinion?

13 A It is my opinion that he would have been
14 capable of distinguishing legal and moral right from
15 legal and moral wrong.

16 Q What do you base that on?

17 A Several things. First of all, I had to
18 get his recollection of what happened.

19 Q Okay.

20 A And I don't know if you want me to go into
21 diagnosis or?

22 Q Yes, sir.

23 A First of all, I want to know does he have
24 a mental illness to begin with.

25 Q. Yes, sir.

SW - R. FRIERSON - DIRECT

1 A. If he doesn't have a mental illness the
2 issue of right and wrong doesn't matter because it
3 has to be you didn't know right from wrong because
4 you're mentally ill so I don't want to muddy the
5 picture. If I'm speeding and I get pulled over and
6 I'm not mentally ill, but I didn't know the speed
7 limit was 55, I thought it was 65 and I didn't know
8 I was doing something wrong, that's not a defense.

9 Q Okay.

10 A It has to be because of some mental
11 illness. Mr. -- my first thing is, Mr. Anderson,
12 does he have a mental illness? The answer to that
13 is, yes, and let me explain what that illness is.

14 Q Yes, sir.

15 A In 1995 Mr. Anderson was found in a ditch
16 on the side of the road. He had had a single car
17 accident the night before and had laid in the ditch
18 pretty much all night long. He was transported, I
19 believe, via helicopter to the Medical University of
20 Charleston where he was noted to have extensive
21 injuries. He had an open fracture of his humerus --
22 that's his arm -- mid shaft fracture of his leg. He
23 had -- the arm was so damaged there was no blood
24 flow going to his hand so they had to reconstruct
25 all these blood vessels. But specifically for me

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1 that's notable, just means he was in a horrible
2 accident, he fractured his vertebra; but what is
3 notable is he had a brain injury. They had an MRI
4 scan done of his brain. He had a left frontal --
5 that's the front of the brain, a left frontal lobe
6 contusion; and that's a fancy medical word, but
7 basically that means a big bruise. He had a
8 significant bruise on the left side of his brain.

9 Q Okay.

10 A Subsequent to all this, he had to spend an
11 entire year in a rehabilitation hospital,
12 Healthsouth in Florence. He had to learn to walk
13 again. He had to learn to talk again. He had to
14 learn to do all sorts of things all over again. So
15 this was a significant traumatic brain injury, not
16 just a little bump on the head.

17 Q Sure.

18 A Okay. So I knew that he had that. Now
19 from the history we also got from his mother that he
20 was a different person after his head injury, as we
21 might expect. Number one he became depressed, that
22 life's probably, I don't know why I'm still living.
23 At one point he cut his wrist as a result of that
24 depression. More significantly, I think for this
25 case he became quite paranoid. He believed that

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1 other people are talking about him all the time. He
2 didn't want to be around other people. He thought
3 people were following him around in the store. He
4 thought that airplanes flying overhead were
5 specifically spying on him. I mean, this is the
6 type of paranoia that can develop after a head
7 injury.

8 Q Okay.

9 A In his recollection in reporting about
10 living in this house with his grandmother and his
11 father, he reported that he thought they were
12 poisoning his food, that they were trying to mess
13 with him. And more closely to the time of the
14 alleged offense he became focused on this insurance
15 policy, specifically that they had taken an
16 insurance policy out on him and he thought that
17 meant that they were gonna harm him, they were gonna
18 kill him or try do him in to collect the money from
19 the insurance policy. The police report reveals
20 that he called his mother earlier that day to tell
21 her that he felt they were harming him or going to
22 do something to him. So there's a significant
23 paranoia that is focused on both of the victims in
24 this case.

25 Q Let me ask you a quick question as relates

SW - R. FRIERSON - DIRECT

1 to the paranoia. If an individual uses illegal
2 drugs, can that exacerbate any symptoms of paranoia?

3 A Yes.

4 Q Okay. All right, now ---

5 A Well, certain drugs.

6 Q Certain drugs, okay. All right, let's go
7 back to the date this incident occurred. You were
8 telling us that the defendant has a history of
9 traumatic brain injury.

10 A Yes.

11 Q Depression and paranoia?

12 A Uh-huh.

13 Q All right. Given all of that, it would
14 seem that one would naturally conclude that he would
15 not know the difference between right and wrong.

16 A Oh, no, no.

17 Q Okay, tell us about it.

18 A You can still be paranoid and psychotic
19 and know that what you're doing is wrong. There's
20 evidence here that he did know that what he did was
21 wrong, and that evidence includes things that -- let
22 me refer to my notes. First of all, there's some
23 disposing of evidence.

24 Q Okay.

25 A You know, you have to look at why did you

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1 throw the gun out of the car.

2 Q Okay.

3 A I mean, if he thought his life was in
4 immediate danger and they were gonna kill him right
5 then and there and he thought it was self-defense,
6 most people who don't think they've done anything
7 will stay at the scene.

8 Q Or call the police.

9 A Wait for police to come so that, you know,
10 he can explain what happened. He leaves, he
11 disposes of the weapon. He tells his mother when he
12 gets there call the police, so that at least lets me
13 know he is aware that he has done something that
14 warrants calling authorities.

15 Q Okay, all right.

16 A Okay. Then on his transcribed interview
17 with the police he makes numerous statements that
18 indicate to me that even though he did this he knew
19 it was wrong. He says, "I messed my life up." He
20 says, "I know I'm going to get some time."

21 Q Okay.

22 A There's one other statement he made that
23 I'm not going to say because I think it may get into
24 something you were trying to avoid.

25 Q Okay, fair enough, fair enough.

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1 A But there was indication from this
2 interview that he was aware that this was something
3 that he did was wrong.

4 Q Okay. All right, now, so in your opinion
5 the defendant time committed these crimes knew the
6 difference between right and wrong?

7 A Yes.

8 Q Moral right and moral wrong.

9 A Moral and legal right from wrong.

10 Q Right -- okay, I understand. As it
11 relates to the second part of that analysis for
12 which he was evaluated, tell me about the capacity
13 to conform.

14 A Yeah. This is a very hard determination
15 is to determine whether or not someone had the
16 capacity to conform their conduct as the law
17 requires or not. It's like choosing the difference
18 between an irresistible impulse and an impulse not
19 resisted, but the person was capable of. This crime
20 according to the records that I have appears to be
21 motivated by this paranoia, that they're harming him
22 by poisoning his food, they want to do something to
23 me. He said in his statement the uncle made some
24 statement to him about, I know what I'm going to do
25 or something; and he took that to mean, he

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1 interpreted that as the uncle meant that he was
2 gonna kill him. And we know that this, the uncle
3 from everything that I've been read, we know that he
4 tested positive for cocaine in the autopsy and we
5 know that he was a sort of, could be an angry person
6 according to his mother's statement.

7 Q According to the defendant's mother?

8 A The defendant's mother's statement that
9 the, one of the decedents, the uncle, could be mean
10 or argumentative and it was distressing to Mr.
11 Anderson. So two things exist. Number one is
12 paranoia. Number two, because of his head injury,
13 and this predates this offense, one of the reasons
14 he was on psychiatric medication is because he had
15 trouble controlling anger and controlling angry
16 impulses, and the frontal lobe of the brain is the
17 part of the brain that gives us the ability to do
18 that, to control our emotions, to control our anger.
19 So there's a history that predates this offense that
20 he had trouble with that. So it's my opinion that
21 the combination of both the paranoid thoughts about
22 the victims and his lack of ability to control his
23 anger came together to impair his ability
24 substantially to conform his conduct to the
25 requirements of the law.

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1 Q Now, and ultimately this is a jury
2 question, but let me -- well, let me ask it a
3 different way. You indicated that based on some of
4 the information that you reviewed that there was
5 some animosity between the uncle and the defendant;
6 is that correct?

7 A Yes. Well, I don't know about animo--
8 there was frequent arguing.

9 Q Frequent arguing. Is it possible that the
10 defendant could have killed his uncle out of just
11 pure rage or anger or revenge?

12 MR. MCKENZIE: Objection, Your Honor,
13 that's no, nothing in the record that indicate
14 that -- that would be speculation, I think, on the
15 prosecutor's point.

16 THE COURT: Ms. Barr.

17 MS. BARR: Your Honor, he's an expert.
18 I'm asking him his opinion in a hypothetical.

19 MR. MCKENZIE: I just think, Your Honor,
20 the question probably should be is there anything in
21 the record that would indicate that.

22 THE COURT: All right, state the question
23 please.

24 BY MS. BARR:

25 Q Sir, you testified that based on some

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1 information that you reviewed that the victim
2 Theward McCray allegedly got into arguments with the
3 defendant, correct?

4 A Yes.

5 Q Okay, all right. And sir, my question to
6 you is, is it possible that the defendant could have
7 killed the victim Theward McCray out of revenge or
8 either anger?

9 A Certainly that is possible. I think the
10 evidence in this case points specifically, though,
11 the reason he was angry ---

12 Q Okay.

13 A ---involves around these insurance
14 policies, and that's the element of his mental
15 condition.

16 Q You mentioned that the autopsy report of
17 Theward McCray indicated that he had cocaine in his
18 system?

19 A Yes.

20 Q All right. Did you receive any
21 information from any source to indicate whether or
22 not the defendant was using illegal drugs?

23 A I did not. There is -- his mother was
24 suspicious of that.

25 Q She was suspicious of it?

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1 A Yeah, because she thought his disability
2 check would disappear too quickly, that he was
3 spending it way too quickly; but there's no arrest
4 or anything for drugs to my knowledge since his car
5 accident. Before the head injury he had done drugs
6 back before 1995.

7 Q Okay. As it relates to the grandmother
8 Ms. Rosa McCray, of course there were no drugs found
9 in her system, correct?

10 A Not that I recall.

11 Q And you were not provided, or were you
12 provided any information to suggest to you that the
13 defendant had frequent arguments with his
14 grandmother?

15 A Well, they were arguing that night
16 according to his, what he reported to me, and they
17 were arguing specifically over the life insurance
18 policy. He wanted that policy canceled, and they
19 wouldn't give him the name of the person who sold
20 them the insurance or a copy of the policy and so
21 they had argued -- he had been arguing with his
22 grandmother, then his uncle comes in and gets in the
23 middle of the argument and they're all going at it.

24 Q Okay. He shared with you that he and the
25 grandmother had been arguing?

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1 A Specifically just about this insurance
2 issue, yeah.

3 Q Okay. And the uncle then comes in and
4 gets in the middle of the argument is what he told
5 you?

6 A Yes.

7 Q And he admits to you to shooting both of
8 them?

9 A I can go over what he told me. He does
10 admit to -- he has memories for some of it, but not
11 others. I mean, he has memory impairment. First of
12 all, he has memory impairment because of his head
13 injury. But frequently when people do very violent
14 things that is disturbing to them, there may recall
15 parts of it they don't remember later 'cause it's
16 your mind's way of protecting yourself from not
17 having painful memory. But he certainly, he
18 doesn't -- he told the police he thought they were
19 going to kill him. He doesn't remember that when I
20 talked to him. He doesn't remember thinking that.
21 He remembers thinking that they were gonna harm him.

22 Q Okay.

23 A "They were trying to harm me and one of
24 them said wait till tomorrow," the night it
25 happened, and he thought that meant that they were

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1 gonna do something during the next day; but he
2 acknowledged that he likely shot them.

3 Q Okay. All right, and in terms of your
4 conversation and your evaluation of him, as it
5 relates to the notion about him being paranoid about
6 the life insurance policy, that conclusion is based
7 almost entirely on what the defendant told you; is
8 that fair?

9 A Primarily on what the defendant told me.
10 I can't remember offhand if the mother may have said
11 he mentioned this insurance policy to her before
12 this happened.

13 Q Okay.

14 A But that's, but it fits, it fits his
15 pattern of paranoia. The people in the jail tell me
16 he doesn't like to be around other people; he stays
17 to himself. I don't think he was hallucinating the
18 day that this happened. He doesn't report having
19 any hallucinations.

20 Q He does not report ---

21 A In the jail he's had hallucinations, okay.
22 Hallucinations that say someone, they're gonna kill
23 you, they're gonna get you, you know, the sort of
24 paranoid. And I don't think it's normal for people
25 to think planes are spying on them.

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1 Q Okay, I understand.

2 A And that's a symptom of mental illness.
3 And this type of paranoid thinking especially about
4 an insurance policy which your relatives have taken
5 out of you and made themselves the beneficiary,
6 that's, fits into his paranoid thinking. He also
7 thought that they had been poisoning him.

8 Q All right. Let me ask you this, I want to
9 make sure I got your answer to this specific
10 question. He did not report to you that on that
11 particular day he was having hallucinations.

12 A No.

13 Q All right, I just want to make sure I'm
14 clear about that. And he told you that either the
15 grandmother or his uncle took out the life insurance
16 policy and named either the grandmother or the uncle
17 as the beneficiary. Is that your testimony, that he
18 told you that, that they took it out on him, ---

19 A. Yeah.

20 Q. ---and they ---

21 A I'm not saying that that -- that was his
22 perception, yes.

23 Q That was his perception?

24 A Yes. Maybe he agreed to it initially.

25 Q Okay.

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1 A And then he gets paranoid about it, wait a
2 minute, why do they want to do this, you know, and
3 that builds and builds and builds and until it
4 becomes I think they want to kill me.

5 Q Okay. So your testimony at the end of the
6 day is to a reasonable degree of medical certainty
7 that he knew the difference between moral right,
8 moral wrong, legal right, legal wrong, correct?

9 A Yes.

10 Q And, but that he could not conform his
11 conduct to the requirements of the law?

12 A Yes.

13 MS. BARR: Beg the Court's indulgence.

14 BY MS. BARR:

15 Q Doctor Frierson, thank you so much.
16 Please answer any questions that Defense counsel or
17 the judge may have for you.

18 **CROSS-EXAMINATION**

19 BY MR. MCKENZIE:

20 Q Doctor Frierson, how are you doing today?

21 A I'd rather be elsewhere, but...

22 Q I can imagine, I can imagine. I see
23 you've given your opinion for Mr. Anderson. One of
24 the questions I had was I think during the --
25 whether or not he had the capacity to help his

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1 attorney in court, that sort of thing. One of your
2 conclusions or at the end of your conclusion he
3 should be afforded -- and I'm just reading from your
4 report, this is the last page. "He should be
5 afforded extra time to consult with his attorney and
6 things need to be explained to him very slowly and
7 very carefully."

8 A Yes.

9 Q Okay. "With these precautions in mind it
10 is my opinion he is currently competent to stand
11 trial in South Carolina." So would your opinion be
12 changed if those things were not explained to him
13 very carefully?

14 A Well, that was my recommendation.

15 Q Right.

16 A There is a chance that if that's not done
17 he may miss something.

18 Q Right. And because he has such a
19 significant brain trauma from that incident we have
20 to, we have to treat Mr. Anderson differently; is
21 that correct?

22 A I -- yes. You have to take in, you have
23 to give him some extra time to do things, to process
24 things.

25 Q Okay. And because of that brain injury,

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1 again, that extra processing time, the things that
2 need to go slowly with him, all those are your
3 opinion based upon what you have looked at, his
4 medical records from MUSC. I think you've looked at
5 records from Waccamaw Mental Health. And I think
6 that some of the records at Waccamaw Mental Health
7 he actually was in a group mental home at one point;
8 is that correct?

9 A Yes.

10 Q And I think he had to leave there; is that
11 correct?

12 A Right.

13 Q And they asked him to leave because of his
14 hostility towards the other people there?

15 A He had paranoid thoughts, I think, about
16 the other people.

17 Q Right. So they were trying to get him,
18 they were trying to kill him, so this is a continued
19 pattern for Mr. Anderson since this brain injury?

20 A Yes.

21 Q I mean, ---

22 A He wasn't this way before.

23 Q Right. Airplanes are following him?

24 A That is all after the head injury.

25 Q Okay. And poisoning his food? I mean,

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1 all this after the head injury, right?

2 A All this is after the head injury.

3 Q. All right. Now, ---

4 A. He's had significant change.

5 Q What is schizophrenia?

6 A Schizophrenia is a mental illness that is
7 not caused by brain injury. It's a functional
8 mental illness that happens in the late teens to
9 early twenties. It's characterized by people losing
10 contact with reality. People in schizophrenia
11 experience hearing voices or hallucinations. They
12 experienced believing things that aren't true which
13 we call delusions, like, people can read my mind or
14 people on the TV are spying on me, or their thinking
15 becomes incredibly disorganized with times they
16 don't make sense when they talk.

17 Q Now this situation Mr. Anderson had
18 reports to you or you -- reported to you that he did
19 have delusions?

20 A Yes.

21 Q And he did have hallucinations?

22 A At times, yes.

23 Q And so tell us the difference between a
24 delusion and a hallucination.

25 A Well, hallucination is hearing something

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1 or seeing something that's not there, hearing a
2 voice talking to you and no one is there. It's
3 perceived just like someone's in the room talking.
4 And when they're very severe, I've had patients that
5 cannot focus on me 'cause what they're hearing is so
6 loud that they are responding to the hallucinations
7 that they're experiencing.

8 A delusion is a fixed, false belief that
9 someone has that they maintain despite evidence of
10 the contrary. To give you a perfect example, I have
11 another guy I evaluated one time who believed that
12 the government had implanted a computer device
13 inside of his body, that the FBI had done that, and
14 the government was tracking him and it could cause
15 electroshocks to go through his body and everything
16 else. And he was -- there's no way this is
17 possible. He underwent CAT scan of his abdomen, a
18 colonoscopy, a EGD, all these medical tests; and the
19 doctors told him, look, there's nothing in your body
20 and he still believes it's there. So this is a
21 fixed, false belief that someone holds despite
22 evidence to the contrary.

23 Q And let's go with that for a second
24 because you were here when Detective Frebowitz
25 testified in regards to the statement that

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1 Mr. Anderson gave shortly after the grandmother and
2 the uncle were killed. Did you hear that testimony?

3 A Yes.

4 Q And one of the things that he said, I
5 think that they told Mr. Anderson throughout that
6 interrogation that his grandmother was dead.
7 Towards the end of the interrogation Mr. Anderson
8 said, maybe she's asleep. Now would that be a
9 delusional thought?

10 A Not necessarily.

11 Q Okay. Does that give you pause for
12 concern?

13 A Well, the reason I don't think it's
14 delusional ---

15 Q Okay.

16 A ---is because I, the first time I saw him
17 he wasn't convinced that his grandmother was dead.

18 Q Right. And that was, what, two years ago
19 the first time you saw him?

20 A Yeah.

21 Q Okay.

22 A And I said, well, if they show you her
23 dead body and a photo and the autopsy report, would
24 you then believe she's dead, and he said yes. So,
25 if given evidence to prove it, his thinking changes

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1 so that's not a delusion. What I think that could
2 be is a cultural phenomenon that he doesn't want to
3 accept that she's dead 'cause he keeps his denial,
4 she can't be dead ---

5 Q Right, but ---

6 A ---'cause it's too painful to accept that
7 fact.

8 Q But he goes through in the interrogation
9 and to Detective Frebowitz and Detective Frebowitz
10 asked him questions, where'd you shoot her, did he
11 shoot her while she was standing up, she was sitting
12 down; and then he just said, while she was standing
13 up and then she was on the bed. He goes through all
14 that and then at the end of that statement he says,
15 well, maybe she's just asleep.

16 A And he says, I'm confused about that.

17 Q Yeah.

18 A And, you know, people that aren't mentally
19 ill and are not brain injured sometimes block out
20 the most horrific parts of a crime that they commit
21 ---

22 Q I understand.

23 A ---and they become omniscient to it so he,
24 you're highly emotionally charged when this is going
25 on and our ability to remember things like that in

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1 great detail can be impaired.

2 Q All right. So your testimony today is
3 that he had some delusions, is that correct? He's
4 had delusions in the past?

5 A Yes, yes.

6 Q He's had hallucinations. He's had
7 significant frontal left brain trauma?

8 A Yes.

9 Q Okay.

10 A Visible on a scan.

11 Q Visible on a CAT scan.

12 A You can't argue with what you see.

13 Q Right. I mean, it's a, it was according
14 to all of his history a life changing event for him.

15 A Yes.

16 Q That he had paranoid thoughts of people
17 killing him?

18 A Or wanting to harm him.

19 Q Right. People chasing him, is that right?

20 A Following.

21 Q Following him. Let me ask you this
22 question, the person that believed that the
23 government put, implanted some device in him, what
24 was his diagnosis?

25 A Schizophrenic.

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1 Q Schizophrenic, okay. And so Mr. Anderson
2 cannot be diagnosed with schizophrenia because he
3 had brain trama; is that correct?

4 A Yeah. The cause here is this brain
5 injury.

6 Q Right.

7 A And, bear with me.

8 Q Uh-huh.

9 A See, he would have been almost 30 at the
10 time of his head trauma.

11 Q Right. And he had no prior ---

12 A There was no prior history and
13 schizophrenia normally begins before that.

14 Q Right. So he has a lot of symptoms of
15 schizophrenia, the paranoia?

16 A He has symptoms that are shared with the
17 diagnosis of schizophrenia.

18 Q Right, but ---

19 A Does not have schizophrenia.

20 Q So he has delusions, he has
21 hallucinations, he has memory loss?

22 A Yes.

23 Q Okay. Let me ask you this question, what
24 is the -- when do children start knowing the
25 difference between right and wrong?

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1 A Well, it varies from child to child; but I
2 think by the age of two-and-a-half, three, children
3 begin.

4 Q To know the difference between right and
5 wrong?

6 A It's almost like when you really start
7 disciplining a child.

8 Q Right, when you give them a little pop
9 when they ---

10 A When you expect them -- well, I don't
11 advocate any particular form of punishment, but when
12 you expect them to behave.

13 Q Right. And when that child at two or
14 three does something, gets in the wrong thing and
15 looks back at you ---

16 A They're looking for ---

17 Q They're looking at you to see what you're
18 gonna do, right?

19 A The conscience is external; it's mom's
20 conscience.

21 Q Right.

22 A You know, I don't know if this is okay to
23 do, but she does, I'm gonna look at her; and that's
24 how they internalize that and develop their own
25 sense of right from wrong.

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1 Q So a two or three year old can know the
2 difference between right and wrong and ---

3 A Three.

4 Q Three, okay, three. Three year old can
5 know the difference between right and wrong.
6 Anthony Anderson knows the difference between right
7 and wrong, is that right?

8 A Well, you're oversimplifying it in a way
9 that might be misleading; but I think that there are
10 differences in degrees from knowing right from
11 wrong.

12 Q Let me ask you this question. And we
13 talked about a three year old looking back and
14 saying I know what I'm doing is wrong. They can
15 conform their conduct; can't they?

16 A Well, they're like -- for example, we will
17 not let a three year old get behind the wheels of a
18 car.

19 Q I understand that.

20 A Because their judgment of what's right or
21 wrong when it comes to something as complicated as
22 driving, they're not capable of that.

23 Q I understand that, but they can conform
24 their conduct though at three years old?

25 A For some things.

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1 Q Sure.

2 A For other things, no.

3 Q But Anthony Anderson cannot conform his
4 conduct?

5 A In my opinion the combination of his
6 paranoid thinking and his inability to control anger
7 as a result of the injury in this part of the brain
8 impaired his ability to conform his conduct to the
9 requirements of the law.

10 Q He can't think abstractly?

11 A He thought abstractly, he has some ability
12 to think abstractly.

13 Q Okay.

14 A That would be using words and symbols like
15 a phrase, I can't judge a book by its cover. What
16 does that mean.

17 Q Right.

18 A He said he knew you couldn't judge a book
19 by their appearance. That would be an abstract
20 answer. If someone says you got to read the book,
21 that's a concrete answer. An abstract requires some
22 frontal lobe functioning.

23 Q Tell us about the medication he's on.

24 A At what point in time? Currently?

25 Q Well, at the time of this incident. I

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1 think he was on ---

2 A At the time of this incident he was on two
3 medications for psychiatric reasons. One is
4 Risperdal, also known as Risperidone. That is an
5 antipsychotic medication that is used to treat
6 paranoia, hallucinations, those types of symptoms.
7 He was also on a medication, I believe, Mirtazapine;
8 it's also known as Remeron. And it's a medicine for
9 depression and it helps people sleep.

10 Q And do those drugs interact with each
11 other in any way?

12 A They can be prescribed together.

13 Q Okay. How about he was on some, I think
14 Prilosec; is that correct?

15 A Yeah, that's ---

16 Q Does that interact with the Risperdal?

17 A That's for gastroesophageal reflux.

18 Q Right. So you diagnosed him. Tell the
19 ladies and gentlemen of the jury what's his specific
20 diagnosis from you.

21 A I have three.

22 Q Okay.

23 A One is psychotic disorder due to traumatic
24 brain injury; that's the paranoia. The next one is
25 depression due to traumatic brain injury 'cause

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1 he's had significant depression, feeling like life
2 is not worth living, trouble sleeping, feeling sad,
3 not -- low appetite. And the last one is cognitive
4 disorder due to traumatic brain injury which
5 explains the problems with his thinking, his memory,
6 and other areas of impairment.

7 Q And that's your diagnosis for him?

8 A Yes.

9 Q Okay. Thank you, Doctor Frierson.

10 THE COURT: Anything else?

11 MS. BARR: Just a couple of followup,
12 Judge, very briefly.

13 **REDIRECT EXAMINATION**

14 BY MS. BARR:

15 Q Doctor Frierson, you were asked about
16 medications that the defendant was taking at the
17 time and I believe there's testimony about perhaps
18 six pill bottles being taken. Tell me what
19 Benztropine is, if I'm pronouncing it correctly.

20 A Benztropine, it's also known as Cogentin
21 is a medication that is used to -- first of all, the
22 previous medication Risperdal, in some people they
23 can have a side effect where it causes their muscles
24 to get very stiff.

25 Q Okay.

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1 A There's a fancy medical term,
2 extraperineal side effects; but basically they can
3 have stiff muscles and their movements are very
4 slow. In severe cases people can sort of become
5 locked up. Cogentin or Benztropine prevents that
6 from happening so frequently it's given to someone
7 on certain types of antipsychotic medication to
8 prevent side effects.

9 Q And the second medication that you
10 mentioned, I believe it is M-I-R-T-A---

11 A Mirtazapine.

12 Q Mirtazapine.

13 A. Mirtazapine.

14 Q. Tell us about that.

15 A It's an antidepressant.

16 Q And tell us what Naproxen is.

17 A I'm sorry?

18 Q Naproxen?

19 A Naproxen is nonsteroidal anti-inflammatory
20 drug citizen used for arthritis, muscle and joint
21 pain.

22 Q What is Diovan, D-I-O-V-A-N?

23 A That's a blood pressure medicine.

24 Q Okay. And omeprazole,

25 O-M-E-P-R-A-Z-O-L-E?

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1 A That's Prilosec.

2 Q Prilosec. That's -- you can buy that over
3 the counter?

4 A Yes.

5 Q Okay. Those are all the questions that I
6 have. Thank you.

7 MR. MCKENZIE: No other questions, Your
8 Honor.

9 THE COURT: All right. Thank you, Doctor.
10 Yes, sir, you're excused.

11 All right, ladies and gentlemen, we will
12 get one more break in. If you will go to the jury
13 room.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 4:36 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: Okay, what else we have in
18 store for today?

19 MS. BARR: Judge, we've got three SLED
20 agents and I think they'll be relatively quick. I'd
21 love for you to get them out. We've got the -- Ms.
22 Ila Simmons. We've got Dan DeFreese here from
23 firearms, and then we've got Ms. Harrison here from
24 latent prints. They'll be quick, I think 15 minutes
25 or less on each. That's assuming that Steve will

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1 stipulate to the chain of custody on all.

2 MR. MCKENZIE: I don't have any problem
3 with chain of custody; it's not about that, Your
4 Honor.

5 THE COURT: All right, stipulate to chain
6 of custody. All right, we'll take a seven minute
7 break.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 (WHEREUPON, State Exhibits Nos. 53, 54,
11 and 55 were marked for identification
12 only.)

13 THE COURT: All right, bring them on.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 4:49 p.m., and the
16 following proceedings commenced in open court.)

17 THE COURT: Mr. Dollard, if you will stand
18 aside for a moment. All right, take the first seat
19 there. Mr. Gauler, I'm gonna appoint you as
20 foreperson of the jury. As the foreman you serve as
21 spokesperson for the jury to preside over the jury
22 deliberations and complete the verdict form
23 representing the unanimous verdict of the jury. All
24 right.

25 And you may proceed with your next

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1 witness.

2 MS. BARR: The State calls Ila Simmons.

3 WHEREUPON,

4 **ILA SIMMONS,**

5 having been duly sworn by the Clerk of Court,

6 testified as follows:

7 **DIRECT EXAMINATION**

8 BY MS. BARR:

9 Q Good afternoon, Ms. Simmons.

10 A Good afternoon.

11 Q Ma'am, you were subpoenaed to testify in
12 this case?

13 A Yes, I was.

14 Q I need you to state your full name for me.

15 A Ila Simmons.

16 Q All right. And ma'am, at one point in
17 time you worked for the South Carolina Law
18 Enforcement Division?

19 A Yes, ma'am.

20 Q That's commonly what we call SLED?

21 A Yes, ma'am.

22 Q Tell me how long you worked there.

23 A 14 years.

24 Q All right. When did you cease becoming
25 employed with SLED?

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1 A In October of last year.

2 Q All right. So you were there in July of
3 2011?

4 A Yes, ma'am.

5 Q And what was your assignment and job
6 responsibilities then?

7 A I was forensic scientist in the forensic
8 lab, their trace evidence department.

9 Q And tell us what that entails and what
10 your educational background is.

11 A I received a bachelor of science degree in
12 chemistry. I went to work at SLED, and the first
13 three years I worked with a court qualified SLED
14 certified trace evidence examiner who taught me how
15 to collect and analyze trace evidence. I had to
16 take a written and practical examination during that
17 time and passed at hundred percent efficiency that I
18 was then given a certificate. I was certified to
19 analyze trace evidence.

20 Q And you certainly analyzed hundreds, if
21 not, thousands of cases where you were called upon
22 to do analysis regarding trace evidence?

23 A Yes, ma'am.

24 Q And you've testified in state courts and
25 in South Carolina, many times in this county as an

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1 expert witness; is that right?

2 A Yes, ma'am, over 250 times.

3 MS. BARR: Your Honor, at this time we
4 would tender Ms. Simmons as an expert in the field
5 of trace evidence.

6 THE COURT: Mr. McKenzie.

7 MR. MCKENZIE: No objection, Your Honor.

8 THE COURT: All right, you are so
9 qualified.

10 BY MS. BARR:

11 Q Now, may I first of all, as it relates to
12 the gunshot residue kind of explain your, what that
13 is and what your role is when it relates to evidence
14 involving gunshot residue.

15 A. Gunshot residue is the residue deposited
16 on the hands and clothes of someone who discharges a
17 firearm. Gunshot residue is a mixture of
18 microscopic chemicals that come out of a gun when
19 it's discharged. When you see a puff of smoke come
20 out of the gun the gunshot residue is mixed up with
21 the smoke, and it can get on anything in close
22 proximity to that gun when it's discharged,
23 including the hands of the person that's firing the
24 gun.

25 Q What about the hands of the person who

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1 sustains a gunshot wound but does not, is not in
2 possession of it or does not carry a firearm?

3 A Yes, ma'am, you can also get it on your
4 hands in that way.

5 Q Okay, all right. As relates to this case
6 you were asked to analyze two GSR kits?

7 A Yes, ma'am.

8 Q I'm gonna show you what's been marked for
9 identification purposes as State's Exhibits 50 and
10 53 and ask you if you recognize those exhibits.

11 A Yes, ma'am, I do.

12 Q Tell the Court how it is that you
13 recognize those exhibits.

14 A It's marked with our laboratory
15 identification number. Every case that comes into
16 the lab is given a unique identification number and
17 each piece of evidence is given an item number. It
18 is also marked with my initials and the date that it
19 was opened from the beginning of my analysis.

20 Q And after you began your analysis and once
21 you completed your analysis and your report, what
22 then becomes of the evidence?

23 A It would be sealed back up and returned to
24 the agency that submitted it.

25 Q Okay, all right. And next, as you've

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1 testified now, do you see any indications as relates
2 to those two GSR kits that the seal has been broken?

3 A No, ma'am, it appears to have a piece of
4 evidence tape they placed on the item. It has my
5 initials and the date that I sealed it, has not been
6 opened.

7 MS. BARR: Judge, we offer State's
8 Exhibits 50 and 53.

9 THE COURT: What says Defense?

10 MR. MCKENZIE: No objection, Your Honor.

11 THE COURT: Admitted without objection.

12 (WHEREUPON, State Exhibits Nos. 50 and 53
13 were admitted into evidence.)

14 BY MS. BARR:

15 Q Ms. Simmons, tell us what item 50 is, or
16 what State's Exhibit 50 is.

17 A That would be a gunshot residue collection
18 kit taken.

19 Q All right. Tell us about the analysis
20 that you performed as relates to the GSR kit for
21 Anthony Anderson. Tell the ladies and gentlemen of
22 the jury what the results of that analysis were?

23 A Gunshot residue is made up mainly of lead,
24 barium, and antimony. These are three chemicals
25 that are used. What we try to do is we analyze how

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1 much of each of these metals are present on the
2 hands of a person from whom the kit was collected.
3 It has, we have to find a certain threshold level of
4 each metal before we can conclude that gunshot
5 residue is present, metals consistent with gunshot
6 residue present. And in this particular GSR kit and
7 the areas that were analyzed, the right palm, back
8 of the right hand, left palm and back of the left
9 hand, the quantities did not find indication,
10 presence of gunshot residue.

11 Q Okay. And in terms of that particular
12 item of evidence can you tell based on that State's
13 Number 50 who was the individual collected the GSR
14 kit?

15 A It was collected by Jill Domogaer.

16 Q Okay, all right. And your analysis
17 revealed there was no gunshot residue on the
18 defendant's palm?

19 A Correct.

20 Q And the back of his hands?

21 A Correct.

22 Q Both hands, both palms?

23 A Yes, ma'am.

24 Q Thank you. Tell me, if an individual
25 admittedly fired a firearm, what might explain the

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1 absence of gunshot residue on either the back of his
2 hands or palms of his hands?

3 A Gunshot residue has a consistency of baby
4 powder so it can be very easily removed. If someone
5 were to wash their hands or begin to sweat or put
6 their hands in and out of their pocket, this can
7 also remove gunshot residue. Very active person
8 will remove gunshot residue within four to six hours
9 of the incident. Somebody shooting a gun, after
10 four to six hours they will have gunshot residue on
11 their hand even if they didn't wash their hands, put
12 their hands in and out of their pockets.

13 Q Okay, within four to six hours?

14 A Yes.

15 Q Tell us about State's 53, what is that?

16 A That is a gunshot residue collection kit
17 from Theward McCray.

18 Q Okay. And tell us about your analysis and
19 your results.

20 A We performed the same analysis trying to
21 determine how much of the three metals were present
22 on the samples. And on this particular kit on the
23 right palm, metals were found that were consistent
24 with gunshot residue on the back of the right hand.
25 Metals that were associated with gunshot residue

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1 were found. On the left palm also metals associated
2 with gunshot residue were found and on the back of
3 the left hand metals that are consistent with
4 gunshot residue were found.

5 Q Okay. Ma'am, I'm going to show you what's
6 been previously admitted as State's Exhibit Number
7 10. If I represent to you that that photograph
8 shows an injury to Theward McCray's thumb that was
9 a result of the gunshot wound, would that explain to
10 some degree the presence of gunshot residue on his
11 hands?

12 A Yes, ma'am, it can.

13 Q Ms. Simmons, that's all the questions I
14 have for you. Thank you so much. Please answer any
15 questions defense counsel may have.

16 **CROSS-EXAMINATION**

17 BY MR. MCKENZIE:

18 Q When you shoot a shotgun the gunshot
19 residue can get on your hands and get on your body?

20 A Yes, sir.

21 Q Am I being correct in that statement?

22 A Yes, sir, it can.

23 Q I grew up in South Carolina. I grew up
24 actually in Williamsburg County so I did a lot of
25 hunting when I was growing up. Sometimes I go

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1 hunting, I come back I smell like gun powder. And
2 is that common for gunshot residue to get all over
3 your body?

4 A Yes, sir, depending on how many times you
5 fire?

6 Q Right. But a shotgun we would expect more
7 gunshot residue because there's more powder in the
8 shells; would that be a fair statement?

9 A There's actually more gunshot residue in
10 the cartridges, yes, sir.

11 Q Yeah. So that's a good, fair statement
12 so. And also there would be gunshot residue on the
13 gun itself; is that correct?

14 A There can be, yes, sir.

15 Q Okay. And so, and for example, the
16 ejector point whenever, the ejector pointer whenever
17 the shell is ejected from the gun a lot of gunshot
18 residue gets around that area, is that -- would that
19 be a fair statement?

20 A Yes, sir. 98 percent of gunshot residue
21 comes out of the muzzle of the gun and smaller
22 amounts can come out of those areas ---

23 Q Come out when it's ejected out of the
24 chamber, right?

25 A Yes, sir.

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1 Q And so, for example, if I'm riding down
2 the road and I have a gun in my hand and I didn't
3 even fire it and I'm riding down the road, I could
4 actually get gunshot residue on my hand from that
5 gun?

6 A Yes, sir. If there's gunshot residue on a
7 gun and you handle it, you can transfer it from the
8 gun to your hand.

9 Q And if I, if I was to discard that gun,
10 then I would probably still have the gunshot residue
11 on my hand; would I not?

12 A Yes, sir, until it's removed by some
13 source, yes, sir.

14 Q Okay. And you've been here all day; have
15 you not?

16 A Most of the day, yes, sir.

17 Q Okay. Have you heard any testimony in
18 regards to anybody -- to my client washing his hands
19 or cleaning up?

20 A No, sir. I heard the end of the
21 investigator's and the doctor's testimony.

22 Q And I show you a picture. You're trained
23 in this I believe. This is State's Exhibit 47.
24 That's a picture of my client's hand. Those hands
25 appear to be washed to you?

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1 A No, sir, there does appear to be debris on
2 the hands.

3 Q There appears to be debris on the hands,
4 right?

5 A Yes.

6 Q And that was taken shortly after he was
7 arrested, actually his left hand. Is there any
8 debris on that ---

9 A Debris on that hand, yes, sir.

10 Q Okay. So if someone was to throw the gun
11 out of the window like I said, you would probably
12 expect to see gunshot residue on their hands from
13 the gun itself.

14 A If too much time had not passed or if it
15 hadn't been sweated off or wiped off in some way,
16 yes, sir.

17 Q Now what would it -- I can understand
18 that one of the victims may have had his hand shot
19 by the gun. That would explain the gunshot residue
20 probably on the palm and on the back side of that
21 hand. But what would explain it on the other end?

22 A If he was in the plume of the gunshot
23 residue when it comes out of the gun, it comes out
24 in a big cone shaped cloud, you can get it on both
25 hands.

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1 Q Okay.

2 A In fact, the quantities that we found on
3 the hands were much more consistent with a defensive
4 posture situation. When you shoot a gun we expect
5 to see about 170 counts to 200 counts of lead; and
6 on this particular kit we found 2400 and 2600, 500,
7 like that.

8 Q But was there a gunshot residue done of
9 any other parts of his body?

10 A No, sir.

11 Q Just to his hands?

12 A Yes, sir, and that is the standard kit.

13 Q There's one hand that was shot, had a good
14 bit of blood on it; did it not?

15 A Yes, sir, there is some blood.

16 Q And you can test for gunshot residue
17 inside the blood?

18 A We -- what we recommend them doing is
19 going around the areas that have the blood on them
20 because blood can diminish the gunshot residue.

21 Q Right, and you don't -- do you know
22 whether or not that was done?

23 A There was no blood on the swabs that I
24 analyzed so I assume that they had been collected in
25 that manner, yes, sir.

SW - I. SIMMONS - CROSS

1 Q So you don't know how that was collected?

2 A I just know that they had swabs and they
3 did not have blood on them so they must have missed
4 the areas that had blood.

5 Q Okay. Again, you would expect that if
6 the, my client was arrested within four to six
7 hours, had not washed his hands and you examined his
8 hands, you don't believe -- you believe there was
9 dirt on his hands; is that correct?

10 A From the pictures that you showed there
11 appears to be some debris on his hands.

12 Q You would expect if he was in that window
13 of time frame that there would be GSR on his hands?

14 A Yes, sir, there should be. We have seen
15 cases where someone has shot a gun and not gotten
16 gunshot residue on his hands, especially with a long
17 rifle or a shotgun being that the barrel is so far
18 away. The shorter the barrel, the better chance you
19 have of getting it on your hands when you're
20 shooting. With long guns we found that someone can
21 shoot a gun, take a GSR kit immediately, and then
22 not have gunshot residue present on the kit.

23 Q Okay. But you've got to admit that a,
24 with a long gun, -- like I said, I was talking about
25 the chamber -- the hand's right by the chamber; is

SW - I. SIMMONS - REDIRECT

1 that correct?

2 A It's -- it is right by the ejector port,
3 yes, sir.

4 Q Right. So we would expect to see at least
5 blowback on the back side of the right hand or left
6 hand depending on whether the person was right
7 handed or left handed?

8 A Well, I have shot a pump shotgun which is
9 where you have to pump the shotgun, pump on the
10 front to push the shell out, and I've had a GSR kit
11 collected immediately after and there was no gunshot
12 residue on my hands so it is a possibility then,
13 yes.

14 Q But you would, again, let's go back to the
15 gun itself, if I was throwing it out of the window
16 and it's been shot several times, there would be
17 gunshot residue that would be transferred to my
18 hand?

19 A If there was gunshot residue on the gun it
20 could have been transferred to a hand.

21 Q Thank you. No other questions.

22 **REDIRECT EXAMINATION**

23 BY MS. BARR:

24 Q Brief followup, Ms. Simmons. Tell us
25 again what you meant when you said that the amount

SW - I. SIMMONS - RECROSS

1 of gunshot residue that you found on the victim
2 Theward McCray's GSR kit indicated what to you?

3 A Defensive posture situation.

4 Q Tell me what that means when you say that.

5 A If someone were to point a gun at me and I
6 would put my hands up in a defensive situation to
7 try and defend myself I can get gunshot residue on
8 my hands. Because I am on the muzzle end of the
9 gun, I'm gonna get the majority of the gunshot
10 residue on my hands and that's what this indicates
11 because there's such high levels.

12 Q Thank you so much. Now that's all the
13 questions that I have.

14 THE COURT: Anything else?

15 MR. MCKENZIE: Just one followup.

16 **RECROSS-EXAMINATION**

17 BY MR. MCKENZIE:

18 Q Someone shoots a gun, more likely than not
19 there's gonna be gunshot residue on their hands?

20 A Yes, sir, unless it's removed in some way
21 before the kit is collected.

22 MR. MCKENZIE: Thank you.

23 THE COURT: All right, thank you.

24 Next witness.

25 MS. BARR: The State calls Andrena

SW - A. HARRISON - DIRECT

1 Harrison.

2 WHEREUPON,

3 **ANDRENA HARRISON,**

4 having been duly sworn by the Clerk of Court,
5 testified as follows:

6 THE CLERK OF COURT: Take a seat in the
7 witness box.

8 **DIRECT EXAMINATION**

9 BY MS. BARR:

10 Q Ma'am, state your name for us.

11 A Andrena Harrison.

12 Q And Ms. Harrison, I believe that you have
13 gotten married since you created this report?

14 A Yes.

15 Q Congratulations to you.

16 A Thank you.

17 Q Your maiden name at the time that you
18 authored this report was Belton; is that correct?

19 A Belton was it.

20 Q If you will, kind of introduce yourself to
21 the ladies and gentlemen of the jury. Tell them
22 where you work and what it is that you do.

23 A Hello. I'm Andrena Harrison. I work at
24 SLED, known as South Carolina Law Enforcement
25 Division, in the crime scene latent print

SW - A. HARRISON - DIRECT

1 department. I've been there since 2007. I've been
2 with SLED since 2003.

3 Q Okay. And specifically on a day-to-day
4 basis what is it that you do in latent prints?

5 A Say that one more time.

6 Q Yeah. What is that you do in the latent
7 prints department?

8 A On a day-to-day basis we get cases through
9 the door from all the counties within the state. It
10 can be something as simple as a cartridge case or
11 something as much as everything in a box. I take
12 the evidence, I process it, and I look for latent
13 prints and then I issue a report and we end up here.

14 Q Okay. Tell me what are latent prints.

15 A Well, before I can tell you what a latent
16 print is let me explain to you what a fingerprint
17 is.

18 Q Awesome.

19 A So you know that your skin here is
20 different from the skin here and you also know that
21 the bottom of your feet, that's different as well;
22 so those are called your friction ridge skin. So,
23 with the fingerprint you're gonna get your
24 fingerprints done voluntary or involuntary. When we
25 think about voluntary, if you're going for a job

SW - A. HARRISON - DIRECT

1 application, foster parent, teachers, they give
2 their fingerprints rolled. Involuntary, if you
3 commit a crime you're gonna get your fingerprints
4 rolled. So that's the fingerprint.

5 A latent print means not easily seen, not
6 physical. So, when you touch something you all just
7 know you touched that, but you cannot see my
8 fingerprint there. That's what a latent print is.

9 Q Okay, very good. And have you ever
10 testified in court prior to your testimony here
11 today?

12 A Yes.

13 Q And you've been qualified as an expert in
14 the field of latent prints?

15 A Yes.

16 Q All right.

17 MS. BARR: Judge, at this time we tender
18 Ms. Harrison as an expert in the field of latent
19 prints.

20 MR. MCKENZIE: No objection, Your Honor.

21 THE COURT: All right, she's so qualified.

22 BY MS. BARR:

23 Q And Ms. Harrison, you received evidence in
24 this case, or SLED received evidence in this case,
25 from the Williamsburg County Sheriff's Office; is

SW - A. HARRISON - DIRECT

1 that correct?

2 A That's correct.

3 Q Now I'm gonna show you what's been marked
4 for identification purposes as State's Exhibit
5 Number 55, and I'll ask you if you recognize this
6 particular exhibit.

7 A Yes.

8 Q All right. Tell the ladies and gentlemen
9 of the jury how it is that you recognize that
10 exhibit.

11 A Okay, so the first thing I did was I
12 looked at the back. So when you open a case you
13 kind of break the seal. Once you're done you seal
14 it back up. Under this seal I can see my initials,
15 the HAB. As she mentioned, Ms. Barr mentioned
16 earlier about I just recently got married again so
17 you can see the Belton where I put Belton in return
18 so that's how I know this is mine.

19 Q Now do you recognize any other initials on
20 that bag from your agency?

21 A Yeah. As a matter of fact, if you look
22 here it looks like little different codes. It says
23 LPFA, latent prints firearms. And so on the back
24 you can tell that there's a seal on top of mine. I
25 can't make out whose initials it is, but I know that

SW - A. HARRISON - DIRECT

1 that means that it's been opened again.

2 Q Okay, all right. Tell us about the
3 analysis that you did in this case. Identify the
4 items of evidence that you received and what you did
5 with the evidence after you received them to conduct
6 your analysis.

7 A Okay. So I received items 3 through 6.
8 Item 3 says it was a red shotgun shell contained in
9 a sealed envelope marked victim one, bedroom floor.
10 Item 4, red shotgun shell, sealed envelope marked
11 kitchen floor. Item 5, same thing, shotgun shell,
12 sealed envelope, marked in box behind woodstove in
13 den. And then item 6, red shotgun shell, sealed
14 envelope, and that was marked outside on ground
15 behind house, back right corner.

16 Q Hold on for just a second for me.

17 A Okay.

18 Q All right, ma'am, let's talk about your
19 first item on your report. You've identified it as
20 item number 3, and tell me what the description of
21 SLED item number 3 is again please.

22 A Okay. It says red spent shotgun shell
23 found in victim one, bedroom floor.

24 Q All right, I'm gonna publish what's
25 previously admitted as State's Exhibit Number 23 and

SW - A. HARRISON - DIRECT

1 represent to you that that is a shot shell that was
2 found in the bedroom of victim Rosa McCray. Tell us
3 about your analysis on that item of evidence.

4 A Okay. With this particular item, of
5 course we always do a visual so we look it over to
6 see if you can see any fingerprints at all and I
7 didn't see any. The next step was to do
8 cyanoacrylate, which is just a fancy word for
9 superglue so, and all it does is it hardens or
10 enhances any kind of prints that's there. Once it's
11 done I did another visual; I didn't see anything.
12 And the last step was to do black powder which I'm
13 pretty sure we've all seen people dust with powder,
14 and still nothing was there.

15 Q Okay. Now tell us about your item number
16 4.

17 A Okay. It's a red spent shotgun shell
18 found on the kitchen floor.

19 Q All right. I'm gonna publish what's
20 previously been marked as State's Exhibit Number 8
21 and represent to you that that depicts a shot shell
22 that was found in the kitchen part of the victim's
23 home. Tell us about your analysis on item number 4.

24 A I did the exact same analysis which will
25 be the visual, the cyanoacrylate, fancy word for

SW - A. HARRISON - DIRECT

1 superglue, another visual, then black powder, and
2 still I didn't find anything.

3 Q All right. Tell us about item number 5
4 and while you're doing that I'm gonna publish what's
5 previously been admitted as State's Exhibit Number
6 14.

7 A Okay. Number 5 was a red spent shotgun
8 shell found in box behind wood stove.

9 Q Okay. And again, your analysis?

10 A Same analysis, a visual, cyanoacrylate,
11 fancy word for Superglue, another visual, black
12 powder, another visual, I didn't find anything.

13 Q All right. And tell us about your SLED
14 item number 6 and I'll publish State's Exhibit
15 Number 5.

16 A Okay. Number 6 was a red spent shotgun
17 shell found on the ground behind house, back right
18 corner.

19 Q Okay. And your analysis as it relates to
20 that particular item of evidence?

21 A Same analysis. We did a visual, nothing.
22 Superglue, fancy word — or cyanoacrylate, fancy
23 word for superglue, visual, nothing, black powder,
24 nothing. Nothing was found.

25 Q Now the fact that you've got four fired

SW - A. HARRISON - CROSS

1 shot shells in this case and no latent prints on any
2 of those particular shot shells, was that unusual
3 finding?

4 A No.

5 Q Okay. Tell us why not.

6 A Again, like I stated, you all witnessed
7 me touch this and I didn't leave a print behind. It
8 could be the texture, it could be surface, it can be
9 too hot, it can be too cold, you can be sweaty. And
10 then if you think about it, when you're in the
11 middle of committing a crime anything that you do,
12 you're not gonna sit and stop to make sure your
13 hands are right and say, I'm gonna leave that right
14 there for them; it just doesn't happen.

15 Q Okay, all right. Ma'am, I believe that's
16 all the questions I have. Thank you so much.
17 Please answer any questions that Defense counsel may
18 have for you.

19 **CROSS-EXAMINATION**

20 BY MR. MCKENZIE:

21 Q Ms. Harrison, how are you doing today? I
22 won't be long.

23 A Good, how are you?

24 Q Good. On the end of these shotgun shells
25 they're brass, right?

SW - A. HARRISON - CROSS

1 A I don't know.

2 Q It's a metal, right?

3 A I don't know, sir.

4 Q You examined them; did you not?

5 A I examined them for fingerprints. I can't
6 tell you what was on the end of it.

7 Q Okay. So you don't know whether on the
8 end of a shotgun shell there's brass or metal?

9 A I'm not a firearms expert, I'm sorry.

10 Q So you just — okay. I'm gonna show you
11 15. Can you take a look at that. You see it on
12 your screen?

13 A Yeah, I can see that.

14 Q You see the end right here?

15 A Yes, I do.

16 Q What's that appear to be to you?

17 A It appears to be brass, but I can't tell
18 you directly that that is what that is.

19 Q Okay. Is it a metal type of stuff?
20 Plastic on one end, metal on the other end?

21 A It's plastic on one end and it could be
22 metal on the other end.

23 Q So do you know how to load a shotgun?

24 A No, I don't.

25 Q Okay. So is it easier to get a latent

SW - A. HARRISON - CROSS

1 prints off of metal versus plastic?

2 A It depends on what type of plastic you're
3 talking about.

4 Q Okay, the plastic that was in a shotgun
5 shell.

6 A Okay, if you pull that picture back up I
7 can make sure that the jury kind of sees. Remember
8 I told you all about the texture?

9 Q Right.

10 A So I'm not sure if you can really see it.
11 I'm not sure if that's a grooved texture or not, but
12 a smooth surface is easier to get prints off of
13 versus something like this here. If you can see it,
14 it's a rougher surface. You're not gonna be able to
15 get a good print off of it.

16 Q Does that help you out? It looks pretty
17 smooth to me.

18 A It's still blurry to me.

19 Q I'm sorry?

20 A It's still blurry. What do you want me to
21 look at?

22 Q See if it's smooth.

23 A I can't tell. Can you pull it out?

24 Q No, I don't have it. I mean, pull it out
25 of the bag?

SW - A. HARRISON - CROSS

1 A Yeah, if you would like.

2 Q I don't have an objection to that. Okay.
3 You mind pulling it out the bag and let's take a
4 look at one of them?

5 A You have something for me to open this
6 with?

7 Q I got a car key.

8 A Let's try it.

9 (Attorney McKenzie opens exhibit.)

10 THE WITNESS: So do you want me to open
11 them all or just, is one just good enough?

12 BY MR. MCKENZIE:

13 Q Just do one, probably number 15 since we
14 were looking at that on the screen.

15 A Mine is item 3.

16 Q Okay, that's fine.

17 A Is that fine?

18 Q That's fine.

19 A Okay.

20 MS. BARR: That's not number 3.

21 MR. MCKENZIE: That's not item 3? Okay.

22 MS. BARR: That would be item number 6.

23 MR. MCKENZIE: Item 6?

24 MS. BARR: Her item 6.

25 MR. MCKENZIE: Her item 6?

SW - A. HARRISON - CROSS

1 THE WITNESS: I opened item 3.

2 MR. MCKENZIE: I got 1, 4, 5, and 15.

3 Let's see, that's 3? Okay, all right.

4 BY MR. MCKENZIE:

5 Q Number 1 on here is number 3 that you
6 have.

7 A Okay.

8 Q Okay. Is that good?

9 A Uh-huh, that's good. So it appears to be
10 smooth.

11 Q Okay.

12 A But it's also rough kind of texture like
13 at the bottom, and this is the part you were talking
14 about here. It doesn't sound like metal (tapping
15 with fingernail).

16 Q Okay, that's metal. It doesn't sound like
17 metal? All right. Now if I was to tell you that
18 I'm gonna push this into a chamber with my thumb ---

19 A Uh-huh.

20 Q ---with this part right here, would that
21 leave a good latent print?

22 A It could possibly leave a good latent
23 print, but it also goes through a firing chamber
24 when you fire it which causes heat which also has a
25 problem with leaving raised fingerprints since it's

SW - A. HARRISON - CROSS

1 made out of 99 percent moisture.

2 Q Okay. So the heat would destroy the
3 print?

4 A It could possibly destroy the print.

5 Q But that ---

6 A You're touching it now and I can look at
7 it and see. I don't see your print there. That
8 doesn't mean you didn't touch it.

9 Q It doesn't mean you didn't touch it.

10 A It doesn't mean it's not either.

11 Q Okay. So we have no prints from anybody
12 that you can pull off of these, any of these shell
13 casings?

14 A None.

15 Q Okay. That's all the questions I have.

16 MS. BARR: Your Honor, I don't have any
17 followup, thank you.

18 THE WITNESS: Am I free to go?

19 THE COURT: Thank you.

20 Next witness.

21 MS. BARR: Judge, we call agent Dan
22 DeFreese.

23 WHEREUPON,

24 **DAN DEFREESE,**

25 having been duly sworn by the Clerk of Court,

SW - D. DEFREESE - DIRECT

1 testified as follows:

2 **DIRECT EXAMINATION**

3 BY MS. BARR:

4 Q Good evening, Mr. DeFreese, how are you
5 doing today?

6 A Fine.

7 Q Good. State your full name and spell your
8 last name for the court reporter.

9 A My name is Frank Dan DeFreese. It's D-E,
10 capital F, R-E-E-S-E.

11 Q And, sir, tell us where you are employed.

12 A I work for the South Carolina Law
13 Enforcement Division in the forensic services
14 laboratory in Columbia, and I'm assigned to the
15 department within the laboratory where we do the
16 analysis of firearm and tool mark evidence.

17 Q Okay. And tell us about that in terms of
18 your training, your background, and your education.

19 A Well, the firearm and tool mark department
20 analyzes physical evidence having to do with
21 firearms and ammunition components and also tools
22 and usually compromised physical security devices.
23 And our analysis is basically one of identifying
24 striations, which is a fancy word for scratches and
25 impressions that are left on surfaces by the tools

SW - D. DEFREESE - DIRECT

1 that impart those marks, in this case a firearm
2 being a tool and the mark being the mark that's left
3 on a fired cartridge case when the cartridge case is
4 fired within the weapon itself.

5 I was employed with SLED in 1967, and I
6 began a course of instruction that lasted about
7 two-and-a-half years. I studied the technique of
8 firearm and tool mark identification with Lieutenant
9 Miller Cate. Lieutenant Cate established the SLED
10 laboratory when SLED itself was established in 1947.
11 And after my two-and-a-half years of studying the
12 techniques I began accepting cases on my own and
13 testifying as to my results, which I've been doing
14 since 1969.

15 Q Okay, all right. And sir ---

16 A And I have testified before.

17 Q Yes, sir. And you testified within this
18 county before as an expert witness; is that correct?

19 A I have.

20 MS. BARR: Judge, at this time we offer
21 Mr. DeFreese as an expert in the field of firearms
22 and tool mark identification.

23 THE COURT: What says Defense?

24 MR. MCKENZIE: No objection to
25 Mr. DeFreese.

SW - D. DEFREESE - DIRECT

1 THE COURT: He's so qualified.

2 BY MS. BARR:

3 Q Mr. DeFreese, I'm gonna show you two items
4 of evidence. First with regard to State's Exhibit
5 Number 55, that's the item of evidence that
6 Ms. Harrison was holding and testifying about a few
7 moments ago, and I asked her whether or not she
8 recognized any of the initials at the top of that
9 particular exhibit and she said that she did not.
10 Do you recognize the initials at the top of that
11 exhibit?

12 A I do.

13 Q Okay, tell the Court how you recognize the
14 initials.

15 A Because they're mine.

16 Q Very good.

17 A It's sort of scripted FDD, with the date
18 7/12/11, which would be the last date that I sealed
19 this package.

20 Q Okay. And in terms of your analysis in
21 this particular case did you get that item of
22 evidence before or after Ms. Harrison, formerly
23 Ms. Belton?

24 A Afterwards.

25 Q Okay. And what was the reason you would

SW - D. DEFREESE - DIRECT

1 have gotten it after she did her analysis?

2 A Well, fingerprints are very delicate that
3 my handling of a fired cartridge casing, excuse me,
4 or fired shot shell, just my handling it could
5 destroy a latent print if it were there and it could
6 leave my fingerprints on it as well so. In the
7 general order of processing latent prints and DNA
8 and other evidence that's easily destroyed is
9 collected before the item is ever sent to firearms
10 because we usually have to handle things rather
11 extensively.

12 Q Sure. Now tell me what all the items of
13 evidence that you received and analyzed in this
14 case.

15 A I received four fired shot shells.

16 Q Okay.

17 A Some people call them a shotgun shell.

18 Q Okay.

19 A They were all four 12 gauge. They were
20 all two-and-three quarter inch shotgun shells.
21 Three of them were Winchester brand and one of them
22 was a brand known as Nobelsport,
23 N-O-B-E-L-S-P-O-R-T.

24 Q Okay. All right, let's go through your
25 report as it relates to the shot shells that were

SW - D. DEFREESE - DIRECT

1 found. What's your item number three?

2 A My item number three is the Winchester
3 shot shell received in a container marked victim
4 one, bedroom floor.

5 Q Okay. And Ms. Harrison testified
6 previously that when she was viewing the evidence or
7 the packet that the evidence was contained in, while
8 she was testifying, that it appeared had been opened
9 after she sealed it up. Would that have been opened
10 up by you to do, conduct your analysis?

11 A Yes.

12 Q Okay, all right. Now you are taking out
13 what again, sir?

14 A This is my item 3.

15 Q Okay.

16 A The one that's -- I think everything in
17 the container is State's Exhibit 55.

18 Q All right.

19 MS. BARR: Judge, we would move State's
20 Exhibit Number 55 into evidence at this time.

21 MR. MCKENZIE: No objection, Your Honor.

22 THE COURT: In without objection.

23 (WHEREUPON, State Exhibit No. 55 was
24 received into evidence.)

25

SW - D. DEFREESE - DIRECT

1 BY MS. BARR:

2 Q And Mr. DeFreese, can I get you to step
3 down for a moment for me please and bring the items
4 of evidence with you as well.

5 A (Complies.)

6 Q Now let's put it on the screen so that the
7 jurors can see up close what we're talking about.
8 Mr. DeFreese, tell us how you are able to identify
9 this shot shell as -- how are you able to identify
10 this as being a Winchester 12 gauge shot shell?

11 A Well, the case head of the shot shell, the
12 brass end, this end, is marked as being Winchester
13 and the side wall marks have two A's. Winchester
14 makes a shell known as double A's. This is a AA
15 light target shell. It has a plastic body and it
16 has a real brass case head.

17 Q Okay.

18 A You can also partly see the markings that
19 I left on the brass case head that have my case
20 number, my item number, and my initials on it.
21 That's how I know that was the shell that I
22 examined.

23 Q All right.

24 A It was marked as being loaded with an
25 ounce and one-eighth of the number eight birdshot.

SW - D. DEFREESE - DIRECT

1 Q I'm sorry, say that again for me please,
2 sir.

3 A The side markings on the shell indicate
4 that it was originally loaded with one and
5 one-eighth ounces of number eight lead birdshot.

6 Q Okay. And I'll let you go so that you can
7 get out the appropriate one and let's talk about
8 your item number 4, or SLED item's number 4.

9 A Item number, my item number 4, State's
10 Exhibit 55, is essentially the same thing as item
11 number 3. There were three fired Winchester shot
12 shells that were of similar manufacturer and
13 markings, the AA ounce and an eighth Winchester
14 headstamp.

15 Q Okay. And I'm going to simultaneously
16 publish what's been previously admitted as State's
17 Exhibit Number 8. How do you have your SLED item
18 number 4 identified?

19 A My item number 4 comes from an envelope
20 that was marked exhibit 4 on the envelope. Exhibit
21 4 on the envelope here was not my marking.

22 Q I understand.

23 A Yeah. It just happened that we assign our
24 own item numbers and sometimes they match the item
25 numbers of the local agency or someone else that

SW - D. DEFREESE - DIRECT

1 collects it; sometimes they don't. In this case
2 they do.

3 Q All right. So in this particular instance
4 the yellow marker that law enforcement assigned to
5 this item of evidence was number 4, and it was only
6 by coincidence SLED assigned that same number 4 to
7 their item number?

8 A Correct.

9 Q All right. Okay. And tell us about your
10 item number 5.

11 A Item number 5 is a different brand of 12
12 gauge shot shell. This one has the head-stamp
13 Nobelsport on it. It's a 12 gauge two-and-three
14 quarter inch shot shell, and the color rendition on
15 the overhead doesn't really show the difference
16 between it and the Winchesters. This is actually
17 more nearly orange in color, whereas the other ones
18 are more merely red. This is, like I say, the same
19 gauge, but a different brand of shot shell.

20 Q Okay.

21 A And a different construction. The case
22 head on this one is what we call a high brass where
23 it has more of a case head to it and case head on
24 this shell really placed out of the brass plated
25 plated steel, whereas Winchesters were actually made

SW - D. DEFREESE - DIRECT

1 out of the solid brass.

2 Q All right. And you've identified that as
3 being the shot shell that was -- or I shouldn't say
4 you've identified, law enforcement has identified it
5 as being the shot shell found in the box, in the
6 wooden box?

7 A Yes, it's marked in the box behind wood
8 stove in the den and it also coincidentally is their
9 exhibit 5, their exhibit 4.

10 Q And tell us about number 6 please, sir.

11 A Item 6 is another Winchester. It's
12 another one of the Winchester AA 12 gauge red
13 plastic shot shell with the low brass case head on
14 it.

15 Q Okay.

16 A It was received in an envelope marked
17 outside on the ground behind house, back right
18 corner, and it bears the Exhibit Number 15 on it.

19 Q All right. And I'll ask you some more
20 about those, but let me ask you about State's, I
21 believe it's 54. Tell us if you recognize this
22 particular exhibit.

23 A I recognize the container which also has
24 my initials and the sealing date of July 12th, 2011.

25 Q All right. And what is contained within

SW - D. DEFREESE - DIRECT

1 that exhibit?

2 A (Witness opens exhibit.) Within State's
3 Exhibit 54 are my items 7, 8, 9, 10, 11, 25, and 26,
4 which are principally shotgun wads and pellets.

5 Q All right. Let's go over them one by one.
6 Tell us what item 7 is.

7 A Item 7 is a fired 12 gauge combination wad
8 and shot cup. It's a type of wad and shot cup
9 that's found loaded into some Winchester brand
10 shotgun shells.

11 Q Okay.

12 A It also contains a swab which I took from
13 the wad.

14 Q All right. And tell us where the law
15 enforcement indicated that that item of evidence was
16 found.

17 A It says floor in victim two, bedroom on
18 where the article was found, and it's their exhibit
19 number 10.

20 Q Okay. I'm gonna publish what previously
21 been admitted as State's Exhibit Number 31. Would
22 you open that up for me please.

23 A Sure. It's located there. It's hard to
24 see because the background has very little contrast
25 with the wad. The wad is a sort of translucent

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1 white plastic material.

2 Q Yes, sir. And you've indicated that it is
3 here, and I'm showing number 4, a pair of white
4 socks; is that correct?

5 A It looks like that, yes, ma'am.

6 Q All right. And you said that was
7 identified as being in victim two's bedroom?

8 A It is so written, victim two, bedroom.

9 Q Let me, if you will, Mr. DeFreese, kind of
10 tell the ladies and gentlemen of the jury how is it
11 that you were able to determine that SLED item
12 number 7, what it was most consistent with, I'll ask
13 it that way.

14 A Well, we can determine the gauge of it by
15 the diameter of the base of the wad 'cause this wad
16 is damaged, but it's not so badly damaged that we
17 can't tell that the diameter is consistent with the
18 bore of a 12 gauge shotgun.

19 Q Okay.

20 A The, this area toward the front is the
21 shot cup portion. In the original shell it was
22 filled with small birdshot pellets, and you can see
23 the perforations and the abrasions that occurred to
24 it as the wad is propelled down the barrel and out
25 of the gun. It actually leaves impressions of

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1 birdshot pellets in the shot cup portion. And the
2 area in between what's known as the base wad section
3 is a collapsible set of plastic fingers that are
4 there to provide some cushioning to the shot during
5 the combustion of the propellant gasses. It's there
6 to keep the shot from being badly deformed as a
7 result of firing.

8 Q All right. And sir, you indicated that
9 that was from a, most consistent with a 12 gauge wad
10 and shot shell?

11 A Right. It's a 12 gauge combination wad
12 and shot cup, and it's the type that's used in some
13 Winchester brand shot shells. Specifically, it's a
14 type used in Winchester AA shotgun shells.

15 Q Now did you notice any debris or any other
16 material that is contained within or on SLED item
17 number 7 as relates to that item of evidence?

18 A Well, I did. I found some debris that
19 could be biological debris. It could be blood or
20 body tissue; and before handling it extensively I
21 went ahead and took a swab just to preserve whatever
22 might be there in case it became an issue later.

23 Q Yes, sir. All right. And tell us about
24 item number 8. While you're doing that I'm gonna
25 publish what's been previously admitted as State's

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1 Exhibit Number 9.

2 A My item 8 is their Exhibit Number 9.
3 It's, the point of recovery is listed as being
4 behind couch in dining room, and this consists of
5 another fired 12 gauge combination wad and shot cup
6 of the type loaded into Winchester brand shot
7 shells. And there's also some debris that appears
8 to be textile fibers and some other material that
9 was clinging to this wad at the time I got it, which
10 I've simply removed and separately packaged.

11 Q Okay. You can place that back into the
12 container.

13 A I should mention that with both of those
14 wads it's sometimes possible to identify wads back
15 to a particular shotgun.

16 Q Yes, sir.

17 A In this case I made inspection of the
18 marks on all the wads and didn't find anything
19 sufficiently unique. Usually you have to have
20 either a sawed-off shotgun or shotgun with a
21 variable choking device or something else that
22 leaves a mark on the wads. Usually shotguns don't
23 leave much of a mark on the wads they fire and very
24 seldom leave any marks on pellets.

25 Q All right. Now if you will, tell us about

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1 number 9 please.

2 A My item number 9 was listed on the
3 container as being recovered from bedroom -- it's
4 got R.L. McCray, [REDACTED] Seward Avenue, Salters, SC. It
5 doesn't actually have an item number that I -- it
6 has their case number and some other information.

7 Q Okay. And while you are talking about
8 that I'm gonna call, Mr. DeFreese, admitted State's
9 Exhibit 25. All right, tell us about that
10 particular item of evidence.

11 A My item number 9 is another of the fired
12 Winchester type 12 gauge combination wad and shot
13 cups, and it also has a single lead pellet that was
14 most consistent in its size and weight with a number
15 8 lead birdshot pellet. It also had some fibrous
16 debris and wood debris that accompanied it that I
17 removed and separately packaged.

18 Q All right, let me put that on the
19 projector screen so they can see.

20 A The pellet is actually, it's sort of
21 hiding behind the wad and it wants to slide back
22 there. It's the small little black dot that you see
23 in the corner of that envelope.

24 Q All right. Now the remaining items that
25 you analyzed in this case were taken after the

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1 autopsy of the victims?

2 A Yes, they were so marked.

3 Q Okay.

4 A. There was also a rubber glove there which
5 I think the collector simply left. I didn't do
6 anything with the rubber glove.

7 Q All right. Now just as a collective
8 discussion about those, can you please put up items
9 10, 11, 25 and 26.

10 A That's item 10, which is another
11 combination wad and shot cup.

12 Q And where was it taken from?

13 A This is marked McCray, Rosa Lee, and it
14 has forensic autopsy number FA1100338 on it.

15 Q Taken from the autopsy of Rosa Lee McCray?

16 A Right, and it's just marked wadding and
17 pellets.

18 Q All right.

19 A Item 11 are the pellets in a plastic bag,
20 and they are similarly marked McCray, Rosa Lee, with
21 the same forensic autopsy number.

22 Q All right. The pellets were taken from
23 the autopsy of Rosa McCray?

24 A Yes.

25 Q All right, tell us about 45.

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1 A The pellets here were also, they were
2 consistent to their size and weight with number 8
3 lead bird shot pellets and the wad was a 12 gauge
4 Winchester wad, consistent with a 12 gauge
5 Winchester wads, and it also bore no marks suitable
6 for identification.

7 Q No marks suitable for identification, all
8 right.

9 A My item number 25 are lead birdshot
10 pellets that are consistent in their size and weight
11 with number 8, and they were received in a container
12 marked McCray, Seward, pellets from right chest, and
13 they have forensic autopsy number FA1100341.

14 Q Okay. Tell us about the analysis done
15 with regard to that item number.

16 A Well, in this case about all I could
17 determine was that they were number 8 lead birdshot
18 pellets. They were too small and -- they did not
19 have any markings that were suitable for
20 identification with a specific firearm, which is
21 pretty common for small birdshot pellets.

22 Q And tell us about number 26.

23 A My item 26 is also small lead birdshot
24 pellets that were most consistent in their size and
25 weight with number 8 lead birdshot pellets, and they

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1 were received in an envelope marked McCray, Seward,
2 pellets from left chest. And they have the forensic
3 autopsy number FA1100341. These also bore no
4 markings for identification with a specific firearm.

5 Q You can take a seat. A few more questions
6 and I'll be done, sir. Mr. DeFreese, as it relates
7 to SLED items 3, 4, 5, and 6, which are the shot
8 shells, can you tell us after a comparison and
9 analysis of those four items of evidence were they
10 consistent with each other and could they have been
11 fired by the same weapon?

12 A Well, 3, 4, and 6 were all three
13 Winchesters. The Winchester low brass red plastic
14 shells, and I -- they were sufficiently well marked
15 that I could identify all three of them as being
16 fired by the same gun, and matching breach face
17 marks which will placed on the shot shell when the
18 shell is fired in the shotgun. The item 5, that
19 Nobelsport shot shell, was not marked as well as the
20 other and it sometimes happens that guns mark one
21 brand of ammunition better than they do another. I
22 found matching extractor marks, which the extractor
23 is a structure in a repeating shotgun that grabs the
24 rim of the shell and pulls the shell out after it's
25 fired. So I could conclude that all of those shells

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1 had been loaded into and extracted from the same gun
2 at some prior time and there were no marks on the
3 Nobelsport shell that indicated they weren't fired
4 by that gun, but there just weren't enough markings
5 on it to say they were all four fired by the same
6 gun and no other gun kind of situation. So three of
7 them definitely fired by the same gun, all four of
8 them could have been fired by the same gun.

9 Q Okay, and those three that you have opined
10 that were definitely fired by the same gun are the
11 ones that: Item 3, which was found in victim one's
12 bedroom floor; item 4, which was found in kitchen
13 floor; and item number 6 found outside?

14 A Right.

15 Q Your testimony is those three items were
16 definitely fired by the same gun?

17 A Correct.

18 Q And the item number 5 that is the one
19 that's contained in the wooden box or the box behind
20 the wooden stove, you said could have been fired by
21 the same weapon that fired the other three shot
22 shells?

23 A Correct.

24 Q All right. And let me ask you, did you,
25 did law enforcement ever submit to you an actual

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1 firearm to compare the shot shells and wadding to in
2 this case?

3 A No.

4 Q Now tell us about, lastly, about the
5 significance, if any, of the wadding as it relates
6 to the types of shot shells that you analyzed.

7 A Well, we have four fired Winchester wads,
8 combination of wads and shot cups. We have three
9 fired Winchester shells. And then we have that
10 Nobelsport shell, and the Noblesport shot shell is
11 loaded with a different kind of wad. It's the same
12 diameter, but it's constructed in a slightly
13 different way. So in order to get four fired
14 Winchester wads, we need four Winchester shot shells
15 absent the prospect of somebody reloading a shot
16 shell and there was no evidence of that in this
17 case.

18 Q Okay, all right. What would account for
19 the wadding for the Nobelsport shot shell?

20 A I don't know. It's simply -- there wasn't
21 a wadding submitted that was consistent with a kind
22 of wad I would expect to see in a Nobelsport shot
23 shell.

24 Q Okay. Is it possible that as it relates
25 to that particular item that it could have remained

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1 in the firearm depending on the type of firearm?

2 A Well, the -- a fired shot shell could
3 easily remain in a firearm especially if it was a
4 manually operated firearm.

5 Q Like a pump?

6 A. Right.

7 Q. Okay.

8 A. I can't account for where the wad would
9 have gone. That would depend on where the shotgun
10 is pointed.

11 Q Okay.

12 A But it could be that there was one fired
13 Winchester brand shot shell left in the gun when the
14 gun left the scene.

15 Q Okay. Now help me out on this, and this
16 is the last question I'll ask you. I'm a layperson
17 when it comes to firearms so I need you to educate
18 me a little bit. As it relates to a 12 gauge
19 shotgun, when you fire a 12 gauge shotgun what
20 happens, where does the shot shell go and where does
21 the wadding go?

22 A Well, the wadding is propelled down the
23 barrel and out of the gun when the shot itself is
24 fired.

25 Q Yes, sir.

SW - D. DEFREESE - CROSS

1 A So, for every shot you're gonna end up
2 from a standard shotgun shell you'll end up having a
3 wad propelled out. And at some distance in front of
4 the muzzle the wad will drop away and the shot will
5 continue on, you know, toward its target.

6 Q Okay.

7 A And distance varies from, you know, from
8 brand to brand and according to the wad. With
9 respect to the fired shot shell it depends on the
10 gun itself. That in the case of manually operated
11 shotguns, like single barrel shotguns, double barrel
12 shotguns, pump shotguns, it requires some effort on
13 the part of the shooter. The shooter has to
14 manually provide the energy necessary to expel the
15 fired shell from the chamber so that another unfired
16 shell can be chambered and the gun prepared for the
17 next firing. So, when like singles, doubles, pumps,
18 and bolt action shotguns are the common ones that
19 are manually operated. There are semiautomatic
20 shotguns that use some of the energy from firing to
21 actually extract and eject the fired shot shell, and
22 it's done automatically without any effort on the
23 part of the shooter.

24 Q Okay, all right. Beg the Court's
25 indulgence. Mr. DeFreese, that's all the questions

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1 I have. Thank you so much for your patience and
2 answer any questions defense counsel may have.

3 **CROSS-EXAMINATION**

4 BY MR. MCKENZIE:

5 Q How are you doing today, sir?

6 A Doing well.

7 Q I will be brief. Mr. DeFreese, are you a
8 doctor in forensic science?

9 A No.

10 Q Been trained and been doing it since '69;
11 is that correct?

12 A I've been doing -- I've been testifying
13 since '69.

14 Q Okay. You said there were extractor marks
15 on these shells; is that correct?

16 A Correct.

17 Q Would the extractor marks be most
18 consistent with a pump or semiautomatic?

19 A Either one.

20 Q Either one?

21 A Yeah.

22 Q So there's no ---

23 A I would expect a bolt action, a pump, or a
24 semiautomatic to commonly leave extractor marks.

25 Q Right.

SW - D. DEFREESE - CROSS

1 A And even though it's possible sometimes to
2 get extractor marks from single barrels and double
3 barrels, they usually don't leave much of a mark;
4 but the extractor mark they found on these would
5 have been consistent with either pump or
6 semiautomatic or bolt action.

7 Q And so the Noblesport was a high brass
8 shell?

9 A It was.

10 Q Okay. And my knowledge of shotguns is
11 I've been hunting since I was a small boy; but
12 anyway, we use high brass shells. They usually have
13 more than a one-eighths amount of powder in them.
14 Would that be ---

15 A Usually they're loaded with more shot and
16 usually they're loaded to higher velocity.

17 Q And so that would mean more power, more --
18 so when the igniter hits it there's more power is
19 burned, you have a greater concussion, greater, more
20 velocity coming out the end of the muzzle.

21 A Frequently so, yes, sir.

22 Q Okay.

23 A Not always because it really, it's just
24 sort of a convention that they use, what they call a
25 high brass base had more powerful shells than low

SW - D. DEFREESE - CROSS

1 brass wad on cheaper ones. But it really doesn't
2 have any real relationship to their power, but
3 that's the convention.

4 Q So we have four shotgun shells that we
5 recovered from the scene, three of them Winchesters,
6 one of them Nobelsport, right?

7 A Correct.

8 Q But we have four wad casings that were
9 shot out the end of this shotgun that are all
10 consistent with being Winchesters?

11 A Correct.

12 Q So we've got a conundrum.

13 A Well, you got an unusual situation because
14 I would not expect that Winchester AA type wad to be
15 loaded in a Nobelsport shot shell unless it were a
16 reload. As I said, there's no evidence that these
17 shells were reloaded. So in order to get four fired
18 AA Winchester combinations in wad and shot cups, you
19 really need four fired Winchester shot shells 3.

20 Q Well, you'd be able to tell that no wad be
21 reloaded; wouldn't you?

22 A I inspected it for that. Normally the
23 effort of the reloading will leave some marks on it

24 ---

25 Q Right.

SW - D. DEFREESE - CROSS

1 A ---which I did not find in this case.

2 Q So, and I think one of the waddings, I
3 think, was found in the headboard of where Ms.
4 Rosa McCray was found; is that correct? Was found
5 in the headboard. I think you actually said you
6 pulled some material or wood out of the wadding
7 itself; is that correct?

8 A Well, we got victim one, bedroom floor,
9 item 3.

10 Q Uh-huh.

11 A Then we got kitchen floor in box behind
12 woodstove in den and then outside on the ground.

13 Q All right. Well, I'm talking about the
14 wadding.

15 A Excuse me, I'm sorry.

16 Q I'm sorry, I apologize. And I was -- so
17 if you look at item 11, Rosa Lee McCray, she had 26,
18 she had 26 pellets removed during autopsy and item
19 11 was consistent size and weight with number 8 lead
20 birdshot. I'm sorry, I may on the wrong...

21 A Yeah, we'll just ---

22 Q That's more of -- is that consistent with
23 a one shot to her?

24 A It could be that the number of bird shot
25 pellets recovered were substantially less in all

SW - D. DEFREESE - CROSS

1 cases than what you expect to see; but there were
2 about, there were about four hundred number 8
3 birdshot to the ounce.

4 Q Right.

5 A So an ounce in an eighth of bird shot, you
6 know, I try not to ever do math on the stand.

7 Q 425?

8 A Yeah, 425, 450, somewhere in that
9 neighborhood would have been the number that
10 actually left the gun; but, you know, some could
11 have penetrated, some could have been partially hit
12 her. You know, I just, I don't know.

13 Q And the wadding shoots out the end of the
14 barrel about how far, with a number 8?

15 A Well, it's -- it varies by brand.

16 Q Right.

17 A And, but it wouldn't be uncommon like from
18 you to me.

19 Q Sure.

20 A That if I were to shoot you, then you
21 would end up having at least the impression where a
22 wad hit you and fell off and at closer distances the
23 wad can actually follow the shot into the body of
24 the victim.

25 Q And we actually found some tissue samples

SW - D. DEFREESE - CROSS

1 and some of the wadding here.

2 A Yeah.

3 Q So that is indicative of a close shot.

4 A Yeah. Well, see, I never know whether the
5 wad like falls into like blood that's at the crime
6 scene or what have you. But when I see blood or
7 tissue or what looks to be that on a wad, I
8 frequently will collect it in case it becomes
9 significant later, who it might have passed through.

10 Q And you and I are about, I would estimate,
11 about 8 to 10 feet, probably.

12 A A little, probably 10.

13 Q 10?

14 A May be a little more.

15 Q Okay.

16 A You're a little bit farther than a sheet
17 of plywood.

18 Q Okay, good. So you would expect to see a
19 close shot something that the wadding was embedded
20 into the person or tissue into it it would be, it
21 would be definitely be closer than what we have now?

22 A Very close, like 2, ---

23 Q Very close shot.

24 A ---3 feet, something like that.

25 Q But also you would see more pellets inside

SW - D. DEFREESE - CROSS

1 in that person also because pellets coming out of
2 the end of a firearm are like a beehive; is that
3 correct?

4 A They represent a swarm of shot and they
5 diverge, the farther away from the gun, the bigger.

6 Q Right, kind of reverse funnel coming out
7 like that?

8 A Right.

9 Q Is that correct? So the closer ---

10 A If you're very close you would expect to
11 see the shot very densely packed.

12 Q Right.

13 A And, you know, all going in together and
14 if you're farther away it would be more spread out.

15 Q So we would expect to see 400, I mean,
16 real close, maybe 250, 300 shot pellets in somebody?

17 A Well, you don't know 'cause you, without
18 being at the autopsy knowing exactly -- and they may
19 not necessarily remove every pellet so I just don't
20 know what was done.

21 Q But we got, I think, 26 pellets removed
22 from Rosa Lee McCray and you said that 11 of those
23 pellets were consistent with number 8 bird shot and
24 then 25 pellets removed from Theward and another
25 item 26, 26 pellets removed. So we had about total

SW - D. DEFREESE - REDIRECT

1 of 51 pellets removed from Theward and Rosa Lee
2 about 11 pellets?

3 A So, you know, all ---

4 Q 26 pellets, I'm sorry.

5 A All together it represents only a sampling
6 of total number of pellets that would have been
7 fired from at least four different Winchester shots.

8 Q So we may be missing a Winchester shell;
9 is that correct?

10 A Correct.

11 Q And we don't have the wadding from the
12 Noblesport shell so that shell could have been there
13 before and just been empty casing?

14 A Yeah, I couldn't say.

15 Q I mean, all that speculation. But you
16 would expect you did find four Winchester waddings
17 at the scene, or that were given to you at the
18 scene?

19 A Right. Three of four Winchester type wads
20 were recovered.

21 Q Right. So there's one shell that's
22 unaccountable for?

23 A Yes. There's one missing Winchester
24 shell.

25 Q Thank you. That's all the questions I

SW - D. DEFREESE - REDIRECT

1 have.

2 THE COURT: Anything further?

3 MS. BARR: One question, Judge.

4 **REDIRECT EXAMINATION**

5 **BY MS. BARR:**

6 Q Mr. DeFreese, tell me again what the
7 distance between the shooter and the victim would
8 suggest to you if a wadding is taken from the
9 victim's body at autopsy.

10 A It would be very close for it to follow --
11 now in this varies by the ammunition itself by the
12 wad and the load; but in order for the wad to
13 actually go into the victim, usually it denotes
14 something that's very, very close.

15 Q Okay.

16 A You know, in a range of like 3 to 6-feet.
17 At greater distances you start to get the -- you may
18 get a wad impact, but the wad is so much lighter
19 than the shot that it would impact. It may leave a
20 mark or bruise, but it won't usually penetrate the
21 body and follow the shot in.

22 Q Thank you, sir. That's all the questions
23 I have, appreciate it.

24 MR. MCKENZIE: One followup.

25 **RECROSS-EXAMINATION**

SW - D. DEFREESE - RECROSS

1 BY MR. MCKENZIE:

2 Q You didn't have any evidence that any wads
3 penetrated the body?

4 A No, not that I recall.

5 Q Okay, thank you.

6 A The only thing we had, that one wad that
7 was from the body.

8 Q Uh-huh.

9 A The wad shot cup removed from Rosa Lee
10 McCray. And of course, you saw it. And it's not
11 uncommon for the people at the Medical University to
12 actually wash them off so I can't speak for what
13 condition they were at the time they were recovered.

14 Q Right.

15 A Perhaps the pathologist could speak to
16 that. But that one may have actually been in
17 somebody.

18 Q Right, but we don't know that?

19 A I don't know that.

20 Q And again, as Ms. Barr said, that could be
21 8 to 10-feet that wadding could have been
22 penetrated; is that correct?

23 A Well, here again, it varies. I can't give
24 you a hard and fast rule that it's gonna penetrate
25 up to 3-feet or 4-feet or 5-feet because there's so

1 much about the target itself, the clothing on the
2 target, they add to at which the target presents
3 itself. I just can't say, but it connotes something
4 very close.

5 Q Yes, sir, thank you.

6 THE COURT: All right, thank you, sir.

7 Ladies and gentlemen, we've made it
8 through the day. We'll start back at 9:30 tomorrow
9 morning. Y'all have a good evening, see you then.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 6:06 p.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: Anything else before we leave
14 for the day?

15 MS. BARR: Judge, I can't think of
16 anything.

17 THE COURT: All right.

18 MR. MCKENZIE: Nothing, Your Honor.

19 THE COURT: We'll start back at 9:30.

20 (WHEREUPON, the proceedings were concluded
21 for the day at 6:07 p.m. to be reconvened on May 14,
22 2014.)

23 (WHEREUPON, State Exhibits Nos. 56, 57,
24 and 58 were marked for identification only.)

25 THE COURT: We got anything before the

SW - N. BATALIS - DIRECT

1 who will be our next witness.

2 THE COURT: All right. Tell me, what are
3 they again?

4 MS. BARR: Those are autopsy photographs.

5 THE COURT: All right. Okay, you may
6 bring in the jury.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 10:02 a.m., and the
9 following proceedings commenced in open court.)

10 THE COURT: Good morning. Mr. Foreman,
11 how is the jury doing?

12 THE FOREMAN: Fine, sir.

13 THE COURT: Very good. All right, well,
14 this is day number three and we will press on.

15 Ms. Barr, your next witness.

16 MS. BARR: Thank you. At this time the
17 State calls Doctor Nicholas Batalis.

18 WHEREUPON,

19 **NICHOLAS BATALIS,**
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE CLERK OF COURT: Please step around to
23 the witness box.

24 MS. BARR: May it please the Court.

25 THE COURT: Yes.

SW - N. BATALIS - DIRECT

DIRECT EXAMINATION

BY MS. BARR:

Q Good morning, Doctor Batalis. If you would, spell your last name for us.

A My last name is Batalis, B-A-T-A-L-I-S.

Q If you will, sir, please introduce yourself to the ladies and gentlemen of the jury by telling them where you work and what you do for a living.

A Again, my name is Nicholas Batalis. I'm a forensic pathologist at the Medical University of South Carolina in Charleston, South Carolina.

Q All right. And share with us information about your educational background and your training to become a pathologist.

A So I obtained a biology degree from Butler University in Indianapolis, Indiana. Following graduation I then moved to medical school of Indiana University School of Medicine. I graduated there four years later and then came down to MUSC in Charleston to do a residency training in general pathology, anatomic and clinical pathology. Following that year, those four years, I graduated and became Board certified in those specialities and then went on to perform one year specialized

SW - N. BATALIS - DIRECT

1 fellowship in forensic pathology at the Dallas
2 County medical examiner's office in Dallas, Texas,
3 after which I became Board certified in forensic
4 pathology. At that point I returned to MUSC and
5 began as faculty there approximately six years ago.

6 Q All right. And so you've had occasion
7 prior to your testimony here today to testify in
8 state courts in South Carolina as an expert in the
9 field of forensic pathologist, correct?

10 A Yes.

11 Q And about how many times have you
12 testified and been qualified as an expert witness?

13 A Between South Carolina and North Carolina
14 and Texas approximately 40 times.

15 Q All right. And you've previously
16 testified in this courtroom prior to your testimony
17 here today?

18 A Here in Williamsburg County. I think we
19 were in the temporary courtroom down the road,
20 but...

21 Q Correct.

22 MS. BARR: Judge, at this time we would
23 tender Doctor Batalis as an expert in the field of
24 forensic pathology.

25 MR. MCKENZIE: No objection, Your Honor.

SW - N. BATALIS - DIRECT

1 THE COURT: All right, he's so qualified.

2 BY MS. BARR:

3 Q Doctor Batalis, tell us what it is that a
4 forensic pathologist does and tell us a little bit
5 about the science of forensic pathology.

6 A Sure. Let me first start out by saying
7 what pathology is. So pathology is a medical
8 specialty that specializes in the diagnosis of
9 disease. Somebody -- general pathology training,
10 anatomic pathology, anatomic pathologist. If you
11 get a biopsy, a pap test, a surgeon takes something
12 out, they will then give it to the pathologist.
13 They say, you know, what this is. A clinical
14 pathologist oversees the clinical lab so if you have
15 any blood drawn, or your chemistry values, your
16 sodium, your glucose, the pathologist is the one
17 that oversees all that testing that's performed so
18 that's general pathology.

19 Forensic pathology is in a specialized
20 field that really focuses on the medical, legal
21 aspect of diagnosing disease which for the most part
22 is performing autopsies.

23 Q Okay. Now tell us what a autopsy is.

24 A Sure. An autopsy is an examination we
25 performed on somebody after they died in order to

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1 determine the cause of death and the manner of
2 death. In the course of a typical autopsy what we
3 would generally do is bring a body into our autopsy
4 so we take photographs as we receive the body before
5 we've done any manipulation. Then document any
6 clothing items, any evidence, if they had surgery or
7 therapy, clean the body up, remove it, all that
8 stuff, and document. Then we perform our external
9 examination where we examine the body from head to
10 toe for identifying features like height, weight,
11 eye color, tattoos and that sort of stuff, but then
12 also any indicators of natural disease or trama.

13 After we've completed the external exam we
14 then move on to the internal exam so we make a
15 couple of surgical type incisions in order to expose
16 the internal organs of the body. We then examine
17 those one by one, again, looking for evidence of
18 injury or natural disease. During the course of the
19 autopsy we also will collect some blood and tissue
20 samples that we'll submit for toxicology testing at
21 the end of the case. We then put our findings
22 together to produce a report.

23 Q Okay. Now, sir, tell us about -- we'll
24 deal with Ms. Rosa Lee McCray first; but to be
25 clear, you performed the autopsy on both Rosa Lee

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1 McCray and Theward McCray?

2 A Yes, I did.

3 Q All right, let's talk about Ms. Rosa Lee
4 first. Tell us when you began the autopsy of her
5 body.

6 A So we performed her body on June 6, 2011,
7 at 9 a.m.

8 Q And tell us about the visual observations
9 you made of her body prior to actually beginning the
10 formal autopsy procedure?

11 A As we received her body she was wearing a
12 yellow shirt and a white slip. There were some
13 defects in the clothing. That was how we received
14 the body.

15 Q Okay. You said she was wearing a yellow
16 shirt and a white slip?

17 A Yes.

18 Q All right. Did she have on any type of
19 undergarments like a bra or panties?

20 A No, she did not.

21 Q Okay. Now what was immediately apparent
22 to you when you began the visual observation?

23 A The major finding on Ms. McCray's body
24 under external examination was a shotgun wound on
25 the right buttock.

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1 Q On her right buttock?

2 A Yes.

3 Q All right. Did you weigh her as a part of
4 your autopsy?

5 A We did.

6 Q Okay. And how much did she weigh?

7 A She weighed 164-pounds and was 5 foot
8 2-and-a-half inches long.

9 Q 5'2"?

10 A Yes, 5 feet 2-and-a-half.

11 Q And what was her birthday?

12 A We had her birthday as [REDACTED]

13 Q Okay. And so at that time that would have
14 made her 89 years old?

15 A Yes.

16 Q When you received the body was there any
17 indication to you that Ms. McCray had received any
18 medical treatment as a result of the gunshot wound?

19 A There was no evidence of medical therapy
20 when we received the body.

21 Q Now tell us what you did after performing
22 the external examination. I call it the visual
23 examination, but the external examination.

24 A Sure. After performing the external exam
25 to, again, examine the body, the major finding was

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1 identifying that shotgun entrance wound. We then
2 moved on to the internal exam where, again, we made
3 our surgical type incisions to open the body and
4 then saw injuries that resulted in her death.

5 Q Okay. Doctor Batalis, if I can, let me
6 get you to step down off the stand for me and you
7 can bring your file if you need to, sir.

8 A (Complies.)

9 Q While you're standing there, Doctor
10 Batalis, would you make sure to keep your voice up
11 so that the court reporter can hear you and so that
12 the jury can hear you as well. And how does MUSC go
13 about identifying a body which a physician performs
14 autopsy? Are there certain identifying numbers or
15 letters or combination thereof that helps you make
16 sure to identify the body?

17 A Sure. When we receive a body the coroner
18 tells us the decedent's name, birth date, that
19 pertinent information. We then receive that
20 information; we enter it into a computer. Each
21 autopsy is identified by a unique case number that
22 was only used the one time for that examination.

23 Q And I'm going to show you what's been
24 marked as State's Exhibit Number 56.

25 MS. BARR: And Madam Court Reporter, I'm

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1 missing a number on the back of this one.

2 (WHEREUPON, State Exhibit No. 59 was
3 marked for identification only.)

4 MS. BARR: Judge, for the record we move
5 to admit State's 56, 58, and 59 at this time, and
6 the Defendant does not have any objection.

7 (WHEREUPON, State Exhibits Nos. 56, 58,
8 and 59 were admitted into evidence.)

9 BY MS. BARR:

10 Q Doctor Batalis, I'm gonna publish State's
11 Exhibit Number 56. Tell the ladies and gentlemen of
12 the jury what's depicted in that particular exhibit
13 and why.

14 A So this is a photograph I took at the
15 autopsy, what we call identification picture. So
16 after the body's been cleaned you can see her
17 identifying case number FA11338. So again, that's a
18 unique number that identifies her in our system so
19 the placard is there, and then showing the decedent
20 for identification purposes.

21 Q All right. And this is Rosa McCray?

22 A Yes, it is.

23 Q Now, if you will, kind of tell us how you
24 began the autopsy process as relates to her body.

25 A So again, the first thing we did after we

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1 received the body was take some initial pictures.
2 We then, as I mentioned, she did have some clothing
3 on, removed the clothing, cleaned up any blood that
4 was there and then proceeded on to the external
5 examination, again noting height, weight, and any
6 injuries present and such.

7 Q And I believe that while you were on the
8 witness stand you testified that the evidence of
9 injury was a gunshot wound to her right buttock?

10 A Yes, a shotgun entrance wound to the right
11 buttock.

12 Q All right, thank you. I hand you and
13 publish what's been identified as State's Exhibit
14 Number 57. Is that injury depicted in this
15 photograph?

16 A Yes, it is. The shotgun entrance wound is
17 located here on the lower right side of the right
18 buttock.

19 Q Okay. All right, tell us what you did
20 next, sir.

21 A So after we saw that wound we took
22 pictures, we did some measurements, then proceeded
23 on to -- we also obtained x-rays at that point to,
24 again, it appeared to be a shotgun wound. We do
25 x-rays to determine if there are any projectiles,

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1 any bullets, any pellets left within the body. So
2 we performed an x-ray then before we moved on to the
3 internal exam.

4 Q And sir, I'm gonna hand you what's been
5 noted as State's Exhibit Number 59. Tell us about
6 the -- well, before I do that let me go to State
7 Exhibit Number 58. Tell us about the x-ray.

8 A So this is an x-ray of this decedent. She
9 would be laying on the table with her head would be
10 up here. Her right leg extends up here. Her left
11 leg would extend over here. And the major finding
12 you can see there's a lot of little white beebie or
13 circular objects located all throughout this bone
14 here in the pelvic bone so a large number of shot we
15 can see are located within the right side of her
16 pelvis.

17 Q All right. So all of these little white
18 marks as you noted, those are pellets?

19 A Yes, those are pellets that entered the
20 skin through the entrance wound that we just saw on
21 the previous photograph.

22 Q All right. And you also indicated that
23 you took an x-ray to determine whether or not there
24 were any pellets inside and also, I believe, you
25 testified about wadding?

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1 A Yes, we then moved on to internal
2 examination. The wadding does not show up on x-rays
3 generally because it's plastic or paper wadding, and
4 so the x-ray just goes right through it. You would
5 not see that on an x-ray the way you would see the
6 beebees. However, when we opened the body and did
7 an internal examination we did find the wadding or
8 the shot cup that held the beebees together.

9 Q All right. And I'm gonna publish what's
10 marked as State's Exhibit Number 59. Tell us about
11 what's depicted in that photograph.

12 A Sure. So again, we can see the same case
13 number here. On the left side of the picture are
14 small shot so this would be representative of
15 birdshot that was in the shotgun shell. What we're
16 seeing on the right side of the photograph is
17 plastic wadding so, again, the numerous shot and we
18 just recovered representative sample. As you saw on
19 the x-ray there were hundreds of these shot in the
20 body. We recovered a representative number of this
21 shot would have been contained in this shot cup
22 before the gun was fired. After the gun fires the
23 shot begins to spread out as the distance grows.
24 The shot cup will travel a few feet and then will
25 generally fall to the ground. And so if somebody is

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1 shot from several feet away the shot cup or wadding
2 will not enter the body. If it's a closer range
3 that this wadding will enter the body along with the
4 shot.

5 Q Okay. And the fact that you recovered the
6 wadding from inside Ms. Rose's body, what does that
7 tell you about the distance that the end of the
8 firearm would have been from the victim at the time
9 of impact?

10 A So, finding the wadding within the body
11 and also the appearance of the entrance wound that
12 we saw and the skin on the outside looking at the
13 characteristics of that entrance wound, would
14 suggest that the end of the gun was 3 to 5-feet from
15 the body when it was fired.

16 Q 3 to 5-feet?

17 A Yes.

18 Q Okay. All right now, did you note any
19 exit wounds to Ms. McCray's body?

20 A Yes. Well, on x-ray we could see that
21 there were still numerous shot retained in her body.
22 She did have several exit wound defects from
23 individual pellets on the right side of the groin so
24 in this area here.

25 Q Okay, all right. Tell us what the

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1 existence of entrance wounds and exit wounds tell
2 you about the trajectory of the firearm and the
3 positions of the victim and the shooter at the time
4 that the firearm was fired.

5 A So by evaluating the entrance wound, the
6 wound tracks, seeing what organs and tissues that
7 the shot went through and seeing the exit wounds
8 we're able to determine a wound track. In this case
9 the entrance wound was, again, on the right buttock.
10 The exit wound was on the right exit, injury is
11 around the right side of the pelvis. So this was
12 predominantly traveling from back to front, a little
13 bit upward, and then a little bit towards the left
14 side of the body so if the -- this baton here
15 represented the wound path it'd be traveling
16 something like that.

17 Q Okay, all right. And Doctor Batalis, I
18 think you can take the stand for me. Thank you.

19 A (Complies.)

20 Q Sir, other than that single shotgun wound
21 to the right buttock did Ms. McCray sustain any
22 other fatal injuries?

23 A She did not.

24 Q And typically you would think that a wound
25 in that area would not be fatal. Tell us what it is

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1 about that particular wound and any organs or any
2 arteries or veins that may have struck that would
3 have caused what contributed to her death?

4 A Sure. As the individual pellets traveled
5 through her body from the right buttock towards the
6 pelvis, the pellets traveled through the muscle and
7 soft tissue of that region. It also went through
8 the part of the pelvic bone itself. What would have
9 caused her death is the pellets also ruptured
10 through her femoral artery so the femoral artery is
11 the main blood vessel that's gonna feed your, the
12 vasculature to your right leg so it gives your right
13 leg your blood flow. So it went through that. That
14 would have caused extensive internal bleeding into
15 the soft tissues of the buttock and the abdomen.
16 The pellets also went through her bladder and her
17 small intestines. But predominantly her fatal
18 injury would have been bleeding out from lacerating
19 or rupturing that main artery.

20 Q And can you tell us approximately how long
21 Ms. McCray would have lived when she sustained that
22 type of injury. Are we talking seconds, minutes,
23 hours?

24 A It's gonna depend on individual by
25 individual. Everybody is gonna have some sort of

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1 variation depending on how quickly they bleed out.
2 This would be something, I would think, in the terms
3 of minutes. It could be several minutes, you know,
4 it could be two or three minutes. In other
5 individuals it could be 15, 20 minutes. So there's
6 gonna be a range there, but it's not something
7 immediately fatal that you would say, okay, she had
8 to die within, you know, five seconds or anything
9 like that.

10 Q Okay. Now in terms of any other
11 examination of her internal organs, was there
12 anything else that would have led to her death other
13 than from the shotgun blast?

14 A No. You know, considering again the age
15 of the decedent being 89 years old, she appeared to
16 be in fairly good health. Her heart was the
17 appropriate size. She did have some minor blockage
18 of her coronary arteries, but nothing that showed
19 any evidence of a heart attack. She had a lesion in
20 her lung, a small lesion about two centimeters that
21 we examined under the microscope. It may represent
22 a small lung cancer or it could be a benign lesion;
23 we couldn't make that distinction by looking at it.
24 She had a couple of minor findings, but nothing that
25 would have, could be, could explain a sudden death.

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1 Q Okay. And based upon your examination of
2 her and your experience as a physician did you make
3 an opinion, render opinion as to the manner and
4 cause of the death of Ms. McCray?

5 A Yes, the cause of death was a shotgun
6 wound of the right buttock and the manner of death
7 was homicide.

8 Q Now tell us about the different
9 classifications of death in South Carolina.

10 A As far as manners of death?

11 Q Yes, sir.

12 A So with manners of death we essentially
13 have five choices. One choice is natural, which I
14 think is kind of self-explanatory, heart disease,
15 lung disease. The second choice would be a suicide
16 which is when somebody intentionally takes their own
17 life. Another manner of death is accident which
18 would include car accidents, drowning deaths, drug
19 overdoses typically. Homicide is when a death is
20 directly caused by the actions of another
21 individual. And then the fifth choice is
22 undetermined. There are certain cases that for
23 whatever reason we can't determine, we can't place
24 it in these top four categories and so undetermined
25 would be the fifth manner you choose from.

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1 Q Okay. And here you classified the death
2 as a homicide?

3 A Yes, I do.

4 Q All right, now, you talked about her
5 clothing. What happened to her clothing? Did you
6 keep them or were they turned over to law
7 enforcement?

8 A So we retained her clothing during the
9 course of the autopsy and then transferred them to
10 authorities, I believe with the sheriff's or the
11 county sheriff's office.

12 Q Okay. And obviously the shotgun wadding,
13 and the pellets were turned over to law enforcement
14 as well?

15 A Yes. We transferred clothing, fingernail
16 clippings, pulled hair from the scalp, also from
17 pubic hair. We also, not knowing the nature of, we
18 did a sexual assault exam. We retained swabs from
19 various regions of the body, a sample of the
20 decedent's blood, the evidence that we see on the TV
21 screen, and then a CD of the autopsy photos were all
22 transferred to the officer to an officer, to an
23 officer the following day.

24 Q Now you said that you all did a sexual
25 assault kit?

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1 A Yes.

2 Q Is that something that law enforcement
3 requested or is that something that MUSC or you in
4 particular decided to do on your own? If you
5 remember.

6 A I don't remember offhand. I'm referring
7 to my notes.

8 Q Yes, sir.

9 A We did the sexual assault examination
10 based on how the body was found, the fact that it
11 was in bed, wearing night clothes, and when the
12 coroner reported the case said that there were some
13 panties that were pulled down. So just to kind of
14 cover any bases even there was no suggestion of a
15 rape, it's procedure. We kind of use our judgment
16 to go ahead and collect that evidence in case it
17 becomes an issue.

18 Q Yes, sir. All right, let's then talk
19 about the autopsy of Theward McCray. Doctor
20 Batalis, hold on just a second. State's 60 through
21 64.

22 (WHEREUPON, State Exhibits Nos. 60 through
23 64 were marked for identification only.)

24 BY MS. BARR:

25 Q Tell us about your external examination of

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1 the body of Theward McCray.

2 A Sure. So again, we went through, we also
3 performed this autopsy on the same day of June 6th,
4 2011, a couple of hours later after we completed the
5 first exam on Ms. McCray. Followed, did the same
6 procedure as previously described. And the major
7 findings on his autopsy were three distinct shotgun
8 entrance wounds on the left arm, the left side of
9 the chest, and the right side of the chest with also
10 an exit wound on the right side of the chest, and
11 the left thumb had a suture lesion. We removed the
12 sutures, and it was revealed that much of the left
13 thumb had been blown away by a shotgun shot.

14 Q Okay. Now Mr. Theward McCray would have
15 been 52 years old at the time?

16 A Yes, he was.

17 Q All right. Tell us about his height and
18 weight please.

19 A We measured him to be 69 inches so 5-foot
20 9 inches tall and he weighed 210-pounds.

21 Q Okay. Now when you began the autopsy of
22 Mr. McCray I believe you testified as relates to Ms.
23 McCray there was no evidence that she had received
24 any medical attention. What about as relates to
25 Mr. McCray? Was there evidence that he received

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1 medical attention?

2 A There was. Following Mr. McCray's
3 injuries he was then transferred to the MUSC
4 hospital where they attempted resuscitation so there
5 was evidence of that, several evidence of
6 resuscitation. He had a breathing tube down his
7 throat. He had a feeding tube going into one of his
8 nostrils. He had a catheter extending into his
9 urethra, a Foley catheter to collect urine. He also
10 had several intravascular catheters, or IVs. He had
11 a couple of chest tubes extending into his chest to
12 drain fluids out of his chest. Then also had open
13 laparotomy incision so surgeons during his
14 resuscitation had opened the abdomen to see if they
15 could repair any of the defects to keep him alive.

16 Q Okay. Sir, I'm gonna hand you what's been
17 marked as State's Exhibits 60 through 64 and ask you
18 are these photographs depicting the condition of
19 Mr. McCray's body at the time of autopsy?

20 A Yes. There are three photographs
21 depicting the body and then two photographs
22 depicting evidence that we recovered.

23 Q Yes, sir.

24 MS. BARR: At this time we move State's
25 Exhibits 60, 61, 62, 63 and 64 in.

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1 MR. MCKENZIE: No objection, Your Honor.

2 THE COURT: Admitted without objection.

3 (WHEREUPON, State Exhibits Nos. 60 through
4 64 were admitted into evidence.)

5 BY MS. BARR:

6 Q Thank you, Doctor Batalis. I'm gonna get
7 you to come down again. **I'm going to publish now**
8 **what's been admitted State's Exhibit Number 60.**
9 **Tell us the autopsy number that's associated with**
10 **Mr. McCray.**

11 A So again, this is our identification
12 picture that we take. You can see his case number
13 is FA11-341 so a unique number just for his case,
14 and again, the photograph to show his
15 identification.

16 Q Now in terms of that number 11-341, does
17 that have any significance or that's just random
18 numbers?

19 A No. So FA is forensic autopsy, means it
20 was ordered by a coroner as opposed that somebody
21 that passed away in the hospital by natural causes.
22 11 is the year, and then the last number is the
23 number of case that it was for the year. So this
24 would be the 341st forensic autopsy that we
25 performed in 2011.

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1 Q Yes, sir. Publishing now State's Exhibit
2 Number 61. Tell us about that, sir. Does it help
3 to do it that way or?

4 A Either way.

5 Q All right.

6 A So this is a picture of the decedent's
7 left side of the body that we took at the autopsy
8 after we had cleaned things up. So you can see his
9 head is here, the left side of his chest, his legs
10 would be extending that way. The main finding that
11 we can see in this picture, centrally here we have a
12 gunshot entrance wound complex so a major large
13 entrance wound. And then also in the skin there are
14 several what we call satellite wounds so these are
15 entrance wounds from individual pellets as it had
16 spread out from the bunch before they entered the
17 body. So a central shotgun entrance wound with
18 several satellite wounds. The other thing that we
19 can see up in the corner, this wound here is also a
20 shotgun entrance wound that was on the right side of
21 the chest; and then the wound we're seeing at the
22 top left here, this is actually the surgical
23 incision where they opened up the abdomen to prepare
24 for therapy purposes.

25 Q All right. So this wound is not related

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1 to the homicide at all except for treatment?

2 A It was for treating injuries caused by the
3 shooting, but it's not an injury from the shooting.

4 Q Yes, sir, all right. Tell us about
5 State's Exhibit Number 62.

6 A So State's Exhibit 62 is showing the
7 decedent's left arm. So for orientation purposes
8 his head is here and so the left arm is sticking out
9 to the side like mine is now. And so what we can
10 see here is, again, another shotgun entrance wound,
11 has mostly, again, a central defect with a few
12 satellite lesions. This one, it's fairly actually
13 fairly close proximity to the one we just saw on the
14 left side of the chest with the arm kind of spread
15 out. It looks like these are two that's spread out.
16 This is the one we just saw in detail. In reality,
17 when you put the body up, the one on the left arm
18 that we're seeing here was actually fairly close to
19 the one on the chest. So there are separate wounds
20 as far as the pictures go, but I can't rule out if
21 the arm was positioned next to the body that this
22 couldn't be part of one, a single shot.

23 Q All right. And just for prospective, this
24 area here would be the, his underarm?

25 A Yes, this is the left armpit here.

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1 Q And you talked about pellets being removed
2 from the right and left side of the decedent's
3 chest, and I'm gonna publish State's Exhibits 63 and
4 64. Were those the envelopes in which the, which
5 would indicate that the pellets were taken from
6 Mr. McCray's body and then placed there for
7 evidentiary purposes?

8 A Yes. So again, we have our unique case
9 number here, the envelope that we place the pellets
10 in, our label. So these were pellets recovered from
11 the left side of the chest, these were pellets
12 recovered from the right side of the chest. Again,
13 it's not all the pellets as there were numerous
14 pellets on both sides just to represent the same of
15 what was there.

16 Q Thank you, sir. You can take your seat
17 again.

18 A (Complies.)

19 Q Now in terms of the injuries to
20 Mr. McCray, do you have any opinion regarding the
21 distance that the barrel of the shotgun would have
22 been from Mr. McCray at the time it was fired?

23 A Sure. As you can see on his entrance
24 wounds picture there was still a central defect, but
25 there were more of those satellite lesions, much

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1 more spread out than we saw on Ms. McCray. That
2 would tell us in rough estimate that the gun, the
3 end of the gun was between 4 and 10-feet from the
4 body when the gun was fired. That's true for all of
5 the wounds, the left arm, the left side of the
6 chest, and the right side of the chest.

7 Q All right. And what about the locations
8 of Mr. McCray's wound, what does that tell us about
9 the position of the shooter and the position of
10 Mr. McCray at the time he sustained his wounds?

11 A I can't speak as to the position that the
12 shooter was in. I can attest to the direction that
13 the shot were traveling. Both the shots on the left
14 side of the chest and the right side of the chest
15 were both traveling from front to back. They both
16 traveled downward, and they both traveled to the
17 right so the gun would have been positioned on the
18 decedent's left-hand side when the gun was fired
19 with the shot traveling from front to back and kind
20 of down and across the body. The left arm was
21 essentially front to back so, again, it was kind of
22 essentially traveling in the same direction.

23 Q Okay. And you noted that there was an
24 injury to Mr. McCray's thumb?

25 A Yes.

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1 Q I show you what's been admitted as State's
2 Exhibit Number 10. Do you see that on this
3 particular photograph?

4 A I do.

5 Q Okay, all right. Describe that injury.

6 A So the injury on the thumb — again, as we
7 received it it had been sutured shut. And again, he
8 was seen by clinicians and resuscitated. Once we
9 removed the sutures, essentially the left thumb
10 almost kind of fell apart. The sutures were holding
11 it together. The thumb had basically been
12 obliterated. There were numerous individual defects
13 from shotgun pellets that had traveled through it.
14 Because of that, we couldn't tell which direction
15 they were traveling because, again, the thumb was
16 mostly obliterated.

17 Q Okay. Tell us about any other
18 examinations of his internal organs and whether or
19 not anything else would have contributed to his
20 death.

21 A No. The, regarding the shot, the shot
22 traveled through his body from the left side of the
23 chest and the right side of the chest. The shot
24 perforated both of his lungs, his stomach, his
25 pancreas, spleen, liver, so most of the organs of

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1 the chest and the abdomen which led to significant
2 bleeding within the abdomen and within the chest so
3 there were significant internal organ damage from
4 that. As far as any natural disease, the decedent
5 did have blockage of all three of his main coronary
6 arteries; but again, no evidence he had a heart
7 attack, nothing to suggest that he died from
8 anything other than his shotgun wounds.

9 Q Okay. And as it relates to that, it was
10 your opinion that that was the cause of his death?

11 A Yes. His cause of death was due to
12 shotgun wounds of the trunk, essentially grouping
13 the one on the left side of the chest and the right
14 side of the chest. They both caused injuries and
15 perforations of organs that could have killed him
16 individually so I lumped them together as the cause
17 of death.

18 Q Is there any way to tell how many times
19 Mr. McCray would have been shot, or how many times
20 the shooter would have fired and it struck
21 Mr. McCray?

22 A So we know there were at least two shots
23 fired, the one that struck the right side of the
24 chest, the one that struck the left side of the
25 chest. It's possible that the one on the left arm

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1 could have been part of the wound on the left side
2 of the chest, and it's possible the left thumb could
3 have been injured during that process as well so the
4 minimum number of shots would be two. It could have
5 been three shots with one to the left arm, one to
6 the left side of the chest, one to the right side of
7 the chest, with again, the thumb being incidental.
8 Or it could be four shots with the thumb was one
9 shot, the arm was one shot, and the chest were
10 separate. So the body was struck between somewhere
11 between two and four shotgun blasts.

12 Q And, sir, you classified Mr. McCray's
13 death as a homicide?

14 A I did.

15 Q Beg the Court's indulgence. Doctor
16 Batalis, the testimony that you've just provided
17 this Court as to the cause and manner of death of
18 Ms. Rosa Lee McCray and Mr. Seward McCray, have they
19 been to a reasonable degree of medical certainty?

20 A Certainly.

21 Q Thank you so much. Please answer any
22 questions that Mr. McKenzie or the Court may have
23 for you.

24 **CROSS-EXAMINATION**

25

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1 BY MR. MCKENZIE:

2 Q Doctor, good morning.

3 A Good morning.

4 Q My name is Steve McKenzie. I represent
5 Mr. Anderson here. Do you -- you have classified
6 these as homicides, but that's just a mere way that
7 you guys have to do it at MUSC to put them in
8 certain categories; is that correct?

9 A Not only at MUSC. Any autopsy that's
10 performed, forensic autopsy in South Carolina or
11 throughout the country, we assign a manner of death.

12 Q You have to put a category. It's either,
13 you know, like you said before, accidental death,
14 you know, suicide, I think natural causes, you know,
15 and so this just happens to be that your opinion
16 that what you witnessed was a homicide, right, or
17 what the bodies were homicide?

18 A Yes, determined it to be homicide as the
19 deaths were due to the actions of another
20 individual.

21 Q But you weren't there, you don't know what
22 happened, you don't know any of the circumstances
23 surrounding any of this, do you?

24 A I haven't personally witnessed anything.
25 We do receive reports from the coroner. When they

SW - N. BATALIS - CROSS

1 report the deaths to us they will give us a scenario
2 that they're aware of at that time which sometimes
3 is very helpful, other times not so much.

4 Q But you weren't there, you don't even know
5 -- you say the manner was shotgun blast, I believe,
6 to both bodies; but you haven't examined the
7 shotgun, have you?

8 A I have not. That's out of my area of
9 expertise.

10 Q Okay. And you said Rosa Mae McCray died
11 of how many shotgun wounds?

12 A She had a single wound to the right
13 buttock.

14 Q Okay. And Theward McCray had from two to
15 four?

16 A Yes.

17 Q Now whenever you were examining Ms. McCray
18 were there any items other than the pellets that you
19 were able to get from her body?

20 A I'm sorry, any other items of?

21 Q Any propellants, anything coming out of
22 the shotgun, anything that may have been forced into
23 her body besides the pellets themselves?

24 A On Ms. McCray we received the pellets and
25 also the wadding, or the shot cup.

SW - N. BATALIS - CROSS

1 Q And any other items?

2 A No.

3 Q Okay. Now on Theward McCray can you tell
4 us — you said his left hand and there's a picture
5 of it here, but his left hand had been shot; is that
6 correct?

7 A Yes, the left thumb.

8 Q Okay. Any evidence of any damage to the
9 right hand or right arm?

10 A No.

11 Q None at all?

12 A No.

13 Q And you said that a, because of the nature
14 of the way that Ms. Rosa Mae McCray was found there
15 was a, there was a sexual protocol, rape protocol
16 kit, that was performed upon her?

17 A Correct.

18 Q And that was negative?

19 A I do not know the results of this. I did
20 not see any injuries on the body to suggest that she
21 was assaulted. As far as if there was any other
22 DNA, I'm not sure. We transferred those to
23 authorities so I don't know if that testing, but
24 there was no evidence of forced activity on the
25 decedent.

SW - E. EVANS - DIRECT

1 Q So what you observed there's no evidence
2 of any sexual assault, she simply died of a gunshot
3 wound to the leg?

4 A Correct, the shotgun, yes.

5 Q Okay.

6 MR. MCKENZIE: Your Honor, no further
7 questions.

8 THE COURT: All right.

9 MS. BARR: Your Honor, we don't have any
10 redirect.

11 THE COURT: All right, thank you.

12 The next witness.

13 MS. BARR: We call Ms. Eva Evans to the
14 stand.

15 WHEREUPON,

16 **EVA EVANS,**
17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE CLERK OF COURT: Step around to the
20 witness box.

21 **DIRECT EXAMINATION**

22 BY MS. BARR:

23 Q Ms. Evans, state your full name for us.

24 A Eva Evans.

25 Q All right. And how are you related to

SW - E. EVANS - DIRECT

1 Rosa Lee McCray and Theward McCray?

2 A Rosa Lee is my mother and Seward is my
3 brother.

4 Q Now I have, and throughout this trial we
5 have heard him referred to as Theward and Seward.

6 A Yes.

7 Q Can you provide some insight on that?

8 A Yes. When my mother had him she named him
9 Seward, but somehow the name was misspelled so it
10 spelled Theward so everyone like Steward and stuff
11 call him Theward; but the family call him Seward.

12 Q All right. So on his birth certificate
13 his name is spelled Theward?

14 A Yes.

15 Q Okay. But all the family members call him
16 Seward?

17 A Yes.

18 Q Okay. And were you in court when we
19 played the interview that the defendant gave to
20 Investigator Frebowitz down in Myrtle Beach? Were
21 you in court when we played that?

22 A Yes.

23 Q And did you hear Anthony Anderson refer to
24 him as Seward?

25 A Yes.

SW - E. EVANS - DIRECT

1 Q Okay. But that's would have been what his
2 family called him?

3 A Yes.

4 Q So Anthony Anderson is your nephew?

5 A Nephew.

6 Q Okay. Now let me ask you a couple of
7 questions. Where was Anthony Anderson living at the
8 time of the death of your mother and your brother?

9 A With my mom and brother.

10 Q All right. So the killings happened in
11 June of 2011. How long had he been living in the
12 home with them?

13 A Since December.

14 Q Since December of the year before?

15 A Yes.

16 Q Okay. And we heard testimony about a
17 vehicle or a truck. Did your brother -- your
18 nephew, I'm sorry, Mr. Anderson own a vehicle?

19 A Yes.

20 Q Okay. The Nissan pickup truck that we
21 heard about, was that his vehicle?

22 A Yes, it was.

23 Q And you've seen him driving it?

24 A Yes.

25 Q Don't tell me what anybody would have

SW - E. EVANS - DIRECT

1 said; but based upon what you observed about the
2 relationship between Theward and Anthony Anderson,
3 how did they get along?

4 A Sometimes they get along real good and
5 sometimes they have little arguments.

6 Q And you've seen that?

7 A Yes.

8 Q Okay. Now did you ever hear your nephew
9 Anthony Anderson say anything negative about your
10 brother Seward?

11 A He said one day, you know, he was getting
12 tired of him. He said, one day I'm gonna kill him.

13 Q Who said that?

14 A Anthony.

15 Q And who was he talking about?

16 A He was talking about Seward.

17 Q All right. Now when he made that
18 statement to you was that -- what was the time frame
19 between when he made that statement to you and when
20 your mom and your brother died?

21 A It was about three weeks.

22 Q Say again.

23 A About three weeks.

24 Q About three weeks before?

25 A Yes.

SW - E. EVANS - DIRECT

1 Q All right. So three weeks before Mr.
2 Anderson says he's getting tired of Seward and that
3 he wanted to kill him?

4 A Yes.

5 Q All right. Did he say anything else about
6 that?

7 A He said, but I'm gonna have to kill him or
8 anyone else, I'm not leaving no witness. Even if
9 it's a baby, even if he's old enough to talk I'm
10 gonna take him out.

11 Q Did you take him seriously when he say
12 said that?

13 A No, I didn't.

14 Q All right. Now you said this was about
15 three weeks before?

16 A Yes.

17 Q Okay. How far did you live from your
18 mother at the time? First of all, you living in the
19 same place you were back then?

20 A I'm in her house now.

21 Q You're living in her home now, okay.

22 A Yes.

23 Q Prior to her death how far did you live
24 from her?

25 A It was only a half a mile. It was just

SW - E. EVANS - DIRECT

1 right at walking distance.

2 Q All right. And how often would you talk
3 with your mom and how often would you see her?

4 A Every day.

5 Q Every day? You all had a close
6 relationship?

7 A Yes.

8 Q Did you see your nephew Anthony Anderson
9 in the days or within a week of your mother's
10 killing?

11 A I saw him every day.

12 Q You saw him every day as well?

13 A Yes.

14 Q Every time you would see your mom pretty
15 much ---

16 A Yeah.

17 Q ---you would see him because he was
18 staying there?

19 A Uh-huh.

20 Q Okay. Now your mother, I believe the
21 testimony has indicated, was 89 years old?

22 A Yes.

23 Q Okay. Tell me about the conversation you
24 had with the defendant Anthony Anderson about your
25 mom.

SW - E. EVANS - DIRECT

1 A He called me one day and said he wanted to
2 talk to me.

3 Q And when did that call take place?

4 A That call took place right about a week
5 before my mom died.

6 Q Okay.

7 A And he said, he said, I come to your
8 house, so he hang up. And he came to my house.

9 Q How did he get there?

10 A He drive his truck.

11 Q Okay.

12 A And he asked me, he said, how would you
13 feel if something happened to ma because he would
14 call my momma ma.

15 Q He called your mother ma?

16 A Yes.

17 Q All right, what does he call his mother?

18 A Joanne.

19 Q Calls her Joanne?

20 A Yes.

21 Q By her first name?

22 A Yes.

23 Q Okay. All right, so Mr. Anderson asked
24 you how — I'm sorry, say that question again, what
25 does he ask you?

SW - E. EVANS - DIRECT

1 A How would I feel if something happen to my
2 ma.

3 Q Okay.

4 A And I said what are you talking about. I
5 said, what do you mean? He said, you know, if she
6 was to die. And I said, Anthony, I said, ma is
7 getting pretty old now. I say, it's bound to
8 happen; but whenever it do, I said, I'm gonna be
9 hurt. And he said, okay, I got my answer.

10 Q He said, okay, I've got my answer?

11 A Yes.

12 Q Okay. Now what did you think he meant by
13 that?

14 A I thought he meant that something happen
15 to my mom that he would have to move.

16 Q That he wouldn't have a place to stay?

17 A Yeah, because he and my brother weren't
18 getting along that good.

19 Q Because he and your brother were not
20 getting along that good?

21 A Yes.

22 Q So in your mind you thought that he was
23 just worried about where he would ---

24 A Yes.

25 Q ---live if something happened to your

SW - E. EVANS - DIRECT

1 mother?

2 A Yes.

3 Q Now how were you notified that your mother
4 and your brother had been shot?

5 A My son-in-law one day, he said, mom, he
6 say, there's a police car going to grandma house.
7 So I called up there and I didn't get a answer. So
8 I wake up my son-in-law and I said, Don, I said, go
9 to my mom house and see if everything is okay. And
10 he called me back and he said, he said, your momma's
11 gone. And I said, where'd she go? He said, she's
12 gone. I said, Don, please tell me where did my mom
13 go. He said, Ms. Eva, your mom's dead. So I
14 started up there and he tried to get me not to go,
15 but I said I got to see; but when I got there she
16 was gone.

17 Q When you arrived at your mother's house
18 did you get there before or after the police were
19 there?

20 A The police was there and the EMS was
21 there. They was putting my brother in the EMS.

22 Q Okay. Where was your mother when you got
23 to the house?

24 A She was in her bed, but they wouldn't let
25 me see her.

SW - E. EVANS - DIRECT

1 Q Okay.

2 A You know, but they brought her out, you
3 know, after everything, bring her in front of all of
4 us.

5 Q Okay. When you arrived at the home that
6 night, Ms. Eva, did you hear any unusual sounds or
7 noises?

8 A Anthony was playing music that night.

9 Q Say again.

10 A He got music. Anthony got music playing
11 in his room.

12 Q In his room?

13 A Yes.

14 Q How -- what was the tone of the music?
15 Was it soft, was it loud?

16 A It was loud like hiphop music type thing,
17 real loud.

18 Q Okay. Did you -- well, we know that you
19 testified that you had moved into your mother's
20 house.

21 A Yes.

22 Q After the police finished their
23 investigation did you ever go into Anthony
24 Anderson's bedroom?

25 A Yes, we did.

SW - E. EVANS - CROSS

1 Q All right. And I'm gonna hand you what's
2 been admitted as State's Exhibit Number 36. Can you
3 tell us, if you know, is that a picture of the
4 bedroom that the defendant was staying in at the
5 time?

6 A Yes, it is.

7 Q It is? All right. I'm gonna publish
8 State's Exhibit Number 36. Ma'am, do you know what
9 these two items are here?

10 A Those was Anthony's clothes he had packed
11 up.

12 Q Had them packed up?

13 A Yes.

14 Q Ma'am, those all the questions I have.
15 Please answer any questions that Mr. McKenzie may
16 have for you.

17 **CROSS-EXAMINATION**

18 BY MR. MCKENZIE:

19 Q Ma'am, tell me your name again.

20 A Eva Evans.

21 Q Everette?

22 A Eva Evans. Eva Evans.

23 Q Eva Evans, okay, I'm sorry, I apologize.
24 You've known Anthony all his life?

25 A Yes.

SW - E. EVANS - CROSS

1 Q Okay. And so you know that he was in a
2 significant car accident in 1995?

3 A Yes, I do.

4 Q And did Anthony ever call you telling you
5 that people were watching him? Did -- he never
6 called you to tell you that?

7 A No.

8 Q So he never said that to you?

9 A No. No.

10 Q So you had a close relationship with him,
11 but he ---

12 A Yes, we did.

13 Q You had a very close relationship with
14 him.

15 A Yes, we did.

16 Q Did he ever call you in a frenzy, paranoid
17 that people were trying to kill him?

18 A No, he didn't.

19 Q That never happened?

20 A That never happened.

21 Q Okay. But you had a close relationship
22 with him?

23 A I had a close relationship with him.

24 Q Okay. You were sitting in here yesterday
25 when the doctor testified about all this; didn't

SW - E. EVANS - CROSS

1 you?

2 A Yes.

3 Q Okay. And I think you said that, talking
4 about Seward, that about three weeks before he
5 threatened to kill him?

6 A Yes, but he would always, he would always
7 say things. He would say it in a way, you know, and
8 laugh, but like, you know, he was just playing.

9 Q Okay. So what you told us earlier was
10 that he wasn't afraid of, he wasn't afraid of -- or
11 he was not afraid of people killing him, but he
12 would always threatening to kill other people and
13 laugh about it?

14 A Not always. That was the only time. I
15 mean, he would just play around saying things, you
16 know, just joking about different things.

17 Q Well, Ms. Evans, I think what you just
18 said was he would joke around about killing people
19 ---

20 A I didn't say always. I said that
21 particular time he would tell jokes about different
22 things, but not always like that.

23 Q Well, let me ask you this question, before
24 1995 'cause you've known him all his life.

25 A Yes.

SW - E. EVANS - CROSS

1 Q And after 1995 was he a different person?

2 A He was different, but I mean, he know
3 everything he's doing. We went places together. He
4 stayed with me for a while. He'd go back to his mom
5 house and come back and stay with me. He driving
6 too going through whatever he had to do.

7 Q And you keep saying driving and you've
8 been on the roadways of South Carolina; have you
9 not?

10 A Yes.

11 Q Have you ever seen crazy people driving on
12 the roadways?

13 A Yeah, I have.

14 Q Okay. So is your testimony today here
15 that you had a very close relationship with Anthony?

16 A Yes, we did.

17 Q You talked to him every day?

18 A Yes, I did.

19 Q And you never saw any hallucinations?

20 A No.

21 Q Any paranoid?

22 A No.

23 Q Okay. You ever seen any psychotic
24 behavior?

25 A I'm not a doctor so I can't tell you what

SW - E. EVANS - CROSS

1 psychotic behavior.

2 Q Well, you ever seen him acting crazy?

3 A I never seen him acting crazy.

4 Q Okay. You ever known him to have memory
5 loss where he'd come talk to you about something you
6 and he talked about the week before and you'd say,
7 Anthony, we talked about that a week ago?

8 A Well, I have memory loss so I don't
9 remember things so.

10 Q So you don't remember things?

11 A I don't a lot of times.

12 Q So what you're telling us today that you
13 may not even remember some of the things he's told
14 you in the past?

15 A I say some thing, I didn't say everything.

16 Q Okay. Ma'am, my question is, you said you
17 had memory loss. Have you been diagnosed with
18 something ---

19 A No, I'm just saying a lot of time people
20 forget things.

21 Q I understand that. But do you remember,
22 you don't remember specifically episodes of him --
23 and you saw him every day. You don't remember him
24 being psychotic?

25 A No.

SW - E. EVANS - CROSS

1 Q Manic?

2 A No.

3 Q You don't -- paranoid?

4 A No.

5 Q None of those things?

6 A No.

7 Q How about depressed? You ever seen him be
8 depressed, oh, I just, I don't know if I can do it.

9 A A lot of time he be, he's bored or
10 something, you know. Yes, I have seen that.

11 Q And you've known him all your life.

12 A Yes.

13 Q And you remember him since 1995.

14 A No, I remember him when since he born.

15 Q All right. And you remember that he went
16 into inpatient treatment three times?

17 A Yes, I do.

18 Q And why did he go to inpatient treatment
19 three times?

20 A In---

21 Q Inpatient treatment three times?

22 A You mean put away in a place?

23 Q Yes.

24 A I have never known him to be put away.

25 I've known him to go to mental health and to see the

SW - E. EVANS - CROSS

1 doctor and back home; but as far as being committed
2 to a place, I have never known that.

3 Q All right, you've never known that?

4 A I never.

5 Q Okay. You remember he had to learn how to
6 walk?

7 A Yes, I do.

8 Q You remember he had to learn how to talk?

9 A Yes.

10 Q He had to learn how to dress himself?

11 A Yes.

12 Q He had to learn how to feed himself?

13 A Yes.

14 Q He had to learn how to bathe himself?

15 A Yes.

16 Q And he had to learn how to drive a vehicle
17 again?

18 A Yes.

19 Q Okay. You remember all those things?

20 A Yes.

21 Q Okay. But it's your testimony today here
22 that you never saw him act crazy, psychotic,
23 paranoid, hallucinate, didn't think people were out
24 to kill him, didn't think planes were flying around,
25 none of that?

SW - E. EVANS - CROSS

1 A No, I've never seen that, no.

2 Q And you saw him every day?

3 A I can't say -- I haven't, I don't even see
4 my kids sometimes every day, but for the most of it.

5 Q And how old are you, Ms. Evans?

6 A I'm 57.

7 Q 57. And do you work outside the home?

8 A No, I don't.

9 Q Are you on disability?

10 A Yes, I am.

11 Q What's your disability?

12 MS. BARR: Objection, relevance.

13 THE WITNESS: Do I have to tell everybody
14 my personal business. I'm not on trial.

15 MR. MCKENZIE: I'm not -- Your Honor, I
16 think it goes to relevance if it has to do with her
17 memory or her cognitive function.

18 THE COURT: All right. Now ladies and
19 gentlemen, I'll have you step to the jury room just
20 a few minutes. Please do not discuss the case.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 11:02 a.m., and the
23 following proceedings commenced in open
24 court.)

25 THE COURT: Mr. McKenzie, is this a

SW - E. EVANS - CROSS

1 question that you know the answer to or ---

2 MR. MCKENZIE: I do.

3 THE COURT: All right, and how is the
4 response relevant?

5 MR. MCKENZIE: Because she has been
6 diagnosed with major mental illness and that ---

7 THE WITNESS: No. No, I wasn't. No, Your
8 Honor.

9 MR. MCKENZIE: And other people have had
10 to handle her affairs including her money, and I
11 think that goes to the relevance of why -- she
12 testifies to -- if she's coming in here saying I
13 remember these things or I didn't remember these
14 things. In fact, in one of the situations when I
15 asked her a question she admitted she had memory
16 problems. But I think it goes to the weight to the
17 jury to, for this witness, if she can't even handle
18 her own affairs how can she judge and say to the
19 jury that she didn't, she did not see any of these
20 things happening. And also, if these, if she has
21 memory problems and cognitive problems, then these
22 statements that she gave about what my client said,
23 I think that's weight that the jury needs to hear.

24 THE COURT: All right.

25 Ms. Barr.

SW - E. EVANS - CROSS

1 THE WITNESS: I'm ready to answer.

2 MS. BARR: And Judge, quite frankly, I did
3 not know and still in this instance do not know the
4 nature of the disability. She hasn't answered the
5 question. I ask the Court to allow her to proffer
6 the answer outside the presence of the jury.

7 THE COURT: All right, what kind of
8 disability are you on?

9 THE WITNESS: I'm on disability 'cause in
10 2002 my youngest child died instantly with a asthma
11 attack and I had a nervous breakdown behind it.

12 THE COURT: All right. I think it's all
13 relevant testimony. I overrule the objection.

14 MS. BARR: Yes, sir.

15 THE COURT: We'll take a few minutes and
16 then we'll be back on track.

17 (WHEREUPON, a recess was taken from the
18 proceedings.)

19 THE COURT: Bring the jury back.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 11:17 a.m., and the
22 following proceedings commenced in open court.)

23 THE COURT: The objection is overruled.
24 You may proceed.

25 MR. MCKENZIE: Thank you, Your Honor.

SW - E. EVANS - CROSS

1 BY MR. MCKENZIE:

2 Q Ms. Evans, I think we were talking about
3 the fact that you have yourself been diagnosed with
4 some pretty severe mental disorder; is that correct?

5 A Yes.

6 Q Okay. And I think it's major depression
7 is one of them; is that correct?

8 A I had a nervous breakdown because I lost
9 my daughter.

10 Q I understand that. And but, I asked you
11 earlier about these things and what -- the point I'm
12 trying to get at with you, Ms. Evans, is that you
13 have been diagnosed with a point where someone has
14 actually had to take care of your financial needs
15 for you. Is that a fair statement?

16 A Yes, at one point.

17 Q Okay. And you now currently have your
18 financial?

19 A I'm in the process of it, yes.

20 Q Okay, who -- does someone have your power
21 of attorney?

22 A No.

23 Q Okay. But someone handles your financial
24 affairs currently for you?

25 A I do it myself.

SW - E. EVANS - REDIRECT

1 Q All right. You just said earlier that
2 you're in the process ---

3 A Someone is, my check do come to my son
4 now, but I take care of all my business myself.

5 Q But somebody has to handle your money for
6 you?

7 A I pays my bills myself.

8 Q And do you drive?

9 A Yes, I do.

10 Q Okay. And so you have been diagnosed with
11 these major disorders, some ---

12 A I have been diagnosed with just minor
13 breakdown because I lost my daughter.

14 Q Okay, but it's ---

15 A I'm not on any medication for anything
16 now.

17 Q But it's so severe when you broke down
18 that you had to go on disability?

19 A Yes.

20 Q Okay. And so severe that someone else had
21 to handle your money for you?

22 A Yes.

23 Q Okay.

24 MR. MCKENZIE: Court's indulgence, Your
25 Honor. No other questions, Your Honor.

SW - P. WRENN - DIRECT

1 THE COURT: Any redirect?

2 **REDIRECT EXAMINATION**

3 BY MS. BARR:

4 Q Ms. Eva, one quick question. What year
5 did you have the breakdown due to the death of your
6 child?

7 A 2002.

8 Q 2002. All right, thank you, ma'am.

9 THE COURT: Anything further?

10 MR. MCKENZIE: One other question, Your
11 Honor.

12 **RECROSS-EXAMINATION**

13 BY MR. MCKENZIE:

14 Q Ms. Evans, you stated prior that you did
15 not go pick up, or that you did not know
16 Mr. Anderson was in a mental facility?

17 MS. BARR: Objection, Your Honor, outside
18 the scope of recross.

19 THE COURT: All right, Mr., the objection
20 is beyond the scope of cross-examination.

21 MR. MCKENZIE: I understand, Your Honor.

22 THE COURT: I sustain the objection.

23 MR. MCKENZIE: Thank you.

24 THE COURT: You may step down.

25 MS. BARR: The State calls Investigator

SW - P. WRENN - DIRECT

1 Pamela Wrenn.

2 WHEREUPON,

3 **PAMELA WRENN,**

4 having been duly sworn by the Clerk, testified as
5 follows:

6 **DIRECT EXAMINATION**

7 BY MS. BARR:

8 Q Ma'am, state your name for us.

9 A Pamela Wrenn.

10 Q All right. And spell your last name.

11 A W-R-E-N-N.

12 Q And tell the ladies and gentlemen of the
13 jury where you work and what you do.

14 A Williamsburg County Sheriff's Office, I'm
15 a criminal investigator.

16 Q And how long have you been employed with
17 the Williamsburg County Sheriff's Office?

18 A Since 2007.

19 Q All right. And I hate to age you, but how
20 long have you been in law enforcement?

21 A Since mid '90s. I started out with
22 Berkeley County Sheriff's Office.

23 Q All right. Now there are references in I
24 believe maybe some of the exhibits and definitely
25 some of the police reports regarding Investigator

SW - P. WRENN - DIRECT

1 Laile, is that your former last name?

2 A Yes, I got married November 2011.

3 Q All right. Now, ma'am, were you one of
4 the on-call investigators during the early morning
5 hours of June the 5th of 2011?

6 A Yes.

7 Q All right. And you responded out to the
8 scene of [REDACTED] Seward Avenue in Salters?

9 A Yes, I did.

10 Q And that home is located within
11 Williamsburg County?

12 A Yes, it is.

13 Q All right. Tell us when you arrived at
14 the scene and what you observed when you got there.

15 A When I first received the call I responded
16 directly to the hospital and then from there to the
17 scene, if I recall correctly.

18 Q Why did you go to the hospital and what
19 hospital did you go to?

20 A Because one of the victims, I was advised
21 that the male victim had been transported by EMS to
22 Williamsburg Regional emergency.

23 Q Okay. And so you were at Williamsburg
24 Regional emergency. For what reason did you go to
25 the hospital? Did you plan to talk with the victim,

SW - P. WRENN - DIRECT

1 or why did you go there?

2 A If it were at all possible to speak with
3 the victim I did go back there and check the status
4 of the victim, and also because I was told that it
5 was a shooting incident. To some degree I went to
6 do, conduct a GSR if possible, on the male victim
7 that was there.

8 Q And when you say the male victim we're
9 taking about Theward ---

10 A Theward McCray.

11 Q ---McCray. And we've also heard him
12 referred to as Seward McCray.

13 A Seward.

14 Q And in fact, when you went out to the
15 hospital were you able to speak with him?

16 A No, ma'am.

17 Q Were you able to collect GSR kit on him
18 though?

19 A Yes, ma'am.

20 Q You did, okay. All right, now after
21 leaving the hospital where then did you go?

22 A Then I responded to [REDACTED] Seward Avenue, the
23 residence of Theward and Rosa Lee McCray.

24 Q All right. And had -- I'm assuming that
25 other members of the Williamsburg County Sheriff's

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1 Office were already on scene when you got there?

2 A That is correct.

3 Q All right, now in terms of the other
4 victim in the case, Ms. Rosa Lee, was her body still
5 there, had she been removed by the coroner?

6 A No, she was still at the residence.

7 Q And where was her body physically once you
8 arrived at the home?

9 A When I arrived I walked into what I was
10 told to be her bedroom, and she was lying on the
11 bed, on her bed.

12 Q Okay, all right. Now we've heard
13 testimony in the case that the pathologist Doctor
14 Batalis collected a rape kit from Rosa Lee McCray.
15 Were you aware of that, that he had collected a rape
16 kit?

17 A Yes, ma'am.

18 Q Okay. Did you request that, or do you
19 recall?

20 A Yes, ma'am.

21 Q Tell us when why you asked the pathologist
22 to collect a rape kit from Ms. McCray.

23 A The reason for that is when I first walked
24 in, especially her being an elderly female, it was
25 unusual to see her with no clothes or her clothes

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1 pulled up and her panties down; and quite frankly, I
2 wanted to request the testing to see if she had been
3 sexually assaulted.

4 Q All right. And we've heard testimony that
5 fingernail clippings and so forth were collected and
6 pubic hair was collected from Ms. McCray. That
7 evidence was sent off to SLED?

8 A Yes, and that is part of the protocol of a
9 sexual assault kit, pubic hairs, head hairs; and
10 that's to identify the, that individual, or in this
11 case, that particular female victim.

12 Q Okay.

13 A. And the clippings are part of the protocol
14 that's collected in a sexual assault kit.

15 Q And again, just to be clear there was no
16 evidence that came back from SLED DNA to suggest
17 that she had been sexually assaulted, correct?

18 A No.

19 Q You did that just as a precaution ---

20 A Precaution.

21 Q ---in the event that she was?

22 A That's correct.

23 Q Thank you. Now kind of tell us the role
24 that you took once you arrived at the scene and tell
25 us whether or not you had any communication with

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1 Investigator Neil Frebowitz.

2 A Could I refer to my...

3 Q Sure.

4 A After I left -- let me back up for a
5 minute. After I left the hospital I went to central
6 dispatch and that was because constantly on any type
7 of crime scene the officers on the scene involved in
8 the scene, we exchange information. And I was given
9 the name of Anthony Anderson and we needed to run a
10 criminal history of him, find out whatever we could
11 because he was not on the scene. And as a result, I
12 called our central dispatch and requested that they
13 run a criminal history on him. So while at central
14 dispatch I received a call from Horry County and
15 that they had advised that they had had -- Horry
16 County had received a call from the mother of
17 Anthony Anderson.

18 Q All right. And as a result of that
19 communication you subsequently had a conversation
20 with Investigator Neil Frebowitz; is that correct?

21 A That's correct.

22 Q All right, do you have a copy of your, or
23 the Williamsburg County Sheriff's Office initial
24 incident report?

25 A Yes, I do.

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1 Q Okay. Now on that first page is there a
2 reference to a radio in a bedroom?

3 A According to the first responder, yes.

4 Q All right, so when you get out to the
5 scene Ms. Rosa McCray's body is still there, you
6 were aware that shot shells had been collected or
7 were going to be collected by Sergeant Monteith,
8 correct?

9 A That's correct.

10 Q And that's part of the standard protocol?

11 A That is correct.

12 Q So we had the shot shells being
13 transferred to SLED for testing. Were you all able
14 to ever recover the actual firearm that was used in
15 the two murders?

16 A No.

17 Q Okay. All right now, as a part of the
18 communication that you had on this particular day
19 with Investigator Frebowitz, do you know whether or
20 not the investigator ever talked with Mr. Anderson?
21 And I'm talking about did you know then whether or
22 not the investigator ever talked with Mr. Anderson
23 about the location of the weapon that was used in
24 this case.

25 A I did not know anything concerning his

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1 conversation with Mr. Anderson until after the
2 interview had been conducted.

3 Q Okay.

4 A And then he called me with a summary of
5 the interview.

6 Q All right. As a result of that phone
7 conversation did you, Investigator Collins, and/or
8 Mr. Willie Brown ever go attempt to try to find this
9 weapon?

10 A Yes.

11 Q Okay, tell us about that.

12 A The information that was relayed from the
13 Horry County detective, Detective Frebowitz, is that
14 Mr. Anderson had explained to him that he had thrown
15 it out a few minutes or a few miles -- I cannot
16 remember exactly -- before Trio Mini Mart. So,
17 coming from Seward on to Harrison we did search the
18 ditches as best we could which is a vast amount of
19 wooded area, but we did check in case he just, you
20 know, pulled up in the vehicle and threw it. We
21 even requested the canine unit from Berkeley County
22 Sheriff's Office, and I think four or either five of
23 their officers come and we did a foot search to Trio
24 Mini Mart from Harrison Road.

25 Q Okay. And the location that you all were

SW - P. WRENN - DIRECT

1 searching -- and I'm assuming it's in Berkeley
2 County since you actually in assistance of Berkeley
3 County Sheriff's Office?

4 A No, ma'am.

5 Q. Okay.

6 A. We did not have canine unit to assist. We
7 do not -- at that time did not have a canine unit
8 with Williamsburg County so we requested their
9 assistance to use their canine to help search.

10 Q All right. And so you searched the area
11 near the Trio Mini Mart?

12 A Well, actually it was probably, I would
13 say, two miles, you know, between where Seward and
14 Harrison, the area where the victim reside, victims
15 resided, up to Trio Mini Mart so it was a good bit
16 of area that we attempted to search.

17 Q Okay. And that was without success,
18 correct?

19 A Ma'am?

20 Q That was without success?

21 A No, ma'am.

22 Q Now were you provided a copy of the
23 interview from the Myrtle Beach, or I should say
24 Horry County Police Department?

25 A Yes.

SW - P. WRENN - CROSS

1 Q And ma'am, based upon your investigation
2 and based upon the assistance of the Horry County
3 police officers you later signed arrest warrants
4 against the defendant?

5 A That is correct.

6 Q And the charges that you signed arrest
7 warrants for against Anthony Anderson were what?

8 A Murder and possession of a weapon during a
9 violent crime, the victim being Ms. Rosa Lee McCray;
10 murder and possession of a weapon during a violent
11 crime, victim being Mr. Theward McCray.

12 Q Thank you, ma'am. That's all the
13 questions I have. Please answer any questions that
14 Mr. McKenzie may have for you.

15 **CROSS-EXAMINATION**

16 BY MR. MCKENZIE:

17 Q Ms. Wrenn, do you go by another first
18 name?

19 A It's Pamela Jean Wrenn.

20 Q And I know you as Jean so whenever I heard
21 Pamela I was like, well, maybe I've been calling
22 Jean the wrong name.

23 A I answer to either one of them.

24 Q Either one of them, okay. And you're
25 recently married?

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1 A Three years.

2 Q Okay, great. Okay. You were involved in
3 this investigation?

4 A That's correct.

5 Q Right. And the next day I think the
6 Williamsburg County Sheriff's Department attempted
7 to question Mr. Anderson; is that correct?

8 A That's correct.

9 Q And there's a form here, and do you
10 recognize that form?

11 A Yes, I do.

12 Q And is that a form that you guys use in
13 your office?

14 A Yes, it is.

15 Q And on that form it says Mr. Anderson
16 invoked his rights?

17 A That's correct.

18 Q Okay. Do you know whether or not Mr.
19 Anderson had been on his medicine overnight at that
20 time?

21 A I had no reason to ask that, no, sir.

22 Q You don't know?

23 A Not at that point. Not at the point
24 that -- and I'll have to say it began, the Miranda
25 was read to him at 12:52.

SW - P. WRENN - CROSS

1 Q. Right.

2 A. At 12:54 he invoked his rights so I had no
3 time to ask him anything.

4 Q Right. You didn't ask him any questions?

5 A No.

6 Q This was during the daytime the next day.
7 This was afternoon?

8 A It was 12:54 p.m.

9 Q P.m. so, okay, it will be afternoon. So
10 you know what, whether or not Detective Frebowitz
11 sent his medication along with him to the detention
12 center?

13 A Now that I do not know.

14 Q Okay. But the day before or the night
15 that he gave the interview to Detective Frebowitz
16 you've heard that testimony that he did not invoke
17 his right, but the next day he was able to invoke
18 his rights?

19 A That's correct.

20 Q Okay. So you guys went looking for the
21 shotgun, right?

22 A That's correct.

23 Q Based on the statement that Mr. Anderson
24 gave the night before that he threw the shotgun out
25 the window on, is it Seward?

SW - P. WRENN - CROSS

1 A No, he did not say a specific road. He
2 just said either a couple of miles or a couple of
3 minutes. I cannot remember whether it was miles or
4 minutes before Trio Mini Mart.

5 Q Well, Trio Mini Mart would be on, would
6 that be on which road? Is that Seaboard Road?

7 A If I'm not mistaken it is, yes, sir.

8 Q Seaboard Road is the road that runs
9 between Lane and Andrews, it's a straight shot.

10 A Yes.

11 Q I mean, it's -- it used to be old railroad
12 tracks. I think they pulled it up and it's nothing
13 about 10, 15-miles of straight shot to ---

14 A Straight shot.

15 Q Okay. So, and as I recall that area it's
16 pretty wooded?

17 A It is.

18 Q Okay. But you're looking for a shotgun,
19 right? Something probably that big or bigger? Is
20 that a fair statement?

21 A That's what I, fair statement, yes.

22 Q And you're in law enforcement, you know
23 what a shotgun looks like?

24 A Sure.

25 Q Okay. You actually got a canine unit from

SW - P. WRENN - CROSS

1 Berkeley County that could -- the dogs could
2 actually smell for gun powder or shotguns?

3 A Now I don't know what type of training
4 that particular dog had; but we told them what we
5 needed, an article search or, you know, which would,
6 -- guns are included in article searches.

7 Q Right.

8 A And they sent the canine unit with that.
9 I think they have six dogs to choose from.

10 Q So how many law enforcement officers did
11 y'all have on the scene looking for this shotgun?

12 A I wouldn't be afraid to say maybe 12 all
13 together. It could be a little more, could be
14 little less; but it was because we broke up two
15 teams and searched the ditches and the dogs would
16 make more, cover more ground than we could.

17 Q So twelve officers and a canine, and based
18 on the statement that Mr. Anderson gave the night
19 before you guys could not find the shotgun?

20 A Not before Trio Mini Mart, no.

21 Q Okay. Has that -- and we've been -- this
22 occurred in 2012, it's now 2000-- I'm sorry 2011.

23 A 11.

24 Q It's now 2014. That's, we're going on
25 three or four years ago and this shotgun has not

SW - P. WRENN - CROSS

1 shown up?

2 A Not to my knowledge.

3 Q Okay. And so when did you guys get out
4 there and start looking for the shotgun?

5 A I think it was the following day.

6 Q Okay. So he threw, if he threw it out
7 that night this is a pretty, this is a pretty
8 desolate area, is it not?

9 A Yes, sir.

10 Q There's not a whole lot of houses. I
11 think you can actually ride down that road, and I've
12 ridden down it and not see another vehicle before
13 you get to Andrews.

14 A It's open area.

15 Q Okay. And so the next day twelve officers
16 and a canine could not find the gun that Anthony
17 Anderson said was used in these murders in the
18 location he said it was?

19 A Well, he never said a particular location.
20 We looked a two mile, approximately two miles to
21 Trio Mini Mart; but there's a whole lot of miles
22 between the victim's residence and Horry County so
23 we did not find it.

24 MR. MCKENZIE: Court's indulgence, Your
25 Honor.

SW - P. WRENN - CROSS

1 BY MR. MCKENZIE:

2 Q Okay. I have your report, your incident
3 report.

4 A Okay.

5 Q Okay. And can you read us where it
6 states, I believe the best -- he stated that he
7 shot -- can you start there? Okay.

8 A Okay, now again, this is from the
9 interview so I'm kind of repeating.

10 Q You're repeating what Frebowitz has told
11 you?

12 A Right.

13 Q Okay.

14 A He stated ---

15 MS. BARR: And judge, we would -- let me
16 just object as lack of foundation. We'd object to
17 the witness just simply reading from a report and
18 there's not a question that's before her.

19 MR. MCKENZIE: Well, the question is, I've
20 asked, you know, where was their search located at
21 and this will answer that question 'cause she keeps,
22 Jean keeps saying I don't know whether it was a few
23 minutes or a few miles. This report states exactly
24 where that search occurred.

25 THE COURT: The objection is sustained as

SW - P. WRENN - CROSS

1 to reading the report. You can pose a question.
2 And she can refer to it to refresh her recollection
3 if she needs to.

4 BY MR. MCKENZIE:

5 Q Is there anything in that report that
6 refreshes your memory?

7 A It does say minutes, three minutes before
8 Trio Mini Mart.

9 Q Okay, thank you. So that report refreshes
10 your memory in regards to it's three minutes before
11 ---

12 A Minutes.

13 Q ---Trio Mini Mart?

14 A Well, it said a few, quote/unquote. A few
15 minutes before Trio Mini Mart.

16 Q Okay. So you had an area, defined area,
17 in which to search?

18 A Well, again, we went from Seward Avenue,
19 the victim's residence.

20 Q Right.

21 A Seward, Harrison, and on to Trio Mini
22 Mart, so it's approximately a two mile range.

23 Q Okay, so about two mile range where you
24 looked with 12 officers and a dog.

25 A Right.

1 Q And you could not find this gun the next
2 day?

3 A Could not find it.

4 MR. MCKENZIE: Your Honor, that's all the
5 questions I have.

6 THE COURT: Any redirect?

7 MS. BARR: No, Your Honor.

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

9 MS. BARR: Your Honor, at this time the
10 State rests.

11 THE COURT: Ladies and gentlemen of the
12 jury, that's the State's case and we'll take another
13 break and discuss some matters with the lawyers.
14 Please do not discuss the case.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 11:42 a.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Yes, sir, Mr. McKenzie.

19 MR. MCKENZIE: Thank you, Your Honor.
20 Your Honor, I would renew my motion regards to
21 Detective Frebowitz and the knowing and
22 voluntariness of the statement that was given to, by
23 my client Anthony Anderson. I would ask the Court
24 to, again, to rule upon that issue and, again,
25 renewing that motion to have that statement thrown

1 out or the jury at this point in time to disregard
2 that statement.

3 Also, just for the record, I advised the
4 Court that I had a document in regards to that you
5 were the attorney whenever you practiced law for one
6 of the decedents, and you had already discussed that
7 issue and said that you didn't feel you like needed
8 to recuse yourself on that issue, but I would also
9 just for the record put that on the record.

10 Also, Your Honor, I intend on calling
11 Lieutenant Collins to the stand and in my case and
12 chief. We might need to proffer his testimony to,
13 and that is in regards to the statement and the
14 motion that I made back on August 29th, 2013, that
15 you have a copy of. It was a motion for compulsory
16 process or attendance of exculpatory witnesses or in
17 the alternative a continuance based upon the status
18 of the State's failure to obtain the witness. I
19 filed that motion, as I said, back in August 29th,
20 2013. A copy was sent to the Solicitor's Office.

21 And the reason that Lieutenant Collins
22 would be important is because he received the fax
23 from the sheriff of Livingston County which is in
24 New York, wherein, an individual by the name of
25 Davin Headman purported to give a confession under

1 Miranda, a signed confession to these murders.

2 THE COURT: Now what is Lieutenant
3 Collins' complete name?

4 MR. MCKENZIE: I don't know.

5 MS. BARR: Debra, Debra Collins.

6 MR. MCKENZIE: Debra? Lieutenant Debra.

7 THE COURT: You keep referring to
8 Lieutenant Collins and saying he.

9 MR. MCKENZIE: I'm sorry, she.

10 THE COURT: Well, she's standing right
11 there so --

12 MR. MCKENZIE: I'm sorry.

13 THE COURT: ---you want to call her as a
14 witness?

15 MR. MCKENZIE: I was going to call her as
16 a witness. When we can proffer that, we can listen,
17 then you can make a ruling in regards to the
18 statement coming in; or we can, you know, or however
19 the Court wants to do it, call her during my case.
20 But if you want to make a ruling on its
21 admissibility prior to outside the presence of the
22 jury I would proffer what her statement is gonna be
23 or we -- she can testify.

24 THE COURT: All right, you can call her if
25 you want to proffer her, whatever.

DW - D. COLLINS - PROFFER

1 MR. MCKENZIE: We would call Lieutenant
2 Collins to the stand. I also provided the solicitor
3 with a memorandum of law. This is your original in
4 regards to the issues that I think will come up in
5 this hearing.

6 WHEREUPON,

7 **DEBRA COLLINS,**
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 MR. MCKENZIE: Your Honor, would you like
11 to make this -- can we make this a court exhibit for
12 purposes of this hearing?

13 THE COURT: Yes, sir, this is your
14 presentation so whatever you want to do.

15 MR. MCKENZIE: Well, I'll present it to
16 the witness first.

17 **P R O F F E R E X A M I N A T I O N**

18 BY MR. MCKENZIE:

19 Q Lieutenant Collins, how are you doing
20 today?

21 A Fine, and you?

22 Q Good. And how long have you worked for
23 the Williamsburg County Sheriff's Department?

24 A Thirty-five years.

25 Q Okay. And Lieutenant Collins, on 12/29/12

DW - D. COLLINS - PROFFER

1 did you receive a fax and a statement, a voluntary
2 statement from, I think the investigator's name is
3 investigator -- I think, I think it looks like
4 Winder.

5 A Can I see what you have in your hand?

6 Q Yes. You can you recognize that fax?

7 A Yes, sir.

8 Q Okay. And what did you do with that
9 statement once you received it?

10 A Passed it to Investigator Wrenn.

11 Q Okay. And so Investigator Wrenn then
12 received the statement. Do you know what she did
13 with it after that?

14 A No, sir.

15 Q Did you do anything to followup this
16 statement?

17 A No, sir.

18 Q You just simply received it?

19 A I received it and I made a -- I think we
20 talked on the phone, me and the investigator from
21 New York.

22 Q Okay. Do you recall that conversation?

23 A Yes, sir.

24 Q Okay, what did you and he talk about?

25 A At the time I asked him was anyone living

DW - D. COLLINS - PROFFER

1 with the person that they arrested which was a Devin
2 Hyman. I think that's how you pronounce his last
3 name. And he was living with his wife at the time,
4 and I asked him would he go talk with her to find
5 out whether he was out of state during the time of
6 the murder that we had in Williamsburg County.

7 Q Right.

8 A And he called me back later and said that
9 he never left New York, he was there, and that he
10 had worked.

11 Q Okay. And so after that you did nothing
12 further in the case, in that matter?

13 A No, sir.

14 Q Didn't follow up, didn't go to New York,
15 didn't talk to Mr. Headman?

16 A No, sir.

17 Q No one from Williamsburg County that
18 you're aware of went to New York?

19 A No, sir.

20 Q Okay.

21 MR. MCKENZIE: That's all the questions I
22 have for this witness, Your Honor.

23 THE COURT: All right, Ms. Barr.

24 **CROSS-EXAMINATION**

25

DW - D. COLLINS - PROFFER

1 BY MS. BARR:

2 Q And Investigator Collins, the statement,
3 the purported statement by Mr. Hyman, do you have
4 that up there with you?

5 A Yes, ma'am.

6 Q All right. In his statement he says that
7 the murders happened in the summer of 2010. You see
8 where he says that, probably the third paragraph
9 down?

10 A Yes.

11 Q Okay. And so if the murders happened in
12 summer of 2011 he would be wrong about that,
13 correct?

14 A Correct.

15 Q And he said that the murders happened, I
16 believe he indicated in July?

17 A He has July.

18 Q Okay. And if this murder occurred in June
19 he'd be wrong about that, correct?

20 A Correct.

21 Q All right. And you had an opportunity to
22 read over this statement?

23 A At the time when I received it. I haven't
24 read it since.

25 Q Okay. In this statement does he say that

DW - D. COLLINS - PROFFER

1 he's actually related to Anthony Anderson?

2 A Can you give me a second to look over it?

3 Q Sure. And again, I meant about the
4 second, third paragraph, when it talks about today.
5 You see on the same line.

6 A You talking about where it says in the
7 summer of '10?

8 Q No, the paragraph before where it says
9 today, December 29th, 2012?

10 A Okay, I got you.

11 Q Okay. Does he say that he's related to
12 the defendant or does he say they're just friends?

13 A They're just friends.

14 Q Okay, all right. And quite candidly, when
15 you read the statement he doesn't make much sense,
16 does he, in terms of the facts of the crime as you
17 know them to be?

18 A No.

19 Q For example, he talks about having a
20 45-caliber pistol?

21 A Yes, ma'am.

22 Q And yet, at the same time he supposedly
23 confesses to shooting the victims with a shotgun
24 that was already at the house?

25 A Yes.

DW - D. COLLINS - PROFFER

1 Q Even though he brought a .45 caliber
2 pistol to the house?

3 A Right.

4 Q Talks about never seeing Ms. Rosa Lee, on
5 page 2, never actually seen her. Correct?

6 A He said he heard of her, but he never saw
7 her.

8 Q And he even says that he thinks he may
9 have accidentally shot her through the wall?

10 A Yes.

11 Q All right. And of course you were at the
12 crime scene. There was no shooting in the wall, was
13 there?

14 A No.

15 Q Okay. So be candid, you viewed this
16 information, information that was provided by his
17 wife, really doesn't make ---

18 A It doesn't make any sense.

19 Q ---any sense. That's all the questions
20 that I have. Thank you, ma'am.

21 **REDIRECT EXAMINATION**

22 BY MR. MCKENZIE:

23 Q Lieutenant Collins, it does make some
24 sense in the fact that he claims to have killed two
25 people that are dead in Williamsburg County?

DW - D. COLLINS - PROFFER

1 A In July.

2 Q I understand that. But have you ever made
3 a mistake in a report?

4 A I didn't prepare this so I don't know.

5 Q I understand. My question is have you
6 ever made a mistake in a report? Have you ever
7 gotten a date wrong?

8 A And I corrected it.

9 Q Okay. And he doesn't say, he doesn't say
10 it was in July. He said I believe it was in July.
11 This occurred in June. Is that correct?

12 A He said in the summer of 2010. I believe
13 it was in July.

14 Q Right.

15 A And this is a typed report, a typed report
16 that was typed by somebody else. This is not
17 handwritten by anybody, I mean, by Mr. Headman.
18 It's not handwritten by him. It's typed.

19 Q It's typed.

20 A. I don't know who typed it.

21 Q So it's -- clearly you've seen errors in
22 reports and incident reports and statements before.
23 This could be a Scribner's error. It could be a
24 year off.

25 A It could be.

DW - D. COLLINS - PROFFER

1 Q And then he says, I believe it was in
2 July. He didn't say it was in July.

3 A He said he believed ---

4 Q Okay.

5 A ---it was in July.

6 Q And it says that he -- and he says he
7 bought a 45, but he didn't use the 45 'cause he used
8 Theward's gun, right, his shotgun. And also he says
9 that he threw the gun. I believe he says on the
10 second page that I threw the gun in some trees
11 behind a dumpster. Right?

12 A What line are you on? I can't see that.

13 Q On the second page about midway through.
14 It said, when I got to the end of the road I gave up
15 and threw the gun in some trees behind a dumpster.

16 A Yeah, but there was no dumpster at the end
17 of the road. That's what it says on this paper
18 but...

19 Q Do you know there was no dumpster end of
20 that road in 2011?

21 A I walked that road when we looked for that
22 gun. I didn't see a dumpster out there.

23 Q Okay. He said that he ran down, he ran --
24 or he said, "Then I turned and shot Anthony, but he
25 had already run out of the house. I ran out of the

DW - D. COLLINS - PROFFER

1 house looking for Anthony. I ran down the road
2 looking for him. When I got to the end of the road
3 I gave up and threw the gun in some trees behind the
4 dumpster." Is that right?

5 A That's what it says.

6 Q Okay. Now did Williamsburg County do
7 anything to verify any of this in this report?

8 A We had walked the following morning from
9 [REDACTED] Seward Avenue to Trio Mini Mart between the
10 resident where the incident took place and Trio Mini
11 Mart, and there was no dumpster at the end of that
12 road or on the side of the road.

13 Q Okay. But my question to you is, you
14 couldn't ---

15 A What are you asking me, after I got
16 received this did we go back out and look?

17 Q Yeah.

18 A There weren't no dumpster out there.

19 Q Did you go back out there and look?

20 A There wasn't none there at the time of the
21 murder, so if you had ---

22 Q But you weren't looking for a dumpster,
23 you were looking for a gun. My question is did you
24 go back out there and when you got this report to
25 see if there was a dumpster out there?

DW - D. COLLINS - PROFFER

1 A We did not go back out and look, but when
2 we looked the first time there was no dumpster out
3 there. That's what I'm telling you.

4 Q But you specifically remember no dumpster
5 being there?

6 A I travel that road all the time. There
7 was no dumpster there.

8 Q Okay. So your testimony back in 2011
9 there was no dumpster. Three years ago you remember
10 specifically, even though you were looking for a gun
11 there's no dumpster?

12 A If there was a dumpster we would have
13 checked the dumpster to see whether the gun was in
14 there. There was no dumpster there.

15 Q Okay. But you have a report, you have a
16 confession from somebody who says, "I killed Theward
17 and I killed Rosa Mae with a shotgun that belonged
18 to Theward"?

19 A That's what this report says.

20 Q And this guy's admitting this?

21 A That's what he said.

22 Q Okay. And you -- and y'all did no
23 followup other than talk to the officer on the phone
24 in New York?

25 A There was no need to go to New York

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1 because he was not in South Carolina.

2 Q I understand that. That's why I filed my
3 motion to have him brought to South Carolina so we
4 could hear that from him.

5 A Well, did you bring him?

6 Q No, ma'am, I didn't. I filed a motion for
7 the State to bring him.

8 MR. MCKENZIE: That's all the questions I
9 have, Your Honor.

10 THE COURT: All right.

11 MS. BARR: I don't have any followup, Your
12 Honor.

13 THE COURT: You may step down.

14 All right. Yes, sir, Mr. McKenzie, what
15 else do you have?

16 MR. MCKENZIE: Your Honor, we call Officer
17 Wrenn back to the stand, let her testify about the
18 investigation she did about this. I think that
19 Officer Collins said, I handed it over to
20 Investigator Wrenn.

21 THE COURT: All right. Investigator
22 Wrenn.

23 **DIRECT EXAMINATION**

24 BY MR. MCKENZIE:

25 Q Officer Wrenn, how are you doing today?

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1 A Good.

2 Q You heard Lieutenant Collins state that
3 she gave you this statement. What did you do in
4 followup to this statement?

5 A Actually, she's my lieutenant.

6 Q Okay.

7 A So if she gave it to me she would give me
8 anything pertaining to that case so it could be
9 included in the case file, and she is what we would
10 refer to as working lieutenant. So having said
11 that, meaning that even though she physically gave
12 it to me put in the case file, she would have
13 followed up on it and she did. She advised me later
14 that, you know, information was received from New
15 York and it was, in my words, frivolous information.

16 Q So you believed that people in New York
17 just admit to crimes in South Carolina and this one
18 didn't really happen?

19 A I've had that done here in Williamsburg
20 County.

21 Q Okay.

22 A Yes, sir.

23 Q And so voluntarily statements and
24 confessions and after someone's been read their
25 Miranda rights and when they say, I killed so and so

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1 and this person, that doesn't mean a whole lot to
2 Williamsburg County?

3 A That's not what I said. I said I've had
4 that done here in Williamsburg County where someone
5 would confess to a murder that he did not commit.

6 Q Okay. Did you go back out to the scene
7 afterwards to determine whether or not any of the
8 information here was correct, to look behind a
9 dumpster if there was a dumpster for the gun?

10 A I knew there was no dumpster because we
11 have the open trash sites or dump sites so there's
12 no dumpster.

13 Q So how close is an open trash site or dump
14 site to this area?

15 A I could not tell you that. I know there's
16 not one, however it was worded, I don't know. But
17 to answer your question I did not go back out and
18 look specifically for a dumpster, I knew that there
19 wasn't one.

20 Q But we really don't know what he's
21 referring to when he says, I threw the gun behind
22 the trees or dumpster 'cause no one has ever talked
23 to him, is that right?

24 A The investigator in New York, but. As far
25 as reading this in detail I have not read it, but it

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1 looked to be there were several discrepancies prior
2 to ever getting to the point concerning a dumpster.

3 Q I understand that. Dates are wrong,
4 things of that nature. But there are also a lot of
5 things in here that are correct, shotgun, Theward
6 was killed.

7 A There was mention about a .45 caliber as
8 well ---

9 Q Right.

10 A That was not ---

11 Q He didn't use that. He didn't use that.
12 There was no ---

13 A But it was mentioned in the report is what
14 I'm saying.

15 Q I understand that. I understand that,
16 Jean. I'm not trying to be argumentative with you
17 but, he says, I didn't use a 45, I used Theward's
18 shotgun and killed him with a shotgun.

19 A Yes, sir.

20 Q He does say that Theward was killed with a
21 shotgun. That's a fact, right?

22 A Uh-huh, yes, sir.

23 Q He says grandma was killed, he thinks
24 that he may have shot her through the wall, but he
25 doesn't remember shooting her but he heard her gasp,

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1 okay. That's what he says in here. So apparently
2 he did shoot her is what he's admitting to.

3 A Okay. You know, in just glancing over
4 this he says, "The next day Joe drove me to the bus
5 station in Kingstree." There's no bus station.

6 Q Well, did you go to Kingstree bus station
7 and say, find out if he had a ticket?

8 A There is no bus station.

9 Q Okay. Did you go any bus station around
10 here to find out if there was a ticket?

11 A It says bus station in Kingstree.

12 Q Okay. But did you go to any locations at
13 the bus services?

14 A No, no, I didn't. Huh-uh.

15 Q Florence, anywhere around here?

16 A No, and I wouldn't, no.

17 Q Okay.

18 MR. MCKENZIE: That's all the questions I
19 have, Your Honor.

20 THE COURT: Anything further, Ms. Barr?

21 MR. MCKENZIE: No, Your Honor.

22 THE COURT: You may step down.

23 What else do you have, Mr. McKenzie?

24 MR. MCKENZIE: Your Honor, you have my
25 memorandum of law that rule 804 governs the

1 exception to the hearsay rule. I think this falls
2 under an exception to the hearsay rule.

3 THE COURT: So you examined these
4 witnesses outside of the presence of the jury and so
5 you offering some testimony, or are you just making
6 an argument?

7 MR. MCKENZIE: Well, Your Honor, I'm
8 proffering this to determine whether or not it's
9 admissible. I can call these witnesses ---

10 THE COURT: Oh, yeah, I wouldn't waste the
11 time if proffering their testimony for me to give an
12 advance ruling or advisory opinion. I thought you
13 had some other purpose in asking these people to
14 testify or call them as a witness.

15 MR. MCKENZIE: Okay. That will be -- and
16 you have my memorandum.

17 THE COURT: All right. Anything else
18 before you proceed with the defense?

19 MR. MCKENZIE: Nothing, Your Honor.

20 THE COURT: You want me to have, discuss
21 with the defendant whether he's gonna testify?

22 MR. MCKENZIE: He is not going to testify,
23 Your Honor.

24 THE COURT: Would you like me to examine
25 him as to whether he ---

1 MR. MCKENZIE: Yeah, that would be ---

2 THE COURT: ---on that issue?

3 MR. MCKENZIE: That would be fine, Your
4 Honor.

5 THE COURT: Mr. Anderson, if you will come
6 stand in front of me right here.

7 If you would swear him please.

8 THE CLERK OF COURT: Place your left hand
9 on the Bible, raise your right hand.

10 WHEREUPON,

11 **ANTHONY ANDERSON,**

12 having been duly sworn by the Clerk, testified as
13 follows:

14 THE COURT: Mr. Anderson, give me your
15 full name.

16 THE WITNESS: Anthony Anderson.

17 THE COURT: Stand right there. And how
18 old are you?

19 THE DEFENDANT: 46.

20 THE COURT: And are you on some kind of
21 medication today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What kind of medicine are you
24 on?

25 THE DEFENDANT: I'm on a lot of medicine.

1 I don't remember.

2 THE COURT: A lot of different medicine?

3 MR. MCKENZIE: Yes, sir.

4 THE COURT: Okay, I'm gonna explain to you
5 some of your rights at this time. If anything that
6 I say to you you do not understand, please let me
7 know and I will explain it in greater detail. You
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We have now
11 reached the stage of the trial where you may present
12 your defense. You have a right to claim the
13 protections given to you by the Fifth Amendment to
14 the Constitution of the United States. This
15 amendment states in part that no person shall be
16 compelled in any criminal case to be a witness
17 against himself. This means that you cannot be
18 required to testify. No one can make you testify.
19 You understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: But you can testify if you
22 want to testify. Do you understand that? Sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: But whether or not you testify
25 is a personal right, and no one can waive your right

1 to testify except you. You understand?

2 THE DEFENDANT: Yeah.

3 THE COURT: Only you can decide whether or
4 not you're gonna testify. You understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now if you decide to testify
7 you may be examined or cross-examined by the
8 solicitor on any relevant issue in this case. In
9 addition to that, if you have any convictions
10 involving dishonesty or false statements or any
11 crimes punishable by more than one year and I
12 determine that the probative value of admitting that
13 testimony, the probative value of admitting that
14 evidence outweighs the prejudicial effect to you,
15 then the solicitor will be able to introduce your
16 record to attack your credibility. You understand?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Now if you decide
19 not to testify, that must be your own decision. If
20 you decide to testify that may be -- it must be your
21 own decision. It must be freely, voluntarily, and
22 intelligently made with the knowledge of protections
23 given to you by the Fifth Amendment and the
24 consequences of your decision to testify. If you
25 decide not to testify I will instruct the jury that

1 they cannot give the fact that you did not testify
2 any consideration whatsoever and that there is to be
3 absolutely no prejudice to you because you did not
4 testify. It's left entirely up to you whether or
5 not you testify. Of course, you can talk to your
6 attorney Mr. McKenzie, Mr. Burgess. You can talk to
7 your family or anyone else you have to talk to, but
8 the final decision about whether or not you testify
9 is your decision. You understand, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you talked with Mr.
12 McKenzie about whether or not you want to testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you made up your mind
15 about whether you want to testify?

16 THE DEFENDANT: I don't want to testify.

17 THE COURT: You don't want to testify?
18 You thought about it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Thought long and hard about
21 it?

22 THE DEFENDANT: It's a lot of things I
23 don't remember.

24 THE COURT: All right. There's a lot of
25 things you don't remember?

1 THE DEFENDANT: Yeah.

2 THE COURT: All right. But you do not
3 wish to testify?

4 THE DEFENDANT: No.

5 THE COURT: All right. Thank you, sir.

6 MR. MCKENZIE: Thank you, Your Honor.

7 THE COURT: Let me ask you one other
8 thing. Do you understand what I've just explained
9 to you?

10 THE DEFENDANT: Not too much.

11 THE COURT: Do you understand whether or
12 not concerning your right to testify or not testify?

13 THE DEFENDANT: Yes.

14 THE COURT: You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand what I've
17 explained to you about your right to testify or not
18 testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 MR. MCKENZIE: Thank you, Your Honor.

24 THE COURT: All right. Mr. McKenzie, as I
25 understand it you've sort of presented two issues to

1 the Court sort of wrapped up into one. You
2 presented one issue during the course of the State's
3 case about a, some efforts you had to get the State
4 to produce a witness for you and you call that a --
5 what was it?

6 MR. MCKENZIE: It was my motion to compel
7 compulsory process.

8 THE COURT: A motion to compel compulsory
9 process. Then you put some witnesses up in which
10 you wanted to know what they did to determine the
11 validity of what the person said in the affidavit
12 that you submitted as part of your motion for
13 compulsory process.

14 MR. MCKENZIE: Right.

15 THE COURT: Then you made an argument that
16 the Court will excluding -- you're assuming or
17 presuming -- that the Court will exclude any effort
18 to introduce any hearsay, and you submitted some
19 cases, State v. Doctor and State v. Steadman, in
20 which the court stated at least in State v. Doctor
21 which I left that the court should have allowed the
22 hearsay. In State v. Doctor there, two juveniles
23 who were codefendants but refused to testify against
24 a third, against a doctor, had given confessions;
25 but they claimed the Fifth and would not testify and

1 the question was whether or not their statement
2 should have been allowed because they were unable
3 to, unavailable because they took the Fifth and they
4 have given a complete confession corroborating
5 evidence that would or might have been exculpated
6 the doctor and the Court should have allowed them to
7 do that so since the witnesses were unavailable.

8 In this case there has been presented no
9 corroborating evidence as to anything other than
10 this defendant, this individual's statement to law
11 enforcement which law enforcement was convinced was
12 untrustworthy, not true, and did not happen. So we
13 have not gotten to the point of your attempt to
14 present this hearsay evidence; hence, I mention some
15 it appears you're seeking an advisory ruling.

16 On the question of your motion about
17 compulsory process that you first mentioned not
18 before the trial, but midway through the State's
19 case, I haven't heard anything further on that issue
20 as to any entitlement to compulsory process. The
21 motion, no motion was made for a continuance to the
22 Court before the trial so I have to take it that
23 your motion must have been for me to stop the trial.
24 I'm not sure what you're seeking.

25 MR. MCKENZIE: Well, Your Honor, what I am

1 seeking is -- and that's one of the reasons I called
2 these witnesses to the stand was did anybody go and
3 talk to Mr. Headman, did anybody bring him down
4 here. I filed this motion a year ago, where is my
5 witness, because we don't have -- I don't have
6 subpoena powers beyond the jurisdiction of this
7 court, and I've asked the State to produce this
8 witness. And I think the State is trying to convict
9 my client of murder on two counts and I think the
10 State's obligation to produce a witness that could
11 exculpate my client 'cause they have produced to me
12 evidence that clearly indicates someone has said, I
13 did these murders. Now questions of what were the
14 timing or dumpsters or whatever, that would be
15 questions of fact for the jury to determine whether
16 or not the believability and credibility of the
17 persons giving the statement. But I don't have
18 access to this witness who lives in New York, and
19 I'm asking the State to provide me with that. If
20 they're gonna put my client on trial for murder,
21 then I think they should produce this witness which
22 they gave me the statement that they obviously
23 believe was exculpatory or they would not have
24 produced it to me under Brady.

25 THE COURT: So in effect, you're asking

1 the State to produce evidence of third party guilt
2 which the State is convinced is not evidence of
3 third party guilt.

4 MR. MCKENZIE: Well then, why would they
5 produce it to me in the first place?

6 THE COURT: Well, you have to ask -- you
7 didn't ask them that question. Are you asking me?

8 MR. MCKENZIE: No, sir, I'm just saying
9 that's just a rhetorical question. But they
10 produced it to me because obviously they thought it
11 had some value to me in regards to my defense, and I
12 know that Ms. Barr knowing that she knows rules of
13 ethics issues and the way that she's handled herself
14 in the past, would present anything that would
15 exculpate my client. And, so obviously I have a
16 statement here that I am seeking, if I don't have
17 Mr. Headman here I can't adequately defend my
18 client.

19 THE COURT: All right.

20 MR. MCKENZIE: And that's why I made this
21 motion for continuance ---

22 THE COURT: What else have you done other
23 than asking the State to bring him to you? What
24 efforts have you done to get him here?

25 MR. MCKENZIE: I have no way, I have no

1 contact with Mr. Headman. I don't know who Mr.
2 Headman is. All I know is what the State provided
3 to me, and I do not have subpoena powers beyond the
4 orders of this state. That's why I made this motion
5 and filed it with the court, served a copy on the
6 Solicitor's Office in August of 2013.

7 THE COURT: And did you ever request a
8 hearing on the motion that you filed, or was it a
9 motion or a request to the State, to the solicitor?

10 MR. MCKENZIE: My motion, it says that
11 this -- I'm filing for compulsory process by the
12 State of South Carolina for attendance at trial on
13 this matter of Devin A. Headman.

14 THE COURT: It's captioned a motion for
15 compulsory process?

16 MR. MCKENZIE: Yes, sir, this is my
17 motion.

18 THE COURT: And you filed it with the
19 court?

20 MR. MCKENZIE: I did.

21 THE COURT: When was that?

22 MR. MCKENZIE: In August of 2013.

23 THE COURT: And did you ever request a
24 hearing on the motion?

25 MR. MCKENZIE: I have not requested a

1 hearing on the motion, but I brought this up
2 whenever the case was tried. I was notified last
3 week the case was going to be tried.

4 THE COURT: As I stated, it was brought up
5 during midway during the State's case.

6 MR. MCKENZIE: That's right, Your Honor,
7 'cause I don't know whether they have him here or
8 not.

9 THE COURT: Okay.

10 MR. MCKENZIE: I mean, I don't have any
11 way of knowing that. I mean, it's, you know, Your
12 Honor, the State's put my client on trial for murder
13 and I asked the State to produce a witness, and he's
14 not here. And so I don't know how -- it's a
15 potential witness that could exonerate my client.

16 THE COURT: All right.

17 MR. MCKENZIE: And I think that's what
18 compulsory clause of the Sixth Amendment says that
19 if you're gonna put somebody in jail, life, liberty,
20 whatever, you're gonna take from them, then the
21 State has the, then I can request, or the State has
22 to produce pursuant to compulsory process clause
23 witnesses that can exculpate my client.

24 THE COURT: And you believe that sending a
25 copy of it to the Solicitor is adequate and not

1 bring it to the attention of the court?

2 MR. MCKENZIE: I filed it with the Clerk's
3 Office, Your Honor, and when I brought this issue up
4 yesterday -- when I brought this up yesterday, Your
5 Honor said you didn't even have a copy of the file,
6 of the Clerk's file.

7 THE COURT: I still don't.

8 MR. MCKENZIE: Okay. And so I'm not sure
9 how else I can bring it to the attention of the
10 Court.

11 THE COURT: By speaking. You brought
12 anything in evidence, you brought it up in the
13 middle of the trial.

14 MR. MCKENZIE: And I did, Your Honor,
15 whenever I realized you didn't know anything about
16 it. I assumed that you did know something about it
17 because I assumed you had the file.

18 THE COURT: I see, that's your assumption.
19 All right, Ms. Barr.

20 MS. BARR: A couple of things, Your Honor,
21 in response. Mr. McKenzie mentioned that he does
22 not have subpoena powers outside the state of South
23 Carolina and, Judge, candidly, neither do I. We've
24 had incidences where, you know, in a recent case a
25 few years back where we had a witness in

1 Williamsburg County, South Carolina, who was a
2 witness to a homicide that was committed in the
3 State of New York. I can't remember her first name,
4 the last name was Canty. And the state of New York
5 obtained a material witness warrant and actually
6 asked me to stand in their stead at a hearing to
7 obtain the material witness warrant. The circuit
8 court in Williamsburg County based upon an order
9 signed by the presiding judge in the state of New
10 York issued a material witness warrant for that
11 individual and she was later, took the bus up to New
12 York at the, on New York's dime, and then testified
13 in the case. We've had opportunities as well to
14 obtain or procure the attendance of a witness in
15 another state by that same means and that's in aid
16 by obtaining material witness warrant by obtaining a
17 writ of habeas corpus. And so, you know, candidly,
18 I don't have any more power in that instance than
19 defense counsel does.

20 Judge, and moreover, when you look at the
21 statement itself, Your Honor, I think that under the
22 rules I'm required to turn over that statement to
23 defense counsel because it could conceivably be
24 exculpatory and certainly it would be viewed be
25 exculpatory just reading it on its face. But my

1 obligation I would respectfully submit is there,
2 we're not required to get a witness for the defense;
3 and so we would certainly deny that it was our
4 obligation to get that individual here. And if
5 there were efforts above and beyond the motion for
6 compulsory process I'm not aware of that, but any
7 other effort beyond that filing that perhaps the
8 Court can consider that as part of the notion that
9 the Defense tried to procure that witness'
10 testimony.

11 But Judge, more importantly, when you have
12 evidence of third party guilt or evidence of
13 anybody's guilt, it has to be more than just simply
14 a statement. There has to be some corroboration of
15 that statement in order for it to be considered by a
16 jury; and Judge, there's no corroboration of this
17 individual's statement at all. The statement
18 references somebody by the name of Joe who
19 purportedly helped or purportedly purchased a gun
20 for this man Mr. Headman. There is no affidavit
21 from this Joe person. The facts of the crime, not
22 just, you know, just the date, but the facts of how
23 the killing took place are in a lot of respects
24 completely inconsistent with what actually happened
25 in this case and so ---

1 THE COURT: You said an affidavit. You
2 said, what did you say about an affidavit?

3 MS. BARR: There's no corroborating
4 affidavit from the fellow by the name of Joe. Mr.
5 Headman mentions in his affidavit that some guy
6 named Joe actually bought the 45 caliber pistol for
7 him and then took him to the victim's home and then
8 later took him back to the bus station; but there's
9 no affidavit or anything that the Court can rely on
10 or the State can rely on or anybody can rely on to
11 corroborate the allegations that are raised in this
12 affidavit. And Judge, just as the defendant is
13 entitled to a fair trial, the State is entitled to a
14 fair trial, and to allow this statement to come in
15 with the State having no opportunity to
16 cross-examine the person who authored that
17 statement -- first of all, there's no foundation for
18 it. I don't know how we would get it in if there's
19 no foundation as to when it was given, who gave it,
20 what witness would it have come in through. So I
21 don't believe the defendant can, one, lay a
22 foundation to get it in and that's assuming all
23 these other things were not problematic in terms of
24 corroboration and in terms of effort to obtain the
25 witnesses' attendance at trial; but I don't know how

1 you get it in if there's no foundation. And
2 secondly, I'm not sure that it would come in in as
3 much as there's no corroboration for it. But Judge,
4 you know, again, that would, to allow that piece of
5 evidence if that's what you want to call it, into
6 the trial of this case would be in my view as unfair
7 as it would be if I were to get a statement from
8 some out of court declarant who says the defendant
9 planned this all along and offered to pay off the
10 witnesses and all kind of stuff within the statement
11 and attempt to offer it by simply saying that person
12 is unavailable. The defendant would not have an
13 opportunity, which he's entitled to, to
14 cross-examine that piece of evidence to test its
15 credibility before the jury; and so if it would be
16 unfair for the State to do it, I believe that it
17 would be equally unfair for the Defense to do it.
18 And Your Honor, I would strenuously object to the
19 admissibility of that affidavit or that statement.
20 I think it falls outside the realm of ---

21 THE COURT: You're -- affidavit or that
22 statement? I haven't seen an affidavit. I've heard
23 some words thrown around. I haven't -- no one has
24 shown me an affidavit. I see something captioned
25 voluntary statement.

1 MS. BARR: And Judge, I think that Your
2 Honor is absolutely right. I think I looked down, I
3 saw signed witness, and I presumed that was from a
4 notary. It just says sign of witness. It's not a
5 notary. It's classified as an affidavit would be an
6 error. It's a statement of a witness by reportedly
7 law enforcement officer. You are correct; it's not
8 an affidavit.

9 THE COURT: All right. Anything else on
10 this issue?

11 MS. BARR: Also, Judge, we noticed this
12 case for trial in March so I just want to make sure
13 that was part of the record as well.

14 THE COURT: And with regard to
15 Mr. McKenzie sending you this motion some years ago,
16 a couple of years ago, whenever the state it was,
17 and no one requesting a hearing or no one bringing
18 it to the attention of any presiding judge to my
19 knowledge and seeking a ruling from the Court or any
20 assistance from the Court with regard to the motion
21 except during the middle of this trial, what's the
22 State's position?

23 MS. BARR: Your Honor, candidly, I think
24 when this came in it came in not necessarily
25 addressed to me, but to the Clerk of Court and I was

1 cc'd on it. And candidly, it came in to the office.
2 It was then placed in the file and so I did not even
3 realize it had come in until we started organizing
4 the file; but certainly, I, my position would be
5 that it would be incumbent upon the movant
6 prosecuting the motion that had been filed and that
7 would be pending with the court. And Judge, I
8 don't, of course I don't know how the Court would
9 rule on that motion; but candidly, the process
10 that's available to the State to get a out-of-state
11 witness here would be the same process that would be
12 available to the opposing side.

13 THE COURT: All right. Anything else on
14 this issue?

15 MR. MCKENZIE: Yes, Your Honor. I think
16 in State versus Steadman, I think you have a copy of
17 my memorandum, and it says that ---

18 THE COURT: A memorandum is one thing, but
19 often I find memorandums, they misrepresent what's
20 contained in cases. I've looked at State v. Doctor.
21 I haven't seen State v. Steadman so if you have a
22 case that would be better than the reference to a
23 memorandum. But you can rely on whatever you want,
24 I'm just telling you what's, what impresses me is
25 not so much what someone puts in memorandum; but you

1 can reiterate it but, what a case might say. Now
2 State v. Doctor, for example, doesn't support your
3 position. State v. Steadman might. I'll take a
4 look at it while you're talking but.

5 MR. MCKENZIE: Well, State v. Steadman is
6 a 1950 case. It says a witness whose absent from
7 jurisdiction and could not be found held would be
8 unavailable. That's...

9 THE COURT: All right.

10 MR. MCKENZIE: So if he's unavailable,
11 then he's unavailable witness and the statement
12 comes in under the hearsay exception under 803.

13 THE COURT: All right.

14 MS. BARR: And Judge, if I may, as relates
15 to the motion it indicates in the motion that comes
16 now the defendant filing this motion for compulsory
17 process by the State of South Carolina for
18 attendance at the trial on this matter, it also
19 requests that in the alternative that a continuance
20 be granted. And again, you know, I accept
21 responsibility for not recognizing it that when it
22 came in earlier, but it looks like that it was filed
23 at a time where we were gonna call the case last
24 year; and based upon the motion I would assume that
25 Mr. McKenzie was asking for a continuance when the

1 case was scheduled last year based on the fact that
2 that particular individual Mr. Headman was not,
3 could not be located.

4 Judge, I will say that Mrs. Eva Evans has
5 indicated that that's her nephew. That's her
6 brother Harris McCray's child, and so this is not
7 some witness who, you know, doesn't have a
8 connection to the family. Mrs. Evans has
9 communicated with me that the witness knows the
10 victim's home 'cause he's been there many times
11 before. And so the fact that he says he's a friend
12 of Anthony Anderson is when he is in reality a first
13 cousin, makes the contents of the statement even
14 more suspect when looking in that time frame. But I
15 say that only to say that in this particular case
16 because he's a family member of the defendant,
17 certainly the defendant, I think, would have more
18 access to him than if he were just a stranger by
19 virtue of the fact that they're first cousins.

20 THE COURT: All right, anything else?

21 MR. MCKENZIE: That would be it, Your
22 Honor.

23 THE COURT: Well, the first thing I see in
24 State v. Steadman the Court notes a ruling on motion
25 for continuance will not be stirred absent abuse of

1 discretion, denial motion for continuance, not
2 prejudicial. Let's see. Headnotes from cases are
3 just, can be very misleading, especially to me.
4 They indicted out of Steadman in 1947 in Richland
5 County violating some laws involving administering
6 medication on a child caused them to have premature
7 labor or miscarriage or abortion. She was found
8 guilty for producing abortion, sent to prison. And
9 she claimed there was error because the judge
10 refused to grant her motion for a condition, on the
11 ground her physical condition was such that she
12 couldn't safely go to trial because she had
13 arthritis, a fever, and nervous condition. The
14 judge appointed four doctors to examine her and
15 explain what her condition was and so and all and
16 found her guilty and she appeals. And her
17 conviction was affirmed. We get nothing out of that
18 case that's relevant to this case.

19 MR. MCKENZIE: Which case was that, Your
20 Honor?

21 THE COURT: Steadman where they, she said
22 she had arthritis and other problems and wanted a
23 continuance and the judge denied it. Section
24 19-9-70, request by this state for witness from
25 reciprocating state if any person in any state which

1 is — the South Carolina code? If a person in any
2 state which by its laws made provision for
3 commanding persons within its borders to attend and
4 testify in criminal prosecutions, grand jury
5 investigations, commence or about to commence in
6 this state is a material witness in a prosecution
7 depending — pending in a court of record and grand
8 jury investigation or is about to commence, a judge
9 of such court may issue a certificate under the seal
10 of the court stating these facts and specify the
11 number of days the witness will be required. Such
12 certificate may include a recommendation that the
13 witness be taken into immediate custody and delivery
14 to an officer of this state to insure attendance in
15 this state. The certificate shall be presented to a
16 judge of a court of record in the county in which
17 the witness is found. So the compulsory process
18 that exists in this state would appear to be some
19 effort under rule 19-9-70 to seek to have a witness
20 after establishing materiality of why you need the
21 witness to have the court address the issue.
22 This — none of which was done in this case. The
23 Defense did not seek a continuance, did not seek any
24 assistance from the Court with regard to producing
25 this witness. The burden is not on the State to

1 produce a witness for the Defense. The Defense has
2 equal access to the Court in seeking relief as far
3 as enforcement of the subpoena if it's, if need be.
4 I do not think the State in this instance failed to
5 comply with its responsibility in regard to this
6 defendant.

7 Certainly the Court does not make a
8 practice of reviewing all criminal files. If a file
9 is present the Court reviews the file. The Court
10 typically looks for the parties to grant to the
11 Court any matters that need to be addressed by the
12 Court and not the Court sua sponte searching files
13 and picking up matters that need to be heard or need
14 to be addressed. It's incumbent upon the parties to
15 bring these matters to the Court's attention.

16 So with regard to the motion to compel the
17 attendance of the witness that was introduced,
18 brought to the Court's attention yesterday, not to
19 seek the Court to have the witness produced but to
20 allow the introduction of a voluntary statement that
21 was given to law enforcement in the state of New
22 York. It was not timely presented yesterday in that
23 it was presented in the middle of testimony by a
24 witness as a means of allowing hearsay or
25 introducing a, introducing the defense during the

1 course of the State's case as I saw, recall being
2 attempted. We're now preparing to move forward in
3 Defense's case. The Defense has the right to
4 present whatever defense that might be appropriate,
5 and I'll rule on matters regarding introduction of
6 evidence as a proffer. The Court will not give any
7 advice as to means of preventing any evidence by any
8 party. Anything else?

9 MS. BARR: Not at the moment.

10 MR. MCKENZIE: Your Honor, just again for
11 the record, I filed this motion almost a year ago.
12 I brought this to the Court's attention whenever the
13 issue came up.

14 THE COURT: Well, that's not appropriate
15 for the record; the record is clear. And you
16 stated, you made an argument. The Court has ruled
17 on the motion, and I don't know what else needs to
18 be repeated over and over for the record. The
19 record is clear.

20 MR. MCKENZIE: Thank you, Your Honor.

21 THE COURT: Yeah. We'll take five minutes
22 and press on.

23 (WHEREUPON, a recess was taken from the
24 proceedings.)

25 THE COURT: All right, you may bring the

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1 jury.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 12:47 p.m., and the
4 following proceedings commenced in open court.)

5 THE COURT: All right, ladies and
6 gentlemen, you've heard the State's case. It's now
7 the Defense's turn.

8 Mr. McKenzie.

9 MR. MCKENZIE: Thank you, Your Honor.
10 Your Honor, we call Detective Collins to the stand
11 from the Williamsburg County Sheriff's Department.
12 Lieutenant Collins to the stand.

13 THE CLERK OF COURT: Place your left hand
14 on the Bible, raise your right hand.

15 WHEREUPON,

16 **DEBRA COLLINS**

17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. MCKENZIE:

21 Q Lieutenant Collins, how are you doing
22 today?

23 A Fine.

24 Q Can you tell us your job duties at the
25 Williamsburg County Sheriff's Department.

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1 A I'm lieutenant over investigations. I
2 assign cases to the other investigators that need to
3 be followed up.

4 Q And did you have an opportunity to receive
5 a facsimile from Livingston County, New York,
6 Sheriff's Department?

7 A Yes, sir.

8 Q Okay. And can I hand you a copy of that
9 statement?

10 A I have a copy.

11 Q You have a copy? Okay. When did you
12 receive that copy?

13 A December the 29th, 2013.

14 Q Okay. And what did you do with that once
15 it was given to you?

16 A I had a conversation with the investigator
17 from New York that sent the fax to me.

18 Q Okay. And then after that what did you do
19 with it?

20 A I gave it to Investigator Wrenn to put it
21 in the case file.

22 Q Okay. And when she put it in the case
23 file is that something you guys normally do in the
24 normal course and scope of being a Williamsburg
25 County sheriff investigator?

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1 A Any information, additional information
2 that we receive we put in the case file.

3 Q Okay. Is that your normal course of
4 business, how you handle things?

5 A That's what we do when we receive any
6 information ---

7 Q. Any information?

8 A. ---regarding a case.

9 Q Did you take a copy of the statement and
10 give it to the Solicitor's Office?

11 A We give them a complete case file.

12 Q Okay.

13 A Of everything that we have.

14 Q Okay. And is that something you normally
15 do in the course and scope of your business as a
16 sheriff's investigator?

17 A Yes, sir.

18 Q Okay.

19 MR. MCKENZIE: Your Honor, at this time we
20 would move the statement from the Livingston County
21 Sheriff's Department into as Defendant's number 1.

22 THE COURT: Ms. Barr.

23 MS. BARR: Your Honor, we would object
24 based on hearsay and lack of foundation.

25 THE COURT: Objection is sustained.

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1 MR. MCKENZIE: That's all the questions I
2 have for the witness, Your Honor.

3 THE COURT: All right.

4 Ms. Barr.

5 MS. BARR: Thank you, Your Honor. We
6 don't have any questions for Lieutenant Collins.

7 MR. MCKENZIE: Your Honor, we would call
8 Jessica McCray to the stand please.

9 THE CLERK: Place your left hand on the
10 Bible, raise your right hand.

11 WHEREUPON,

12 **JESSICA MCCRAY,**
13 having been duly sworn by the Clerk, testified as
14 follows:

15 **DIRECT EXAMINATION**

16 BY MR. MCKENZIE:

17 Q State your name for the record please.

18 A Jessica McCray.

19 Q And, Jessica?

20 A Yes.

21 Q Jessica, how do you know Anthony Anderson?

22 A He's my brother.

23 Q And is he older or younger than you?

24 A Older.

25 Q He's older than you?

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1 A Yes.

2 Q Do you recall the car accident he was
3 involved in in 1995?

4 A Yes, I do.

5 Q Okay. And do you remember Anthony before
6 the accident?

7 A Yes.

8 Q Okay. And can you tell us, describe how
9 Anthony was prior to his accident in regards to his
10 ability to do things, work, that sort of thing?

11 A Prior to the accident Anthony was more of
12 a father figure to me because he was much older than
13 me. He provided for me. He pretty much, he was my
14 father in my eyesight. And he was, he was the man
15 of the house because my mom, she worked a lot
16 because she had to provide and sustain a household
17 for three kids and she didn't have any help. And
18 Anthony was the only male figure I had in my life.

19 Q There's another talk about an incident
20 where he was actually hit by a car.

21 A Yes.

22 Q Do you remember that incident?

23 A Yes.

24 Q Tell us about that.

25 A When he was hit or when?

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1 Q When he was walking, a pedestrian, he was
2 run over by a car.

3 A I don't remember the details 'cause I was
4 a lot younger.

5 Q Okay. Well, if you don't remember then we
6 won't go there,---

7 A. Yeah---

8 Q. ---but you do remember him being hit by a
9 car?

10 A Yes.

11 Q All right. Now after the 1995 accident do
12 you -- can you tell us what Anthony's demeanor would
13 have been after the accident?

14 A He went from being a father figure to more
15 like the infantile state. Like, he had to re-learn
16 everything. He was more of a child. His mental
17 capacity was greatly diminished.

18 Q Okay. And would you say the role was
19 reversed in your household?

20 A Yes, drastically, drastically.

21 Q Tell us about what you mean by that.

22 A It went from him being like the man of the
23 house and the one that did everything for us to me
24 being his daughter figure, to me being his mother
25 figure to having to help take care of him. And like

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1 I say, he was more of an infant stage. I mean, he
2 didn't, his mental capacity was greatly diminished
3 and his physical state he had to re-learn
4 everything. It was basically like raising a baby.

5 Q Okay. And do you know who Eva Evans is?

6 A That's my aunt.

7 Q Okay. And at some point in time I believe
8 you guys were living in New Jersey?

9 A Yes.

10 Q Okay. And when I say "you guys", Anthony
11 wasn't living there?

12 A No.

13 Q Anthony was living down in South Carolina?

14 A Yes, sir.

15 Q Okay. And was Anthony ever
16 institutionalized?

17 A Multiple times.

18 Q Okay.

19 A Multiple times.

20 Q And who took care of him down in South
21 Carolina when he was institutionalized?

22 A My aunt Eva. Actually, before the
23 accident he stayed with Eva a lot in Hartsville. He
24 was like a second, she was like a second mom to him.
25 So between him, her and my mom, that's who he lived

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1 with, relied on even prior to the accident. Those
2 were his two mother figures. And after the accident
3 it went from him being the man of the house in both
4 households somewhat, to him having both my mom and
5 her having to oversee his wellbeing. And Eva
6 actually, when he at one point he had a breakdown
7 and he thought someone was after him and -- when he
8 came to visit us in Jersey he was there for a couple
9 of weeks. He thought someone was after him up
10 there. He actually took my mom's car and
11 disappeared. He ran away from New Jersey thinking
12 someone was out to get him and he was
13 institutionalized in Florence, and she was the one
14 that took him out of the hospital.

15 Q And you guys were actually in Jersey then
16 and ---

17 A Yes.

18 Q ---she was here in South Carolina?

19 A Yes.

20 Q And did he go to live with her after that?

21 A Yes, he lived with her on and off before
22 the accident and after the accident.

23 Q Okay. Now you currently live in South
24 Carolina?

25 A Yes, I do.

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1 Q Okay. Where do you live?

2 A Conway.

3 Q In Conway?

4 A Yes.

5 Q How long have you lived in Conway?

6 A We moved down here -- well, I moved down
7 here in about 2001.

8 Q 2001. So you've been here ---

9 A Yes.

10 Q ---13 years.

11 A Yeah.

12 Q Okay. So you have observed Anthony since
13 2001 pretty much daily?

14 A Yes.

15 Q Okay. And do you speak to Anthony a good
16 bit?

17 A Yes. Yes. Me and him, we're, like I
18 said, initially it was, it went from him being my
19 father figure to me having to somewhat raise him
20 back up. And then when he got back to somewhat
21 adult mentality somewhat, we were like best friends.
22 Like, I was kind of his go-to, his counselor.
23 Whenever he had any issues he called me.

24 Q Okay. And did you get numerous -- and
25 just tell us about, I know you got, did you get

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1 numerous phone calls from Anthony?

2 A Yes.

3 Q Okay. And can you tell us what would be
4 the gist or the conversation that you and Anthony
5 would generally talk about?

6 A I mean, normal conversations would just be
7 him calling in, checking in, just normal
8 conversations; but most of the conversations would
9 be him in a panic state saying that someone was
10 doing something or after him or, it was always
11 something. And typically he would call me and I
12 would calm him down or go pick him up from wherever
13 he, location he ran to, when he thought somebody was
14 after him or something.

15 Q And so you, how many -- do you have any
16 idea, say, from 2001 to when this incident occurred
17 in 2011 how many times you either had to go pick him
18 up, calm him down?

19 A In all honesty I -- it's so many that I
20 wouldn't be able to tell you an approximate number
21 because it's so much.

22 Q Okay. Was it something that happened
23 every week?

24 A If not every week, multiple times per
25 week. It just, it varied. And then the level of

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1 intensity varied also. It would be from someone
2 taking something from him from out of his apartment
3 or taking something out of the refrigerator to
4 something he think someone is watching him or
5 someone following him. It just, it varied.

6 Q So as little as somebody taking an object
7 out of a refrigerator could set him off?

8 A Yes.

9 Q And when he was set off how would he
10 react? What was his, what would — when he called
11 you or you saw him what was, how did he react?

12 A He was in a panic state thinking that
13 everybody is after him and just — it went to the
14 point where his money, his check monthly went
15 directly into the bank. If someone took something
16 out the refrigerator he would go to the bank and
17 draw all his money out thinking that someone was
18 trying to take everything of his or they were after
19 him. He was very paranoid.

20 Q Okay.

21 A Very paranoid.

22 Q And you use that word paranoid. Do you
23 have any other words to describe him?

24 A Without him being offended, psychotic.

25 Q Okay. Did he ever have any hallucinations

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1 that he told you about?

2 A Yes.

3 Q Tell us about those.

4 A He heard voices. At one point he was
5 actually living with me.

6 Q Okay. Do you remember what time frame
7 that was?

8 A Probably about 2004.

9 Q Okay.

10 A 2005.

11 Q Okay. And so you said he was
12 hallucinating?

13 A Yeah.

14 Q Okay. Do you recall what -- you said he
15 heard voices. Do you recall those conversations?

16 A You would have to turn everything off in
17 the house because he thought that there were
18 messages through the TV and just the little
19 slightest commercials he thought were messages or
20 something weird. I never quite understood, and I
21 knew that he was out of mental state that nothing
22 that he said really was actual; but in his mind, it
23 was real so I kind of like played along, calmed him
24 down, and just...

25 Q Did you develop a coping skill with

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1 Anthony?

2 A Yes.

3 Q And tell us about that coping skill, how
4 you got, how did you help him?

5 A I just always let him know that regardless
6 I loved him, his family loved him, and nobody was
7 gonna hurt him.

8 Q Okay. Did you see anything in regards to
9 his memory? Did you, did he have problems with his
10 memory that you recall?

11 A Yes, he did.

12 Q Okay, tell us about that.

13 A It kind of remind me of -- I have seizure
14 disorder so immediately following a seizure, like my
15 short term memory, like, anything that happened like
16 an hour before I have a seizure I don't remember
17 that time frame. He had that on a regular basis for
18 longer term periods.

19 Q Okay.

20 A So, like, we can be having a conversation
21 right now. About 20 minutes later he won't remember
22 anything we just talked about.

23 Q Okay. Did people take advantage of
24 Anthony?

25 A Yes.

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1 Q And do you remember any specific
2 incidences that that occurred?

3 A I won't say any specific instances, but
4 the people and family members that he had around him
5 tended to take advantage of him.

6 Q Okay. You said that there was a
7 difference, that you kind of had a role reversal
8 where you were the child and he was the father
9 figure and then you're the mother figure and he's
10 the child. Can you be more specific about his
11 cognitive ability, the ability to understand and
12 talk and reason things out that you recall?

13 A In all honesty, I have three kids.

14 Q Right.

15 A It got to the point where, like, when he
16 was, felt like I had four kids.

17 Q Okay.

18 A Because it's like his mental capacity was
19 on the same level as my three boys. He, we would
20 have fun, joke around; but as far as like when it
21 came to business and real issues, he wasn't very
22 lucid of what was really going on.

23 Q Right. Now you described earlier that he
24 had to re-learn a lot of things at Healthsouth, and
25 one of the things that he had to learn was to walk?

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1 A Yes.

2 Q He had to learn how to talk again.

3 A Yes.

4 Q He had to learn how to bathe himself?

5 A Yes.

6 Q He had to learn how to eat?

7 A Everything.

8 Q Everything. Learn how to drive again?

9 A Everything.

10 Q Everything. Now there's been a lot made
11 about him driving. His cognitive ability didn't
12 interfere with his ability to drive, did it?

13 A In all actuality he didn't drive too much,
14 like -- more towards when the incident happened he
15 had just really started back driving when he got the
16 little Nissan truck. He always took the bus or
17 walked or he had a bike. He used to ride his bike
18 from Conway or to the beach or sometimes from
19 Andrews to Conway. He was on a bike or taking a
20 bus. He just had started really driving back during
21 that period.

22 Q Okay. And so let's go forward back to
23 June of 2011. You recall that. That's, I guess, is
24 the night that your grandmother died, is that
25 correct, and your uncle died.

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1 A (No verbal response.)

2 Q Is that a yes?

3 A Yes.

4 Q Okay, I'm sorry. Did you have a
5 conversation with Anthony that day?

6 A Yes.

7 Q Okay. Can you tell the ladies and ---

8 A However, prior to that conversation me and
9 my aunt Eva, we were on speaking terms. We was, we
10 were talking because me and my mom, mother/daughter,
11 we have our little issues occasionally. Me and my
12 mom weren't on speaking terms, and my aunt, she was
13 concerned about my brother. She called me showing
14 concern.

15 Q Okay, so your aunt called you that day?

16 A Not that day. It was probably within that
17 time period, that week or the week before, just
18 telling me how his mental state at the time.

19 Q Okay.

20 A Because like I said, she was also like a
21 mother figure to him too, and me and her were real
22 close too. She called me, was showing concern about
23 him.

24 Q Okay.

25 A And I really, I was working, and during

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1 that time I was working night 11 to 7 a.m.

2 Q Tell the ladies and gentlemen of the jury
3 what you do for a living.

4 A I work night at a hotel.

5 Q So that's -- you work the desk. You take
6 in, check in people who are wanting a room?

7 A Yes, I work both the day shift and night
8 shift.

9 Q Okay.

10 A So ---

11 Q And so you had talked to your Aunt Eva
12 earlier that week and she ---

13 A Expressed concern.

14 Q I don't want you to tell us what she said,
15 but she voiced some concern about Anthony?

16 A She was talking to me about what he had
17 expressed to her about the fact nobody loved him and
18 ---

19 MS. BARR: Your Honor, I object to
20 hearsay.

21 MR. MCKENZIE: Okay.

22 BY MR. MCKENZIE:

23 Q You can't tell us what she said. You just
24 had a conversation ---

25 A Well, she expressed concern about his

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1 mental capacity.

2 Q Okay. And so you get this phone call the
3 day that your grandmother and your uncle were
4 killed. Can you tell us ---

5 A Actually, my brother called me the night
6 of or the day of earlier during that day while I was
7 at work. I couldn't really talk very long because I
8 was supposed to be scheduled from 11 to 7, but
9 someone called in so I had to go in 3 to 7 a.m. so I
10 was at work. I had to do a double shift. He called
11 me while I was at work expressing concern about not
12 feeling loved and thinking that someone was trying
13 to kill him and talking about an insurance policy
14 and just, he just was rambling. Like, it was
15 typical, it was typical. So I calmed him down and
16 talked to him like I usually do and didn't think
17 much of it. Like, typically he'll have his moments
18 and then once I talk to him he'll calm down and I'll
19 call him later just to, you know, check on him.

20 Q Okay.

21 A But by the time I got off from work...

22 Q All this had occurred.

23 MR. MCKENZIE: Court's indulgence.

24 BY MR. MCKENZIE:

25 Q After 1995 when Anthony got in the

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1 accident, did he live in Andrews at some point?

2 A Yes.

3 Q Okay. Did he have a mailbox there?

4 A Yes.

5 Q Okay. And ---

6 A He would ride his bike from Conway to
7 Andrews just to check his P.O. box, or sometimes if
8 his bike wasn't in a working condition he would
9 walk.

10 Q Okay. So, like I said, there's been a lot
11 of talk about Anthony driving, but most of the time
12 he either rode a bike ---

13 A During that period he didn't have any
14 transportation. He didn't have a license during
15 that time to my knowledge at least 'cause he always
16 took the bus or rode or walked.

17 Q Right. And at some point in time he was
18 in a group home?

19 A Yes.

20 Q And I think that he was thrown out of that
21 group home?

22 MS. BARR: Objection as to leading, Your
23 Honor.

24 THE COURT: Objection sustained.

25 THE WITNESS: Well, when he was living ---

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1 THE COURT: Objection sustained.

2 BY MR. MCKENZIE:

3 Q Let me ask you a question, okay. Anthony
4 was in a group home.

5 A Yes, sir.

6 Q Do you know why he left that group home?

7 A He thought that the ---

8 MS. BARR: Objection as to hearsay, Your
9 Honor.

10 THE COURT: Objection overruled.

11 THE WITNESS: Well, from conversations he
12 had with me he thought that the people were after
13 him and thought that people were trying to poison
14 him. That was conversations he had with me. So I
15 mean, he just, he was paranoid about everything.
16 Even though, from my knowledge and my talks me and
17 him had over his daily activities 'cause, like I
18 said, me and him, we'd talk regularly. Like, the
19 conversations we had about just the normal
20 activities and what was going on in the group home,
21 I thought it was healthy and beneficial to him; but
22 then he went into one of his psychosis modes as I
23 called it and thought that they were all after him
24 and talking about him and poisoning him which we all
25 knew that wasn't true, but then he got paranoid and

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1 ran away.

2 Q But in his mind when he talked to you this
3 was a very real event for him?

4 A Yes, it was. He would call me from pay
5 phones at times.

6 Q And again, you talked to him two or three
7 times a week?

8 A Yeah, 'cause I program my number into his
9 cell phone and I also -- he always carried around
10 his little bag with his mail because he thought
11 people were trying to take his mail so I wrote my
12 number down on a letter in the little bag so he
13 would always be able to get in contact with me.

14 Q All right. And you talked to him at the
15 day that your grandmother and your uncle were
16 killed. And you can testify ---

17 A He was crying.

18 Q Okay. He was that upset?

19 A He called me crying.

20 Q And he was concerned about what?

21 A That someone was trying to go kill him and
22 that nobody loved him.

23 Q Okay. And do you know who he thought was
24 trying to kill him?

25 A He never said names, but I knew who he was

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1 alluding to because he — those are only two people
2 he were living with, and he just kept saying they're
3 trying to kill me, Jessica, they're trying to kill
4 me, they got a policy on me, they're trying to kill
5 me, she making me pay for her to kill me.

6 MR. MCKENZIE: That's all the questions I
7 have, Your Honor.

8 THE COURT: Ms. Barr.

9 **CROSS-EXAMINATION**

10 BY MS. BARR:

11 Q Ms. McCray, just a few questions to ask
12 you. Have you ever had any medical or psychological
13 training?

14 A Training?

15 Q Yeah.

16 A No.

17 Q Okay. All right, when you use the term
18 psychosis what do you mean when you say psychosis?

19 A Psychosis, that's mentality. In other
20 words, you're not in a normal level of thought.

21 Q Okay. That's what ---

22 A That's just common knowledge.

23 Q So ---

24 A You don't have to have training for that.

25 Q Well, that wasn't my question.

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1 A. Okay, sorry.

2 Q. I was just asking you what you meant when
3 you used the term. Have you prior to your testimony
4 here today and prior to this case being called for
5 trial, have you reviewed any of the evidence in the
6 case?

7 A No.

8 Q Have you seen any of the police reports or
9 anything along those lines?

10 A No.

11 Q Were you here on yesterday when Doctor ---

12 A I was at work yesterday.

13 Q Okay. Let me do this so that we don't
14 kind of talk over each, okay.

15 A Okay, go ahead, I'm sorry.

16 Q Let me ask the question and then I'll let
17 you give the answer, fair enough?

18 A Uh-huh.

19 Q Is that fair enough?

20 A Uh-huh.

21 THE COURT: Answer yes or no, ma'am.

22 THE WITNESS: Yes.

23 BY MS. BARR:

24 Q You were not here on yesterday?

25 A No, I wasn't.

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1 Q Okay. Were you here on Monday?

2 A Yes.

3 Q Okay. Were you here on Monday when Doctor
4 Frierson testified?

5 A Yes, I was.

6 Q So you were here for that part of the
7 case?

8 A Yes.

9 Q Now you indicated that you and your mother
10 were not on speaking terms?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yes.

14 Q Okay.

15 A I'm sorry.

16 Q Oh, no, you're fine. In fact, your mother
17 did not attend funeral services for your
18 grandmother, correct?

19 A No.

20 Q All right. And you, have you talked to
21 your brother at all since the death?

22 A You know, in actuality no, and I feel some
23 level of guilt for that because I haven't been able
24 to really go see him or communicate with him since
25 he got locked up because I don't like seeing him

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1 like that. I'm not used to seeing him like that and
2 I cannot see him like that.

3 Q Okay. So let me ask you this, have you
4 ever written to him since?

5 A No, I haven't.

6 Q Okay. Are you okay? You need a tissue?

7 A No, I'm not.

8 Q You need a moment?

9 A Continue.

10 Q You testified that you lived in New Jersey
11 for a period of time? Are you sure you're okay?

12 A (No verbal response.)

13 Q How long did you live in New Jersey?

14 A From about '96 to 2001.

15 Q From '96 to 2001?

16 A (No verbal response.)

17 Q Is that a yes?

18 A Yes.

19 Q And during that period, I guess that's
20 about five years, your brother was not living there
21 with you at the time?

22 A He came to visit.

23 Q But he wasn't staying there?

24 A No.

25 Q He was living here in Williamsburg County?

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1 A Yes.

2 Q Okay.

3 A And also in Hartsville with my aunt.

4 Q Okay. And I'm sorry, how old are you?

5 A I'm 32.

6 Q Okay. So there's probably, what, about a
7 20 year age difference between you and your brother.
8 Is that about right?

9 A Yeah.

10 Q I'm sorry, how old is your brother?

11 A About 46.

12 Q 46, I'm sorry, so there's a 14 year age
13 difference. You all grow up together?

14 A Yes.

15 Q Okay. Now you indicated that your brother
16 had been hospitalized multiple times.

17 A Yes.

18 Q Where?

19 A At one point in New Jersey. When he came
20 to visit he had a mental breakdown and he ran away.
21 They found him in New York or somewhere, ended up
22 putting him in a mental institution in Trenton. And

23 ---

24 Q. How long ---

25 A. I'm just talking times that I know of.

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1 Q Sure.

2 A And at one point, I think a couple of
3 months later when they did release him, him and my
4 mom went to shop, right, grocery shopping, and then
5 he kept displaying some paranoia and thinking
6 somebody was following him. They were unloading the
7 groceries from the car. He took the car, took the
8 keys, and came down south and that's when he ended
9 up in an institution in Florence ---

10 Q Let me ---

11 A ---when Eva McCray picked him up.

12 Q Hold on, hold on, you're going too fast.
13 The incident where you're talking about in New
14 Jersey where he was supposedly hospitalized, I'm
15 assuming that that would have been prior to 2001?

16 A Yes, 'cause I wasn't living in that area
17 in 2001.

18 Q Correct. Now in terms of him coming down
19 to South Carolina and supposedly being hospitalized
20 here, do you know which hospital he was in here?

21 A I know he was at one point in Columbia and
22 at one point in Florence. What the names are I
23 don't know.

24 Q Of your own personal knowledge do you know
25 how long he stayed there and if he was ever

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1 admitted? Of your own personal knowledge.

2 A From my own personal knowledge ---

3 Q Not based on what somebody told you.

4 A You asked me for my own personal
5 knowledge.

6 Q Yes, based on what you saw.

7 A At one point at least six weeks in
8 Florence, I believe.

9 Q And that was ---

10 A I'm not, I'm not sure. I know the longest
11 stint that he did was about six weeks.

12 Q Okay, and that was when?

13 A Probably about 2003.

14 Q 2003, okay. All right, and you know that
15 because you would go and visit with him there?

16 A No, because I would talk to him on the
17 phone.

18 Q You would talk to him on the phone?

19 A Uh-huh, and he was also at the Lighthouse
20 in Conway at one point too.

21 Q Okay. And what kind of facility is the
22 Lighthouse?

23 A That's a mental institution.

24 Q Okay.

25 A That's like a outpatient. No, not

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1 outpatient, it's a mental home. It's right up the
2 street from the college I was going to.

3 Q Don't they also provide drug counseling,
4 drug addiction services as well?

5 A Yes, but he was in there for mental
6 problems.

7 Q How long did your brother live with you?

8 A Probably about six months.

9 Q And when he moved out he moved where?

10 A To the place on the beach, the apartment
11 he had on the beach.

12 Q He had his own apartment on the beach?

13 A Yeah.

14 Q All right. What year was it that he was
15 living with you?

16 A About 2007.

17 Q Okay.

18 A 'Cause it was shortly after me and my
19 kids' father broke up.

20 Q Okay. And how long did he have the
21 apartment on the beach?

22 A That was actually the apartment designated
23 as my mom's house.

24 Q Okay. How long did he stay there?

25 A I said about six months.

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1 Q About six months?

2 A Uh-huh.

3 Q Okay, I'm sorry, I thought you were saying
4 he was living with you about six months?

5 A Yeah. The house that me and my mom have
6 on the beach -- well, in Conway -- there's a garage
7 unit that I built and turned into a two bedroom
8 apartment. He lived there with me.

9 Q Okay.

10 A Yeah.

11 Q All right. And once he moved out of there
12 where did he then go to?

13 A To the apartment he had on the beach.

14 Q And he stayed there for an additional six
15 months or how long did he live there?

16 A Up until this situation happened.

17 Q All right. So, and this is in 2007 that
18 he ---

19 A He was back and forth.

20 Q Okay.

21 A Back and forth.

22 Q All right. Well, if I represented to you
23 that he moved in with your grandmother in December
24 of 2010, would you agree with me? Does that sound
25 about right?

DW - J. MCCRAY - REDIRECT

1 A I'm really, I'm not aware of the date.
2 I'm not sure because at that time I had another
3 apartment -- I had moved from that residence where I
4 was staying with my mom. I was staying at Crabtree
5 Apartments with my ex-spouse, and I was pregnant at
6 the time with my daughter that passed.

7 Q Okay. The apartment that he stayed on at
8 the beach, it was Myrtle Beach, not in Conway,
9 right?

10 A It was in Myrtle Beach, yes.

11 Q And you indicated that he may have started
12 living there around 2007?

13 A No, I said that he started living with me
14 approximately about the end of 2007 or 8. I knew it
15 was -- I'm not exactly aware or sure of the
16 timeline, but I know it was after me and my kids'
17 father broke up and me and my kids' father broke up
18 and the end of 2007 so I know it was after that
19 period.

20 Q You talked about -- you used very specific
21 buzz words like paranoia and psychotic disorder and
22 stuff like rambling and so forth. When he would
23 have these episodes, of course, he's never thrown
24 one of these episodes and killed anybody as far as
25 you know, right?

DW - J. MCCRAY - REDIRECT

1 A No, he hadn't.

2 Q All right. Thank you, ma'am.

3 THE COURT: Any redirect?

4 MR. MCKENZIE: Just a couple of questions.

5 **REDIRECT EXAMINATION**

6 BY MR. MCKENZIE:

7 Q The apartment that you were talking about
8 at the beach, was that that group home that he went
9 to?

10 A Yes.

11 Q And so that was a group home for?

12 A Mentally.

13 Q Mentally deficient people?

14 A Yes.

15 Q And then eventually he was kicked out of
16 that group home and went to live with your
17 grandmother?

18 MS. BARR: Objection, that's leading, ---

19 THE WITNESS: Yes.

20 MS. BARR: ---Your Honor.

21 THE COURT: Don't lead.

22 THE WITNESS: That's actually what
23 happened.

24 MR. MCKENZIE: Okay.

25 THE COURT: I don't need any ---

DW - J. MCCRAY - REDIRECT

1 BY MR. MCKENZIE:

2 Q Let me ask you again, okay. Tell us the
3 sequence of events -- when you say he went ENT to an
4 apartment at the beach, where did he go?

5 A To the group home that he was kicked out
6 of. And then one of the reasons -- he used to come
7 back to me and I would have to pick him up quite
8 frequently from there because he thought people
9 there were after him also.

10 Q Is that the people you were talking before
11 that were taking things out the refrigerator?

12 A No, that was different.

13 Q That was different?

14 A Yeah, it's...

15 Q So everywhere he's been he's been paranoid
16 about people --

17 A There's been different issues.

18 MS. BARR: Judge, again, we're gonna
19 object based on leading.

20 THE COURT: Objection sustained.

21 BY MR. MCKENZIE:

22 Q So the sequence of events again, when you
23 left from where you lived where'd he go?

24 A He went to the group home.

25 Q Okay. When he left the group home where'd

1 he go?

2 A To my grandma's house.

3 MR. MCKENZIE: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MS. BARR: No, Your Honor.

6 THE COURT: Thank you.

7 Ladies and gentlemen, we're gonna break
8 for lunch now. We're gonna break 'til 2:30. We've
9 ordered lunch for you. You don't have to stay in
10 the jury room.

11 THE WITNESS: You order lunch for me too?

12 THE COURT: I want you to stay right there
13 while I'm talking to the jury.

14 You don't have to stay in the jury room,
15 but don't mill around, have any association, contact
16 with anyone involved in the case. We'll see you
17 back in the jury room at 2:30.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 1:23 p.m., and the following
20 proceedings commenced in open court.)

21 THE COURT: With regard to the issues that
22 we were discussing earlier in regard the, regarding
23 the responsibility of the State to compel the
24 attendance of witnesses, the law as stated in
25 Broughton Meyer versus, or the Broughton Meyer case

1 from 2013 U.S. Supreme Court, criminal defendants
2 have a right to the government's assistance in
3 compelling the attendance of favorable witnesses at
4 trial and the right to put before the jury evidence
5 that might influence the determination of guilt;
6 however, this right for a compulsory attendance does
7 not by its term grant a defendant the right to
8 secure the attendance and testimony of any and all
9 witnesses. In order for there to be a compulsory
10 process violation there must be some plausible
11 showing that the testimony of the absent defendant
12 would be both material and favorable to the
13 defendant. And as I interpret that to be
14 exculpatory in nature, further, the -- with regard
15 to the attempt to offer to hearsay testimony the
16 court in the case of State versus Staten, a 2006
17 case, a Court of Appeals case, that addressed the
18 right of confrontation and the right to offer
19 testimony or hearsay testimony based on the absence
20 of a witness. The Court of Appeals in that case
21 stated that a defendant seeking to offer hearsay
22 statement against interest bears a formidable burden
23 of establishing that corroborating circumstances
24 clearly indicate the trustworthiness of the
25 statement. Exculpatory evidence that is not

1 corroborated and with other evidence that clearly
2 shows its trustworthiness is excluded.

3 In this case I find that the defendant did
4 not show that this attempt to offer hearsay
5 statements, that the statement offered, attempted to
6 be offered is trustworthy; and I find that the,
7 despite the State having some burden to assist where
8 there's otherwise be exculpatory evidence, that this
9 matter was not brought to the Court's attention in a
10 timely fashion. And in addition thereto, the
11 evidence is not exculpatory based on its
12 untrustworthiness as presented in the evidence in
13 this case. And we're gonna break 'till 2:30.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: What you got next,
16 Mr. McKenzie?

17 MR. MCKENZIE: That would be our case,
18 Your Honor.

19 THE COURT: All right. Anything we need
20 to talk about before closing arguments?

21 MR. MCKENZIE: Just renew my motions, Your
22 Honor, that I previously had made, also the form of
23 the verdict I guess.

24 THE COURT: All right.

25 MR. MCKENZIE: And as I read the statute,

1 MR. MCKENZIE: Your Honor, the Defense
2 rests.

3 THE COURT: All right. Ladies and
4 gentlemen, you've heard the Defense's case.

5 Any reply by the State?

6 MS. BARR: No reply by the State, Your
7 Honor.

8 THE COURT: Ladies and gentlemen, you've
9 heard all of the evidence. Now it's time for
10 closing arguments.

11 First Ms. Barr.

12 MS. BARR: Thank you, Your Honor. May it
13 please the Court, Mr. McKenzie.

14 Mr. Foreman, ladies and gentlemen of the
15 jury, good afternoon. I wanna tell you all that I
16 have a practice during the trial of a case to
17 periodically look over at the jurors. We've had
18 some occasions we were trying a case and members of
19 the jury would fall asleep, they get bored, or what
20 have you; and it always concerns me that if we have
21 a juror who does that, I get worried that they're
22 not paying attention. I want to thank you all
23 because every time I looked over here you all were
24 keenly focused on the witnesses. You were keenly
25 focused on evidence as it was being presented and

1 that tells me that you are taking your job very
2 seriously. I thank you for that and I'm sure
3 Mr. McKenzie joins me in thanking you for that
4 because that means that you're doing what your oath
5 required you to do.

6 You've got one more part of your oath that
7 you have to fulfill, and that's deliberate and
8 render a verdict that is, that speaks of justice and
9 speaks of truth. And that's probably the hardest
10 thing you all will have to do in this case and
11 perhaps maybe even the hardest thing you'll have to
12 do in your life time. Let me talk to you a little
13 bit about the law and then I'm gonna sit down and
14 turn this part of the trial over to Mr. McKenzie and
15 he's gonna argue, give his closing argument to you
16 and then I'll have an opportunity to get you one
17 more time before you go back and begin your
18 deliberations.

19 But at this point I'd like to give you a
20 little bit of information as far as a road map to
21 the law in this case. You remember that I told you
22 all on yesterday that the defendant is charged with
23 three counts in the indictment: Two counts of
24 murder, and one count of possession of a firearm
25 during the commission of a violent crime. So when

1 you all begin your deliberation you have to
2 determine whether or not the State has proved by a
3 reasonable doubt whether or not the defendant is
4 guilty of two counts of murder. That's the murder
5 of Rosa Lee McCray and the murder of Theward McCray
6 and whether or not at the time that he committed
7 these murders he was in possession of a firearm.
8 Those are the three questions that you have to
9 answer. But I think candidly based on some of the
10 testimony that came out during the trial, you'll
11 have to answer some other questions before you even
12 get there.

13 The defendant has raised the issue
14 concerning his mental competency at the time, and
15 that's a matter for your consideration. When you
16 all go back in the room for the final time to
17 deliberate the judge is gonna give you, or the
18 bailiffs will give you a verdict form; and in that
19 verdict form it's gonna give you four options with
20 regard to this case. One of the four options is you
21 can find the defendant guilty of every charge in the
22 indictment, guilty of murder, guilty of possession
23 of a weapon during a violent crime. Or, you can
24 find the defendant just straight not guilty, the
25 State didn't meet its burden you can find that

1 there's insufficient evidence to prove that he
2 committed the murder and he possessed a weapon and
3 you can just find him not guilty.

4 There are two other options that are
5 unique to this kind of case. Those two other
6 options that I'm referencing are: You can find him
7 not guilty by reason of insanity or you can find him
8 guilty but mentally ill. Let me tell you about the
9 two distinctions with regard to those last two
10 options. The judge is gonna read the law to you in
11 the case. What I suspect that he'll tell you is
12 that in the prosecution of a case against a
13 defendant for whatever crimes, it's an affirmative
14 defense to those crimes if the defendant at the time
15 that the crime was committed and as a result of a
16 mental disease or defect lacked the capacity to
17 distinguish moral or legal right from moral or legal
18 wrong. If that is, in fact, the case, if the
19 defendant has satisfied you all beyond a
20 preponderance of the evidence that at the time these
21 murders were committed he could not distinguish
22 moral or legal right from moral or legal wrong, then
23 you should find him not guilty by reason of
24 insanity.

25 However, however, if you all determine

1 during your deliberations that the defendant at the
2 time he committed these crimes had the ability and
3 the capacity to distinguish between moral or legal
4 right and moral or legal wrong, but because of some
5 mental disease or some mental defect he was not able
6 to conform his conduct to the requirements of the
7 law, then you can find him guilty but mentally ill.
8 And so when you all are having those discussions one
9 of the things that I want you to do is to recall the
10 testimony of Doctor Frierson in that regard because
11 I think that to some extent his testimony and his
12 findings will offer some guidance on that.

13 And I recognize that it is a huge task in
14 this case. One of the hard working things about
15 this case, it's crimes committed within a family.
16 And you know, obviously we're seated in this
17 courtroom and you see one side of the family over
18 here and one side over there and it's created a
19 divide that's tragic. But one of the things that I
20 would tell you is that the judge will share with you
21 that your verdict cannot be based on any passion,
22 any prejudice, or any sympathy for or against
23 anybody. See, we already ask enough of jurors. We
24 ask you to come in here. We ask you to leave your
25 families and leave your job and come in here and

1 devote your time and attention to a case because we
2 want jurors obviously to openly deliberate and
3 render a verdict that you are satisfied within
4 yourself speaks from the facts of the case and so
5 your verdict has to be based only on the facts. You
6 have no friends to reward and no enemies to punish,
7 and we're not gonna ask you to reward anybody or
8 punish anybody. The State expects, the Defendant
9 expects, only you all to deliberate openly and
10 honestly and fairly.

11 And the interesting thing about the word
12 verdict is it comes from a Latin phrase which means
13 to speak the truth. So Mr. Foreman, when you all
14 come out at the end of this case and you've
15 concluded your deliberations and when you have that
16 verdict form in your hand and when the clerk of
17 court reads that verdict, you all should know in
18 your hearts that that verdict speaks the truth in
19 this case. And at this time I will conclude my
20 preliminary opening statement. I'll turn it over to
21 Mr. McKenzie and I look forward to addressing you
22 all again.

23 MR. MCKENZIE: Thank you, Ms. Barr.

24 MS. BARR: Yes, sir.

25 MR. MCKENZIE: Your Honor.

1 THE COURT: Yes, sir.

2 MR. MCKENZIE: I'm not bringing this up
3 here to throw this at you. It's a big old book and
4 a lot of times we look at these books and we refer
5 to them because in South Carolina the criminal code
6 is based in a book such as this. And sometimes
7 whenever you get your mind wrapped around the law
8 you kind of get lost in it and you don't think about
9 all the other possibilities that are out there. And
10 one of the possibilities that are out there is that
11 there are people who, for whatever reason, and in
12 this case, Mr. Anderson's case, he just could not
13 conform his conduct. He was in a tragic accident in
14 1985 -- I'm sorry, 1995. It left him incapacitated.
15 Y'all have heard the testimony coming from this
16 stand from Doctor Frierson. You've heard the
17 testimony from his sister about how he was a child.
18 He was her father figure, then he flipped over to
19 being a child that she had to raise. Now you have
20 heard that testimony.

21 I am not standing here today to tell you
22 that this whole situation is not a tragedy beyond
23 belief. I cannot imagine how this would tear my
24 family up like it has torn this family apart. This
25 is a tragedy that beyond words. But we -- and

1 remember when I told you in my opening statement to
2 you, that as a society we have decided that we don't
3 treat people with mental defects or mental illnesses
4 the same way we would treat ourselves. And I don't
5 want you to think in that same box of a normal
6 person. I'm not asking you to put yourselves into
7 my client's shoes, but we all know -- and I told you
8 at the beginning of this case, we all bring our
9 every day experiences in this courtroom. And we all
10 know that there are people out there that do not
11 have the ability to distinguish what is right and
12 what is wrong, what is morally right and what is
13 morally wrong. We know that, they live among us,
14 they're there.

15 Fifty years ago we would put people like
16 that in the state hospital. If you've been to Bull
17 Street in Columbia there's a reason why they call it
18 Bull Street. But if you've been to Bull Street in
19 Columbia, there is no state hospital anymore. We
20 now, they now, the people mentally live among us.
21 And from time to time these things happen. And it's
22 a tragedy and I'm not trying to excuse anything
23 here; but you cannot let Anthony Anderson, do not
24 think of Anthony Anderson in the same way you think
25 of anybody else who is charged with a crime,

1 especially the crime of murder.

2 First of all, the State has to prove to
3 you beyond a reasonable doubt. Now what is a
4 reasonable doubt? And the Court's gonna tell you
5 what that is. And Judge Newman has been doing this
6 for about 14 years as a judge, a lot longer than
7 that as a private attorney. I'm not gonna say how
8 much longer, but a lot longer than that. But he
9 will tell you, and whatever he tells you at the end
10 of this trial you listen to him; but I'm gonna tell
11 you what I believe it to be. Beyond a reasonable
12 doubt is if there's a doubt in your mind as to guilt
13 or innocent and that doubt can be the slightest
14 doubt, and if it's reasonable, then you have to
15 acquit my client.

16 And the State has to prove the elements of
17 murder. They have to prove every element of murder,
18 and they have to do that beyond a reasonable doubt,
19 not a reasonable doubt, beyond a reasonable doubt,
20 so that's a very heavy burden. And the only analogy
21 I have for you about that burden is if you think
22 about -- we've all seen the scales of justice,
23 right? Everybody seen those things where the lady,
24 she's supposed to be blind, justice is blind, and
25 the scales tip. Well, beyond a reasonable doubt the

1 scales tip this way. The State has that much proof
2 they have to put on the table, okay.

3 Now you heard Ms. Barr talk about a
4 preponderance of the evidence. Now if you find that
5 Mr. Anderson is not guilty by reason of insanity, my
6 burden, the burden that I have is a preponderance of
7 the evidence. And let's go back to those imaginary
8 scales a second. Preponderance of the evidence is
9 the evidence just tips so ever slightly in favor of
10 the defendant. And there's a reason for that.

11 There's a reason for that because I told you at the
12 beginning we don't put mentally ill people in
13 prison. That's not what society does. Society
14 doesn't put children in prison. And going back to
15 what the doctor said, going back to what Anthony's
16 sister told you, he -- in 1995 he went from being a
17 productive member of society to having to learn how
18 to walk, to talk, to feed himself, to take a shower,
19 to drive an automobile. Yes, he can drive an
20 automobile. And you're gonna hear that a lot from
21 Ms. Barr, but yeah, he can drive automobile because
22 that's a learned action. But what he couldn't do,
23 what he couldn't do, with that frontal lobe injury
24 was think rationally because he could see, he could
25 hear people talking to him. Heard the doctor say,

1 the man, Anthony Anderson could be in this room
2 alone and he could think that this room was full of
3 people talking to him.

4 Now, I tell you, ladies and gentlemen, if
5 that's not insanity I don't know what it is. He
6 also said he had delusions. Again, his word, not
7 mine. He had delusions. He was paranoid. Again,
8 not my words, not my words, from the State's expert.
9 Not my words. All these things you heard from the
10 witness stand so you have a — and I asked the
11 doctor, and I think I wrote these down in my notes.
12 I said, does he have delusions? He said, yes.
13 Hallucinations? Yes. He had all those things. And
14 I also asked him what medications he's on. He said
15 he was on a powerful antipsychotic drug. And I, you
16 remember I asked him about, kept going over
17 schizophrenia with him? The only reason that he's
18 not diagnosed with a paranoid schizophrenic
19 according to the doctor is 'cause he wasn't born
20 with it, but he has all the other symptoms of that.

21 Now we talked about the burden of proof of
22 the State, and there's some things that I want to
23 talk to you about that. One is Detective Frebowitz
24 came in here and he told you that he interviewed my
25 client, and he read my client his Miranda warnings.

1 And we all know what Miranda is. I mean, we all
2 watch Law and Order, you know, you name it, Matlock
3 when it was on. I showed some of my age a little
4 bit. But everybody knows those shows where they
5 read you rights. You got the right to remain
6 silent. Anything you say can and will be used
7 against you in a court of law. You have the right
8 to an attorney. If you cannot afford one, one will
9 be provided for you. Those are your Miranda
10 warnings. Those warnings were given to someone who
11 just went through a psychotic episode.

12 Now you as ladies and gentlemen of the
13 jury, you can give that confession -- if that's what
14 you want to call it -- whatever weight you want to.
15 But that confession is replete with psychosis and
16 hallucinations and delusions. He was thinking that
17 his grandmother and his uncle were trying to kill
18 him, they were going to kill him. He thinks people
19 in airplanes are following him. He rode a bicycle
20 from Conway to Andrews to check his mail. I don't
21 know what else I have to show in order to tip that
22 scales ever so slightly to insanity.

23 The doctor said, he couldn't conform his
24 conduct, he couldn't control himself. He thought
25 he, in his mind -- that's why you've got to separate

1 what a rational person, a normal person, what you
2 would think, versus what Anthony Anderson would
3 think. That's what that doctor was trying to tell
4 you is that in this, my client's mind, my client's
5 mind, he couldn't control his actions that night and
6 that is because of mental defect and insanity.
7 Again, he was psychotic, he was manic, paranoid, he
8 was hallucinating. The doctor said he had
9 significant brain trauma. He had psychotic disorder
10 due to a traumatic brain injury. And the doctor
11 said, no, this wasn't a little bump on the head.
12 This man, he actually saw the scans of the man's
13 brain. There was a significant injury to his brain.
14 And you've heard his sister testify never was the
15 same since, was a child, reverted back to a child.
16 One year at Healthsouth and he had to learn how to
17 do everything over again.

18 The doctor diagnosed him with cognitive
19 disorder, memory loss, depression. Depression would
20 come with something like this. But all of those
21 things affect a mental function that you and I take
22 for granted that we see in a different light than
23 Anthony Anderson. We see what's around us right
24 now. He may see another thousand people in this
25 room. I mean, he's seated over there right now. I

1 don't know what he's thinking. I couldn't tell you
2 what he's thinking. You notice my colleague and I
3 have not talked to him hardly at all during this
4 trial. He sat just like that. That's how he is.
5 Look at his demeanor right now. Demeanor is just
6 some -- the way he reacts. He sat there. Is this,
7 is this a normal person? He's my client and I would
8 do anything in the world for him; but I can tell
9 you, ladies and gentlemen, this man is not
10 competent. He's insane. And on the night that this
11 thing happened -- and you got to understand, the
12 good doctor, Doctor Frierson, didn't examine him
13 till two years later. On the night that this
14 happened his sister testified he was out of control.
15 She had to calm him down over the telephone. She
16 had to calm him down. She talked to him that night
17 before all of this occurred.

18 Again, going back to the State they have,
19 they have a difficult situation in this thing and
20 Ms. Barr has a difficult job to do in this kind of
21 situation, this kind of case. They, first of all,
22 they have to prove to you that my client did it.
23 Well, let's see what evidence they have put before
24 you. They put before you the evidence of a
25 statement of a man who just went through a psychotic

1 episode. And in that statement, again, all he
2 testified about is they were trying to kill me over
3 a 33-dollar a month insurance policy. Now is that
4 rational? Is that somebody who's sane? Is that
5 somebody who is insane? But the State has that
6 burden.

7 What we don't have is a gun. We don't
8 have a gun. Now we know they were killed with a
9 shotgun. We don't know where it is. And let me
10 tell you why that's important. Because the, my
11 client says -- and you remember, you can't think
12 about this in terms of truth or untruth. You got to
13 think about this in terms of sanity versus insanity.
14 At the time he gave this statement what was he
15 thinking. So does the whole statement that he has
16 come in to can you even believe anything that he
17 said that night because they couldn't even find the
18 gun when he said he threw it out a few moments where
19 he went, got to Trio Mini Mart. And I talked about
20 that long road, Seaboard Road or when Jean got on
21 the stand and testified. We talked about that,
22 how -- and they put twelve people out there with a
23 dog that could smell for guns, apparently I didn't
24 know they had a dog that could do that, but
25 apparently there is. They couldn't find this gun.

1 Was my client delusional when he gave this
2 statement? That's why I went through that with
3 Detective Frebowitz. Most of the questions I
4 thought were very leading. And I said, you said so
5 and so and my client just said, yeah, yeah, yeah.

6 The 9-1-1 tape, I listened to the 9-1-1
7 tape and then I heard the story about hip hop music
8 playing so loud from my client's room that the
9 police couldn't even hardly hear themselves when
10 they got there. I didn't hear that on the 9-1-1
11 tape. Now again, you'll have that 9-1-1 tape; you
12 can listen to it. But that's, it just goes to show,
13 you know, I'm trying to tell you basically that the
14 State has the burden, the significant burden, and
15 what I'm hearing is inconsistencies in their case.
16 You know, you got to believe a psychotic man's
17 statement and if he threw the gun out the window on
18 the Seaboard Road, if you believe that, if you
19 believe his statement, then you got to believe
20 there's a gun laying out there somewhere. And a
21 gun, it's a shotgun, not a pistol. It's not a, you
22 know, a pistol is something you — you know, you can
23 throw a pistol, you know, a hundred yards if you
24 really wanted to; but a shotgun, it's gonna be
25 there, you'll be able to find it. It hasn't turned

1 up and it's going on three years. Those are some of
2 the things you need to think about.

3 Again, I went through the, with Doctor
4 Frierson on the stand, about my client's diagnosis,
5 psychotic disorder due to his paranoia, his
6 paranoia. So paranoid that somebody's trying to
7 kill him that he gets in an argument with his uncle
8 about an insurance policy, according to his
9 statement. If you believe that statement that's
10 what happened. He shows up at his mother's house
11 and says call 9-1-1. Now the Solicitor is gonna
12 tell you that's indicative of somebody who knows the
13 difference between right or wrong. Remember when I
14 talked to the doctor on the stand I said, you know,
15 you got, you know, what age do people start knowing
16 the difference between right and wrong. He said
17 about three, three years old. And 'cause I reminded
18 him, I said, you know, I've had, I have four
19 children. I'm blessed, four healthy children. And
20 I know my children, when they do something wrong
21 they'll look at me 'cause they want to see what the
22 punishment is going to be. But a child at three
23 years old can distinguish between right and wrong.
24 That's what the doctor testified to. Do we put
25 three year old children in jail? We don't.

1 My client is insane. I'm sorry, and I
2 hate to say that about him and I hate to tell you
3 that about him, but he is. And everything that we
4 have shown you by that preponderance of the evidence
5 is there. And again, he was at a group home, got
6 kicked out because he couldn't stay there because he
7 thought the people were trying to poison him.
8 People were taking things out of the refrigerator.
9 He went to the bank, took all of his money out
10 because people were trying to take things out the
11 refrigerator for them to eat. Are these the
12 thoughts of rational, sane people? They're not.
13 They're not. And no one is more sorry than I am
14 than this family that are torn apart about this
15 murder. I have a mother over here who wants what's
16 best for her son, but her mother is dead, her
17 brother is dead. Have another sister over here
18 whose mother is dead. And it is a tragedy, but we
19 don't compound tragedies in this word and we don't
20 do it in the United States of America. We are a
21 civilized nation and we understand that mental
22 illness is out there, and we understand that
23 insanity is out there. And I ask that you, when you
24 get through with your deliberations in this case,
25 and you will deliberate. You will go back and you

1 will talk about this case, and Mr. Foreman, again,
2 the judge has already told you your duties, but you
3 will head those deliberations. But all of you will
4 have a say and all of you will have a vote and all
5 of you have to have a vote that has to be unanimous,
6 and your vote is what counts in this case. And I am
7 asking you to show that, to vote that I have
8 provided you enough information about Mr. Anderson's
9 sanity, and lack thereof, by that preponderance of
10 the evidence and that the State has not proven by
11 guilt beyond a reasonable doubt that he is guilty of
12 murder.

13 There is, again, in a civilized society we
14 recognize that there are other alternatives. There
15 are other ways for people like this to get help, and
16 that's what I'm asking you to do. I don't —
17 there's nothing that I can do today or say that's
18 going to bring back Seward McCray or Rosa Mae
19 McCray, nothing that I can do, and it is a tragedy
20 and I am so sorry. I am so sorry. Nothing I can do
21 that can bring those people back. But as a
22 civilized society we have made a decision that
23 civilized people do not incarcerate children, nor do
24 they do people who are insane. And I would ask that
25 you when you go back into the jury room and you

1 deliberate, that you come back and you find my
2 client not guilty by reason of insanity.

3 Now the judge is gonna tell you again and
4 the State's been over that; but again, there's
5 basically four forms that you can come back with.
6 Guilty on all of these counts. Not guilty. If the
7 State doesn't meet their burden you can say he's not
8 guilty. Not guilty by reason of insanity which is
9 what I'm asking you to look at. That's what I'm
10 asking you to consider, is what I believe we've
11 proven to you. And the last one is guilty but
12 mentally ill.

13 I thank you for your time. Ms. Barr was
14 correct, you have been a very attentive jury. You
15 have listened to these facts. It has been three
16 days of you having to live this and live these
17 horrific events that have occurred, but I know that
18 you will do the right thing. I chose you and Ms.
19 Barr chose you because we felt like you could be
20 fair and impartial. We felt like that you could do
21 what you needed to do in order to provide justice in
22 this case. Again, we can't bring back these victims
23 and I hate that I'm having to stand here and talk to
24 you about it. But again, we don't put insane people
25 in jail with sane people. We don't do it; they

1 don't make it.

2 I thank you for your time. I thank you
3 for all that you've done and I thank you for being
4 away from your families and being here. I thank you
5 your volunteering to be -- well, you didn't have
6 much of choice, you've been made to be here. But I
7 appreciate your time today and I appreciate your
8 time this week, and my client does 'cause this is
9 the only day in court and this is the only time I
10 get to talk to you. Ms. Barr will come back and
11 she'll tell you what she thinks. But I tell you,
12 ladies and gentlemen of the jury, I believe that you
13 know that this man on the night in June of 2011
14 these murders occurred he was insane. I think you
15 know that. Thank you.

16 THE COURT: Ms. Barr.

17 Ladies and gentlemen of the jury, let's
18 stand for a moment.

19 (Pause.)

20 THE COURT: All right.

21 MS. BARR: Ladies and gentlemen, I started
22 my first opening talking about the law and I'd like
23 to end this part of my closing statement by bringing
24 us back to where we started, and that's talking
25 about the law. Now when you get your verdict form

1 it's gonna be a little neater than this and it's
2 gonna be typed; but essentially those four options
3 that we talked about earlier, those are gonna be
4 your four options right there. And there's gonna be
5 a little box or little line there where you can
6 check what your appropriate verdict is. Let me
7 humbly submit to you what the evidence has shown in
8 this case so we can kind of eliminate some of your
9 options.

10 Option number two is that you can find the
11 defendant not guilty. You can say the State of
12 South Carolina has not met its burden of proof,
13 there's no evidence that defendant committed these
14 murders and therefore we find him not guilty. To do
15 that, though, would require that you ignore the most
16 important pieces of evidence in this case, that is,
17 the statement of the victim Theward McCray to the
18 9-1-1 dispatcher where he identifies in no uncertain
19 terms who his killer is and who the killer of his
20 mother is, and he identifies his nephew Anthony
21 Anderson as being the person who committed those
22 crimes.

23 To find him not guilty you would have to
24 completely ignore his own statements, not just to
25 Investigator Frebowitz, but his statements to his

1 own mother. You see, what the Defense would have
2 you all believe that the defendant's will was so
3 overcome by this police officer who did not
4 recognize that he was suffering from a mental
5 illness, or didn't care, he took his statement
6 anyway and therefore you should ignore it. Well,
7 when the defendant comes to his mother's house that
8 night and tells her what he tells her, she thinks
9 that he's suffering from some delusion. That's what
10 the Defense was getting up and kept objecting to,
11 but they kept asking him -- Mr. McKenzie kept asking
12 Detective Frebowitz, well, wait a minute now, he
13 didn't have any information that my client was
14 suffering from a delusion; and he said no, I didn't.
15 He said, well, wait a minute, didn't you take a
16 statement from his mother Joani Burroughs. And so
17 he handed him the statement and he reviewed the
18 statement and he said, well, yeah, at the time I
19 didn't remember, yes, yes, I did have some
20 information. That's what he's talking about.

21 Ms. Burroughs, according to the evidence
22 that you heard, calls the police. She thinks her
23 son is having some kind of psychotic episode because
24 he came and told her I just killed my grandmother
25 and my uncle. So she automatically assumes that

1 this must be a delusion, this cannot be true, so I'm
2 gonna call 9-1-1 for help. Well, it turns out it
3 wasn't a delusion, it wasn't some sort of psychotic
4 episode, it was the truth. It was the truth. So
5 all these statements that you heard about him being
6 delusional, that's what they're talking about; but
7 it actually wasn't a delusion, it was the truth. So
8 we would submit to you, ladies and gentlemen, that
9 based on the evidence that is before you you cannot
10 find him not guilty.

11 Let's talk about the second option, not
12 guilty by reason of insanity. Now we talk about an
13 individual being not guilty by reason of insanity.
14 Mr. McKenzie said that the Defense has the burden of
15 proving by a preponderance of the evidence that the
16 defendant at the time the crimes were committed was
17 legally insane. And I talked about that a little
18 bit. You remember when I started off I was telling
19 you all about how in order for you to find an
20 individual not guilty by reason of insanity you have
21 to find that he didn't have the ability to
22 distinguish moral or legal right from moral or legal
23 wrong. And candidly, Mr. McKenzie kind of
24 trivialized it a little bit by saying, well, listen,
25 a three old can distinguish right from wrong. Let

1 me tell you why under the law and if you follow your
2 oath and if you follow the law as the judge will
3 give to you, you will quickly dismiss or you should
4 quickly dismiss that third option of finding him not
5 guilty by reason of insanity. Not being able to
6 distinguish moral or legal right from moral or legal
7 wrong is essentially saying because of my mental
8 problems I don't have the ability to understand that
9 what I'm doing is wrong. That's essentially what
10 that means. And you know, sometimes you may see or
11 hear about cases where somebody commits a mass
12 murder or commits a crime and when the police come
13 out they're still on the scene. They're sitting
14 next to the dead bodies. And you hear about, you
15 know, this history of mental illness and how the
16 person really can't, didn't realize that what the
17 individual was doing was wrong. Those are cases, I
18 would respectfully submit to you, where a person
19 really is classified under the law as being
20 criminally insane. They really just do not know and
21 do not appreciate that what they did was a violation
22 of the law. That's not this defendant. That is not
23 this defendant that's currently seated in this
24 courtroom.

25 Now grant it, it's clear, it's obvious to

1 all of us that at some point 16 years before he
2 committed these murders the defendant was involved
3 in a very significant, if not near fatal accident;
4 and that as a result of that, he suffered brain
5 damage, substantial brain damage, no question, no
6 question at all. When Doctor Frierson testified,
7 you know, we had had his report since August. You
8 remember he testified that he evaluated the
9 defendant for competency in August. We knew what he
10 was gonna say. But folks, just because an
11 individual has a mental illness doesn't give them
12 free pass to commit murder. It simply does not give
13 them a free pass to commit murder.

14 You ask, Ms. Barr, well, how do we know
15 that he wasn't insane. How do we know that he did
16 have the ability to know that his actions were
17 morally or legally wrong. And this is why it's so
18 important that -- well, my mother used to say, you
19 know, it's not always what you say, it's what you
20 do. If I tell somebody I love them, well, words are
21 words; but if I show somebody that I love them,
22 actions speak louder than words. And in this case,
23 the defendant's actions spoke a lot louder than the
24 words that he was giving to a psychiatrist who's
25 gonna evaluate him for criminal responsibility and

1 competency to stand trial. His words on the night
2 that this happened, they spoke volumes, way
3 beyond -- his actions spoke way beyond what his
4 words did. Let's talk about what he did.

5 Anthony Anderson says that he's staying
6 with his uncle and his mother. There's been
7 testimony here that sometimes he and his uncle would
8 get into little arguments. They didn't get along.
9 I mean, that's family. You got two men in the
10 house, probably both of them bullheaded, but I mean,
11 that's the nature of humanity sometimes. But they
12 get into an argument. First he apparently,
13 according to his statement, he gets into an argument
14 with the grandmother about some insurance policies.
15 Well, Seward then, I guess he hears his argument
16 with his mother and he comes to intervene because
17 the defendant said, well, you know, I'm talking to
18 my grandmother and then my uncle comes in, he puts
19 himself in the middle of it. And what's interesting
20 about what he says next is it goes to this whole
21 notion about whether or not he had the capacity to
22 conform his conduct to the requirements of the law.
23 He says, he kept pushing me, just kept pushing me,
24 and he was taking me for something to laugh at. And
25 this is the defendant talking about his uncle. He

1 kept pushing me and he kept taking me for something
2 to laugh at and I didn't like that. What does he
3 do? He goes into his uncle's bedroom, gets a
4 shotgun, looks in the shotgun to see that it's
5 loaded, comes back out, shoots his uncle -- not
6 once, at least twice, possibly three times, possibly
7 four times, but at least twice. His grandmother
8 sees this, bless her heart, and the first thing she
9 does is run into her bedroom. And I just can't
10 imagine what was going through her mind at that
11 point in time, but she runs into her bedroom and she
12 shuts the door. The defendant -- mind you now, has
13 already told his Aunt Eva a couple of weeks ago, I'm
14 gonna kill somebody, I'm not gonna leave any
15 witnesses. So he goes into the bedroom, kicks the
16 door open, and he sees his grandmother standing
17 there. And he's holding a shotgun. And what does
18 he do to his only grandmother who he calls momma?
19 He kills her. And we know, folks, that he shot her
20 once, but he fired that shotgun at least twice in
21 her bedroom. How do we know that? Because one of
22 the waddings from the shot shell was actually inside
23 her body. And where was the other one at? Where
24 was the other one at? Remember? In her headboard.
25 So he fires not once, but twice. And then what does

1 he do after he does that?

2 This is a person who Doctor Frierson --
3 and I respect him, obviously he's imminently
4 qualified. But Doctor Frierson tells us that this
5 man was operating under some irresistible impulse
6 where he couldn't control himself, that he committed
7 these murders because of his mental illness although
8 he knew they were wrong, but he couldn't control
9 himself because his paranoia about insurance coupled
10 with his mental problems created a situation where
11 he couldn't control himself. But folks,
12 respectfully, that flies in the face of logic and it
13 flies in the face of what we know he did after. It
14 flies absolutely in the face of what we know he did
15 after. What does he do after he shoots his
16 grandmother? 'Cause I got a sneaking suspicion that
17 after she's shot, she doesn't take her own shirt and
18 pull it up over her head and put it behind her neck.
19 And I swear on that sneaky suspicion that she
20 doesn't take her underwear and pull it down and then
21 lay down on the bed. I don't think that happened
22 like that.

23 I don't like to use the word crazy. I
24 think it's an insensitive term when you're talking
25 about people who have mental illness. My

1 grandmother used to say things like, baby, sometimes
2 people are crazy like a fox. He was setting up and
3 staging this crime scene. Now is he still in this
4 -- what were the words used? -- an irresistible
5 impulse when he's setting up this crime scene with
6 his grandmother? Is he still in that? Or are those
7 the actions of a person who is calculated, who is
8 cunning, who is manipulative. When he gets into his
9 vehicle and he drives the whatever distance it took
10 him to get to Conway, are those the actions of a
11 person who is still in this irresistible impulse and
12 still in this fog? Are those the actions of a
13 person trying to get away with murder. When he gets
14 rid of the shotgun that committed the murders, is he
15 at that point, is he still acting in that fog and is
16 he still under the influence of this irresistible
17 impulse, or is that the person trying to get away
18 with murder. When he goes down to Conway -- and he
19 doesn't drive his truck up in his mother's driveway,
20 no, no, no, he doesn't do that, huh-uh. He drives
21 it and hides it in a parking lot, parking complex,
22 walks to his momma's house because he doesn't want
23 the police coming out and seeing his truck there,
24 okay, this is the one, this is the truck we're
25 looking for from Williamsburg County. No. Now is

1 that the actions of a person who is in this fog
2 speel and having this irresistible impulse, or is
3 that the actions of a individual who's trying to get
4 away with murder.

5 Now when he goes and gives a statement,
6 the police officer asked him, sir, listen, why don't
7 you come with me, why don't you just kind of take
8 the path that you took to come down here, you said
9 you threw the gun out, let's go and try to find it,
10 you know, because I don't want a kid to get a hold
11 of it and hurt himself or herself, and plus, it's
12 somebody else's property and I want the person to
13 get the property back. He would not go back there
14 to help that officer try to find that gun to save
15 his life. And so when Defense argues to you that we
16 don't have any evidence of the gun, we don't have
17 any evidence of the gun because he got rid of it.
18 And those actions are not the action that a person
19 who is criminally insane would ever take, they
20 wouldn't know to take. They wouldn't have the
21 mental capacity that it would take to connect all
22 those little dots and cover themselves. Does he
23 have a mental illness? Yes, he does, clearly he
24 does. Does that mental illness means that he's not
25 responsible for his action? Clearly it does not.

1 You know, when Ms. Eva testified that he
2 told her that he was tired of Seward and he was
3 going to kill Seward. If he killed Seward, he
4 didn't care whether it was a baby, he was just gonna
5 make sure he didn't leave any witnesses. If they
6 were old enough to talk and they're old enough to be
7 a witness so he's going to kill them too. That's
8 not coincidence that it happened this way, folks.
9 That's not coincidence. That's corroboration of
10 truth. It's not coincidence; it's corroboration.
11 What's coincidence in this case is that the
12 defendant killed his uncle for no other reason than
13 he was mad. The coincidence is that he killed his
14 uncle, but he still had mental illness. That's the
15 coincidence, that he had mental illness, but he
16 committed a regular, old fashioned murder that we
17 prosecute every day in this county in this state.

18 When you look at who he asked about after
19 this happened, you remember the investigator said,
20 well, he asked about his grandmother. Doctor
21 Frierson said, even when I did his evaluation he was
22 talking about his grandmother. Well, guess who he
23 didn't ask about? Never asked about Seward. Never
24 asked about his uncle. And why do you think that
25 is? Because he didn't like his uncle. That's the

1 person he was mad at. You remember when the
2 detective said he kept, the defendant told me he
3 kept, the uncle kept pushing him and kept taking him
4 for something to laugh at and that's what made me
5 mad and that's why I killed him. And y'all, I just
6 can't understand when the doctor says that he killed
7 him because he was paranoid about the insurance
8 policy, well, that's not what the defendant said.
9 That's not the reason why the defendant said he
10 killed him. And for the longest time when — this
11 case has been pending for several years. And when I
12 was getting ready for the case for trial, you know,
13 at one point I almost didn't see the forest for the
14 trees 'cause, you know, you had all of these
15 complicated factors in the case. And it dawned on
16 me last night when I was preparing my closing
17 argument, I said, you know what, this case isn't as
18 hard or as difficult or as complicated as I thought
19 it was initially. It's just a good, old fashioned
20 murder. People kill people because they're jealous.
21 People kill people because they're angry. People
22 kill people because they cheat them out of money.
23 Folks, people kill people every day that's
24 independent and has absolutely nothing to do with
25 some sort of mental illness. The defendant in this

1 case killed his uncle, either it was a good, old
2 fashioned rage or he didn't like him and he killed
3 his grandmother because she was a witness. And
4 that's the sad, tragic, honest truth of the case.

5 When I hear all of these buzz words -- and
6 I asked his sister about this. You know, she would
7 use terms like paranoia and psychosis and she
8 thought I was being smart with her. I wasn't being
9 smart with her. I was just asking, you know, did
10 you have training 'cause you don't hear people using
11 terms like that in their every day conversation. I
12 mean, if you're talking about somebody who does
13 something weird or odd behavior, I normally don't
14 hear they're suffering from psychosis so when she
15 said that, it kind of threw me. And it dawned on me
16 that, wait a minute, okay, she had to have been in
17 this courtroom at some point when the doctor
18 testified. And she admitted that. And what were
19 the words the doctor was using? Paranoia,
20 psychosis. Mr. McKenzie was right, those are not
21 his words. He's absolutely right. Those are not
22 Mr. McKenzie's words. Whose words are they? Ask
23 yourselves the questions when you go back in those
24 courtrooms, in those deliberation rooms. Whose
25 words are those that he's having delusions, that

1 he's paranoid. Well, let's see, who did the doctor
2 speak to when he did his evaluation about the
3 defendant? He read police reports. He read the
4 autopsy reports. He read the defendant's statement.
5 And he actually talked to two people, I mean, just
6 face-to-face talked to two people: The defendant,
7 the defendant's mother. Didn't see the crime scene
8 photos, didn't speak with any of the other family
9 members, just those two people.

10 Now, if anybody in this courtroom believes
11 that the defendant and his mother did not know that
12 he was going to Columbia to meet with his doctors
13 and his doctor will come to court and testify as to
14 whether or not he was in his right mind, I got some
15 land, coastal land in Florida I'd love to sell you
16 when this is over, they knew exactly what. He got
17 those words from the defendant and the defendant's
18 mother. Because, folks, I didn't see one medical
19 record, I did not see one medical record where it
20 says that he thought planes were following him
21 around. I did not see one medical record where he
22 supposedly walked from Andrews to Conway. When I
23 heard that I said, wait a minute now, if he's living
24 in Salters and he goes to Conway because his mom and
25 his sister lived in Conway, what would he be doing

1 in Andrews? I mean, I guess that's neither here nor
2 there, but it did not make sense to me.

3 When I hear words like he has all these
4 delusions and hallucinations, I didn't see one
5 medical record about that. When I hear for the
6 first time in court that he's in inpatient care for
7 six weeks in Florence, I would expect to see a
8 medical record or something to that effect, didn't
9 see it. To me, if the information is junk and
10 subject to be exacerbated because of the source it
11 is coming from, then the opinion related to that
12 information is gonna be suspect and that's only
13 because Mr. Anderson and his mother have every
14 incentive to give whatever information that they
15 think is gonna help him out to the psychiatrist. So
16 I would submit to you, ladies and gentlemen, that
17 you should disregard the notion that he is guilty by
18 reason of insanity because that's not supported by
19 the evidence and that's not supported by the law.

20 You have two options left. That is to
21 either find him guilty or find him guilty by reason
22 of mental illness. Judge Newman is gonna tell you
23 that if you find that at the time of the commission
24 of the act constituting the offense which is the
25 murder, if at the time of the crime you find that

1 the defendant had the ability or the capacity to
2 distinguish right from wrong but because of a mental
3 disease or defect he lacked the sufficient capacity
4 to confirm his conduct to the requirements of the
5 law, you can find him at number four, guilty but
6 mentally ill.

7 Ladies and gentlemen, I would submit to
8 you that the defendant is guilty of the crime for
9 which he's charged. I believe that number one is
10 the appropriate verdict. But I recognize that there
11 is medical evidence that's been presented in the
12 form of the opinion from Doctor Frierson that you
13 could find that he's guilty but mentally ill.

14 Mr. McKenzie is right, we don't treat people with
15 mental illness the same as we do people who don't
16 have mental illness; but we don't allow people with
17 mental illness who are otherwise capable of
18 understanding the difference between right and
19 wrong, we don't give them a free pass.

20 When I came up to you earlier and I told
21 you that your verdict should speak justice in the
22 case, this is the part of the case that I'm talking
23 about. It's difficult not to be sympathetic to some
24 degree just based on the whole tragedy that's
25 happened. But folks, we need you to use your common

1 sense, we need you to use your collective judgment,
2 and we need you to listen and discuss the evidence
3 and law. And I would submit to you if you do that,
4 if you do that, then that will bring you to only one
5 logical conclusion, and that is, that the defendant
6 is guilty as charged. And folks, I ask you to
7 return a verdict that reflects that.

8 Thank you so much again for your time.
9 Thank you again, most importantly, for your
10 attention.

11 THE COURT: Mr. Foreman, members of the
12 jury, let's take a five minute break. Please do not
13 discuss the case. We'll come back in five minutes.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 3:48 p.m.)

16 THE COURT: We'll break for five minutes.

17 (WHEREUPON, a recess was taken from the
18 proceedings.)

19 THE COURT: All right, bring the jury.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 3:57 p.m., and the
22 following proceedings commenced in open court.)

23 THE COURT: Mr. Foreman, and members of
24 the jury, you have heard the testimony, the
25 evidence, and the arguments of the State and the

1 Defendant. I will now explain to you the law that
2 applies to this case. Under the Constitution and
3 laws of South Carolina you are the finders of the
4 facts in this case. I do not have the right to pass
5 upon the facts or even to express any opinion that I
6 might have as to them because this is a matter
7 solely for you, the jury, to determine. As jurors
8 then, it is your duty to determine the effect, the
9 value, the weight, and the truth of the evidence
10 presented during this trial.

11 You are also the judges, the sole judges,
12 of the credibility, that is, the believability of
13 the witnesses who have testified and of the evidence
14 which has been presented during this trial. In
15 passing upon credibility you may take into
16 consideration many things such as the demeanor or
17 manner of testifying, whether the witness had reason
18 to be biased or prejudiced, or whether the testimony
19 of a witness was contradicted on the one hand or
20 supported and corroborated on the other hand. All
21 these things you will consider bearing in mind that
22 you should give the defendant the benefit of any
23 reasonable doubt. It becomes your duty as jurors to
24 analyze and to evaluate the evidence and determine
25 that evidence which convinces you of its truth.

1 The rules of evidence ordinarily do not
2 permit witnesses to testify to opinions or
3 conclusions. An exception to this rule exists for
4 witnesses we call expert witnesses. A witness who
5 by training, education, and experience has become
6 expert in some art, science, or calling, may state
7 an opinion as to relevant and material matter in
8 which the witness claims to be an expert and may
9 also state the reasons for the opinion. You should
10 consider any expert opinion received in evidence in
11 this case and like the other evidence, give it the
12 weight you think it deserves. If you decide that
13 the opinion of an expert witness is not based on
14 sufficient training, education, and experience, or
15 if you conclude that the reasons given in support of
16 the opinion are not sound or that the opinion is
17 outweighed by other evidence, you may disregard the
18 opinion entirely. The testimony of an expert
19 witness is to be given no greater weight than that
20 of other witnesses simply because the witness is an
21 expert. Further, you're not required to accept the
22 opinion of an expert even though it is not
23 contradicted.

24 Now I instruct you and emphasize that the
25 fact that the defendant did not testify is not a