

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
George C. James, Jr., Third Judicial Circuit Judge

Case No.: 2010-GS-43-1239
Appellate Case No.: 2012-212546

The State of South Carolina, ...Respondent,

v.

Christopher Wayne Gainey, ...Appellant. _p

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Index

Transcript	3
------------------	---

Testimony of James M. Compton

James M. Compton – Direct Examination by Mr. Clark	10
--	----

Testimony of Christopher W. Gainey

Christopher W. Gainey – Direct Examination by Mr. Clark.....	14
Christopher W. Gainey – Cross Examination by Mr. Corbett.....	43
Christopher W. Gainey – Redirect Examination by Mr. Clark.....	59

Testimony of Martha T. Rogers

Martha T. Rogers – Direct Examination by Mr. Clark.....	68
Martha T. Rogers – Cross Examination by Mr. Corbett.....	72

Testimony of Kimberly Compton

Kimberly Compton – Direct Examination by Mr. Corbett.....	74
Kimberly Compton – Cross Examination by Mr. Clark.....	98
Kimberly Compton – Redirect Examination by Mr. Corbett.....	102
Kimberly Compton – Re-cross Examination by Mr. Clark.....	102

Testimony of Robert Burnish

Robert Burnish – Direct Examination by Mr. Corbett.....	104
Robert Burnish – Cross Examination by Mr. Clark.....	108

Testimony of Wayne Browder

Wayne Browder – Direct Examination by Mr. Corbett.....	109
Wayne Browder – Cross Examination by Mr. Clark.....	122
Wayne Browder – Redirect Examination by Mr. Corbett.....	130
Wayne Browder – Re-cross Examination by Mr. Clark.....	133

Testimony of Christian Gainey

Christian Gainey – Direct Examination by Mr. Corbett.....	137
Christian Gainey – Cross Examination by Mr. Clark.....	139
Christian Gainey – Redirect Examination by Mr. Corbett.....	140

Testimony of James M. Compton

James M. Compton – Direct Examination by Mr. Corbett.....	143
---	-----

Testimony of Christopher W. Gainey

Christopher W. Gainey – Direct Examination by Mr. Clark.....	151
Christopher W. Gainey – Cross Examination by Mr. Corbett.....	154

Court's Rulings	180
------------------------------	------------

Defendant's Exhibits

Number 1	196
Number 2	198
Number 3	200
Number 4	202
Number 5	204
Number 6	206

State's Exhibits

Number 1	208
Number 2	Insert

Certificate of Appellant	210
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STATE OF SOUTH CAROLINA
VS.
CHRISTOPHER WAYNE GAINES,
DEFENDANT.

PRETRIAL MOTIONS

VOLUME 1 OF 2

held before the Honorable George C. James, Jr.,
Melissa Singletary, Circuit Court Reporter
Transcribed by Susan "Mia" Perron, Circuit Court Reporter
in the Sumter County Courthouse
Sumter, South Carolina
on July 16, 2012

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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
<u>PRETRIAL MOTIONS</u>	
JAMES M. COMPTON	
Direct Examination by Mr. Clark	8
CHRISTOPHER W. GAINES	
Direct Examination by Mr. Clark	12
Cross-Examination by Mr. Corbett	41
Redirect Examination by Mr. Clark	57
CERTIFICATE OF COURT REPORTER	59

INDEX TO EXHIBITS

MARKED/ADMITTED

Defendant's Exhibit Number 1 [Photograph]	25 / 26
Defendant's Exhibit Number 2 [Photograph]	31 / 32
Defendant's Exhibit Number 3 [Photograph]	31 / 32
Defendant's Exhibit Number 4 [Photograph]	31 / 32
Defendant's Exhibit Number 5 [Photograph]	31 / 32
Defendant's Exhibit Number 6 [Photograph]	31 / 32
Defendant's Exhibit Number 7 [X-rays]	38 /

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

PROCEEDINGS

THE COURT: Okay. Let's first of all make a note for the record, if you would -- write on whatever you keep your notes on -- that we've switched court reporters from Ms. Sullivan to Ms. Singletary.

And the jury comes in tomorrow at 11:00.

Do we have any -- we do have some pretrial matters. Mr. Clark, I believe these are mostly all of your motions.

MR. CLARK: Yes, Your Honor.

THE COURT: Okay.

MR. CLARK: Thank you, Your Honor.

The defendant, you know, would move to dismiss this action, the indictment in this case, on the basis of the Protection of a Persons and Property Act. Section 16-11-410, et seq.

And that would be our motion, Your Honor.

THE COURT: All right. And that would --

[Off the record momentarily]

THE COURT: Okay. And the common parlance, now it's called a Duncan hearing, I suppose. The defendant has the burden of proving by the greater weight of the evidence that the statute applies; is that correct?

MR. CLARK: I believe so, Your Honor.

THE COURT: All right. You can call your first

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 witness.

2 MR. CLARK: Thank you, Your Honor.

3 And, Your Honor, our motion goes to Subsection C
4 of 16-11-440. We don't contend that this person -- the
5 victim was an intruder, but we contend that --

6 THE COURT: It's an attack where your client had
7 a legal right --

8 MR. CLARK: Yes.

9 THE COURT: -- to be.

10 MR. CLARK: Yes. Thank you.

11 THE COURT: Okay. You can call your first
12 witness.

13 MR. CLARK: Thank you.

14 Your Honor, I would call James Michael Compton.

15 THE COURT: Come on up, Mr. Compton.

16 [Whereupon, Mr. Compton comes forward]

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

19 State your name, please.

20 MR. COMPTON: James Michael Compton.

21 [Whereupon, Mr. Compton is duly sworn by the
22 clerk of court as follows: do you solemnly swear or
23 affirm that the testimony you give this Court will be
24 the truth, the whole truth, and nothing but the truth,
25 so help you God]

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 THE WITNESS: I do.

2 [Whereupon, Mr. Compton takes the witness stand]

3 THE COURT: Okay. As I mentioned to the lawyers
4 back in my office -- this is mainly for the people who
5 may be interested in the case from the audience -- I
6 will not tolerate any facial grimaces, smiles, no
7 nodding or shaking of the head, no expression of I
8 agree or disagree with what this person or lawyer is
9 saying. And the first person who does that will leave
10 the courtroom. Okay?

11 THE CLERK OF COURT: State your name and spell
12 your last for the record.

13 THE WITNESS: James Michael Compton.
14 C-O-M-P-T-O-N.

15 THE COURT: Okay.

16 MR. CLARK: Thank you, Your Honor.

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James M. Compton - Direct Examination by Mr. Clark

1 JAMES MICHAEL COMPTON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. CLARK:

6 Q. Mr. Compton, how old are you?

7 A. Twenty-eight.

8 Q. And where are you from, sir?

9 A. Sumter, South Carolina.

10 Q. And do you know Chris Gainey?

11 A. Yes, sir. I've known him since third grade.

12 Q. What about Kimberly Compton?

13 A. She's my sister.

14 Q. And is she involved in a relationship with Chris
15 Gainey?

16 A. Yes, sir, she is.

17 Q. What kind of relationship do they have?

18 A. I guess -- I guess you'd call it common-law --
19 common marriage law.

20 MR. CORBETT: I'm sorry. I can't hear you.

21 A. Common-law marriage.

22 THE COURT: Can you speak up for me, please.

23 THE WITNESS: Yes, sir.

24 A. Common-law marriage.

25 Q. [Mr. Clark] Do they have any children?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. Yes, sir.
2 Q. How many?
3 A. Three.
4 Q. And where do they live?
5 A. They live on Peach Orchard Highway.
6 Q. All right. Now, Mr. Compton, do you know the
7 address?
8 A. 3885 Peach Orchard Highway, I think.
9 Q. 3885 Peach Orchard Highway?
10 A. Yes, sir. I think that's --
11 Q. And that's in Sumter?
12 A. Yes, sir.
13 Q. Is that a mobile home park?
14 A. No, sir.
15 Q. It's not?
16 A. No, sir.
17 Q. All right. Were you at that -- at Chris Gainey
18 and Kimberly Compton's residence on July 11, 2010?
19 A. Yes, sir.
20 Q. What were you doing there?
21 A. We were -- we were coming back to the house to
22 get in the house.
23 Q. Okay. Now, where were you coming from?
24 A. We were coming from Scott's Place, I think.
25 MR. CORBETT: I'm sorry. I can't hear you.

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. We were coming from Scott's Place.

2 Q. [Mr. Clark] All right. You said you think?

3 A. Yeah. I think so.

4 Q. Now, your testimony about being there and where
5 you were coming from, is that coming from your own memory,
6 Mr. Compton?

7 A. Yes, sir.

8 Q. All right. Do you remember having an incident
9 or an altercation with Mr. Gainey?

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

11 Q. Don't remember anything about it?

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

13 MR. CLARK: All right. Thank you, Mr. Compton.
14 Those are all the questions I have.

15 THE COURT: Mr. Corbett, any questions?

16 MR. CORBETT: [No response]

17 THE COURT: After the presentation by Mr. Clark
18 you can re-call him, if you would like. But if you
19 have any questions at this time, you can go ahead and
20 state those.

21 MR. CORBETT: That's what I was pondering,
22 Judge.

23 Judge, no questions at this time.

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

25 Thank you, sir.

MIA PERRON, CVR-CM

-10-

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 [Whereupon, Mr. Compton is excused and exits the
2 witness stand]

3 THE COURT: All right. Mr. Clark?

4 MR. CLARK: Thank you, Your Honor. Call Chris
5 Gainey.

6 [Whereupon, Mr. Gainey comes forward]

7 THE CLERK OF COURT: Left hand on the Bible and
8 raise your right hand.

9 State your name, please.

10 MR. GAINNEY: My name is Christopher Wayne
11 Gainey.

12 [Whereupon, Mr. Gainey is duly sworn by the
13 clerk of court as follows: do you solemnly swear or
14 affirm the testimony you give to this Court will be the
15 truth, the whole truth, and nothing but the truth, so
16 help you God]

17 THE WITNESS: Yes, sir, I do.

18 THE COURT: Thank you. Up here, please.

19 [Whereupon, Mr. Gainey takes the witness stand]

20 THE CLERK OF COURT: State your name and spell
21 your last for the record.

22 THE WITNESS: My name is Christopher Wayne
23 Gainey. G-A-I-N-E-Y.

24 - - -

25 - - -

Christopher W. Gainey - Direct Examination by Mr. Clark

1 CHRISTOPHER W. GAINNEY,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT-EXAMINATION

5 BY MR. CLARK:

6 Q. Mr. Gainey, where are you from?

7 A. I was born in Tuomey hospital.

8 Q. Okay. And where do you live now?

9 A. 3885 Peach Orchard Road.

10 Q. And is that in Sumter County?

11 A. Yes, sir.

12 Q. Is that also known as Highway 441?

13 A. Yes, sir.

14 Q. And that's in the Shaw Air Force Base area?

15 A. Yes, sir.

16 Q. Okay. Now, speak up so the court reporter and
17 Judge James can hear you. Okay?

18 A. Okay.

19 Q. All right. Mr. Gainey, how old are you?

20 A. I'm thirty-seven years old.

21 Q. All right. And what's your relationship with
22 Kimberly Compton?

23 A. She's my wife. We've been together for twenty
24 years but we're not technically married, but she's my
25 wife, in my eyes.

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 Q. And is that the lady with the orange sweater on
2 right here?

3 A. Yes, sir.

4 Q. All right. And do y'all have any children, sir?

5 A. Three children. Three girls.

6 Q. And what are their names?

7 A. Christian, Crystal, and Coreen.

8 Q. How are you employed, sir?

9 A. I own a computer shop here in Sumter.

10 Q. What's the name of it?

11 A. Phoenix Computer Company.

12 Q. All right. Do you know James Michael Compton?

13 A. I do.

14 Q. And what is his relationship -- what is your
15 relationship to him? Or is he related to your wife?
16 Explain that.

17 A. He's my wife's little brother and I've known him
18 since he was a little kid.

19 Q. Okay. Now, Mr. Gainey, you have been indicted
20 for attempted murder stemming from an incident that
21 occurred on or about July 11, 2010. Do you remember that
22 incident?

23 A. Yes, sir.

24 Q. First of all, tell the Court where that incident
25 occurred.

1 A. It was at my house and at the back door at the
2 base of the steps.

3 Q. All right. Now, what time of day or night did
4 this incident occur?

5 A. It was late at night. We left Mike -- Scott's
6 Place, like Michael Compton said, and we came home. I
7 don't know exactly what time it was, but it was late at
8 night.

9 Q. All right. And had you seen Michael Compton
10 earlier in the day?

11 A. I didn't see him much, earlier that day. I was
12 at work. He and Kim were out mystery shopping, which is
13 where you buy food and rate it, the service of it, all
14 day. They did that most of the day and I didn't see him
15 until I came home from work and I saw him and her.

16 Q. All right. What time was that?

17 A. About 6:30 or 7:00.

18 Q. All right. And what did you do then?

19 A. Well, we were all just sitting around talking,
20 and stuff like that, and looking for something to do. At
21 some point they suggested drinking at the house and I said
22 that's fine by me.

23 Q. Okay. Now, who all was in that group?

24 A. It was me, Kim, Michael, and Marquis.

25 Q. And is that the gentleman sitting right here on

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 the end of the --

2 A. Yes, sir.

3 Q. -- court pew?

4 And what's his name again?

5 A. His name is Christopher Hunter, but we know him
6 as Marquis. I've known him since he was a little kid,
7 too.

8 Q. All right. So it was the four of y'all at your
9 house?

10 A. Yes, sir.

11 Q. Was there anybody else there with y'all?

12 A. No.

13 Q. The kids weren't there?

14 A. The kids were there.

15 Q. The kids were there?

16 A. The kids were there. They were in their rooms
17 and so forth.

18 Q. All right. So y'all decided that y'all would
19 engage in a little drinking that night?

20 A. They -- we wanted to get drunk. It's not
21 something any of us do all that often, to my knowledge. I
22 know Kim and I don't and I really don't think that's
23 something that Michael does on a regular basis, either.

24 But we were all together. He was down from
25 Florida and, you know, we wanted to drink and have a good

1 time at the house. And so that's what we did.

2 THE COURT: Can we clarify that Michael and
3 James are the same person?

4 THE WITNESS: Yes. James Michael Compton.

5 Q. [Mr. Clark] Okay. And you call him what?

6 A. We call him Michael.

7 That's how they distinguish between him and his
8 dad. His dad is Jim or James and he's Michael.

9 Q. Okay. So I'll try to refer to him as Michael
10 and when you're talking about him, refer to him as
11 Michael. Okay?

12 A. Okay.

13 Q. All right. So what kind of beverage did you
14 have?

15 A. We had different liquors. I can't -- I think --
16 I want to say we had Crown Royal.

17 Michael went to the PX because apparently
18 alcohol is a lot cheaper there. So they came back with
19 some. And I want to say it was like Crown Royal or some
20 kind of dark liquor that we had that we drank together.
21 And Michael had a small bottle of gin that he had in his
22 pocket that he said he had never tried before and wanted
23 to try it so he bought some of that, too.

24 Q. And how long did y'all stay at the house
25 drinking?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. I don't know exactly how long we were there, but
2 we were there long enough to consume all of the alcohol.
3 We drank everything that we had there.

4 Q. Okay. Now, were these big bottles of alcohol,
5 or are we talking about small half pints, or what?

6 A. No, they were -- they were huge ones. The first
7 one was. The one that Michael had in his pocket was a
8 very small one-person size bottle.

9 Q. The other one you think was a liter, or a
10 gallon, or what?

11 A. [No response]

12 Q. Or was it a large bottle?

13 A. It was a big bottle. I don't know the size of
14 it.

15 Q. All right. And after you finished off all the
16 liquor that you had at your house, what did y'all do then?

17 A. Well, normally, you know, that would be it. But
18 Michael made the statement that he wasn't drunk enough and
19 so the three of us decided we would go to Scott's Place so
20 that we could drink more, because we couldn't go to the
21 store and buy any. It was pretty late at night.

22 Q. Okay. Now, you started out with four people.
23 How did it end up with three?

24 A. Well, no -- well, Marquis is there, too. I keep
25 -- I keep forgetting about him because later on that night

1 he passed out and was kind of absent for most of the
2 night.

3 Q. Okay. So the four of y'all decided to go
4 somewhere and have some more drinks?

5 A. We did.

6 Q. And who -- how did you get there?

7 A. Michael drove us to Scott's Place.

8 Q. What kind of vehicle was Michael driving?

9 A. A black Chevy Silverado.

10 Q. Okay. One of those four-door trucks?

11 A. Yeah, I think so. A big one.

12 Q. All right. And where did you end up? Where did
13 you end up at?

14 A. We ended up at Scott's Place. Michael took us
15 there.

16 When he backed out of the yard he bumped into
17 Marquis' car and then we went to the bar, because Marquis
18 wasn't worried about it, and at the bar we started
19 drinking and --

20 Q. Now, describe Scott's Place just briefly. Is
21 that a local --

22 A. It's a very small like -- well, not very small.
23 But it's just a small, local bar on the side of the road.

24 And the only reason we went there was because it
25 was close and we don't go to bars so we don't really know

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 where to go. We knew one person that worked there so that
2 was the place to go, we thought.

3 Q. How far was that from your house?

4 A. About a mile.

5 Q. All right. Now, how long were you at Scott's,
6 if you remember?

7 A. We couldn't have been there more than two hours,
8 I don't think.

9 Q. Did you --

10 A. You have --

11 Q. Go ahead. I'm sorry.

12 A. I'm sorry.

13 You have to understand that we were all very,
14 very drunk that night, too, so it's a little hard to
15 pinpoint the amount of time we spent in a certain place.
16 It is for me anyway.

17 Q. All right. Did you have drinks there?

18 A. Yes, sir.

19 Q. How many drinks did you have?

20 A. It was match-for-match. I was trying to keep up
21 with everybody else, so -- Michael -- Michael and I out
22 drank Kim and Marquis, because they both passed out and
23 were asleep in the back of the truck. Michael and I were
24 still in the bar going shot-for-shot, basically. I know
25 he spent money. I know I spent about \$80 on my debit card

1 and I -- I know he had \$100 with him and he spent at least
2 half of that. And that was on top of what we drank at the
3 house. But him and I were still -- we were still
4 drinking. I mean, we weren't knocked out or anything, you
5 know.

6 Q. How many drinks do you think you had, if you
7 remember?

8 A. A lot, generally. I couldn't tell you how many
9 specifically, but I can tell you that I've never drank
10 that much before or since.

11 Q. All right.

12 A. I don't think any of us have ever been that --

13 Q. Okay. So at some point at the bar is it your
14 testimony that Mr. Hunter, I believe his name is -- is his
15 name Marquis?

16 A. Marquis Hunter. Yes. Christopher.

17 Q. Christopher. That's what y'all call him?
18 Christopher?

19 A. We call him Marquis.

20 Q. All right. You're Chris; right?

21 A. Yes, sir.

22 Q. All right. So Marquis and Kim went out to the
23 truck?

24 A. Well, at first Kim went to go pee and then she
25 just kind of disappeared. And we didn't pick up on it

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 right away because we were a little drunk. And we didn't
2 know she was in the truck until the bartender pointed out
3 that Marquis was head-down on the counter. He was passed
4 out on the bar counter.

5 The bartender was like, you've got to get your
6 buddy out. So Michael and I walked Marquis out to the
7 trunk -- or the truck and that's when we discovered Kim
8 asleep in the back with a little bit of puke under her
9 face. We knew she had passed out in the truck.

10 Q. Okay.

11 A. And so we laid Marquis in there with her and we
12 went back inside to drink.

13 Q. All right. Now, did you have any -- did you and
14 Michael have any words, or was there a problem between the
15 two of y'all in there that night?

16 A. It wasn't a -- it wasn't a problem. I mean,
17 Michael -- when we were at the bar everything was okay at
18 first. But after Kim and Marquis started -- you know,
19 after they were out of the picture and it was just me and
20 Michael, he started going into what I would say would be a
21 dark place. Michael doesn't, and never has, approved of
22 my relationship with his sister Kim. And he really
23 doesn't like me at all. And a lot of people would argue
24 that I don't like him, either, but that's not the case.
25 It's one of those situations where you don't want to be

1 around people who don't like you.

2 Q. Okay. Well, tell the Court what happened that
3 night.

4 A. Well, we're drinking and one minute he's saying,
5 man, you used to do my sister wrong, you used to be a real
6 jerk to her, you used to do these things that I didn't
7 approve of and I used to hate you very, very much and I
8 used to want to kill you. But he would be saying that
9 with his hands around my neck. And he wasn't squeezing,
10 he was just gesturing, you know.

11 I thought we were having the talk, something
12 that we have never talked about that I'm sure he's been
13 wanting to confront me on since he was a little kid, you
14 know. But there was no reason for us to be talking about
15 that that night. Kim and I had been getting along great
16 and taking care of our family and our business for years
17 before Michael even came down for this.

18 There hasn't been anything that would have set
19 him off. But he wanted to start talking about something
20 that was making me uncomfortable and I just kept saying,
21 yeah, you know, Michael, you know, I'm glad you feel that
22 way and I'm sorry I used to be what you considered to be a
23 bad guy and stuff like that. And before the end of it,
24 you know, he's hugging me and saying, I love you, man, you
25 know. And I'm saying the same thing, I love you, too,

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 man.. You know what I mean? In fact, somebody at the bar
2 said that they saw us kiss, you know, like two drunk guys,
3 I love you, man, you know.

4 But it was back and forth like that. And it
5 made me a little nervous, but I didn't really put a lot of
6 weight into it because I was drunk and I felt like he was
7 just having a moment. You know what I mean?

8 Q. Did it frighten you the way he was going back
9 and forth with you while you were at the bar?

10 A. It made me a little worried. I wouldn't say at
11 that point I was frightened, no, because if I was afraid
12 at that point, I wouldn't have rode home with him, you
13 know. I thought he was off. When we left, we were arm-
14 in-arm.

15 Q. Okay.

16 A. We were buddies when we left.

17 Q. All right. Now, at some point was anybody
18 refused service at the bar that night?

19 A. Toward the end of the night, after we got
20 Marquis into the truck, the -- Michael and I were at a
21 point where we needed to leave. It was getting late. The
22 bar was going to close and stuff. But Michael tried to
23 order one more drink before we left and Scott wouldn't
24 serve it to him because we were already drunk. It was
25 pretty clear, you know. And Michael got a little

1 frustrated about that.

2 But before it was over he was like, aw, screw
3 it, let's just go, you know. He got mad and tossed his
4 lighter across the -- not even his lighter. It was my
5 lighter that I had sitting on the bar. But he threw it
6 across the bar and was like, screw this place. And then,
7 you know, we walked out and we left. We got in the truck
8 and he drove us home.

9 Q. All right. And home being back to your house;
10 right?

11 A. A mile away.

12 Q. All right. And did you make it back home?

13 A. Made it back home okay.

14 Q. All right.

15 A. I remember getting out of the truck. And Kim
16 and Marquis were still in the back. I also remember
17 walking away from the truck to the house, meaning I didn't
18 try to get her out of the back of the truck, which may
19 have upset him. I don't even know.

20 But I got out of the truck. I went up the back
21 step to the back door and I was going to go in the house.
22 Michael came around the corner of the house behind me, you
23 know, and he wasn't being threatening or anything at that
24 point but when he got to the step it all changed.

25 Q. All right. Well, what happened at the step?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. First, he came up to the step -- when he came
2 around I could -- you know, I couldn't tell there was
3 something wrong with him, but it seemed like he was
4 agitated. Well, he got really irritated, peeled his shirt
5 off, started threatening me saying, come on, MF'r, come on
6 MF'r. And back then Michael was pretty cut, you know,
7 really good so he liked to take his shirt off and flex
8 and, you know -- so he peeled his shirt off, throws it on
9 the ground, and then he's doing the whole, come on, MF'r,
10 come on, you know. And I'm trying to stay out of it.

11 Q. All right. Let me ask you this question. Can
12 you identify this for me, if you can.

13 A. Those are the back steps at the house.

14 MR. CLARK: Go ahead and mark these for ID.

15 Thank you.

16 [Whereupon, Defendant's Exhibit Number 1 is
17 marked for identification by the court reporter]

18 MR. CLARK: Thank you.

19 Q. [Mr. Clark] Want you to look at Defendant's
20 Exhibit Number 1 for ID and tell the Court what that is.

21 A. These -- this is a picture of our back steps.

22 Q. Is that where the incident that eventually
23 occurred happened?

24 A. Yes.

25 Q. And that's the way it looked on that night?

1 A. After he broke the rail that's how it looked.
2 It had two rails before it began.

3 MR. CLARK: I move this as a Defendant's Exhibit
4 for this hearing, Your Honor.

5 THE COURT: Okay. Any objection, Mr. Corbett?
6 Exhibit for this hearing?

7 MR. CORBETT: No objection.

8 THE COURT: All right.

9 [Whereupon, Defendant's Exhibit Number 1 is
10 admitted into evidence by the Court]

11 THE COURT: And which rail was broken, sir?

12 THE WITNESS: It's the one on the inside, Your
13 Honor, facing us.

14 THE COURT: That's the rail

15 THE WITNESS: It's missing a rail. See that
16 right in there?

17 THE COURT: The rail that would have been on the
18 left side?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. And how did that come off?

21 THE WITNESS: Mr. Compton broke it off. I had a
22 broken hand that night.

23 Q. [Mr. Clark] Well, tell the Court what happened
24 once you got to the -- once you -- right at the back
25 stair.

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. Okay. Well, he peels his shirt off and he
2 starts trying to what I consider goat me down the steps.

3 There were a couple of reasons I didn't want to
4 get into that. One, I was drunk; two, I was a little
5 frightened because I felt like he's stronger and faster
6 than me; three, I had broken my hand that very morning
7 helping a friend move and I was casted up so I only had
8 one hand. I was drunk. And I didn't want to fight my
9 wife's little brother anyway, because she's not going to
10 be happy about that. And I felt like he was just drunk
11 and out of control and that I could just kind of turn my
12 back on it and it would -- nothing would happen. You know
13 what I mean?

14 Q. So he offered to fight you?

15 A. He said, come on, MF'r, come on. And I wouldn't
16 -- I was -- at first I didn't know if he was playing again
17 because I didn't know if he was teetering like at the bar,
18 and I said, Michael, are you serious, do you want to fight
19 me. And he said, yeah, that's -- I'll just have to fight
20 you, I'll hurt you. He said -- I don't want to use the
21 profanity, but he kept saying, come on mother fucker, come
22 on, you pussy. You know, that kind of thing.

23 Q. Okay.

24 A. Yeah. And so I was like, Michael, I don't want
25 to fight you, you know.

1 Q. All right. And, well, what happened next?

2 A. Well, after that, he came up to the step --
3 because I turned -- I turned around like I was going to
4 open the door. I mean, that's why I was standing at the
5 top of those steps. I was going to unlock and open the
6 back door to go inside the house.

7 And when I wouldn't come down the step, he came
8 up the step. He didn't come all the way up the step but
9 he put -- he stood on the bottom two of them, you know,
10 just to block the end of the steps.

11 Q. Okay.

12 A. And he was still talking crap. And he grabbed
13 the porch rail -- and I was standing on the steps -- and
14 he pulled it in and then he pushed it out and then he
15 ripped it up. And it came right off, because they're
16 rickety as it is anyway.

17 Q. All right. And that would be the --

18 A. That would be --

19 Q. -- the side of the step in this photograph?

20 A. Yes.

21 You see the large boards and then the slender
22 ones that make up the railing system? He grabbed the
23 large board and broke that second railing system down.

24 Q. All right. And once he did that, what happened?

25 A. Well, he grabbed the board. And at that point

1 my immediate thought was just go inside, I can go inside,
2 close the door on him and, you know, that's that. So I
3 turned by back, went to open the door, and that -- and he
4 hit me from behind, with my back turned to him. And I do
5 have -- got -- I did sustain injuries from that.

6 And, you know, for -- I haven't been able to
7 talk about this because I haven't been able to say
8 anything to anyone since the night that it happened.

9 Q. So you said when you turned your back, he hit
10 you?

11 A. Yes, sir, he did.

12 Q. Where did he hit you at?

13 A. In the back. In the side in the back.

14 Q. All right. And how many times did he hit you?

15 A. At least two before I could even react to it.

16 Q. All right. And then once you reacted, what did
17 you do in reacting to it?

18 A. I picked up a weapon myself, one of those slats
19 -- he was still holding his weapon -- and I fought fire
20 with fire. That's the only thing I could do. I couldn't
21 run. I couldn't get in the house because I couldn't open
22 the door. It was locked. He was blocking the steps. He
23 had already hit me. There was nothing I could do.

24 Q. All right. When he hit you with the first
25 board, were you afraid?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. Absolutely.

2 Q. Were you in fear of death or great bodily
3 injury?

4 A. I was.

5 Q. Did you believe that he could kill you at that
6 point?

7 A. I absolutely did believe that.

8 Q. Did he ever threaten to kill you?

9 A. He has before. He told me in the bar --

10 MR. CORBETT: Objection, Your Honor. Leading.

11 THE COURT: Overruled.

12 A. He told me in the bar. Remember when I said
13 that he had his hands around my stuff -- my neck and he
14 was going into dark places? One of the dark places was he
15 literally told me that when he was a child that he would
16 sit out behind the fence, the tree line in the trailer
17 park, and watch me, with his gun in his pockets. Because
18 he's had one since he was like twelve years old. His
19 father's been good about getting him weapons and letting
20 him be responsible and stuff.

21 Two days before this incident, he made sure that
22 he came into the house and took Kim's gun out of the house
23 and -- you know. And then all of a sudden, two days
24 later, we're having an incident like that out of nowhere
25 for no reason.

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 But Michael has told me several times that he
2 wanted to hurt me just in that night. But before the
3 night was over, like I said, we were supposed to be
4 friends. You know, it was just him saying to me, Chris, I
5 used to hate you because of the way you were but you've
6 proven yourself to be half-ass decent now so I accept you.
7 But by the time we got home, he didn't accept me anymore.

8 MR. CLARK: I would like to mark these for ID,
9 four -- five photographs, Your Honor. I would like to
10 mark them as one.

11 THE COURT: 2 through 6? One?

12 MR. CLARK: Well, 2 through 6 would be better,
13 yes, sir.

14 [Whereupon, Defendant's Exhibit Numbers 2
15 through 6 are marked for identification by the court
16 reporter]

17 MR. CLARK: Okay. Thank you. Thank you, ma'am.

18 THE COURT REPORTER: You're welcome.

19 Q. [Mr. Clark] Mr. Gainey, I'm going to ask you
20 can you identify the photographs in Defendant's Exhibit
21 for IDs -- ID 2 through 6.

22 A. These are -- these are pictures that I had to
23 have my ex-business partner take of me with his cell phone
24 because --

25 Q. What do they show?

1 A. They show bruises. They show marks from
2 encountering Michael, a lot of defense wounds on my arm,
3 because one of my hands was broken. I couldn't use that
4 at all, which would have made it difficult, for one, to
5 tear the steps up myself. Two, I could only block his
6 shots with one hand, you know. So one of them's pretty
7 torn up.

8 Q. Let me ask you this question. The bruises that
9 are shown in the photographs, were they caused by being
10 struck by Michael with the board?

11 A. Yes. That -- these are the back shots here.

12 MR. CLARK: Your Honor, I would like to move
13 these as Defendant's Exhibits into evidence for this
14 hearing.

15 THE COURT: Objections?

16 MR. CORBETT: No objection, Your Honor.

17 [Whereupon, Defendant's Exhibit Numbers 2
18 through 6 are admitted into evidence by the Court]

19 Q. [Mr. Clark] And tell us when those photographs
20 were taken, Mr. Gainey.

21 A. Those were taken after I got out of jail. When
22 this happened --

23 Q. How long after -- how long after --

24 A. Three days --

25 Q. Three days --

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. -- after it happened.

2 Q. Okay. And did you have those bruises on your
3 arms before he struck you with the board?

4 A. No.

5 Q. You've already testified that --

6 THE COURT: Which hand had you broken?

7 THE WITNESS: My left hand.

8 THE COURT: Okay.

9 Q. [Mr. Clark] -- that you were in fear for your
10 life. You said that you took a board and you struck
11 Michael. How many times did you strike him?

12 A. Just enough times to get him to get off of me.
13 You know, I can't tell you exactly how many times I hit
14 him but I can tell you that the minute I felt like he was
15 no longer a threat to me, I did not hit him again.

16 Q. All right. And when you hit him, did he have a
17 board in his hand?

18 A. Yes, he did.

19 Q. All right. And the first time you hit him, did
20 he go to the ground?

21 A. No.

22 Q. How about the second time?

23 A. No.

24 Q. How long did it take for him to go to the
25 ground?

1 A. I hit him I know for sure at least three times
2 before he went down to the ground. It was like he was
3 invincible.

4 Q. All right. Now, when you were hitting him and
5 he was standing, was he still aggressive towards you?

6 A. Yes.

7 Q. Still trying to --

8 A. He was --

9 Q. -- fight you?

10 A. -- coming.

11 He wasn't just standing, he was coming. He was
12 still coming toward me.

13 Q. All right. And did -- were you still in fear
14 for your life?

15 A. Yes.

16 Q. Did you believe you would suffer great bodily
17 injury?

18 A. Yeah. You have to look at -- do I -- I'm not a
19 fighter, I'm a guy who works on computers. I was in fear.

20 Q. And after he was on the ground, how many times
21 did you hit him then?

22 A. I hit him once on the ground, as far as I can
23 recall.

24 Q. Okay.

25 A. But you have to understand, he was forcing his

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 way back up. It's a matter of if you don't stop this
2 person from coming to you, you're going to get hurt. I
3 just wanted him to stop.

4 And he was on the ground when I hit him one
5 time, but when I decided -- when I felt like he wasn't a
6 threat anymore, I did not touch him again.

7 Q. And the whole time that you were hitting him,
8 were you in fear for your life?

9 A. Absolutely.

10 Q. Now, the board that he had, did it have any
11 nails in it? Or did you know?

12 A. I don't know. You know, the State says that --
13 and I say that. I can't speak for them.

14 THE COURT: No. You just need to answer the
15 question.

16 THE WITNESS: Okay.

17 A. They had --

18 Q. [Mr. Clark] Do you know whether nails were in
19 there or not?

20 A. No, I don't.

21 Q. All right. Did you have any other weapons?

22 A. No.

23 THE COURT: Mr. Clark, please clarify which
24 board you're talking about whether or not he knows it
25 had nails in it. The one that --

1 MR. CLARK: Yes, sir. Yes, sir. Thank you,
2 Your Honor.

3 Q. [Mr. Clark] The board that -- I'm asking you
4 specifically about the board that Mr. Compton had in his
5 hand. Did you know whether that had any nails in it?

6 A. I couldn't have told you that night, no.

7 MR. CLARK: All right. May I see the
8 photographs?

9 A. I think from wounds -- from the wound pictures
10 you can tell that there was probably something on them.

11 Q. [Mr. Clark] Okay. What does Defendant's
12 Exhibit Number 2 show?

13 A. I think this one is intended to show basically
14 the first -- that would have been the first hit.

15 Q. And that's --

16 A. It's about --

17 Q. -- the shot on your back?

18 A. Yeah.

19 It's about the width of a two-by-four, because
20 it was a solid flat hit right on my back.

21 Q. That bruise on your back was caused by him
22 hitting you?

23 A. Yes.

24 Q. Now, what about Number 3? Is that your right
25 arm?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. Yes.

2 Q. And are those bruises? The discoloration, are
3 those bruises?

4 A. Yes. That --

5 Q. How were they caused?

6 A. That nasty one -- that board hit me right in the
7 elbow and it created that whole nasty thing there.

8 Q. Okay.

9 A. I couldn't hardly move my arm very much after
10 that but --

11 Q. For ID, Number 4: how were these bruises
12 caused?

13 A. The same day. Just, you know, trying to fend
14 that off.

15 Q. All right. And is there a bruise around your
16 elbow area there?

17 A. Uh-huh.

18 Q. And there's a bruise on your bicep?

19 A. Uh-huh.

20 Q. And what about at your wrist there? Is your
21 wrist swollen and cut?

22 A. It looks like it.

23 Q. Was that caused --

24 A. Yeah, it was -- it was. I mean, it was cut that
25 night.

1 Q. And that was caused by Mr. Compton?

2 A. The marks here? Yeah. Yeah.

3 Now, that night I didn't cut my knuckle. I had
4 to get stitches in it. That was my own doing. But the
5 injuries to my wrist were from the fight.

6 Q. All right. And those -- Defendant's Exhibit 5
7 and 6 show pretty much the same thing on your right side?

8 A. Yes.

9 Q. All right. And you testified that you had a
10 broken hand?

11 A. Yes.

12 Q. And was that your left hand?

13 A. Yes.

14 Q. And, Mr. Gainey --

15 MR. CLARK: Let's mark this as the next exhibit
16 for ID.

17 THE COURT REPORTER: That's Number 7.

18 [Whereupon, Defendant's Exhibit Number 7 is
19 marked for identification by the court reporter]

20 Q. [Mr. Clark] Mr. Gainey, I'm going to show you
21 Defendant's Exhibit, for ID, Number 7 and ask you: do you
22 know what that is?

23 THE COURT REPORTER: Number 6. I'm sorry.

24 MR. CLARK: Number 6 --

25 THE COURT REPORTER: Is that right?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 THE COURT: It's 7.

2 MR. CLARK: It's 7.

3 THE COURT REPORTER: It is 7. Okay. Thanks.

4 A. These are x-rays, from that morning when I went
5 to the emergency room, from breaking the hand.

6 Q. [Mr. Clark] All right. And they're x-rays of
7 your left hand?

8 A. Yes, sir.

9 MR. CLARK: I would like to move these in as
10 Defendant's Exhibit Number 7 for the purpose of this
11 hearing, Your Honor.

12 MR. CORBETT: Objection, Your Honor.

13 THE COURT: You object?

14 MR. CORBETT: The objection is lack of
15 foundation.

16 THE COURT: All right. I can't read them. I
17 don't know who you're going to ask to read them, but I
18 certainly can't and I won't.

19 MR. CLARK: Okay.

20 THE COURT: He's already testified he had a
21 broken hand.

22 MR. CLARK: Right.

23 Q. [Mr. Clark] And I'm not asking you to read
24 them, but do you believe these are x-rays taken of your
25 hand?

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 A. Yeah, they are.

2 THE COURT: Okay. Just leave them for ID at
3 this point.

4 MR. CLARK: Okay. All right.

5 THE COURT: I'm not going to let them in for me
6 to review, with any authority, what they show.

7 Q. [Mr. Clark] So what doctor did you see that
8 morning, Mr. Gainey?

9 A. I went to the -- to the emergency room that
10 morning. And they x-rayed it and verified that it was a
11 break and they splinted it. And they set me up to see a
12 doctor to set it, that sets bones, does casts.

13 Q. All right. And that was on the morning that
14 this incident occurred?

15 A. It was.

16 The night that we went out drinking and stuff, I
17 was wearing the splint from that morning. And I was to
18 see a doctor the next morning, but I didn't make it.

19 Q. All right. So were you in any condition to
20 challenge someone to fight that night?

21 A. Not at all. Not at all.

22 Q. And do you believe the action that you took was
23 reasonably necessary to prevent your death or great bodily
24 injury?

25 A. I do. I do.

Christopher W. Gainey - Cross Examination by Mr. Corbett

1 Q. Any question in your mind?

2 A. No, not at all.

3 Q. Now --

4 MR. CLARK: Beg the Court's indulgence.

5 THE COURT: All right.

6 MR. CLARK: Thank you, Mr. Gainey.

7 That's all I have, Your Honor.

8 THE COURT: Mr. Corbett.

9 MR. CORBETT: Thank you, Judge.

10 Mr. Gainey, good afternoon.

11 THE WITNESS: Good afternoon.

12 CROSS-EXAMINATION

13 BY MR. CORBETT:

14 Q. Your name is Christopher Wayne Gainey; is that
15 correct?

16 A. Yes, sir.

17 Q. And you live at 3885 Peach Orchard Road?

18 A. Yes, sir.

19 Q. That's here in Sumter County; correct?

20 A. Yes, sir.

21 Q. And that is your residence?

22 A. Yes.

23 Q. That is also where this altercation took place?

24 A. Yes, sir.

25 Q. Is that correct?

1 A. [No response]

2 Q. Now, you indicated that night that Mr. Compton
3 struck you with a board, you retrieved a separate board
4 and struck back?

5 A. Yes.

6 Q. Is that correct?

7 A. [No response]

8 Q. So your testimony is that -- I'm sorry. Let me
9 back up just a moment.

10 Now, as a result of you striking Mr. Compton, he
11 suffered serious injury?

12 A. He has, yes. He's suffered injury. You have to
13 remember I haven't spoken to him so I can't really speak
14 to the extent of anything. But I know he got hurt, yes.

15 Q. Now, Mr. Gainey, after you struck the blows on
16 Mr. Compton, why did you flee the scene and go to your
17 parents' house?

18 A. I didn't flee the scene. Basically, when I had
19 made the determination that Michael was no longer a threat
20 and I got up, I walked into my house. I was inside for
21 about thirty seconds. When I stepped out the back door
22 and looked in the direction that Michael was, he was gone
23 and so was Kim. He got up and he took off running. He
24 ran down the street. Kim ran after him.

25 I'm not stupid. I knew after what happened out

1 there that I was going to jail. Any time something like
2 that goes down, the parties involved are going to jail.
3 So we had a fight that happened, Michael and I fought, and
4 he's now gone. So my first interpretation or impression
5 was he's going to either get his people or his police and
6 so forth, so I walked to my mom's house, which is not even
7 a quarter of a --

8 It's the same property. We live on the same
9 property. My mom has a house there and I have a house
10 there. I walked to her house so that I would be among
11 people who would support me. It was a tragic thing that
12 happened. You know, I wanted to be around somewhere where
13 people were going to have my back and so I went to my
14 mom's house. It's all I could think to do.

15 Q. So you walked to your mother's house?

16 A. Yes.

17 Q. And you never called 911, did you?

18 A. I didn't have to, because I wasn't being
19 attacked anymore. I had successfully defended my attacker
20 off of me. I wasn't in danger at the point in time that I
21 walked to my mom's house. I wasn't in danger anymore.
22 Michael ran away.

23 Q. So you're telling us that you were initially a
24 victim, that you beat someone unconscious with a board,
25 and it never occurred to you to call 911?

1 A. I knew that 911 was going to be called by
2 Michael and/or Kim. That -- my impression was that that's
3 what they were going to do: you know, use a phone, call a
4 friend, you know, something like that. I didn't -- I knew
5 the police would be there. I knew I didn't have to call
6 them.

7 Q. Matter of fact, when the police arrived at your
8 parents' house initially you would not come out and talk
9 to them, would you?

10 A. I actually didn't know that the police were out
11 there. My family went out there and were talking to the
12 police for a while before they even came in and said,
13 Chris, the police are out there and they want you to come
14 with them. And as soon as they told me, I went with them.

15 Q. And so you weren't there when Deputy Browder was
16 telling your mother that he needed to see you?

17 A. I didn't hear any of the conversations that they
18 had with my mom at all, you know.

19 MR. CLARK: Your Honor, I object as being
20 irrelevant to the purposes of this hearing.

21 THE COURT: Overruled.

22 Q. [Mr. Corbett] You will admit that it was some
23 time between the arrival of Officer Browder and when you
24 actually came out to speak to him?

25 A. I don't even know if it was Officer Browder that

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 I spoke to that night.

2 Q. But a police officer?

3 A. What is the question again?

4 Q. All right. Did you speak to a deputy at your
5 mother's house?

6 A. Not that I can recall. I didn't try -- I made
7 it a point not to speak to anyone. I tried not to. I
8 couldn't say I had a conversation with them, no.

9 Q. Let me perhaps ask it this way. After the
10 altercation, and you walked to your parents' house, who
11 was home?

12 A. My mom was home. And I think my dad was there.
13 I don't even know. I cannot remember who all was in that
14 house.

15 Q. But you think the two of them were there?

16 A. I'm sure my mom was. I don't know if my dad was
17 or not.

18 Q. Okay. Do you remember speaking to a Sumter
19 County deputy at your parents' house?

20 A. I don't. The only time I remember Sumter County
21 attempting to talk to me was when he came to my cell and
22 asked me if I wanted to talk about this incident. And
23 because I was in a jail cell and Mr. Compton wasn't, I
24 knew it wasn't --

25 THE COURT: That wasn't -- the question -- do

1 you remember talking with a Sumter County deputy at
2 your parents' house.

3 THE WITNESS: No, sir.

4 THE COURT: You can go from there, Mr. Corbett.

5 Q. [Mr. Corbett] And your testimony that you were
6 just alluding to was that you then -- you remember the
7 investigator coming to the jail --

8 A. Uh-huh.

9 Q. -- but you did not talk to him?

10 A. No. At that point I had already been advised by
11 my attorney not to speak to anyone.

12 Q. When you were at your parent's house, do you
13 remember what you said to them about the altercation?

14 A. I don't.

15 Q. You don't remember telling them that you beat
16 Michael's ass?

17 A. I can't say that I remember saying that but I
18 don't remember saying that, whether I said it or not. I
19 could have. I don't remember everything --

20 THE COURT: That would be a comment to who,
21 Mr. Corbett?

22 MR. CORBETT: I'm sorry, Your Honor?

23 THE COURT: A comment to whom?

24 MR. CORBETT: His -- in front of his parents.

25 THE COURT: And, sir, you said you don't

1 remember that?

2 THE WITNESS: I don't remember making that
3 statement, but I'm not going to sit here and say I
4 didn't make it. I've already said I was very drunk
5 that night.

6 THE COURT: Okay.

7 Q. [Mr. Corbett] Had you taken any prescription
8 medication that day?

9 A. They gave -- yes. They gave me pain medicine
10 for the hand thing and I took two of those earlier that
11 day when they gave it to me. But I'm -- I don't like
12 medicine. None of it makes me feel any better. It always
13 makes me feel sick, so I try not to ever take it whenever
14 I can. And I took two when it happened that morning, but
15 I didn't take anymore that day.

16 Q. You didn't take any medicine prior to y'all
17 going -- or in the several hours preceding going to what
18 on my report is the Wheel Inn but I think you're calling
19 Scott's Place?

20 A. It's the same building.

21 Q. Okay. You don't -- you don't recall taking
22 medication?

23 A. I took medication within an hour to two hours
24 after leaving the emergency room. I don't recall having
25 to take it again that day because I wasn't really, you

1 know, feeling an abnormal amount of pain.

2 MR. CORBETT: Your Honor, just one moment, if I
3 may.

4 THE COURT: Yes, sir.

5 Q. [Mr. Corbett] Now, at the time of the
6 altercation, what type of board were you using?

7 A. In the picture you have the top handrail, the
8 big board, I believe it's a two-by-four, and then you have
9 those slat rails, or whatever they're called, in between.
10 One of those is what I grabbed, because the big board was
11 already ripped off. It was gone. The only thing that was
12 left on that side was a bunch of those rails laying this
13 way and that way, and just a few of those, you know. And
14 I just picked one of those up. It was right there next to
15 my hand. I was on the step already. That's all I had to
16 work with.

17 Q. The board that you used to strike Michael
18 Compton, did it have nails in it?

19 A. No.

20 Q. Now, you indicated that you struck him three
21 times while he was on his feet?

22 A. I said that I could -- about three times.

23 Again, I can't say every little detail that
24 happened. We -- I've said it before that we were all
25 extremely drunk. And I don't think anyone else is going

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 to say, I know for an absolute fact that everything went
2 exactly this way, you know.

3 About three times on his feet, yes. It seemed
4 like he would not go down. He was just -- would not stop
5 coming.

6 Q. Where did those blows connect with Mr. Compton?

7 A. His head. You know, I tried to knock him out.
8 That was my goal, the first hit.

9 In my mind, I was going to clunk him on his head
10 and he was just going to be knocked out like you see on
11 TV. But that did not happen. I hit him once. He was not
12 knocked out. He was, in fact, even more angry. I hit him
13 again. Same effect.

14 It was not what I -- I thought he would -- I
15 literally thought he would fall over and be knocked out,
16 one hit on the head, one clunk, and that would be it. I
17 was very wrong about that.

18 Q. So you're standing on the porch or stoop;
19 correct?

20 A. [No response]

21 Q. He hits you from behind, with the board, twice?

22 A. Yes.

23 Q. You turn around, pick up one of the slats --

24 A. As I'm stepping down the steps. Because after
25 he hits me, he backs off of the step and -- because, you

1 know, then I start coming down and we migrate into the
2 yard within the immediate vicinity of the steps.

3 Q. That's when you hit him in the head?

4 A. That's where we fought at, was in the yard.

5 Q. He doesn't go down?

6 A. No.

7 Q. You hit him with what you believe to be two more
8 times?

9 A. I believe so.

10 Q. And he goes down?

11 A. He goes down eventually on the last -- the third
12 hit. He goes down, but not out.

13 You have to understand, all he did was fall
14 over. He was trying to get back up. He was still in
15 aggressive mode.

16 Q. So you struck him some additional times while he
17 was there?

18 A. I struck him one time, as he was trying to get
19 up off of the ground, to ensure that he could not get up
20 and come after me anymore.

21 Q. The first three blows, where did they land?

22 A. In his head, I would imagine. I mean, that --

23 Q. Face? Ear? Jaw?

24 A. In the head. Not the face, not the ear or the
25 jaw or anywhere else. I'm aiming for his head. As we're

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 fighting, we're meleeing around. I'm swinging, flailing;
2 he's swinging, he's flailing. He's hitting me from what
3 you saw on arms, back, stuff like that. I was swinging
4 directly for his head. I was still trying to knock him
5 out. You know, something in my mind was saying if I could
6 pop him one good time, it'll stop.

7 Q. All right. But he's approaching you. So you're
8 striking here on the front of his head; is that correct?

9 A. No. My -- my hits are more reactive. He swings
10 on me first, I try to defend it, then I come around and
11 hit him. A couple of times -- or --

12 You know, I can't remember every little detail
13 but I can tell you that it wasn't a deal where he was
14 coming straight to me and I hit him dead on with a board
15 in the face. We were meleeing in a circle, fighting,
16 pushing, swinging, flailing, you know. As he would hit me
17 and either, you know, swing by me or even hit me not as
18 hard, I would try to counter and hit him.

19 You know, he wasn't standing directly in front
20 of me. Sometimes he was like this, sometimes he's like
21 this. Depends on what -- you know, where his body was
22 moving at the time. It was like that for both of us. I
23 wasn't squared off in front of him, either.

24 Q. And it's your testimony that after he fell to
25 the ground, you hit him one more time?

1 A. I did. To ensure that he would not get up.

2 And he was getting up. Otherwise, I would have
3 left him alone. And I also said that when I felt like
4 Michael wasn't going to be a threat anymore and get up off
5 of the ground and hurt me, I didn't touch him again. And
6 I did -- I did not hit Michael again after that.

7 I knew Michael was still alive on the ground for
8 sure, you know. I went in the house. When I turned
9 around and I came back out thirty seconds later and he was
10 gone, it was no surprise because he was never knocked out.
11 I expected him to be gone or either in the house after me,
12 one of the two.

13 Q. Did you see him get up?

14 A. I saw him getting up. I never let him rise all
15 the way up to his feet. He was pushing up like this and
16 putting his leg under him to start to get up and that's
17 when I hit him the last time to make sure that he didn't
18 get up.

19 Q. After that, did you see him get up?

20 A. I did not see him get up. I was inside the
21 house. I came inside and he was out there. And I was
22 inside about thirty seconds and when I came out, he was
23 completely gone. I didn't get to see him get up. I
24 didn't even get to see him run away. The only reason I
25 know that he did run was because Kim later told me that

1 she had to chase him down. She couldn't even catch him,
2 he moved -- was moving so fast.

3 Q. So you didn't actually see Kim going after him?

4 A. I did not see that, no.

5 Q. Do you know what time of night this was?

6 A. It was late. It was the wee hours of the
7 morning. I could not tell you exactly when. It was after
8 the bars start closing.

9 Q. So your testimony is you believed that the
10 police were going to be coming so you wanted to go
11 somewhere where people would be supportive of you?

12 A. I knew the police were going to be coming and I
13 wanted to be somewhere where people that -- you know, were
14 going to support me and if something happened to me, they
15 would know it.

16 And you have to remember, my mom's house is
17 right there. It's where I've lived my entire life.
18 Anytime something bad happens to me, that's where I
19 gravitate to.

20 MR. CORBETT: One moment, please, Your Honor.

21 THE COURT: Yes, sir.

22 Q. [Mr. Corbett] Mr. Gainey, do you recall the
23 officers calling an ambulance for you that evening --

24 A. I don't recall --

25 Q. -- or, excuse me, that morning?

1 A. I don't recall them calling an ambulance or
2 anything like that, but I do vaguely remember being in an
3 ambulance and going to the hospital.

4 Q. So you can remember with detail the events of
5 the fight but you can't remember talking to your parents
6 or getting in the ambulance?

7 A. I didn't say I didn't remember talking with my
8 parents or anything like that. And I haven't told you
9 that I remember every single little detail of the fight,
10 either, Mr. Corbett. I specifically told you that we were
11 all drunk and I couldn't remember every single little
12 detail and everything.

13 But what I do remember is, yes, I was in an
14 ambulance. I was in an ambulance when they took me to the
15 hospital. I don't remember the trip, all of the trip, in
16 the ambulance. I remember what one of the people in the
17 ambulance looked like. I remember her saying something to
18 me. I don't remember what that was.

19 But, you know, after the fact, when things
20 started slowing down, you know, it's -- it's just not as
21 clear, you know. When I went in the ambulance to the
22 hospital, at some point I fell asleep. When I woke up, I
23 was at the hospital and they were working on me. And then
24 I went to sleep again and was there for like maybe an hour
25 or more before they took us to -- took me to jail.

State v. Gainey
Pretrial Motions - Volume 1 of 2
July 16, 2012

1 Q. For what reason did you go to the hospital?

2 A. Because I had cuts on me and stuff like that.

3 Just general injuries and stuff.

4 Q. Did you cut yourself at your parents' house?

5 A. I did.

6 Q. How?

7 A. I cut myself by -- on a picture frame. I broke
8 a picture frame at my mama's house. I was a little
9 excited, they said, when I got there. And, you know, I'm
10 sure I was. I had just been in a fight for my life or in
11 -- you know, they said that at some point that I broke a
12 picture frame. They didn't say how I did it or anything
13 like that. But I had a cut on my knuckle from it, so I
14 imagine I probably hit it or something like that.

15 Q. So when you got to your parents' house, you were
16 upset enough that you struck a picture frame hard enough
17 that it caused a wound that required a trip to the
18 hospital?

19 A. Well, they didn't say that I came in like that.
20 You know, they told me what -- I didn't even, you know,
21 realize how it happened. But they told me that I was
22 excited when I got there. You know, not aggressive or
23 anything like that, just, you know, this thing happened
24 and blah-blah and they were like, calm down, you know,
25 it's going to be all right and so forth and so on. And I

1 kept saying, no, it's not going to be all right, you know,
2 and this is going to ruin my life and so forth and so on.
3 And it was, you know, one of those situations where you're
4 like, God, God, God.

5 Q. Mr. Gainey, I guess what I'm struggling with is
6 in the pictures you indicate to us wounds and swelling
7 that you say was a result of being attacked, but yet there
8 is some evidence that you were wounded of your own action
9 at your parents' house.

10 A. There is. And if you look at those pictures and
11 you look at the wounds we discussed, none of them are
12 where that injury is at. That injury, and you can still
13 see it right here, is on my pinky knuckle. You can still
14 see the stitch marks and you can see that it's quite far
15 away from any of those other injuries.

16 Q. Now, Mr. Compton, how big of a -- I'm sorry.
17 Mr. Gainey, how big of a fellow is Michael Compton?

18 A. I don't know how much he weighs. But he's a
19 little shorter than me, I know that.

20 Q. How big are you?

21 A. Five nine.

22 Q. Okay. So he's smaller than you?

23 A. He's shorter than me.

24 He's also far healthier, far more well-built and
25 everything else. And that night, he was probably twice as

Christopher W. Gainey - Redirect Examination by Mr. Clark

1 strong as me. You have to remember he, you know, worked
2 out every day, he was in the military, he was proud of the
3 way he looked and should have been because he was very
4 cut, very strong. He could have easily dispatched me
5 [phonetic].

6 MR. CORBETT: That's all I have, Your Honor.

7 THE COURT: Redirect?

8 MR. CLARK: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. CLARK:

11 Q. Mr. Gainey, Mr. Corbett asked you about making
12 statements at your mother's house after the incident.
13 Did you ever say to anyone that you were trying to kill
14 Mr. Compton?

15 A. I mean, if I did, I was only trying to defend
16 myself. I can't -- what Mr. Corbett wants me to do is
17 specifically cite something that I said and when I said
18 it. I can't do that. For me to say I -- I didn't
19 [phonetic] come in the house and he tried to kill me and
20 I kicked his ass, I'm sure I did say that. You know, that
21 -- that would have been something I would have said, but I
22 can't remember saying it.

23 Q. All right. Did you have an intent to kill him
24 when you went home that night?

25 A. No. I had no problems with Michael that night.

1 I did have problems with him before this. I
2 didn't want this to happen then and I didn't want it to be
3 the way it is now. Never wanted Michael to be hurt.

4 Q. But you did intend to injure him?

5 A. I did. Only to the point to save myself.

6 MR. CLARK: Thank you, sir. That's all I have.

7 THE COURT: Anything else, Mr. Corbett?

8 MR. CORBETT: No, sir, Your Honor.

9 THE COURT: You can step down.

10 [Whereupon, Mr. Gainey is excused and exits the
11 witness stand]

12 THE COURT: We'll begin tomorrow morning at
13 9:30.

14 MR. CLARK: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 [PRETRIAL MOTIONS ADJOURN]
17
18
19
20
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25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the pretrial hearings held before the Honorable George C. James, on Monday, July 16, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 28th day of September, 2012.

Mia Perron
Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	65

PRETRIAL MOTIONS

MARTHA T. ROGERS

Direct Examination by Mr. Clark	66
Cross-Examination by Mr. Corbett	70

KIMBERLY COMPTON

Examination by Mr. Corbett	72
Cross-Examination by Mr. Clark	96
Redirect Examination by Mr. Corbett	100
Recross-Examination by Mr. Clark	100

ROBERT BURNISH

Direct Examination by Mr. Corbett	102
Cross-Examination by Mr. Clark	106

WAYNE BROWDER

Direct Examination by Mr. Corbett	107
Continued Direct Examination by Mr. Corbett	119
Cross-Examination by Mr. Clark	120
Redirect Examination by Mr. Corbett	128
Recross-Examination by Mr. Clark	131

INDEX TO PROCEEDINGS

	PAGE
CHRISTIAN GAINNEY	
Direct Examination by Mr. Corbett	135
Cross-Examination by Mr. Clark	137
Redirect Examination by Mr. Corbett	138 79
MICHAEL COMPTON	
Direct Examination by Mr. Corbett	141
CHRISTOPHER W. GAINNEY	
Direct Examination by Mr. Clark	149
Cross-Examination by Mr. Corbett	152
COURT'S RULINGS	178
CERTIFICATE OF COURT REPORTER	193

INDEX TO EXHIBITS

MARKED/ADMITTED

State's Exhibit Number 1
[Statement - Kimberly Comptom]

78 /

State's Exhibit Number 2
[CD]

135 /

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

PROCEEDINGS

MR. CLARK: Call Martha Roach.

MS. ROGERS: Rogers.

MR. CLARK: Rogers.

MR. CORBETT: -- I believe she said --

MR. CLARK: Okay. Has your marital status
changed?

MS. ROGERS: Yes.

MR. CLARK: All right.

[Whereupon, Ms. Rogers comes forward]

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

State your name, please.

MS. ROGERS: Martha Theresa Rogers.

[Whereupon, Ms. Rogers is duly sworn by the
clerk of court as follows: do you solemnly swear or
affirm the testimony you give to this Court will be the
truth --

MS. ROGERS: Yes, sir.

-- the whole truth and nothing but the truth, so
help you God]

THE WITNESS: Yes, sir, I do.

THE CLERK OF COURT: Right here, please.

[Whereupon, Ms. Rogers takes the witness stand]

THE CLERK OF COURT: State your name and spell

Martha T. Rogers - Direct Examination by Mr. Clark

1 your last for the record.

2 THE WITNESS: Martha Theresa Rogers.
3 R-O-G-E-R-S.

4 MR. CLARK: May I proceed, Your Honor?

5 THE COURT: Yes, sir.

6 - - - - -
7 MARTHA T. ROGERS,

8 Having Been First Duly Sworn,

9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MR. CLARK:

12 Q. Ms. Rogers, were you at one point known as
13 Ms. Olerich?

14 A. Yes.

15 Q. Can you explain the name change?

16 A. I divorced.

17 Q. All right. Where are you employed at?

18 A. Walley's hardware store.

19 Q. How long have you been working there?

20 A. A year and a month.

21 Q. Were you at one point employed at Scott's bar
22 out in -- on Peach Orchard Road?

23 A. Yes, sir.

24 Q. When did you start working there? Just
25 approximately.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Three -- three and a half -- three years ago.

2 Q. All right. And what was your job there?

3 A. Bartender.

4 Q. All right. Now, were you working on the night
5 of July 10, the morning of July 11, 2010?

6 A. I don't remember.

7 Q. All right. Were you employed there one night
8 where -- about two years ago where Chris Gainey and James
9 Michael Compton and Kim Compton and a Mr. Hunter came to
10 the bar?

11 A. I was employed there at the time, yes.

12 Q. All right. And you were working as a bartender?

13 A. At the time, no.

14 Q. All right. You weren't working as a bartender.
15 What were you working as? A host, a hostess, or
16 something?

17 A. I wasn't working that night.

18 Q. You weren't working there?

19 A. I was just in there.

20 Q. All right. What's your relationship with the
21 owner of the bar?

22 A. He's my boyfriend.

23 Q. So you frequented it pretty often?

24 A. Uh-huh.

25 Q. And you worked there sometimes?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Yes, sir.

2 Q. All right. Did you have a chance to observe any
3 interaction between Mr. Compton and Mr. Gainey?

4 A. Yes, sir.

5 Q. Were they drinking?

6 A. Yes, sir.

7 Q. How would you characterize the amount of alcohol
8 that they had? Was it a lot? Were they drinking heavy?
9 What can you tell us about that?

10 MR. CORBETT: Your Honor, I would like to
11 interpose an objection. Lack of foundation.

12 THE COURT: Overruled.

13 A. During the hours they were there, they got
14 pretty drunk. I mean, I don't think they were slamming
15 down one after another, but they were drinking pretty
16 heavily.

17 Q. [Mr. Clark] All right. Did you observe any
18 interaction between Mr. Compton and Mr. Gainey?

19 A. Yes.

20 Q. Can you tell the Court what you saw.

21 A. What I saw was one minute Michael Compton would
22 be lovey-dovey with Chris Gainey, then the next minute he
23 would be a little aggressive, then the next minute he
24 would be lovey-dovey and the next minute he'd be
25 aggressive. And that was just -- kind of like that

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 ongoing all night.

2 Q. Now, when you say he would be aggressive, what
3 made you -- what led you to that conclusion? What did you
4 see him doing?

5 A. One moment I saw his arm around his -- around
6 Chris and his hand around his throat and it -- just the
7 conversation they were having at the time. I don't know
8 exactly what they were talking about, but it just -- just
9 the way it looked from the outside it looked like, wait a
10 minute, what's going on, and then the next second, they
11 were like, okay, they're fine.

12 Q. Now, when you say he put his arm -- his hand
13 around his throat, was it in like a choking motion?

14 A. Like a choking -- like a -- yes.

15 Q. Okay. Did -- in your opinion, was that
16 aggressive towards Chris?

17 A. Yes.

18 MR. CORBETT: Objection, Your Honor. He's
19 asking for her opinion.

20 THE COURT: Overruled.

21 Q. [Mr. Clark] Now, Ms. Rogers, did you ever see
22 Chris Gainey act aggressively towards Mr. Compton that
23 night?

24 A. No.

25 Q. Now, did it come to a point where -- or did you

Martha T. Rogers - Cross Examination by Mr. Corbett

1 observe a point where either one of these gentlemen was
2 refused alcohol service that night?

3 A. At the end of the night.

4 Q. What happened?

5 A. They wanted to buy another shot and told him no.

6 Q. Anyone in particular? Was it Chris or was it
7 Mr. Compton?

8 A. It was Chris.

9 MR. CLARK: Thank you, ma'am. That's all I
10 have.

11 THE COURT: Mr. Corbett.

12 MR. CORBETT: Ms. Rogers, good morning.

13 THE WITNESS: Good morning.

14 CROSS-EXAMINATION

15 BY MR. CORBETT:

16 Q. Ms. Rogers, do you remember what date of the
17 year this was? What the date was?

18 A. No.

19 MR. CORBETT: Thank you. That's all that I
20 have.

21 THE COURT: Anything else?

22 MR. CLARK: No, sir, Your Honor.

23 THE COURT: Okay. Thank you, ma'am. You can
24 step down.

25 THE WITNESS: Okay.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 [Whereupon, Ms. Rogers is excused and exits the
2 witness stand]

3 MR. CLARK: Your Honor, this witness is under
4 subpoena. I would like her to remain under subpoena.
5 She might have to go back to work --

6 MS. ROGERS: Yes.

7 MR. CLARK: -- but I can reach her.

8 THE COURT: All right. You can go back to work,
9 but he'll be back in touch with you if he needs you
10 again. Okay?

11 MS. ROGERS: Thank you.

12 THE COURT: All right. Thank you.

13 Mr. Clark?

14 MR. CLARK: Your Honor, those are all the
15 witnesses we have for this hearing.

16 THE COURT: Any witnesses for the State?

17 MR. CORBETT: Yes, sir, Your Honor.

18 THE COURT: Okay. Call your witnesses.

19 MR. CORBETT: The State would call Kimberly
20 Compton.

21 [Whereupon, Ms. Compton comes forward]

22 THE CLERK OF COURT: Put your left hand on the
23 Bible. Raise your right hand.

24 State your name, please.

25 MS. COMPTON: Kimberly Compton.

Kimberly Compton - Direct Examination by Mr. Corbett

1 [Whereupon, Ms. Compton is duly sworn by the
2 clerk of court as follows: do you solemnly swear or
3 affirm the testimony you give to this Court will be the
4 truth, the whole truth, and nothing but the truth, so
5 help you God]

6 THE WITNESS: Yes, sir.

7 THE CLERK OF COURT: Thank you. Here, please.

8 [Whereupon, Ms. Compton takes the witness stand]

9 THE CLERK OF COURT: State your name and spell
10 your last for the record.

11 THE WITNESS: Kimberly Compton. C-O-M-P-T-O-N.

12 MR. CORBETT: Ms. Compton, good morning.

13 THE WITNESS: Good morning.

14 - - - - -

15 KIMBERLY COMPTON,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. CORBETT:

20 Q. Ms. Compton, you're here today by virtue of a
21 subpoena; is that correct?

22 A. Yes, sir.

23 Q. Okay. Fair to say that you don't really want to
24 be here today?

25 A. No, sir.

MIA PERRON, CVR-CM

-72-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. Your name is Kimberly Compton?

2 A. Yes, sir.

3 Q. Where do you live?

4 A. 380 Peach Orchard Road.

5 Q. Ms. Compton, tell me about -- what is the nature
6 of your relationship with Chris Gainey?

7 A. Common-law marriage. And we have three
8 children.

9 Q. And how long have the two of you lived together?

10 A. About twenty years.

11 Q. Now, do you recall the night of -- excuse me --
12 July 10th? Excuse me. Let me make sure I've got the time
13 right. July 10th, 2010, and the early-morning hours of
14 July 11th, 2010?

15 A. I remember that day, yes.

16 Q. Do you remember that as the day that your
17 brother was injured?

18 A. Yes, sir.

19 Q. Okay. I'm sorry. I jumped ahead a little bit.
20 Who is your brother?

21 A. Michael Compton.

22 Q. All right. Do you have any other brothers?

23 A. No, sir.

24 Q. Okay. And this is Michael Compton sitting here
25 in the black shirt?

1 A. Yes, sir.

2 Q. Okay. Older brother? Younger brother?

3 A. Baby brother.

4 Q. Now, if you would please tell us a little bit
5 about what was happening on July the 10th that evening.

6 A. From the beginning?

7 Q. Yes, ma'am.

8 A. Me and my brother were mystery shopping and
9 going to Columbia and this and that, and trying to take
10 care of some of my errands, and we were looking for his
11 dog and putting out flyers and stuff. When he came to the
12 house a couple of days beforehand, the fireworks scared
13 his little dog and he ran off. So that's what we were
14 doing for the day.

15 Q. And at some point did you end up back at your
16 house that evening?

17 A. Yeah. After we finished doing everything, we
18 went to my house.

19 Q. Now, was Mr. Gainey there at that time, or did
20 he arrive later?

21 A. I think the first thing he was there.

22 Q. Do you -- do you have any idea about what time
23 this would have been?

24 A. It was around dinner time.

25 Q. So who all would have been at your house at this

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 time?

2 A. My children, and Chris, me, and my brother.

3 Q. Now, when you say children, how many children do
4 you have?

5 A. Three girls.

6 Q. What are their ages?

7 A. The oldest is seventeen; twelve; and ten. Well,
8 she'll be ten in August.

9 Q. And what did -- did the -- let's see. There
10 were three adults at that point; correct?

11 A. Yeah.

12 Q. Okay. Did Mr. Hunter ever arrive at your
13 residence that evening?

14 A. Yeah.

15 We -- me and my brother discussed that we had
16 had such a bad week, my grandmother died and the dog lost
17 and stuff like that, so we decided to get alcohol. So
18 Marquis came to the house at that point and we three drove
19 to the base and got some alcohol and stuff. And Marquis
20 had to take care of some things before he could come back
21 and us actually start drinking. And I remember that time
22 very well because I remember being like, tell Marquis if
23 he don't hurry up, we're going to start without him and
24 all that. So that was about 10:30 when Marquis arrived
25 back at our house.

1 Q. So there's basically four adults there at the
2 house having some drinks; is that correct?

3 A. Yeah.

4 Q. Now, at some point did you leave your residence?

5 A. Uh-huh.

6 MR. CORBETT: I'm sorry --

7 A. Yes.

8 MR. CORBETT: Because she's taking it down --

9 A. Yes.

10 MR. CORBETT: -- if you would say yes. Thank
11 you.

12 Q. [Mr. Corbett] Okay. Where did you go?

13 A. We went to what's called Scott's Bar.

14 Q. Is that also known as the Wheel Inn?

15 A. Yes, sir.

16 Q. And then the four of you continue to drink
17 there?

18 A. Yes.

19 Q. Tell me about what was going on there at the
20 Scott's Bar.

21 A. I don't remember too much of Scott's Bar because
22 I was already slammed by then. I remember us getting
23 drinks. I remember Marqui's sitting beside me. And we
24 just drank a whole bunch. I don't even remember getting
25 up from the bar except to go to the bathroom. And when I

MIA PERRON, CVR-CM

-76-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 came back, Marquis had had his head laying on the bar.
2 And took a couple of more, can't even tell you how many
3 more, and I got really fuzzy-feeling and went to the
4 bathroom to try to puke some of it up and couldn't make
5 it. So I didn't even tell anybody I was leaving or
6 anything because I couldn't hardly make my way out. And I
7 went outside and crawled in the back of my brother's truck
8 and passed out. As far as I've been told, I wasn't in the
9 bar for very long.

10 Q. Now, did you go back into Scott's at any point?

11 A. No, sir.

12 Q. Okay. Where did you go from Scott's?

13 A. Home.

14 Q. Tell me what happened when you got home.

15 A. Can't really tell you, because I was in the back
16 of the truck asleep. I've been told a few different
17 things. But as far as I think, I think that I came around
18 the trailer and -- because I can -- I can hear
19 altercations. And I think that I got out of the back of
20 the truck myself. I'm not sure. And I went around the
21 house and that's when I saw Chris hit Michael once and I
22 jumped on top.

23 Q. Okay. What else did you see?

24 A. That was it. I didn't actually get to see
25 anything, because at that point I was on top of my

1 brother.

2 Q. How many times was your brother hit?

3 A. I don't know how many times he was hit. I only
4 saw one and I think that was the last one.

5 Q. Ms. Compton, if you would please take a look at
6 this document and tell me if you can identify it.

7 A. Yes, sir. This is the one from Florence.

8 MR. CORBETT: Mark for ID.

9 Your Honor, at this time a two-page statement of
10 Kimberly --

11 Just mark it for ID. It's got to be -- so we
12 can talk about it, it's got to have a number on it. Do
13 you object to it?

14 MR. CLARK: Well, I believe he's only using it
15 for impeachment purposes and so I didn't -- I don't
16 believe it goes into evidence.

17 MR. CORBETT: No. It's just got to be marked --

18 MR. CLARK: Yes, sir.

19 MR. CORBETT: -- so the record will show what it
20 is.

21 MR. CLARK: Yes, sir. Thank you.

22 [Whereupon, State's Exhibit Number 1 is marked
23 for identification by the court reporter]

24 MR. CORBETT: [Mr. Corbett] Your Honor, marked
25 for identification is State's Exhibit Number 1, a two-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 page voluntarily -- the title at the top says voluntary
2 statement. Purports to bear the signature of Kimberly
3 Compton. Two pages.

4 Q. [Mr. Corbett] Ms. Compton, is that your
5 signature?

6 A. Yes, sir.

7 Q. Now, Ms. Compton, where was that statement
8 taken?

9 A. At the Florence hospital.

10 Q. Florence hospital.

11 What were you doing at the Florence hospital?

12 A. Visiting my brother.

13 Q. Okay. At that point in time, what type of
14 condition was he in?

15 A. It was pretty bad.

16 Q. Describe pretty bad for me.

17 MR. CLARK: Your Honor, the relevancy. This
18 witness to talk about what condition he was in, I would
19 object to that.

20 THE COURT: Overruled.

21 Q. [Mr. Corbett] Just what were you able to
22 observe of his condition?

23 A. He had been hit a few times in the back of the
24 head and he was swollen and he looked pretty bad.

25 Q. Was he conscious?

1 A. Not at the time. They had to induce a coma so
2 his brain wouldn't continue to swell.

3 MR. CLARK: Object to the opinion.

4 THE COURT: Sustained.

5 Q. [Mr. Corbett] Now, Ms. Compton --

6 THE COURT: I'll allow in the fact that he was
7 unconscious. But why, I don't think -- it's either
8 hearsay or not within her area of expertise.

9 Q. [Mr. Corbett] Ms. Compton, this is a statement
10 that you gave to Investigator Burnish; is that correct?

11 A. Uh-huh.

12 Q. Does it indicate the date on here?

13 A. 13th.

14 Q. Okay. And it also indicates the time?

15 THE COURT: I'm sorry. I didn't hear the date.

16 THE WITNESS: 13th.

17 THE COURT: 13th.

18 Q. [Mr. Corbett] And it indicates the time; is
19 that correct?

20 A. Yes, sir.

21 Q. 2:22 p.m.?

22 A. No. It says 1:43.

23 Q. I'm sorry. I may be --

24 A. Oh. No. Down at the bottom. I'm sorry. I was
25 reading the top and -- where it says date and time of

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 interview.

2 Q. So sometime probably commencing around 1:43?

3 A. Uh-huh.

4 Q. And then you signed it sometime around 2:22,
5 according to the document?

6 A. Uh-huh.

7 THE COURT: Is that a yes?

8 A. Yes, sir.

9 Q. [Mr. Corbett] Okay. And do you believe that to
10 be accurate, that you gave this statement to Investigator
11 Burnish on that date and time?

12 A. Yes, sir.

13 Q. Now, in this statement you're able to provide
14 considerable detail concerning the events of that night;
15 correct?

16 A. Uh-huh.

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. And those events are more detailed than what you
20 testified to just a moment ago?

21 A. That's because I -- I -- in thinking that --
22 between two years, you know, it gets sort of fuzzy when
23 you start putting pieces together. We've all tried to
24 figure out what went wrong.

25 Q. But this is the statement that you gave to

1 Investigator Burnish?

2 A. Yes, sir.

3 Q. Is that correct?

4 A. Yes, sir.

5 Q. Okay. Now, if you would please read this
6 statement that you gave to Investigator Burnish..

7 MR. CLARK: Your Honor, I object to that use of
8 the statement. If he's using it as a prior
9 inconsistent statement, I believe it's proper for him
10 to ask her didn't she say such and such on this day and
11 show her that it contradicts what she said today.

12 THE COURT: Well, maybe somebody can give me a
13 copy of it, because I don't have it.

14 Have you got an extra copy?

15 MR. CORBETT: Yes, sir.

16 THE COURT: Do you object to me looking at it?

17 MR. CLARK: No, sir.

18 I just object to her reading the entire
19 statement.

20 THE COURT: Well, that might be, you know, a
21 proper objection when the jury is in the courtroom.
22 But if we're trying to get through this process with me
23 having all the facts, that's fine.

24 But you want him to do what?

25 MR. CLARK: Well, I want him to -- he's using it

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 as a prior inconsistent statement and I think what he
2 has to do is point out what's inconsistent in this
3 statement. The first line, Your Honor --

4 THE COURT: It's not like using a deposition.
5 It's not like using a deposition in the trial. There
6 is a certain rule, I think it's 613, on prior
7 inconsistent statements where you can get in evidence
8 of what she said. I don't really care how he does it.
9 But if he has her read it, or he goes through the
10 inconsistencies, what difference does it make -- is
11 what I'm trying to figure out -- for the purposes of
12 this hearing?

13 MR. CLARK: I think only a small part of it is
14 inconsistent, is what he's alleging. For him -- for
15 her to say --

16 THE COURT: Here's -- the rule on that is if she
17 equivocates on anything -- she's giving an account
18 today that she remembers drinking at the house, they
19 went to Scott's Bar at around 10:30 or sometime after
20 10:30, she was slammed, she remembers going to the
21 bathroom, came back and Marquis was passed out on the
22 bar, she went outside and passed out in the trunk
23 [phonetic], she eventually got home and doesn't
24 remember what happened, got out of the truck, could
25 hear an altercation around the corner, and saw Chris

1 hit Michael once, and she jumped on Michael -- I don't
2 know why she jumped on Michael, whether to protect him
3 or join in, I don't know -- and she saw the last hit.

4 So that's where we are. So are there some
5 inconsistencies in this, or is there more expansive
6 explanation in this?

7 MR. CORBETT: Both.

8 THE COURT: Okay. You can -- just cross-examine
9 her using the statement and go for the inconsistencies
10 first. Okay?

11 So your objection at this point is sustained.

12 MR. CLARK: Thank you.

13 THE COURT: I don't think it's going to make any
14 difference, but it's sustained.

15 Q. [Mr. Corbett] Now, Ms. Compton, let me back up
16 just a moment before we look back at that statement.

17 Now, on the night in question, did you observe
18 Chris Gainey taking any prescription medication?

19 A. Yeah. He had broken his hand.

20 Q. Okay. And when did you see him take
21 prescription medication?

22 A. It was the -- I know it was in the evening
23 because it was before -- before we went mystery shopping,
24 he had broken his hand. And I think his friend Brad took
25 him to the hospital and me and Michael went mystery

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 shopping. So it would have to be -- it would -- it was
2 after the second time we came home, because he had been to
3 the doctor and it was wrapped up and they were saying that
4 he was going to have to go back and get an actual cast put
5 on it. But I do know that he did take prescription
6 medicine.

7 Q. Was that before or after you went to the PX?

8 A. I think that -- I think it was before.

9 Q. But after you had gotten home from Columbia?

10 A. Yes. Because I didn't actually find out his
11 hand was broken and all until when we got back.

12 Q. Now, when Chris and Michael left the bar,
13 Scott's Bar, and came back to the vehicle, was there any
14 type of fighting going on?

15 A. No.

16 At that point I was in the back of the truck.
17 When they -- I actually -- me and Marquis rode in the back
18 of the truck on the way home.

19 Q. So there wasn't any type of fighting going on?
20 They were getting along?

21 A. Uh-huh. And everyone's told that they were
22 getting along good.

23 THE COURT: Don't talk about what other people
24 said. He's going to ask you questions about what you
25 remember.

1 Q. [Mr. Corbett] Now, at some point in time you
2 were at the back door of the residence trying to open it;
3 correct?

4 A. That's what I'm thinking, but I don't know for
5 sure. I don't know if that was the first time or second
6 time.

7 Q. Now, when you were at the back door, were they
8 arguing?

9 A. I don't really -- I don't remember anybody
10 arguing when I was with all of them together. And when I
11 was asked, well, then, how do you know they were fighting,
12 because I could hear an altercation. So that's where I
13 don't know if I was in the back yard or in the truck.

14 Q. Now, were you standing on your back steps when
15 you saw James get hit?

16 A. No. I don't think so. I know at one point I
17 was on the steps, because I was beating on the door.

18 Q. And at that point you saw Chris Gainey continue
19 to hit Michael --

20 MR. CLARK: Object to leading, Your Honor.

21 THE COURT: Overruled. I'll allow him to lead.

22 Q. [Mr. Corbett] At that point did you see Chris
23 Gainey hitting Michael Compton with a board?

24 A. I did see him hit him once with a board.

25 Q. Did you run over to Michael?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Uh-huh. Yes.

2 Q. What was the purpose of you running over to
3 Michael?

4 A. I was scared that he was hurt.

5 Q. Okay. What did you do?

6 A. I jumped on top of him, as a mother would do.

7 Q. You jumped on top of him?

8 A. Uh-huh.

9 Q. For what reason?

10 A. To cradle him.

11 Q. Were you over him, or were you holding him in
12 your --

13 A. I was on top of him.

14 Q. On top of him?

15 A. Uh-huh.

16 Q. Why were you on top of him?

17 A. Because he was down and in my eyes he was hurt.

18 Q. While you were on top of him, did Chris Gainey
19 continue to strike him?

20 A. He didn't actually get to strike him, because I
21 was on top.

22 THE COURT: You're going into the details of the
23 statement. I'll allow it.

24 Overrule the defendant's objection.

25 Q. [Mr. Corbett] Now, Ms. Compton, if you would

1 please -- if you would get that statement out for me. And
2 I'm going to direct your attention about where it says,
3 later they finished. Do you see that sentence?

4 A. Uh-huh.

5 Q. All right. Now, this is information you
6 provided to Investigator Burnish; correct?

7 A. Uh-huh.

8 THE COURT: You need to say either yes --

9 A. Yes.

10 THE COURT: -- or no.

11 Q. [Mr. Corbett] All right. Pick that up there
12 for me and read that sentence, please.

13 A. Chris and James were still inside drinking.
14 Later they finished and when they came back, they were
15 getting along fine.

16 Q. All right. Please continue.

17 A. We went home and walked to the back door. At
18 the time they were arguing and then they started fighting.
19 Want me to go on?

20 Q. Please continue.

21 A. That's when I tried to unlock the back door and
22 get into the house. I was having trouble getting into the
23 house -- is that what --

24 THE COURT: You've got to read what it says.

25 A. -- getting into the door unlocked. And when I

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 turned around, I saw James being hit and fall to the
2 ground. Chris was still hitting him. And I ran over and
3 saw a big gash on James' head and tried to pinch it
4 together to try and stop the bleeding. I was crouched
5 over James and Chris was still hitting him and yelling at
6 him. I could see a light from inside my house and I heard
7 my ten-year-old daughter yell at Chris, dad, stop; dad,
8 stop; you're going to kill him and you're hurting mom.
9 That's how I know the door was open.

10 Q. [Mr. Corbett] Continue, please.

11 A. I stayed on top of Michael, trying to protect
12 him, and Chris was hitting me and was yelling and
13 screaming at me. I don't know what made Chris stop, but
14 he did. James came to and got up and started running
15 away. I found him on a neighbor's porch and I ran to him
16 and was cradling him in my arms and beat on the neighbor's
17 door yelling for them to call the cop -- for them to call
18 the police and an ambulance. While Chris was beating
19 James, I kept trying to tell -- while Chris was beating
20 James, I kept trying to tell James everything was going to
21 be okay. James told me, just let him finish, just let him
22 finish. The police came and then the ambulance came and
23 took James to the hospital. I never saw James -- I never
24 saw James hit Chris at any time.

25 Q. Now, let me back up for a moment. In your

1 statement you indicated: I turned around and I saw James
2 getting hit and falling to the ground.

3 A. Because I thought that I was the one trying to
4 get into the door. But my daughter told me that my keys
5 were left in the house, so that's why I'm thinking that I
6 couldn't have been getting in the door.

7 Q. Let me ask it this way. When you saw him get
8 hit and fall to the ground, okay --

9 A. Uh-huh.

10 Q. -- did he -- and then you ran over to cover
11 him --

12 A. Uh-huh.

13 Q. -- did he get up between the time you saw him go
14 to the ground and when you covered him?

15 A. No. He got up after I was on him.

16 Q. Now, you indicated here in the statement that
17 before you got to James, it says -- states here: Chris
18 was still hitting him and I ran over.

19 A. Not with a board. He was kicking him.

20 Q. Kicking him?

21 A. Uh-huh.

22 THE COURT: That's a yes?

23 A. Yes, sir. Kicked him.

24 Only seen the one hit with the -- the one with
25 the board. I never saw any other boards.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. [Mr. Corbett] So when you told the detective,
2 they're hitting, what you're saying today is that it was a
3 kick?

4 A. Well, I know for sure that he did hit him with
5 the board, because I saw him hit him with the board. But
6 when I was running over is when he was kicking him in his
7 side.

8 Q. I was crouched over James and Chris was still
9 hitting him and yelling at him.

10 Was he using the board?

11 A. No, not at that point. I only saw the one hit
12 with the board.

13 Q. But he was still hitting him?

14 A. He had kicked him, yes.

15 Q. Let me see if I understand your testimony.
16 Michael gets hit with the board and goes down?

17 MR. CLARK: Your Honor, I object to him
18 summarizing her testimony.

19 THE COURT: Overruled.

20 Q. [Mr. Corbett] Your statement says hitting. But
21 Chris was actually kicking him, you got there and covered
22 him up, and he continued to kick him and yell at him?

23 A. He was trying to get me off of Michael.

24 Q. And then you heard your daughter yell from the
25 residence?

1 A. Uh-huh. That's how I know the door was open.

2 Q. It says here: I stayed on top of Michael,
3 trying to protect him.

4 A. Uh-huh.

5 Q. Protect him --

6 THE COURT: You either need to say yes or no.

7 A. Yes.

8 Q. [Mr. Corbett] What were you protecting him
9 from?

10 A. He's like my son. I'm going to protect him from
11 anything. And at that point in time, in my opinion he was
12 hurt.

13 Q. Were you protecting him from blows with a board,
14 or kicks?

15 A. The hits, period.

16 Q. Did you get struck?

17 A. Yes, sir.

18 Q. I noticed in one of the photographs that you --
19 your eye was very bad blood-shot that evening. Do you
20 recall that?

21 A. Yes, sir.

22 Q. What caused that?

23 A. I didn't know, but I've been told that it was a
24 kick to the head.

25 MR. CLARK: Object to the hearsay, Your Honor.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 THE COURT: Sustained.

2 Q. [Mr. Corbett] Now, you reference here that
3 James came to?

4 A. Uh-huh.

5 Q. All right. At some point was he unconscious?

6 A. I thought so. He was bleeding.

7 Q. So he came to and ran away from the scene; is
8 that correct?

9 A. Uh-huh. Yes, sir.

10 Q. Do you know about how far he went?

11 A. I thought he was actually running to my
12 father's, so -- it's in between so I'm guessing it was
13 less than a half an hour, maybe a half an hour.

14 Q. But he basically ran to a neighbor's residence?

15 A. Yes, sir.

16 Q. Did you know that neighbor?

17 A. I didn't at the time, but then we found out that
18 we do know each other.

19 Q. Did you remain there until the police arrived?

20 A. Yes, sir.

21 Q. What could you observe about Michael at that
22 time?

23 A. He was talking and telling people that he had
24 lost his dog. And they thought that a dog had viciously
25 attacked him. And I told him, no, that it was my

1 boyfriend. He was --

2 Q. Was he still bleeding?

3 A. Yes.

4 Q. Okay. If you recall -- I noticed from some
5 pictures that there was a lot of blood on you.

6 A. Yes, sir.

7 Q. Would that have been your blood or Michael's
8 blood?

9 A. Michael's --

10 Q. Do you have any idea from how many places he was
11 bleeding?

12 A. I was only worried about the one. That's the
13 only one I saw at that point -- at that time.

14 Q. Did you see any other gashes on his head?

15 A. Not at that time.

16 Q. Did you later see gashes on his head?

17 A. Yes. When we got to the hospital.

18 Q. How would you describe how his head looked?

19 A. At Tuomey, or after?

20 Q. Both, please.

21 A. At Tuomey I thought he was, you know, going to
22 be okay. It looked like he needed some stitches. And
23 then the next thing I saw was they were strapping him into
24 a -- strapping him into an airlift to take him away to a
25 better hospital.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. All right. Let me back up, if I may, to that
2 question. Did you ever see the back of his head?

3 A. No. They told us that he had --

4 Q. Not what -- yeah, not what they --

5 A. I didn't --

6 Q. -- told you.

7 Did you see the back of his head?

8 A. No, because he -- they had him laying down in
9 the street.

10 MR. CORBETT: Okay. One moment, please, Your
11 Honor.

12 THE COURT: Yes, sir.

13 Q. [Mr. Corbett] Now, Ms. Compton, this did happen
14 at your residence; right?

15 A. Yes, sir.

16 Q. And that is here in Sumter County?

17 A. Yes, sir.

18 Q. Okay. And the person doing whether you call it
19 kicking or hitting was Chris Gainey?

20 A. Yes, sir.

21 Q. I just want to make sure we have the basics of
22 what's going on.

23 And you never saw your brother hit Chris?

24 THE COURT: You've already asked that question.

25 That's been asked and answered. She said no.

Kimberly Compton - Cross Examination by Mr. Clark

1 MR. CORBETT: That's all the questions I have,
2 Your Honor. Thank you.

3 THE COURT: All right. Mr. Clark, cross.

4 MR. CLARK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CLARK:

7 Q. Ms. Compton, you talked to Sargent Browder when
8 he got to the scene that night, didn't you?

9 A. At Tuomey [phonetic]?

10 Q. No. At your -- at -- when Sargent Browder came
11 out to the scene.

12 Which porch -- which porch was Michael sitting
13 on?

14 A. It was a neighbor's house, so it was in the
15 trailer park.

16 Q. All right. So you --

17 A. So at that point, they wasn't --

18 Q. Go ahead.

19 A. I never talked to an officer in my yard.

20 Q. Right.

21 A. It was at a neighbor's.

22 Q. But you were on a neighbor's porch; right?

23 A. Yes, sir.

24 Q. And did you tell Sargent Browder at that time
25 that you can't really say what happened?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. I didn't know what had happened.

2 Q. And you told him that on the night that this
3 incident occurred; right?

4 A. Yes, sir.

5 Q. And that was a couple of days before you signed
6 this statement?

7 A. Yes, sir.

8 Q. So on the night of the incident, you told --
9 right after it happened, you told Sargent Browder you
10 can't really say what happened, didn't you?

11 A. Yes, sir.

12 Q. Now, and do you know whether Michael struck
13 Chris with a board or not?

14 A. No, sir.

15 Q. When you heard the fight in the beginning, could
16 you see what was happening?

17 A. No, sir.

18 Q. And in your statement --

19 THE COURT: Exhibit 1.

20 MR. CLARK: Yes, sir, Your Honor. Thank you.

21 Q. [Mr. Clark] You indicated that James -- I
22 turned around and I saw James getting hit and then falling
23 to the ground.

24 You said that in your statement; right?

25 A. Yes, sir.

1 Q. So was it correct that when you first saw James
2 getting hit, he was still on his feet, wasn't he?

3 A. I saw him get -- he was -- he was like -- I
4 can't -- it's not standing completely up, but --

5 Q. He was still up?

6 A. A little.

7 Q. Okay.

8 A. And he got hit and I went over on top of him.

9 Q. All right. And when he was on the ground, you
10 only saw Chris hit him with the board one time?

11 A. Yes.

12 Q. And after that, Chris actually hit you; right?

13 A. Yes.

14 Q. Didn't hit Michael with the board anymore?

15 A. No.

16 THE COURT: And what did he hit you with, ma'am?

17 THE WITNESS: I really don't know what I got hit
18 with.

19 THE COURT: All right.

20 THE WITNESS: I've been told.

21 Q. [Mr. Clark] So --

22 A. I thought it was a board.

23 Q. But you didn't see what hit you?

24 A. No, sir.

25 Q. Are you clear that he only hit Michael one time

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 when he was on the ground?

2 A. Yeah. I do know that that's all I saw.

3 Q. Now, do you know whether Michael was unconscious
4 at any point?

5 A. In my opinion, I thought he was.

6 Q. And what made you think that?

7 A. Because he was on the ground.

8 Q. He was on the ground.

9 But isn't it true, Ms. Compton, that he quickly
10 got up and ran away?

11 A. Yes, sir.

12 Q. So if he was unconscious, it wasn't a very long
13 time, was it?

14 A. I suppose not. None of it seems like it
15 happened very long.

16 Q. After Chris stopped hitting you, how long after
17 that point did it take for Michael to get up and run away?

18 A. It was no time. It seems like seconds that the
19 whole thing, the whole everything -- everything seemed
20 like seconds.

21 MR. CLARK: Okay. Thank you, Your Honor.

22 That's all I have.

23 THE COURT: Redirect?

24 MR. CORBETT: Briefly, Your Honor.

25

Kimberly Compton - Redirect Examination by Mr. Corbett

REDIRECT EXAMINATION

BY MR. CORBETT:

Q. At some point when you had covered Michael on the ground he was not moving, was he?

A. Not to me. He -- he had -- he had said something to me, but that was right before he got up.

Q. About let him finish?

A. Yes.

Q. All right. But prior to that, when you were over him he didn't push you off of him or anything else? He wasn't moving?

A. No, not until he said that -- said -- he rolled me off, I didn't actually get off.

THE COURT: You need to speak up, please, ma'am.

A. I didn't actually get off. That's when Michael rolled me off and he took off.

MR. CORBETT: Thank you.

THE COURT: All right. Anything else from this witness, Mr. Clark?

MR. CORBETT: No, Your Honor.

MR. CLARK: Just briefly, Your Honor.

Kimberly Compton - Re-cross Examination by Mr. Clark

RECROSS-EXAMINATION

BY MR. CLARK:

Q. So Michael rolled you off of him?

A. Yes, sir, he --

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. He pushed you off of him?

2 A. He did like that, and took off.

3 MR. CLARK: Thank you, ma'am. That's all I
4 have.

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

6 [Whereupon, Ms. Compton is excused and exits the
7 witness stand]

8 THE COURT: Any other witnesses, Mr. Corbett?

9 MR. CORBETT: Your Honor, the State would call
10 Robert Burnish just briefly on the statement.

11 THE COURT: Yes, sir. Come on up, Mr. Burnish.

12 [Whereupon, Mr. Burnish comes forward]

13 THE CLERK OF COURT: State your name, please.

14 MR. BURNISH: Robert Burnish.

15 [Whereupon, Mr. Burnish is duly sworn by the
16 clerk of court as follows: do you solemnly swear or
17 affirm that the testimony you give this Court will be
18 the truth, the whole truth, and nothing but the truth,
19 so help you God]

20 THE WITNESS: Yes, I do.

21 THE CLERK OF COURT: Thank you.

22 [Whereupon, Mr. Burnish takes the witness stand]

23 THE CLERK OF COURT: State your name and spell
24 your last for the record.

25 THE WITNESS: Robert Burnish. B-U-R-N-I-S-H.

Robert Burnish - Direct Examination by Mr. Corbett

1 MR. CORBETT: Investigator Burnish, good
2 morning.

3 THE WITNESS: Good morning.

4 - - - - -
5 ROBERT BURNISH,

6 Having Been First Duly Sworn,
7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MR. CORBETT:

10 Q. By whom are you employed?

11 A. I'm with the Sumter County sheriff's office.

12 Q. And were you with the Sumter County sheriff's
13 office back on July 13th of 2010?

14 A. Yes, I was.

15 Q. Okay. Were you involved in the investigation of
16 a case concerning Chris Gainey and James Michael Compton?

17 A. Yes, I was.

18 Q. Okay. Did you have occasion to speak with
19 Kimberly Compton?

20 A. I did, yes.

21 Q. Do you remember the location?

22 A. Yes. I -- actually, I spoke to her twice. The
23 first time was the night of the incident at Tuomey
24 Hospital. I did not take a statement from her at that
25 time because she indicated that she was intoxicated. But

MIA PERRON, CVR-CM

-102-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 the second time was at Florence Hospital.

2 Q. And do you have that document there in front of
3 you?

4 A. Yes, I do.

5 Q. Okay. And it indicates on it that it was dated
6 July 13th of 2010?

7 A. That's correct.

8 Q. To your recollection, is that the correct date?

9 A. Yes, it is.

10 Q. And you've already said it was at McCloud
11 Medical Center?

12 A. That's right.

13 Q. Okay. And we had talked briefly a little bit
14 about some of the phrasing and wording in there. To your
15 recollection, do you remember if Ms. Compton used the
16 phrase hitting, or kicking?

17 MR. CLARK: Your Honor, the statement speaks for
18 itself.

19 THE COURT: Well, you told me you didn't want
20 the statement to come in.

21 Rule 613 allows extrinsic evidence of a prior
22 inconsistent statement to come in, and this is the
23 extrinsic evidence, so how would you suggest that he
24 proceed?

25 MR. CLARK: Well, it seems to me the statement

1 says what it says, not what --

2 THE COURT: Well, she says it's not accurate.

3 MR. CLARK: She wrote what -- is he asking him
4 did she say something else, or is he asking Deputy
5 Burnish to interpret what's on the statement? That's
6 my objection.

7 THE COURT: He's correct. The statement uses
8 the word hit. So, I mean, she's already read the
9 statement in. You can ask him --

10 I'm going to overrule the objection at this
11 point. It may be a more important objection if this
12 issue comes up in front of the jury.

13 Go ahead, Mr. Corbett.

14 MR. CORBETT: Yes, sir.

15 Q. [Mr. Corbett] Did she use the phrase hitting,
16 or kicking?

17 THE COURT: Are you talking about verbally, or
18 in writing?

19 MR. CORBETT: Well, I'm sorry. Let me back up a
20 moment.

21 Q. [Mr. Corbett] This statement, as it was being
22 -- was it being dictated to you?

23 A. Yes.

24 Q. Okay. So the statement is actually your
25 handwriting?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. That's correct.

2 Q. Now, were you writing down word-for-word what
3 Ms. Compton said to you?

4 A. Yes, sir.

5 Q. Okay. And what you wrote down here was word-
6 for-word what she told you?

7 A. That's right.

8 Q. Okay. Did you change it, use any other sources,
9 combine reports, to make this statement?

10 A. No, I did not.

11 Q. These were her words to you?

12 A. That's right.

13 MR. CORBETT: Your Honor, at this time we would
14 offer this as State's Exhibit 1.

15 THE COURT: Well, the statement will still be
16 for ID. I'm going to consider it. For the purposes of
17 the hearing I'll accept it, but let's leave it for ID
18 just for label-keeping purposes.

19 MR. CORBETT: Yes, sir.

20 THE COURT: All right.

21 MR. CORBETT: That's all the questions I have of
22 this witness.

23 THE COURT: Mr. Clark?

24 MR. CLARK: Thank you, Your Honor.

25 - - -

Robert Burnish - Cross Examination by Mr. Clark

CROSS-EXAMINATION

BY MR. CLARK:

Q. Deputy Burnish, did you say on the night of this incident this witness was too intoxicated to give you a statement?

A. That's right.

Q. And have you reviewed the dash cam that Deputy Browder had that night?

A. No, I have not.

MR. CLARK: Thank you, sir. That's all I have.

THE COURT: All right. You can step down.

[Whereupon, Mr. Burnish is excused and exits the witness stand]

THE COURT: Anything else, Mr. Corbett?

MR. CORBETT: Your Honor, may we approach?

THE COURT: Any other --

MR. CORBETT: Oh. I'm sorry. Nothing further, Judge.

THE COURT: Yes.

[Whereupon, an off-the-record bench conference is held]

[Whereupon, a recess is taken]

THE COURT: All right. Mr. Corbett, your witness.

MR. CORBETT: Deputy Wayne Browder, Your Honor.

Wayne Browder - Direct Examination by Mr. Corbett

1 [Whereupon, Mr. Browder comes forward]

2 THE CLERK OF COURT: State your name, please.

3 MR. BROWDER: Wayne Browder.

4 [Whereupon, Mr. Browder is duly sworn by the
5 clerk of court as follows: do you swear or affirm that
6 the testimony you give to this Court will be the truth,
7 the whole truth, and nothing but the truth, so help you
8 God]

9 THE WITNESS: I do.

10 [Whereupon, Mr. Browder takes the witness stand]

11 THE CLERK OF COURT: State your name and spell
12 your last for the record.

13 THE WITNESS: Wayne Browder. B-R-O-W-D-E-R.

14 MR. CORBETT: Deputy Browder, good morning.

15 THE WITNESS: Good morning.

16 - - - - -

17 WAYNE BROWDER,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. CORBETT:

22 Q. By whom are you employed?

23 A. Sumter County sheriff's office.

24 Q. And how long have you been with the Sumter
25 County's sheriff's office?

1 A. Fifteen years.

2 Q. Okay. So you were working with the sheriff's
3 office back in July 11th, 2010?

4 A. Yes.

5 Q. Did you have occasion to respond to an incident
6 at 3855 Peach Orchard Road?

7 A. I did.

8 Q. And did you, in fact, go to 3855 Peach Orchard?

9 A. I did.

10 Q. Just to try to move us along to a point. You
11 first went to 3855; correct?

12 A. I believe. Where Mr. Compton was at.

13 Q. Okay. So you eventually made your way around to
14 where he was located?

15 A. If I recall -- if I can refer to my report?

16 Q. Yes.

17 [Whereupon, the witness reviews documents]

18 A. I believe that's accurate. I went to the --

19 Q. [Mr. Corbett] But you eventually found him?

20 A. Yes.

21 Q. And Ms. Compton?

22 A. Right.

23 Q. And then you left there and went to what I would
24 refer to as the Claudia Gainey residence?

25 A. Right.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. Is that correct?

2 A. Right.

3 Q. Now, when you got to Ms. Gainey's residence, did
4 you ultimately make contact with Chris Gainey?

5 A. I did.

6 Q. All right. Did they identify -- how did you
7 know it was Chris Gainey?

8 A. Ms. Compton had said that they had an
9 altercation and that Chris had done it and -- and I was
10 told that he lived out there at Ms. Gainey's house, so I
11 went there.

12 Q. Okay. Now, prior to this point, did you know
13 who Chris Gainey was?

14 A. I would say I've probably met him one time. But
15 to call him by name, no.

16 Q. Did you know who Claudia Gainey was?

17 A. Yes.

18 Q. All right. Well, let me back up here for just a
19 moment. How many people -- if you remember, how many
20 people were home that evening?

21 A. I want to say Mr. Gainey actually answered the
22 door. I don't know if she answered the door or if he come
23 to the door without her. I want to say there was two or
24 three sisters in the house. Five or six people at the
25 house.

1 Q. Did you ultimately make contact with Chris
2 Gainey?

3 A. Yes.

4 Q. The individual sitted here -- sitting here --
5 sitting here next to Mr. Clark?

6 A. Yes, sir.

7 Q. Okay. Now, while you were in the residence, was
8 that conversation being recorded?

9 A. Yes.

10 Q. And how does that work? How does that recording
11 work?

12 A. Well, I mean, it was with an in-car camera -- I
13 put -- hit record button, went to the door.

14 Q. Is that normal practice when responding to a
15 scene such as this?

16 A. Something of this nature, yes.

17 Q. And this videotape here captures the
18 conversation between you and Chris Gainey, as well as
19 other individuals in the house?

20 A. That's right.

21 MR. CORBETT: Do you have any objection?

22 MR. CLARK: Yeah. I do have a Jackson v. Denno
23 objection to Mr. Gainey's statements on the tape, and I
24 would move to suppress those statements.

25 THE COURT: All right. Mr. Corbett, you're

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 talking about -- I've listened to it, but I -- like I
2 mentioned to you gentlemen up here earlier, a lot of it
3 is just people who are obviously intoxicated and can
4 hardly talk, make out what they're saying. At some
5 point, at about 3:38, according to that clock, Deputy
6 Browder -- I know his voice because I've heard it in
7 court before -- reads him his Miranda rights. So
8 you're talking about anything before that, or are you
9 talking about after that?

10 MR. CLARK: Before that, Your Honor.

11 THE COURT: Okay. Well, did he say anything
12 before he was Mirandized? Whether or not Miranda
13 warnings were effected or not because of any
14 intoxication, I haven't gotten there yet. But I don't
15 know who was talking on the tape. I don't know who was
16 saying what. But I know one thing. From what I heard,
17 Mr. Gainey was going to talk regardless, because his
18 father -- I assume that was him -- told him to shut up.
19 And guess what? He wouldn't.

20 MR. CLARK: I understand.

21 THE COURT: Okay. So I don't know whether that
22 was in response to questioning when he said, I'm guilty
23 of assault. Now, that was right before -- and
24 instantly, Deputy Browder Mirandized him.

25 So what's the State's position on the pre-

1 Miranda statements --

2 MR. CORBETT: Judge --

3 THE COURT: -- including the ones that, I'm
4 guilty of assault.

5 MR. CORBETT: Judge, for purposes of this, we
6 intend to offer what is post Miranda. I had intended
7 to cue it up to where the Miranda rights are read.

8 THE COURT: I would have to do that at a Denno
9 hearing anyway --

10 MR. CORBETT: Yes, sir.

11 THE COURT: -- so let's go ahead with that.

12 MR. CORBETT: And, Judge, let me --

13 THE COURT: Give me the --

14 MR. CORBETT: Yes.

15 And, Judge, let me state to the Court that it's
16 a little bit difficult to stop it on precisely the
17 exact time. Right now it is set on 3:38:34.

18 THE COURT: It's right around then.

19 MR. CORBETT: I believe the Miranda comes on
20 within about fifteen seconds of this, if I remember
21 correctly.

22 THE COURT: All right. I have some notes in my
23 office and I had 3:38-something.

24 MR. CLARK: Just for the record, our position
25 would be that Deputy Browder attempted to question

MIA PERRON, CVR-CM

-112-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Mr. Gainey at 3:30:50 on this tape and that's what
2 got him to talk. Anything after that we believe would
3 be -- even though he Miranda -- Miranda --

4 THE COURT: All right. I understand what you're
5 talking about. In other words, there's cases that say
6 you can't get somebody to make an incriminating
7 statement with Miranda and then Mirandize them and then
8 say, well, didn't you just --

9 MR. CLARK: Right.

10 THE COURT: So I'm aware of the case. But since
11 I've got to hear all this to make my decision, your
12 objection is noted for the record. But I'm going to
13 rule on it right now.

14 MR. CLARK: -- see what's going on.

15 THE COURT: -- go ahead and --

16 And at 11:00 I'm going to stop, bring the jury
17 in and turn them loose until one o'clock. Everybody
18 will have to eat lunch before 1:00 if we start right
19 now. Depending on how I rule --

20 [Whereupon, video plays. Video is not
21 transcribed by the court reporter]

22 [Whereupon, video is paused]

23 Q. [Mr. Corbett] Now, Deputy Browder, it's a
24 little scratchy here on this tape. Were you able to hear
25 that?

1 A. Little bit.

2 Q. Was that you reading Mr. Gainey his rights?

3 And that was Mr. Gainey you were speaking to?

4 Chris Gainey?

5 A. Yes, sir.

6 Q. Speak up.

7 A. Sorry.

8 Q. Now, at this point are you asking any questions,
9 or is he talking?

10 A. He's talking.

11 Q. Just prior to you reading the rights I believe I
12 hear him say, I'm guilty of assault.

13 A. Yes.

14 Q. Was that in response to a question from you, or
15 did he say that on his own?

16 A. I don't recall asking him any questions.

17 Q. Okay.

18 [Whereupon, video plays. Video is not
19 transcribed by the court reporter]

20 [Whereupon, video is paused]

21 Q. [Mr. Corbett] Now, he's being told there to be
22 quiet. Is that you talking, or some other person there?

23 A. That was his dad, I want to say.

24 Q. All right. Now, Deputy Browder, I'm going to
25 hit the play button again. If you hear yourself asking a

MIA PERRON, CVR-CM

-114-

1 question, I want you to stop me so we can focus on that,
2 if it's your voice that you hear. Okay?

3 [Whereupon, video plays. Video is not
4 transcribed by the court reporter]

5 [Whereupon, video is paused]

6 Q. [Mr. Corbett] Could you make that out?

7 A. No.

8 Q. All right. Would you --

9 MR. CORBETT: May I have the witness come
10 around, Your Honor?

11 THE COURT: There's a way you can turn it up,
12 turn the volume --

13 [Off the record momentarily]

14 THE COURT: You can step down, sir.

15 [Whereupon, the witness complies]

16 Q. [Mr. Corbett] Now, I want to know if this is
17 your voice we hear coming in here.

18 [Whereupon, video plays. Video is not
19 transcribed by the court reporter]

20 [Whereupon, video is paused]

21 Q. [Mr. Corbett] Now, are you being asked if he's
22 going to jail for a felony?

23 A. I'll be honest with you, I can't make out what's
24 being said. The house was -- there was just everybody
25 talking and I can't honestly tell you what I heard right

1 there.

2 MR. CORBETT: Okay. I'm going to let you
3 return.

4 [Whereupon, the witness complies]

5 Q. [Mr. Corbett] Now, have you asked any questions
6 at this point?

7 A. I don't think I have.

8 [Whereupon, video plays. Video is not
9 transcribed by the court reporter]

10 [Whereupon, video is paused]

11 THE COURT: Any objection with me asking him a
12 question? Not about any substance. Any objection?

13 MR. CLARK: No, sir.

14 THE COURT: Deputy Browder, all that we're
15 hearing now: was the actual volume greater, or less,
16 or the same as that?

17 THE WITNESS: Inside the residence?

18 THE COURT: Yes.

19 THE WITNESS: It was just like that --

20 THE COURT: Okay. Wanted to make sure that
21 whatever volume it's on, let's make sure we make a note
22 of that because I didn't want it any louder than it
23 really was or any quieter than it really was.

24 Is that accurate?

25 THE WITNESS: Yes, sir.

MIA PERRON, CVR-CM

-116-

1 THE COURT: Okay. Go ahead.

2 MR. CORBETT: Make a note of what volume setting
3 you've got it on.

4 THE COURT: And I'm sorry for the interruption.

5 [Whereupon, video plays. Video is not
6 transcribed by the court reporter]

7 [Whereupon, video is paused]

8 Q. [Mr. Corbett] Detective Browder, who is this
9 that comes onto the scene?

10 A. It looks like EMS.

11 Q. Okay. So while you were there, y'all were
12 actually waiting on EMS to arrive?

13 A. Right.

14 MR. CORBETT: Okay. Judge, that's the pertinent
15 portions that we wanted to play for the Court. I have
16 no objection if Mr. Clark has other portions he wants
17 to play.

18 THE COURT: Let's do the jury first. The jury
19 is here. What I need for you to do is to turn that
20 around, please, sir, against the wall, and bring the
21 jury in and I'll have them come back at 1:00.

22 Now, Mr. Corbett, do you think we'll be finished
23 by then? We may not be able to get lunch. I want to
24 hear from y'all what time you think we can -- if I deny
25 his motion, what time we will be ready for that jury to

1 walk in and you give an opening statement. Shall I
2 tell them 2:00?

3 MR. CLARK: That might be safer, Your Honor.

4 THE COURT: All right. You can bring the jury
5 in.

6 Deputy, you can step down. Don't discuss your
7 testimony with anyone at this point.

8 [Whereupon, Mr. Browder exits the witness stand]

9 [Whereupon, the jury enters the courtroom at
10 11:07 a.m.]

11 THE COURT: Thank you for your patience, ladies
12 and gentlemen. I told you yesterday we were going to
13 begin the trial today at eleven o'clock. There's been
14 a slight change in plans.

15 What I'm going to ask you to do now is to go
16 about your business, have lunch, or whatever you might
17 want to do, and be back in your jury room at two
18 o'clock. We will be ready to proceed at that time.
19 All right?

20 So if you would, again, follow my instruction
21 not to discuss the case amongst yourselves or with
22 anyone else.

23 We'll begin promptly at two o'clock. Thank you.

24 [Whereupon, the jury exits the courtroom at
25 11:09 a.m.]

MIA PERRON, CVR-CM

-118-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 THE COURT: All right. Mr. Clark, do you have
2 any questions of the witness? Mr. Corbett, do you have
3 questions?

4 MR. CORBETT: Very briefly, Your Honor.

5 [Whereupon, Mr. Browder re-takes the witness
6 stand]

7 CONTINUED DIRECT EXAMINATION

8 BY MR. CORBETT:

9 Q. Deputy Browder, now, we have watched a portion
10 of the tape. Did that record the events that were taking
11 place in the residence that night?

12 A. Yes.

13 Q. Now, from the time that you read Mr. Gainey his
14 Miranda rights and listened to the tape, at any point in
15 time do you recall -- or did you even hear yourself on
16 that tape asking any questions?

17 A. No.

18 Q. Now, you indicated EMS responded to the scene?

19 A. Yes, sir.

20 Q. Who were they responding for?

21 A. For Chris.

22 Q. Mr. Gainey?

23 A. Yes, sir.

24 Q. And what had happened to Mr. Gainey?

25 A. To be honest with you, I don't recall. I know

Wayne Browder - Cross Examination by Mr. Clark

1 he said something about his hand hurting or his hand being
2 broken earlier. I want to say it was a cut, or something
3 or other, and he had wanted to be checked out.

4 Q. All right. So you asked EMS to respond to that
5 location?

6 A. Right.

7 Q. Okay. So you waited there until EMS arrived?

8 A. Right.

9 Q. But you didn't ask any questions during that
10 period of time?

11 A. No, sir.

12 MR. CORBETT: That's all the questions I have of
13 Deputy Browder. Thank you.

14 THE COURT: Mr. Clark.

15 MR. CLARK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. CLARK:

18 Q. Deputy Browder, isn't it true, sir, that when
19 you went to what you call the Claudia Gainey residence,
20 Mr. Gainey, Chris Gainey, was not free to leave at that
21 point?

22 A. I hadn't placed him under arrest or anything. I
23 just looked -- you know, find him and see what was going
24 on.

25 Q. Well, when you say what was going on, you mean

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 talk to him; right?

2 A. Right.

3 Q. All right. And but my point is wasn't he being
4 detained at that point?

5 A. At the point where I walked to his house to talk
6 to him --

7 Q. Yes, sir.

8 A. -- it was to get information.

9 Q. All right.

10 A. He was a suspect.

11 Q. Yes.

12 Could he have -- would you have allowed him to
13 leave that residence that night?

14 A. Not at that point.

15 Q. Not at that point?

16 A. No.

17 Q. So you would not have allowed him to leave. You
18 admit that; right?

19 A. Right.

20 Q. All right. Now, Deputy Browder, as I'm setting
21 this up, do you deny -- well, he wasn't allowed to leave
22 and you went there to talk to him; right?

23 A. Right.

24 Q. You wanted him to tell you what happened;
25 correct?

1 A. I was looking to ask and see what had happened.

2 Q. Right. You wanted him to tell you what
3 happened?

4 A. Right.

5 Q. All right. And so didn't you ask him what
6 happened --

7 A. You know, I --

8 Q. -- or do you know?

9 A. I don't recall asking him what happened.

10 Q. Okay. If you heard the tape when you first got
11 there that would refresh your memory, wouldn't it?

12 A. I would think it would.

13 Q. All right, sir.

14 Deputy Browder, while this is being set up:
15 when you got there, Claudia Gainey came to the door first,
16 didn't she?

17 A. It was her or either her husband. I don't know
18 which one. Both of them were at the door at one point.

19 MR. CLARK: I want it set at 3:30.

20 THE COURT: Y'all go ahead. Keep your seat.

21 I'll be right back. I'm going to get a book.

22 [Off the record momentarily]

23 MR. CLARK: Do you need to step down? You can
24 see it? Okay.

25 And just for the record, the dash cam says

MIA PERRON, CVR-CM

-122-

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 3:29:35.

2 Q. [Mr. Clark] And does that show a view through
3 your windshield, basically --

4 A. Yes.

5 Q. -- as you're driving up to the house?

6 [Whereupon, video plays, with questions from Mr.
7 Clark. Video is not transcribed by the court reporter]

8 Q. [Mr. Clark] Is that you knocking on the door?

9 A. [No response]]

10 [Whereupon, video is paused]

11 Q. [Mr. Clark] Is that you saying, I need to talk
12 to Chris?

13 A. Yes, sir.

14 Q. So no question you went there to talk to him?

15 A. Yes.

16 Q. All right, sir. And Chris doesn't come out
17 right away, does he?

18 A. No, sir.

19 Q. In fact, you had to kind of encourage Claudia to
20 get him out there, didn't you?

21 A. Yes.

22 Q. And then you told her that if she didn't get him
23 out there, she could be charged with accessory after the
24 fact of a felony?

25 A. Yes.

1 Q. All right. And you've already admitted here
2 today that at this point, once you saw Chris, he wasn't
3 free to leave?

4 A. Yes.

5 Q. That's correct?

6 A. Right.

7 Q. All right, sir. And, now, do you remember
8 whether you asked him any questions?

9 A. I don't recall asking Chris anything. I don't
10 remember walking down [phonetic] in the house, period.

11 Q. All right. Okay. All right.

12 [Whereupon, video plays, with questions from
13 Mr. Clark. Video is not transcribed by the court
14 reporter]

15 Q. [Mr. Clark] You're waiting on Chris right now;
16 right?

17 A. [No response]

18 [Whereupon, video is paused]

19 Q. [Mr. Clark] Was that you that just said, what's
20 going on, Bo?

21 A. Yes.

22 Q. That was you --

23 A. Yes.

24 Q. And you were talking to Chris; right?

25 A. Right.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. All right. And when you said what's going on,
2 Bo, that was a question to him, wasn't it?

3 A. Not pertaining to -- that wasn't intended --
4 I'll put it this way: not intended as a question as what
5 did you just do. That's more or less, hey, what's going
6 on, that kind of --

7 Q. But, Deputy Browder, you went there for the
8 purpose of talking to him about the incident; right?

9 A. Yes.

10 Q. And when he came out, you asked him what was
11 going on, Bo; right?

12 A. Yes.

13 Q. And then he started telling you about what
14 happened; right?

15 A. Yes, sir.

16 Q. All right. So --

17 THE COURT: Go ahead and play it so I can hear
18 what he said.

19 MR. CLARK: All right, sir. I'll back it up
20 just a minute.

21 [Whereupon, video plays. Video is not
22 transcribed by the court reporter]

23 [Whereupon, video is paused]

24 Q. [Mr. Clark] Was that you just saying, what's
25 going on, Bo?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Yes.

2 Q. And that was to Chris; right?

3 A. Yes.

4 Q. And you say that was your way of saying hello to
5 him; right?

6 A. More or less a greeting, yes.

7 Q. All right. But the words were, what's going on,
8 Bo?

9 THE COURT: Now, you've covered that.

10 MR. CLARK: All right.

11 Q. [Mr. Clark] And at that point, he started
12 telling you what was going on; right?

13 A. Yes.

14 Q. Or what his involvement was in the incident?

15 A. Yes.

16 Q. And at that point, you had not read him his
17 Miranda warnings, had you?

18 A. No, sir.

19 Q. And you didn't actually read him his Miranda
20 warnings until five minutes later at 3:38 --

21 A. Yes.

22 Q. -- is that correct?

23 And after you read -- before you read him his
24 Miranda warnings, he had already started talking to you
25 about what happened; correct?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. He did.

2 Q. And that was in response to your question of
3 what's going on, Bo?

4 A. I don't know whether it was. Like I say, my
5 intent for what's going on, Bo, was more or less a, hey,
6 how you doing.

7 Q. Right.

8 His comments were after you said what's going
9 on, Bo?

10 A. Yes.

11 MR. CLARK: All right. Thank you, Your Honor.
12 That's all I have.

13 THE COURT: You want to play it for me? I've
14 got --

15 MR. CLARK: I -- I -- it's -- he's --

16 THE COURT: If you -- if you're going to argue
17 under I guess it's Missouri against Seibert, that
18 there's some problem with the post-Miranda statement,
19 I've got to hear what the pre-Miranda statement was --

20 MR. CLARK: All right, sir.

21 THE COURT: -- I've got to listen to it.

22 MR. CLARK: Okay.

23 THE COURT: So play that five-minute segment.

24 MR. CLARK: Yes, sir.

25 [Whereupon, video plays. Video is not

Wayne Browder - Redirect Examination by Mr. Corbett

1 transcribed by the court reporter]

2 [Whereupon, video is paused]

3 THE COURT: Any other questions, Mr. Clark?

4 MR. CLARK: No, sir, Your Honor.

5 THE COURT: Redirect?

6 MR. CORBETT: Briefly, please, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. CORBETT:

9 [Whereupon, video plays. Video is not
10 transcribed by the court reporter]

11 [Whereupon, video is paused]

12 THE COURT: Time on the tape, just for the
13 record?

14 MR. CORBETT: Yes, Judge. I had the wrong --
15 I'm trying to get to 3:31.

16 [Whereupon, video plays. Video is not
17 transcribed by the court reporter]

18 [Whereupon, video is paused]

19 MR. CORBETT: Judge, I'm sorry. I'm going to
20 jump forward to 3:33.

21 THE COURT: All right.

22 [Whereupon, video plays. Video is not
23 transcribed by the court reporter]

24 [Whereupon, video is paused]

25 Q. [Mr. Corbett] All right. Now, it sounded to me

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 as if someone said there, you've got to tell your story.
2 Was that your voice?

3 A. No.

4 Q. Do you know who that was?

5 A. I couldn't tell you.

6 Q. Was it you?

7 A. No.

8 Q. I'm sorry. Answer that out loud for me, please.

9 A. No.

10 Q. All right. And we're going to listen to that
11 one more time. I want to make sure that's -- if you can
12 tell who's saying this part.

13 [Whereupon, video plays. Video is not
14 transcribed by the court reporter]

15 [Whereupon, video is paused]

16 Q. [Mr. Corbett] All right.

17 A. Was speaking, but I don't know.

18 THE COURT: Was there any other law enforcement
19 officer there?

20 THE WITNESS: No, sir.

21 Q. [Mr. Corbett] Now, I'm going to back this up
22 for just a moment and I want you to tell me if you can
23 pick out the first time you hear Chris Gainey's voice, if
24 you can.

25 [Whereupon, video plays. Video is not

1 transcribed by the court reporter]

2 [Whereupon, video is paused]

3 A. Said something there, but I couldn't --

4 THE COURT: All right. You've got to make sure
5 the record reflects what time you're talking about.

6 Somebody may be listening to this on some other
7 occasion.

8 MR. CORBETT: Yes, sir. And this is at the
9 3:33:03 as on this tape.

10 Q. [Mr. Corbett] And then you made some type of
11 greeting gesture such as, what's going on, Bo? Is that
12 what -- was that your testimony?

13 A. Right.

14 [Whereupon, video plays. Video is not
15 transcribed by the court reporter]

16 [Whereupon, video is paused]

17 Q. [Mr. Corbett] Now, Deputy Browder, you had
18 occasion to listen to that five-minute or so block of time
19 there beginning at approximately 3:33, a few seconds after
20 that. And you said something to the effect of, what's
21 going on, Bo?

22 A. Yes.

23 Q. Okay. Now, after that point in time did you
24 hear yourself, or do you recall, asking any further
25 questions?

Wayne Browder - Re-cross Examination by Mr. Clark

1 A. No, sir.

2 Q. At this point in time had Chris Gainey been
3 told, you're under arrest, let me put cuffs on you?

4 A. No.

5 Q. Was he in any way physically restrained or told
6 that he was restrained?

7 A. No, sir.

8 MR. CORBETT: That's all I have on redirect,
9 Your Honor.

10 THE COURT: Anything else, Mr. Clark?

11 MR. CLARK: Yes, Your Honor, just briefly.

12 RE-CROSS-EXAMINATION

13 BY MR. CLARK:

14 Q. Deputy Browder, you didn't tell Chris that he
15 was restrained, but you had said over and over again that
16 if he didn't come out and talk to you, you were going to
17 lock everybody up, didn't you?

18 A. Just -- Ms. Claudia, yes.

19 Q. And so you told Ms. Claudia that if Chris didn't
20 come out to talk to you, you were going to lock everybody
21 up?

22 A. Yes, sir.

23 Q. And that was before Chris came out and talked to
24 you; right?

25 A. Yes.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 MR. CLARK: Thank you, Your Honor. That's all I
2 have.

3 THE COURT: All right. Anything else?

4 MR. CORBETT: Nothing further of this witness,
5 Your Honor.

6 THE COURT: You may step down.

7 [Whereupon, Mr. Browder is excused and exits the
8 witness stand]

9 THE COURT: Any other witnesses, Mr. Corbett?

10 MR. CORBETT: Yes, Your Honor.

11 THE COURT: We're on the issue, I assume, of
12 the -- this is kind of crossing over, but do you have
13 anymore witnesses on the immunity?

14 MR. CORBETT: Yes, sir, Your Honor, I do.

15 THE COURT: You can call them.

16 MR. CORBETT: Christian Gainey.

17 [Whereupon, Miss Christian Gainey comes forward]

18 THE COURT: The age of the witness --

19 MR. CORBETT: Seventeen, Your Honor.

20 THE COURT: All right. What I would like for
21 you to do is mark that disc for ID, just so that there
22 won't be any question, and it will stay with the court
23 reporter.

24 You can swear the witness.

25 THE CLERK OF COURT: Place your left hand on the

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Bible. Raise your right hand. State your name,
2 please.

3 THE WITNESS: Christian Gainey.

4 [Whereupon, Miss Christian Gainey is duly sworn
5 by the clerk of court as follows: do you solemnly
6 swear or affirm the testimony you give to this Court
7 will be the truth, the whole truth, and nothing but the
8 truth, so help you God]

9 THE WITNESS: Yes, I do.

10 THE CLERK OF COURT: Right here, please.

11 [Whereupon, Miss Christian Gainey takes the
12 witness stand]

13 THE COURT: All right. Miss Gainey, I'm going
14 to ask you some question. Nobody in here is going to
15 hurt you, so I need you to speak up loud and clear.
16 Okay? Do you understand?

17 THE WITNESS: Yes.

18 THE COURT: How old are you?

19 THE WITNESS: Seventeen.

20 THE COURT: And when is your eighteenth
21 birthday?

22 THE WITNESS: June 29th of next year.

23 THE COURT: All right. So you just turned
24 seventeen?

25 THE WITNESS: Yes, sir.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 THE COURT: I probably don't need to tell you
2 this, but since you're not an adult yet: do you
3 understand the difference between telling a lie and
4 telling the truth?

5 THE WITNESS: Yes, sir.

6 THE COURT: And do you understand the serious --
7 there will be serious consequences if you purposefully
8 misrepresented the truth and didn't tell the whole
9 truth here today?

10 THE WITNESS: Yes.

11 THE COURT: Do you know what it means to be
12 under oath and to swear to tell the truth, the whole
13 truth, and nothing but the truth?

14 THE WITNESS: Yes.

15 THE COURT: All right. Any questions about the
16 witness' competence?

17 MR. CLARK: No, sir, Your Honor.

18 MR. CORBETT: Nothing from the State, Your
19 Honor.

20 THE COURT: I find at this point that she is
21 able to testify.

22 MR. CORBETT: Your Honor, prior to the witness'
23 testimony and the instruction of the Court, I have
24 removed the disk that we were previously watching.

25 Your Honor, the disk is on a white background.

MIA PERRON, CVR-CM

-134-

Christian Gainey - Direct Examination by Mr. Corbett

1 It has a blue magic marker. Written across the top it
2 has 100858147-11-10 and then at the bottom is written
3 Sargent Browder.

4 Your Honor, at this time, if we may mark that
5 for identification as State's Exhibit 2.

6 THE COURT: All right.

7 [Whereupon, State's Exhibit Number 2 is marked
8 for identification by the court reporter]

9 MR. CORBETT: Your Honor, may I have one moment,
10 please?

11 THE COURT: Yes, sir.

12 [Off the record momentarily]

13 MR. CORBETT: Miss Gainey, good afternoon.

14 THE WITNESS: Good afternoon.

15 MR. CORBETT: Miss Gainey, my name is Jason
16 Corbett. I'm one of the assistant solicitors here in
17 Sumter.

18 - - - - -
19 CHRISTIAN GAINNEY,

20 Having Been First Duly Sworn,
21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MR. CORBETT:

24 Q. To my knowledge, have we ever met before?

25 A. No, sir.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. Okay. Miss Gainey, you're now seventeen years
2 of age?

3 A. Yes.

4 Q. And where do you live?

5 A. 3885 Peach Orchard Road.

6 Q. Okay. Now, do you remember the occasion where
7 there was an altercation in the yard and Uncle Michael was
8 injured?

9 A. Yes.

10 Q. Okay. Were you home that evening?

11 A. Yes.

12 Q. Okay. Tell me what you saw.

13 A. Well, I don't exactly know. At the time it
14 was -- I was asleep at night, and I was sleeping in my bed
15 and I heard wild knocks at the door and it woke me up. So
16 I got up and I went out there and I saw my father and my
17 mother, Chris and Kim, standing at the door. And then I
18 remember a whole bunch of like arguing. I don't really
19 know what anyone was saying. And then everyone -- my dad
20 went inside. And I went outside because I saw my mom on
21 top of my Uncle Michael, just holding him.

22 And then my dad came back out and I saw him hit
23 Michael once, or try to, and then that's when I ran inside
24 to go grab our phone and call the ambulance after I was
25 like, stop, stop, stop, because I didn't know what was

Christian Gainey - Cross Examination by Mr. Clark

1 going on.

2 Q. Did you call an ambulance?

3 A. Yes, sir.

4 MR. CORBETT: Thank you. That's all the
5 questions that I have.

6 THE COURT: Mr. Clark.

7 MR. CLARK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CLARK:

10 Q. Christian, you said that you saw your dad hit
11 Michael once, or try to?

12 A. Yes, sir.

13 Q. Which was it? Did he hit him, or are you sure,
14 did he --

15 A. I -- I saw a motion as if he tried to, but I
16 don't think he actually got to him, like contact with him.

17 Q. So you don't believe he actually made contact
18 with Michael?

19 A. No, sir.

20 Q. And so just so I'm clear. Did you ever see your
21 father strike Michael?

22 A. No, sir.

23 MR. CLARK: Thank you, ma'am.

24 THE COURT: Any objection to me asking a
25 question?

Christian Gainey - Redirect Examination by Mr. Corbett

1 MR. CORBETT: No objection from the State.

2 MR. CLARK: No, sir, Your Honor.

3 THE COURT: What did he try to hit him with?

4 THE WITNESS: His foot.

5 THE COURT: His foot?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Go ahead, Mr. Corbett.

8 Any questions?

9 MR. CORBETT: [No response]

10 THE COURT: And then, Mr. Clark, first of all,
11 with regard to the question I asked, do you have any
12 additional questions at this point?

13 MR. CLARK: No, sir, Your Honor. Thank you.

14 MR. CORBETT: Just briefly, Miss Gainey.

15 REDIRECT EXAMINATION

16 BY MR. CORBETT:

17 Q. You indicated that when you got to the outside,
18 your mother was already over your uncle?

19 A. At that point what I remember, I think, is I
20 came to the door and both of them were beating on the door
21 trying to get in, I guess, and then it's -- I think my mom
22 just went down the steps and then that's when she got on
23 him. But I can't be a hundred percent certain. But I
24 remember seeing my mom at the door, too.

25 Q. Now, I know this is going to sound a little bit

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 silly. But when you say your mom, you mean Kimberly --

2 A. Kimberly --

3 Q. --- Compton?

4 A. Yes.

5 Q. And when you say your dad, you mean Chris
6 Gainey?

7 A. Yes, sir.

8 Q. So then you indicate that he then went outside
9 and either struck or attempted to strike him while your
10 mother and uncle were on the ground?

11 A. Attempted.

12 Q. Do you recall if you ever hollered anything to
13 your dad?

14 A. Yes, sir. I only remember telling him to stop,
15 just stop, because I had no idea what was happening. I
16 just asked him to stop.

17 Q. Okay. Do you recall if you said, stop, you're
18 going to kill him and you're hurting mom?

19 A. I do not recall. I just remember, stop, just
20 stop.

21 MR. CORBETT: Thank you.

22 THE COURT: Anything else?

23 MR. CLARK: No, sir, Your Honor.

24 THE COURT: All right. Thank you, ma'am. You
25 can step down.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Is she still under subpoena of the Court?

2 MR. CORBETT: Yes, sir, Your Honor.

3 [Whereupon, Miss Gainey is excused and exits the
4 witness stand]

5 THE COURT: Any other witnesses, Mr. Corbett, on
6 the issue of immunity?

7 MR. CORBETT: Your Honor, may we approach?

8 THE COURT: Yes, sir. All right. Mr. Corbett?

9 MR. CORBETT: Thank you, Your Honor.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 MR. CORBETT: Your Honor, we call Michael
13 Compton to the stand.

14 THE COURT: He's still under oath. You can have
15 a seat, sir.

16 [Whereupon, Mr. Compton comes forward]

17 THE COURT: No. Right up here.

18 [Whereupon, Mr. Compton re-takes the witness
19 stand]

20 MR. CORBETT: Mr. Compton, good afternoon.

21 THE WITNESS: Good afternoon.

22
23 - - -

24 - - -

25 - - -

James M. Compton - Direct Examination by Mr. Corbett

MICHAEL COMPTON,

Having Been Previously Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q. You are James Michael Compton; is that right?

A. Yes, sir.

Q. And you have already testified here some on
yesterday's occasion; is that correct?

A. Yes, sir.

Q. Okay. And I believe your testimony was that you
had very little recollection of the actual assault?

A. Yes, sir.

Q. Okay. Now let me ask you a little bit -- just a
little bit of background.

Prior to July the 10th, before this incident,
what did you do for a living?

A. I was an aircraft engine mechanic.

Q. Okay. For who?

A. For the air force.

Q. Okay. Did that require that you pass a basic
physical?

A. Yes, sir.

Q. Okay. How would you describe your physical
condition, just in general?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. At the time?

2 Q. Yes.

3 A. At the time, I was working out and I was in
4 great shape. I was in great shape.

5 Q. I mean, were you able to do your --

6 A. Yes, sir, I --

7 Q. -- aircraft mechanic job?

8 A. -- my job, yes, sir.

9 Q. Okay. And you were able to pass the air force
10 physical?

11 A. Yes, sir. I mean, I aced -- I aced the air
12 force physicals.

13 Q. Okay. Did, from time to time, the air force
14 require you to maintain a certain level of physical
15 fitness?

16 A. Yes, sir, it did.

17 Q. Okay. Now, I want to talk about your condition
18 now. Tell me a little bit about your condition now.

19 A. Well, I've got lost vision in the -- in the
20 lower -- in the left eye, the lower left -- lower right --
21 lower -- I can't talk. I can't talk, because that's one
22 of my conditions.

23 Q. I'll tell you what. Stop for just a moment and
24 pause for a second and catch your breath.

25 Okay. Take your time and tell us a little bit.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 about your condition now.

2 A. Okay. I've got -- I've got lost vision in the
3 inner lower portion of this eye; and lost vision on the
4 outer lower portion of this eye; and I've got erectile
5 dysfunction; and I've got limited use of my right arm. I
6 can barely brush my teeth with my right arm, no longer
7 than that. And I got -- I got -- I've got one lower lung
8 capacity now so, you know, it's just I can hardly catch my
9 breath.

10 THE COURT: Speak up, please, sir.

11 You said loss -- limited use of your right arm
12 and what about -- you walk with a limp?

13 THE WITNESS: Yes, sir.

14 THE COURT: And low lung capacity?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay.

17 Q. [Mr. Corbett] Tell us about what part you
18 remember at the hospital. When does -- when does your
19 memory sort of come back to you?

20 A. I just remember waking up in the hospital, just
21 things -- because I was in an induced coma. So I remember
22 waking up -- you know, just waking up, you know.

23 Q. Now, when you left the hospital, did you come
24 home?

25 A. No, sir.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Q. Okay. Where did you go next?

2 A. I was -- I was at I think Down South, Down South
3 [phonetic] Physical Rehab. I've been going to rehab ever
4 since. For the last two years I've been going to rehab.

5 Q. What is the purpose for you going to rehab?

6 A. To get me better, to function normally.

7 Q. All right. I want you to be a little more
8 specific. What did they have to work with you on at
9 rehab?

10 A. They had to work on my vision. They had to work
11 on my speech. Still have a speech problem now. And they
12 had to work -- they had to work on my -- bathe and stuff.
13 They had to work on -- I had to stretch my arm and stuff
14 like that. They had to work on my arm.

15 Q. Are you able to continue with your air force
16 duties?

17 A. No, sir. They airborne me out because of this
18 assault.

19 Q. Now, when you were walking up here a moment ago,
20 I noticed some gaps there in your hairline.

21 A. Yes, sir. Yes, sir. Yes, sir. I got -- that's
22 from the -- that's from the C-cut they did on me to remove
23 the blood clot, because I had a blood clot on my brain, so
24 it goes from here all the way back to here --

25 Q. I see it. And do you bear any other scars?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Yes, sir. I've got -- I've got one on my -- I
2 think I've -- I think I've got one on my -- well, I've got
3 one on my left side from the assault.

4 Q. Okay. Any other place?

5 A. No, sir. Well, I've got the ones in the back of
6 my head, the gashes -- the gashes.

7 Q. Okay. May I see the back of your head?

8 A. Yes, sir.

9 Q. And there's also a few places there where your
10 hair is a little thin; correct?

11 A. Yes, sir.

12 MR. CORBETT: Judge, no further questions of
13 this witness.

14 THE COURT: Any questions, Mr. Clark?

15 MR. CLARK: No, sir, Your Honor.

16 THE COURT: All right. Thank you, sir. You can
17 step down.

18 [Whereupon, Mr. Compton is excused and exits the
19 witness stand]

20 THE COURT: Any other witnesses on this issue,
21 Mr. Corbett?

22 MR. CORBETT: No other witnesses, Your Honor.

23 THE COURT: Mr. Clark?

24 MR. CLARK: No, sir, Your Honor.

25 THE COURT: All right. What would be the -- any

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 other evidence on the Jackson vs. Denno matter?

2 Any other evidence that the State would present?

3 I know that -- I know what Mr. Clark's argument is, at
4 least preliminarily, on that report. Other than that,

5 are there any statements of the defendant that the
6 State would be seeking to introduce in its case in
7 chief?

8 MR. CORBETT: Well, Your Honor, I believe -- I
9 believe that is the case, but let me verify that with
10 the detective.

11 [Off the record momentarily]

12 MR. CORBETT: Your Honor, we are not aware of
13 any other statements other than what has been presented
14 to the Court here today.

15 THE COURT: Okay. Would you have any other
16 witnesses on any voluntariness issues?

17 MR. CORBETT: If not, I'll turn it over to
18 Mr. Clark if he does.

19 I'm sorry, Your Honor, if you'll give me just a
20 moment. I'm trying to think through to see if there's
21 any other individuals that need to be involved in that.

22 THE COURT: All right. We'll take about five
23 minutes for you to think about that.

24 And one of the questions I'm going to ask is
25 what did it say. What do you want the jury to hear?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Because what I hear is a lot of hollering and screaming
2 by a lot of people. I know this voice now. And just
3 let the record reflect that we all know Deputy
4 Browder's voice because he was extremely -- and that
5 would be -- and I don't think anybody can argue with
6 that. But obviously there is a lot of screaming going
7 on, most of it not by him. Some of what he has to say
8 bolsters his own self-defense defense. I don't think
9 I'm going to allow the jury to hear Deputy Browder say,
10 I've got a man half dead out here. Nobody -- I know we
11 haven't gotten to that point yet, because he doesn't
12 know, at least other than what somebody may have told
13 him.

14 And the other -- other issues that I've got.
15 You know, we've got -- there's a case called State v.
16 Victor. Even if some of these statements are left out
17 of the State's case in chief, if he takes the stand any
18 statement, even an involuntary one, even one in
19 violation of Miranda, comes in for impeachment
20 purposes.

21 So, you know, I don't know what road we're going
22 down here. But I would assume that he's got a self-
23 defense defense and if the case goes to trial, he's
24 going to have to take the stand. If he does, all this
25 is going to come in anyway. At least that's my

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 interpretation of State v. Victor. And that's 300 S.C.
2 221. I think that's still good law.

3 But, anyway, we'll take a break and you can
4 address that and then you can decide whether or not
5 you've got any other witnesses on the immunity.

6 MR. CORBETT: Yes, Your Honor.

7 THE COURT: Okay?

8 [Off the record momentarily]

9 THE COURT: Any other witness?

10 MR. CORBETT: Judge, no, sir. I believe the
11 witnesses has previously testified to the pertinent
12 facts.

13 THE COURT: All right. Mr. Clark, any other
14 witnesses on the immunity matter?

15 MR. CLARK: No, sir, Your Honor.

16 THE COURT: Okay. Does the State have any
17 witnesses on Denno --

18 MR. CORBETT: Judge, I'm sorry --

19 THE COURT: -- other than what we've already
20 finished?

21 MR. CORBETT: A moment ago when I answered, I'm
22 sorry, I answered in the context of Denno. Let me
23 clarify for the record, if I may. The State does not
24 have any further witnesses with regard to what I would
25 call the Duncan hearing.

Christopher W. Gainey - Direct Examination by Mr. Clark

1 THE COURT: Yes, sir.

2 MR. CORBETT: And with regard to the Denno, I
3 believe the officers already testified to the facts and
4 circumstances of that.

5 THE COURT: Mr. Clark, do you have any witnesses
6 on the Denno matter?

7 MR. CLARK: Yes, Your Honor.

8 THE COURT: And who would that be?

9 MR. CLARK: Mr. Gainey.

10 THE COURT: Okay. You're still under oath, sir.
11 You can come on up.

12 [Whereupon, Mr. Gainey comes forward and takes
13 the witness stand]

14 MR. CLARK: Thank you, Your Honor.

15 - - - - -

16 CHRISTOPHER W. GAINNEY,

17 Having Been Previously Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. CLARK:

21 Q. Mr. Gainey, when the incident occurred, you went
22 to your mother's house; correct?

23 A. Yes, sir.

24 Q. And at some point Deputy Browder came over to
25 your mother's house?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Yes, sir.

2 Q. And he was asking for you to come outside?

3 A. Yes, sir.

4 Q. You heard him out there?

5 A. No, they actually -- I didn't even know that
6 they were there. My family had to come back -- they were
7 trying to be in-betweens --

8 A. Right.

9 Q. -- and deal with them before they talked to me,
10 and I didn't even know that they were there. They came
11 back and told me that they were here to arrest me and so
12 forth. I knew that before I even came to the door to talk
13 to him.

14 Q. Right. That he was there to arrest you?

15 A. Yes, sir.

16 Q. All right. And eventually you came out?

17 A. Yes, sir.

18 Q. Did you want to talk to him?

19 A. No.

20 Q. Did you -- were you aware that he had threatened
21 to arrest everybody if you didn't come out and talk to
22 him?

23 A. They told me that he was threatening to put them
24 all in jail if I didn't come talk, yeah.

25 Q. All right. And when you came out did he ask

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 you, what's going on, Bo?

2 A. He did.

3 He -- I knew he was there to question me about
4 it. And looked at me and said, what's going on, Bo.

5 Yeah.

6 Q. And what did you believe he meant by saying
7 that?

8 A. What's going on, Chris. What happened.

9 Q. All right. That's what you thought he meant?

10 A. Yes.

11 Q. All right. And then you started to tell him
12 what happened?

13 A. I did.

14 Q. All right. Now, if he had not asked you, what's
15 going on, Bo, and if he had not threatened to arrest
16 everyone if you didn't come out and talk to him, would you
17 have talked to him at that point?

18 A. No.

19 Q. And the statements that you made, were they
20 because he had threatened everyone and asked you what was
21 going on?

22 MR. CORBETT: Objection to leading.

23 THE COURT: Overruled.

24 A. The statements that I made I made because he was
25 there for me and he wanted to talk to me and if I didn't

Christopher W. Gainey - Cross Examination by Mr. Corbett

1 satisfy that, he was going to lock up family members.

2 MR. CLARK: Thank you, Chris. That's all I
3 have.

4 THE COURT: Mr. Corbett.

5 MR. CORBETT: Yes, sir, Your Honor.

6 Your Honor, before I begin my questioning, if I
7 may request the court reporter locate the witnesses'
8 testimony from yesterday, the pertinent portion being
9 where he said he did not remember talking to a deputy
10 at his parents' house.

11 THE COURT: Okay. Let me look at my notes.

12 [Whereupon, the Court reviews documents]

13 THE COURT REPORTER: You'll have to bear with me
14 a second.

15 THE COURT: All right. We'll go off the record
16 while --

17 [Whereupon, the court reporter re-plays
18 testimony]

19 CROSS-EXAMINATION

20 BY MR. CORBETT:

21 Q. Mr. Gainey, you heard the testimony played back
22 in court in here just a moment ago; right?

23 A. Yes, sir.

24 Q. You understand that when you're on that witness
25 stand, you're under oath?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. Yes.

2 Q. Okay. So did your memory all of a sudden get a
3 lot better from yesterday?

4 A. Yes, sir.

5 That tape that you played in here this morning,
6 I've never seen that before, ever, and what little of it I
7 could make out did jog my memory. And I do remember a few
8 things that I never remembered before, yes, sir, thanks to
9 that tape.

10 Q. The truth of the matter is you were told you
11 needed to come out here and say, oh, they told me they
12 were there to arrest me, so you could try to get this tape
13 kicked out of evidence; right?

14 A. No.

15 Q. But you remember it today --

16 A. I remember them saying --

17 Q. -- but no memory of it yesterday?

18 A. I said that there were cops there, that I
19 couldn't specifically remember talking to a certain one.

20 I didn't even know Mr. Browder was the guy until
21 you told me that he was the man that I spoke with, today.
22 I don't recognize his face now.

23 Q. All right. Now --

24 A. But I heard myself talking.

25 Q. When you came to the door --

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Were you listening as we played the tape
2 earlier?

3 A. Was I listening?

4 Q. Yes.

5 A. I was trying to, yes.

6 Q. Did you hear an individual say, you need to tell
7 your side of the story.

8 A. I did hear that.

9 Q. Who's voice was that?

10 A. I believe that was my dad. But my dad was
11 saying that that would be decided in court: I can tell my
12 side of the story when it's time to be done.

13 Q. Okay. And then Officer Browder comes up and
14 says, what's going on, Bo, or something to that effect?

15 A. Officer Browder comes up and says that.

16 Q. Okay. And then did he ask you any other
17 questions?

18 A. He asked me what was going on, Mr. Corbett, and
19 I proceeded to start telling him what was going on that
20 night.

21 Q. Did he ask you any other questions?

22 A. Not that I can recall specifically. If so, we
23 would hear it on the tape, I would imagine. Or maybe hear
24 it on the tape.

25 Q. Now, at this point, were you in handcuffs?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 A. No.

2 Q. You had not even been told that you were under
3 arrest, had you?

4 A. Not by the officers, no.

5 But I knew that I wasn't going anywhere other
6 than with him.

7 Q. Subsequent to that what's going on, Bo, Officer
8 Browder read you your rights. Do you recall that?

9 A. I don't specifically remember him doing it, but
10 I heard the tape. I did hear the tape.

11 MR. CORBETT: That's all the questions I have,
12 Your Honor.

13 THE COURT: Mr. Clark?

14 MR. CLARK: Nothing further, Your Honor.

15 THE COURT: You can step down.

16 [Whereupon, Mr. Gainey is excused and exits the
17 witness stand]

18 THE COURT: Any other witnesses on this issue?

19 MR. CLARK: No, sir, Your Honor.

20 THE COURT: Any other witnesses from the State?

21 MR. CORBETT: No, sir, Your Honor.

22 THE COURT: All right. Any other pretrial
23 matters that we have to discuss from the defendant's
24 perspective? Another -- any other motions?

25 MR. CLARK: Your Honor, with regard to the tape

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 itself, I also move to exclude it on the basis that
2 it's not relevant, it's more prejudicial than
3 probative, it's confusing, it's cumulative, it's a
4 waste of time. On that basis, I would move to suppress
5 the tape, as well.

6 THE COURT: Mr. Corbett?

7 MR. CORBETT: Your Honor, we believe the tape is
8 proper. It's an accurate record of the events that
9 night. It is a statement against interest. It can be
10 argued that it's a statement of defense, but we would
11 also argue that it's a statement against interest.

12 Judge, we believe that it's relevant to the
13 issue, relevant to the defendant's aggressive nature,
14 and to his state of mind. That's separate and apart
15 from why I believe it's proper under Denno.

16 MR. CLARK: Well, Your Honor --

17 THE COURT: What's -- of course, the Rule 403 is
18 it's got to be unduly prejudicial or confusing.

19 MR. CLARK: Yes, sir.

20 THE COURT: It's a little confusing because I
21 don't know who's saying what. You've got a whole bunch
22 of people screaming, none of whom are Deputy Browder --

23 MR. CLARK: Yes, sir.

24 THE COURT: -- by the way.

25 So what is it -- what is it that makes it --

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 obviously, any evidence the State wants to introduce is
2 to be considered prejudicial.

3 MR. CLARK: Yes, sir.

4 THE COURT: Well, what's -- why is it unduly
5 prejudicial?

6 MR. CLARK: Well, Your Honor, a lot of the
7 statements on the tape aren't even made by Mr. Gainey,
8 they're made by other people. Also, some of the
9 comments that are made on the tape, like what he would
10 do in the future and --

11 THE COURT: Such as what?

12 MR. CLARK: Well, he said if anybody hits him in
13 the future, he's going to take care of them, he's going
14 to beat them up, he's going to --

15 THE COURT: He said that yesterday. He said, if
16 somebody attacks me, I'm going to fight back. There's
17 nothing wrong with that.

18 MR. CLARK: Well, you're saying he said that
19 from the --

20 THE COURT: He said yesterday, if somebody tries
21 to hurt me, I'm going to defend myself. And he's
22 entitled to do that under the law.

23 MR. CLARK: I understand that.

24 But on the tape he's talking about if he gets a
25 chance in the future, if Michael does something to him,

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 he's going to beat his head until it's soft --

2 THE COURT: I didn't -- I didn't hear that. I
3 couldn't -- I couldn't understand any of it.

4 MR. CLARK: And, see, that's the danger of
5 prejudice. If the Court can't understand it after
6 listening to it several times, I don't think it's
7 reasonable to expect --

8 THE COURT: You understood it, evidently.

9 MR. CLARK: Well, I've studied it in my office
10 over and over again.

11 THE COURT: All right. Here's one thing y'all
12 haven't addressed. What did he say between the time of
13 what's going on, Bo, to the time of you have a right to
14 remain silent? What did he say?

15 MR. CLARK: He started describing the fact that
16 Mr. Compton grabbed a board and he beat -- he -- I
17 don't remember exactly, but he basically talked about
18 how he beat him.

19 THE COURT: Who beat who?

20 MR. CLARK: How Chris Gainey beat James Compton.

21 THE COURT: In self-defense?

22 MR. CLARK: Yes, sir.

23 But the way he described it -- what we have a
24 problem with -- is the State's whole case here, because
25 there's no evidence contradicting Mr. Gainey's

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 statement that he was attacked with a board. The issue
2 is whether the force that he retaliated with was
3 excessive. And that's --

4 THE COURT: But the self-defense law -- we're
5 moving away from Denno. The self-defense law says that
6 he doesn't have to gauge exactly how much force he's
7 entitled to use; he's entitled to use the force that a
8 reasonable person would use under the circumstances.
9 Don't have to stop --

10 MR. CLARK: It's a bright-line test.

11 THE COURT: There's no bright-line test.

12 MR. CLARK: Right.

13 And I agree with that, and we certainly intend
14 to argue that. But our position is that the statements
15 on the -- the statements to Deputy Browder, if this
16 tape is admissible, can be used against Chris Gainey in
17 their case in chief and we think that would be
18 improper.

19 THE COURT: Okay. Mr. Corbett, anything else on
20 that point?

21 MR. CORBETT: [No response]

22 THE COURT: I do find that if a deputy comes up
23 to someone and says, what's going on, Bo, that's not a
24 greeting, at least -- at least for the purposes of a
25 Denno hearing. That is a question. And the question

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 was engaged, in my mind, to find out what happened, to
2 lead up to that point. There's no evidence of whether
3 or not they already knew each other. Have no clue.

4 In any event, when the deputy says what's going
5 on, Bo, that's a question that could be legitimately
6 interpreted to be what just happened, how did you get
7 here. So go from there.

8 MR. CORBETT: Yes, sir.

9 Your Honor, first of all, I would say that, as
10 you can hear in the tape, there's an outside party
11 saying, you've got to tell your side of the story. So,
12 Your Honor, I would argue that the defendant is
13 speaking at the behest of whom I believe to be his
14 father.

15 THE COURT: How do you know that? In other
16 words, that's for me to determine based on what I hear?

17 MR. CORBETT: And, Judge, it's there on the tape
18 to be heard.

19 Then the deputy says, what's going on, Bo. He
20 makes a brief recitation of how he was attacked and
21 defended himself. And then there's basic -- from the
22 defendant, nothing for I think -- let me look at my
23 time frame --

24 [Whereupon, Mr. Corbett reviews documents]

25 MR. CORBETT: -- from around 3:33 to then almost

1 3:39. So then at that point it seems as if the
2 defendant is going to start talking. And the deputy
3 says -- I don't know word for word but it sounded
4 something to the effect of, before you start talking,
5 let me read you your rights. And he reads him his
6 rights at 3:39.

7 So there had been a gap, to my recollection, of
8 five to six minutes in there where the defendant had
9 not said anything. He went to start talking, the
10 deputy read him his rights, and then he continued. And
11 they were not -- they were not questions.

12 Judge, most of Miranda deals with interrogation.
13 There wasn't any interrogating going on.

14 THE COURT: There wasn't any interrogating going
15 on after he said you have the right to remain silent.

16 Do you agree with that, Mr. Clark?

17 MR. CLARK: Yes, sir.

18 THE COURT: There was a whole bunch of screaming
19 by other people, but I don't think Deputy Browder said
20 a word to him.

21 MR. CLARK: I do agree with that, Your Honor.

22 Of course, our position is that he had already
23 questioned him, the defendant had already started
24 making a statement, had already gave what I consider to
25 be -- what can be construed as an incriminating

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 statement, and then just for a housekeeping matter the
2 deputy says, oh, let me read you your rights and he
3 keeps talking.

4 And so our position is pre-Miranda statements
5 are -- should be suppressed, as well as the post-
6 Miranda statement.

7 MR. CORBETT: Judge, from our perspective we
8 don't see anything incriminating in that initial
9 response where, what's going on, Bo, if he talks about
10 self-defense. Then he reads him his Miranda rights,
11 doesn't ask him a question. You can actually hear
12 family members telling him, stop talking, don't say
13 anything. The deputy says nothing and he continues
14 talking.

15 THE COURT: Okay. Anything else, Mr. Clark, on
16 your motion on that point?

17 MR. CLARK: Your Honor, I just -- well, I don't
18 have anything else.

19 I just direct the Court to just before the
20 Miranda warnings are given, Mr. Gainey does start to
21 describe --

22 THE COURT: That, I'm guilty of assault.

23 MR. CLARK: Yes, sir.

24 THE COURT: All right. Your argument on the
25 immunity?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 MR. CLARK: Yes, sir.

2 THE COURT: I'll be glad to hear that.

3 MR. CLARK: Your Honor, under the Castle
4 doctrine, Your Honor, we would -- our position is that
5 Mr. Gainey was not engaged in an unlawful activity. He
6 was in a place where he had the right to be: his home.

7 The evidence is uncontradicted that Mr. Compton
8 had made threats earlier, had acted aggressively
9 towards Mr. Gainey, was significantly under the
10 influence of alcohol, and attacked Mr. Gainey with
11 deadly force. It's undisputed. There's no
12 contradictory evidence in the record, other than the
13 testimony of -- to contradict Mr. Gainey's testimony.

14 THE COURT: And the deadly force was what?

15 MR. CLARK: The board that he was struck with,
16 the same type of board that the State is alleging
17 constituted deadly force against Mr. Compton. So
18 there's no disputing -- no contracting the evidence of
19 that.

20 Mr. Gainey testified that he reasonably believed
21 that he needed to use deadly force to prevent death or
22 great bodily injury to himself. He submitted
23 photographs that show what I would call defensive
24 wounds and wounds to his arm showing that this was not
25 a one-sided fight. Somehow he was injured.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 And the question becomes whether -- the deadly
2 force that Mr. Gainey used in response to being
3 attacked with deadly force, whether it was excessive.
4 And I submit to the Court that there is no evidence
5 that it was excessive.

6 At this stage, according to Duncan our burden is
7 preponderance of evidence. And Mr. Gainey testified
8 that he struck Mr. Compton, Mr. Compton would not go
9 down. As the Court noted, he does not have to
10 carefully measure the response that he made. Mr.
11 Compton went to the ground. Mr. Gainey testified that
12 he struck him one time when he was on the ground.
13 That's the undisputed evidence. Even the State's
14 witness corroborated that. Ms. Compton corroborated
15 that he was only struck one time while he was on the
16 ground. Your Honor, there is some evidence that he
17 attempted to strike him again. But he did not. So
18 therefore that, in and of itself, is not deadly force.

19 THE COURT: But it shows -- it would tend to
20 show his state of mind and what his motivations were.

21 MR. CLARK: Well --

22 THE COURT: In other words, he -- and, plus, it
23 shows an inconsistency to what he said. He said, I
24 went back inside or I went inside and thirty seconds
25 later I came back out and they were gone --

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 MR. CLARK: Yes, sir.

2 THE COURT: -- he was gone, he had run off.

3 MR. CLARK: Uh-huh.

4 THE COURT: Well, a witness testified that
5 Mr. Gainey went inside and came back out and tried to
6 hit him again. That would tend to show two things:
7 one is an inconsistency of what Mr. Gainey said; and,
8 number two, showed that his motivation perhaps was not
9 to defend himself but to -- to get the better of him
10 unlawfully.

11 MR. CLARK: Well, that was at that point --

12 THE COURT: At that point --

13 MR. CLARK: Yes, sir.

14 THE COURT: But I've still got to weigh all of
15 that --

16 MR. CLARK: Right, but --

17 THE COURT: -- correct?

18 MR. CLARK: Right.

19 Well, Your Honor, what I would say is the
20 inconsistency that you're pointing to was on that point
21 only. There's not been any inconsistency about the
22 deadly force that was used earlier. The only
23 inconsistency is whether he came back and tried to
24 strike him.

25 THE COURT: All in all, in this scenario I have

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 to determine -- in other words, I have to determine
2 whether or not I believe him.

3 MR. CLARK: And I understand that, Your Honor.

4 But here's our position: there is nothing else
5 for the Court to believe.

6 THE COURT: Except my weighing of his
7 credibility.

8 MR. CLARK: But if you find him not credible, if
9 you find him not credible, there is no other evidence
10 that the Court can rely on regarding whether who
11 started the fight, whether deadly force was used by
12 Mr. Compton, or whether Mr. Gainey --

13 THE COURT: So are you saying that if -- in any
14 given situation, that if two people are minding their
15 own business and only one is able to remember it all
16 and he's prosecuted and that that's all the evidence
17 there is, I must go with that person?

18 MR. CLARK: Unless there's some other evidence
19 to rest on, there is no other evidence.

20 THE COURT: I just don't think the stand-your-
21 ground law means -- because if that were the case --

22 Now, I do agree with one thing. The police
23 typically arrest the last man standing, and that's --

24 MR. CLARK: That's been my experience.

25 THE COURT: -- and that's not always right.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 MR. CLARK: Right.

2 THE COURT: But at the immunity stage, I have to
3 determine whether or not the evidence before me
4 convinces me by the greater weight that this was a
5 proper exercise of his right to defend himself.

6 MR. CLARK: And I agree with that, Your Honor.

7 But if you don't -- but there is no other
8 evidence to rely on. If you -- I don't think you can
9 take the fact that he -- that you say he was
10 inconsistent when he came back out. I don't think you
11 can take just that inconsistency to establish by a
12 preponderance of the evidence that he didn't have the
13 right to retaliate in the beginning. I don't think you
14 can take just that one inconsistency and say based on
15 that I find that he did not have the right to respond
16 with deadly force.

17 THE COURT: So if you and I were walking down
18 the street and I just all of a sudden cold-cocked you
19 and knocked you out for no reason and you didn't
20 remember anything and I got arrested and we came to
21 court and I said, well, Mr. Clark tried to swing at me
22 so I hit him before he was able to hit me, that that's
23 all there is? That's all I can consider? Not whether
24 or not I'm believable?

25 MR. CLARK: Well, I think you can -- if you find

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 -- if the Court would find under that scenario that
2 you're not believable, then there would have to be some
3 evidence that they rest -- that they rely on. But
4 there is nothing else to rely on. If you say I don't
5 believe him, then what do you believe? There's nothing
6 else to believe on that point. There's nothing else in
7 the record to believe. And if you -- if there's no
8 evidence to rely on, then your conclusion would be
9 speculation because there is no evidence at all to
10 support a finding, other than what the last man
11 standing would have said.

12 Now, the contradiction, the only contradiction
13 in the record, is whether he went back after him. Mr.
14 Gainey says he didn't; another witness says he did.
15 But he went back after him but he never inflicted any
16 other blows. So that is an inconsistency on that one
17 point. But there is nothing inconsistent about what he
18 said about the force that was used against him and the
19 force that he used back.

20 And, also, Your Honor, I would also point out --
21 and I think this is a critical point in this case -- is
22 that shortly, very shortly, after the attack or after
23 the incident, I should say, Mr. Compton got up and ran.
24 So what that tells us is that he was -- that he was not
25 knocked out cold, that he -- and it's consistent with

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 what Mr. Gainey said, is that he kept fighting back.
2 And I think that's an important point because what that
3 shows is that in Mr. Gainey's mind, the threat was not
4 over because this man wasn't out. As soon as he got
5 up, very shortly after that, Mr. Compton got up and
6 ran. So he wasn't out. And I think that's consistent
7 with what Chris Gainey has said the whole time.

8 THE COURT: All right.

9 MR. CLARK: Thank you, Your Honor.

10 THE COURT: Mr. Corbett?

11 MR. CORBETT: Thank you, Your Honor.

12 With regard to the matter of what I will refer
13 to as a Duncan hearing: Judge, I believe that you have
14 to view the totality of the circumstances in the whole,
15 considering all of the witnesses presented. I believe
16 that under Mr. Clark's analysis, it would be
17 exceedingly difficult to ever try a murder case in the
18 state of South Carolina again, because obviously you
19 don't have somebody to tell a second side of the story
20 there.

21 However, Judge, the pertinent parts of this
22 case: the defendant gets on the witness stand and says
23 that, he pulled part of my porch rail off and swung it
24 on me; I then pulled the rail loose, that was still
25 standing there, and we were going at it -- that was his

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 testimony from the stand; and I hit him -- I believe he
2 described two to three times; I hit him, he didn't go
3 down; I hit him, he didn't go down; he went down and I
4 hit him again because he acted like he was trying to
5 get up.

6 That's testimony. And that Mr. Clark would
7 stand here and selectively cite to you evidence in the
8 record and leave out these portions, the defendant's
9 own words on the tape where he says, he swung at me, I
10 took the board from him -- excuse my language; this is
11 how it was said on tape -- and I beat the fuck out of
12 him, on the tape, that is inconsistent. He says, I
13 took it from him and beat him like that.

14 THE COURT: Y'all have got better ears than I
15 do. What time was that on the tape?

16 MR. CORBETT: Yes, sir, Judge. I'll give you
17 the time cite on that. 3:42:50. Three colon four-two
18 colon five zero.

19 THE COURT: All right.

20 MR. CORBETT: Judge, also, if I could refer the
21 Court to State's Exhibit Number 1. This is the
22 statement from the witness.

23 THE COURT: That's Kimberly Compton?

24 MR. CORBETT: That is correct.

25 I was having trouble getting the door unlocked

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 and when I turned around I saw James getting hit and
2 falling to the ground. Chris was still hitting him and
3 I ran over, saw a big gash on James' head and tried to
4 pinch it together to try and stop the bleeding. I was
5 crouched over James, and Chris was still hitting him
6 and yelling at him. I could see light from in my --
7 inside my house and I heard my fifteen-year-old
8 daughter yelling at Chris, dad, stop; dad, stop; you're
9 going to kill him, and you're hurting mom. That's how
10 I knew the door was open. I stayed on top of Michael,
11 trying to protect him, and Chris was hitting me and was
12 yelling and screaming at me. I don't know what made
13 Chris stop, but he did. James came to and got up and
14 started running away. I found him on a neighbor's
15 porch, et cetera. Your Honor, the end sentence of that
16 statement, I never saw James hit Chris at any time.

17 So now we have a witness who describes Chris --
18 James being knocked to the ground -- or I should say
19 Michael -- Michael being knocked to the ground,
20 continuing to hit him, I covered him up, continuing to
21 hit him.

22 Judge, the statutory standard is force on force.
23 Even if there was an altercation and Michael Compton
24 was put down with the first blow, it was unlawful to
25 continue to strike, kick, beat, whatever form the

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 witness's testimony takes him, after he is on the
2 ground and incapacitated.

3 So, Judge, we now have a different version of
4 the events than what the defendant told.

5 Then Miss -- young Miss Gainey, Christian
6 Gainey, took the stand and said that she saw her Uncle
7 Michael on the ground, that mom run over to him, and
8 Mr. Gainey went back down. And she described it as, I
9 couldn't tell if he hit him or attempted to hit him.

10 But that shows the defendant's motivation and
11 state of mind: that after the victim was
12 incapacitated, he continued to try and strike him.
13 This takes us beyond the realm of the Castle doctrine
14 and it takes us to the realm of attempted murder.

15 THE COURT: Mr. Clark?

16 MR. CLARK: Thank you, Your Honor.

17 Your Honor, we talk about inconsistent
18 statements and believability. Well, Kimberly Compton
19 was their witness and she was so inconsistent, they had
20 to actually impeach her with her prior testimony. So I
21 don't see how in the world anyone, any trier of fact,
22 could take her inconsistent statement, which -- what
23 they presented -- they had to impeach her with her own
24 statement -- and say her inconsistent statement trumps
25 an inconsistent statement by Mr. Gainey. So I don't

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 think that argument carries the day.

2 Also, Your Honor, Christian Gainey said -- she
3 never testified that Mr. Gainey struck this man. So
4 the way she said it --

5 THE COURT: She said she tried to -- said he
6 tried to --

7 MR. CLARK: Yes, sir.

8 THE COURT: -- hit him. And I asked her with
9 what and she said his foot.

10 MR. CLARK: Right.

11 That's an important point because trying to hit
12 him with his foot would not, in and of itself, be
13 deadly force.

14 THE COURT: Depends on what kind of shoes he had
15 on.

16 MR. CLARK: I agree, Your Honor.

17 But the fact is, he didn't hit him. And if he
18 didn't hit him, no matter what kind of shoes he had on,
19 that could not be deadly force. There's no evidence,
20 none whatsoever, that he went back and made contact
21 with him.

22 So there's no evidence that he went back and
23 inflicted deadly force; therefore, it can't -- that act
24 cannot constitute attempted murder. And I think that's
25 what Mr. Corbett is trying to argue.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 THE COURT: I agree that it can't constitute
2 attempted murder in the truer sense, but it can be
3 evidence of what his state of mind was and what he was
4 intending to do in that continuum of events going
5 backwards a couple or three minutes.

6 MR. CLARK: Well, Your Honor, and I would ask
7 you to consider that in light of the case law that says
8 he doesn't have to carefully measure his response.

9 And also, Your Honor, this was an excited --
10 excited event. I think it's unreasonable to think that
11 you could strike somebody with a board, use deadly
12 force against them, and they're not going to be
13 excited. Yet --

14 THE COURT: But there's that -- but by the same
15 token, you can strike somebody with a board three times
16 in self-defense and go inside and stay inside.

17 MR. CLARK: And he should have done that. But I
18 don't think --

19 THE COURT: He didn't.

20 MR. CLARK: Beg your pardon?

21 THE COURT: But he didn't.

22 MR. CLARK: He did not.

23 But he didn't inflict anymore blows. He didn't
24 -- he didn't inflict anymore blows. So with that being
25 the case, I don't think you can take the fact that he

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 went out and attempted to strike him to mean that he
2 intended to kill him when he hit him the first time
3 because -- and I think what's telling is it would be --
4 it would go more to his intent to kill him if he went
5 back with him with -- at the board.

6 THE COURT: Well, I'll tell you one thing. And
7 I don't know whether or not this goes into the
8 admissibility of the tape or not, but I can tell you
9 this. His frame of mind on that tape at that house was
10 nobody was going to tell him what to do at all, he was
11 going to do what he wanted to do and say what he wanted
12 to say, and the heck with everything else.

13 MR. CLARK: I agree with that.

14 THE COURT: That was his state of mind.

15 MR. CLARK: Yes, sir.

16 But that doesn't equate to him having a malice
17 aforethought intent to killing someone. He was angry.
18 He had been attacked. There's bad blood between these
19 people for ten years. So I've never denied that he was
20 angry. But that doesn't equate to malice with an
21 intent to kill someone.

22 Thank you, Your Honor.

23 THE COURT: All right. We've covered that
24 issue, the Jackson v. Denno, and the tape. Are there
25 any other pretrial issues?

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 MR. CORBETT: Nothing from the State, Your
2 Honor.

3 MR. CLARK: [No response]

4 THE COURT: All right. There are two cases that
5 I want y'all to look at over the lunch break. One is
6 State v. Brown, 296 S.C. 191 -- that's a 1988 South
7 Carolina Supreme Court case -- and then State v.
8 Victor, which I gave you earlier, 300 S.C. 20, a 1989
9 South Carolina Supreme Court case.

10 And I may have misspoken earlier. There is some
11 recitation of law in there that an accused -- accused,
12 involuntary, incriminating statement is inadmissible
13 for any purpose including impeachment. Then it goes on
14 to cite some other cases. One is a U.S. Supreme Court
15 case in '75 that says that a statement taken in
16 violation of the fifth amendment right to counsel is
17 admissible for impeachment. And then Harris v. New
18 York, which is in the Victor case: a statement taken
19 without the proper Miranda warning is admissible for
20 impeachment. And then State v. Brown covers some of
21 the same topics. I want y'all to be prepared to talk
22 to me about that.

23 I'll have a ruling at quarter to -- you be back
24 in the courtroom at quarter to 2:00. I'll make my
25 rulings on the immunity and then the Jackson v. Denno

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 matter and then, if need be, on the 403 issue about the
2 tape. Okay? Thank you.

3 MR. CLARK: Thank you, Your Honor.

4 MR. CORBETT: Thank you, Judge.

5 [Whereupon a recess is taken]

6 THE COURT: Okay. Before we begin: Mr. Gainey,
7 it would certainly be beneficial if you would be in the
8 courtroom well before we're to begin.

9 MR. GAINNEY: Yes, sir.

10 THE COURT: I haven't given you this instruction
11 earlier. The State has not moved to have you put in
12 custody during the course of the trial, so I assume
13 that's not an issue. But if at any time you are not
14 present in the courtroom when we begin, whether it's a
15 recess or lunch or evening or whether it is a fifteen-
16 minute break, we'll go on without you. Do you
17 understand that?

18 MR. GAINNEY: Yes, sir, Your Honor. I apologize.

19 THE COURT: There's no reason to apologize. I
20 needed to give you that instruction anyway. Of course,
21 that presupposes that the case will go forward today
22 anyway.

23 - - -

24 - - -

25 - - -

COURT'S RULINGS

THE COURT: All right. I'm going to take these issues up in the order that I think is the most logical.

First, under the Code Section 16-11-440, which is the section -- and that's Subsection C -- that Mr. Clark has indicated they're seeking immunity under, that would be the only one applicable here, it says: a person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including but not limited to his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or to another person or to prevent the commission of a violent crime as defined in another statute.

That's where we are now. Of course, we've all been present for the testimony. And under State v. Duncan, I have to make the determination as to whether or not the defendant has established his right to immunity by the greater weight of the evidence. And as the lawyers know -- probably the officers don't because y'all deal with this, that, and the other -- the greater weight of the evidence is tipping the scales

1 ever so slightly in the defendant's favor. That
2 typically comes up in civil cases. What we tell juries
3 is in their mind's eye, they have to take into account
4 those scales being perfectly even and the party that
5 has the burden, in this case the defendant, had to tip
6 those scales just barely in order to meet that burden
7 of proof. And you go on to tell juries -- it's
8 pertinent here -- that if the scales are tipped
9 slightly in the defendant's favor, he's met his burden;
10 if they're tipped slightly in favor of the other side,
11 in this case the State, he obviously would not have met
12 his burden. And we also say that if the scales remain
13 perfectly even, then the defendant in this case would
14 not have met his burden.

15 The testimony of Mr. Gainey, taken by itself,
16 would establish to most people to be credible in their
17 mind that he has established immunity and certainly by
18 the greater weight of the evidence. We have a
19 situation where he claims that the other party,
20 Mr. Compton, had told him earlier that evening that he
21 had thought about killing him before and even imagined
22 it before, and didn't like the way he treated his
23 sister, and at some point put his hands around his
24 throat, or something of that nature, then they
25 alternately were lovey-dovey, I think somebody put it,

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 and then they were -- and then there would be some
2 aggression on the part of Mr. Compton, and they went
3 back and forth.

4 The rub in the case comes obviously at the
5 house. Mr. Gainey testified as he did -- and I won't
6 summarize it all -- but that he was walking up the
7 steps and for reasons unknown to him, Mr. Compton got
8 angry, whacked -- or broke the porch railing and
9 grabbed one of the slats and hit him across the back.
10 He turned around and he struck several more times until
11 he was able to grab a slat of his own and he proceed
12 to, in his words, defend himself.

13 Obviously, a jury could conclude that if the
14 State doesn't disprove that, if we go to trial, beyond
15 a reasonable doubt, then he'll be getting a self-
16 defense -- he'll be acquitted on the basis of self-
17 defense.

18 The difficult part is the testimony of Ms.
19 Compton. She said that she doesn't remember seeing
20 anything but one hit and that's when she came around
21 the corner of the house. She said she doesn't know
22 what happened before then, she never saw Michael hit,
23 and she saw Chris hit Michael one time.

24 However, the statement given to Mr. Burnish is
25 remarkably contrary to that. Matter of fact, she said

1 two or three times in the statement that he kept
2 hitting him, he kept hitting him, and that she didn't
3 know what had gone on, they -- she was leading the way
4 up the steps, Chris was behind her, and then they
5 started arguing and then they started fighting.

6 Then we have the testimony of Christian Gainey,
7 which is not terribly inconsistent with Mr. Gainey's
8 testimony. It does show that he came back outside
9 after Mr. Compton was down and at least tried to kick
10 him again.

11 In my mind's eye, I don't know what to believe.
12 If all I had heard was Mr. Gainey's testimony, it
13 wouldn't have been a very difficult proposition. I
14 would have found that the immunity existed. On the one
15 hand, I think he's extremely credible because of his
16 matter-of-fact way of speaking. He speaks very well.
17 His testimony, at least to me, did not appear to be
18 rehearsed. But then again, his testimony is somewhat
19 contradicted by at least the written statement of
20 Kimberly Compton, not perhaps to any degree that may
21 make a big difference in the end, but it does give me
22 some question about whether or not he's telling the
23 whole truth or whether or not he remembers the whole
24 truth. All in all, I do not believe that he's
25 established his immunity. I think the big chore in

1 this case is going to be the State being able to
2 convince a jury that it has disproved self-defense
3 beyond a reasonable doubt.

4 As Mr. Corbett -- it may have been in a bench
5 conference. Mr. Corbett said he thought that the issue
6 of self-defense was a jury issue. I'm not -- that's
7 not where I go. I make a determination solely on the
8 evidence as to whether or not the defendant has met his
9 burden by the greater weight of the evidence.

10 I find that at least -- I find that he has not.
11 The evidence is going to be the same. He is going to
12 get a charge on self-defense. And I -- frankly,
13 because of the divergences and the burdens of proof, I
14 think the State has a long row to hoe in disproving
15 self-defense, but that's not -- beyond a reasonable
16 doubt. That's not my call at this time. It may be
17 later on in the case.

18 Now, with regard to the statement, my ruling is
19 is that from the time Officer Browder arrives and says,
20 what's going on, Bo, that's a question. That's not --
21 he did not read or give any rights. Ending with the
22 point of, I'm guilty of assault, that is out.

23 An unusual part of the tape is that -- and I
24 assume it's the father and the mother talking in the
25 background, or probably right there -- Mr. Browder can

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 clearly be heard saying, at 3:39:06, before you say
2 anything, I need to read you your rights. He says
3 that. So he's trying. 3:39:18, Mr. Gainey says
4 something to the effect, I don't need to hear my
5 rights; I'm guilty of assault.

6 That's a close question. You've got an officer
7 trying to do that and the defendant says, I don't need
8 to hear my rights, I'm guilty of assault. And if the
9 State chooses to adjourn this trial and appeal my
10 ruling on that point, I would be curious to see what an
11 appellant court would do, because Mr. Browder was
12 trying to, but the defendant because, number one, he's
13 angry and he's intoxicated and he's just going to do
14 what he wants to do, he says, I don't need to hear my
15 rights, I'm guilty of assault. And I think it was his
16 mother that said, shut up.

17 Now, then Mr. Browder does read him his rights.
18 And the father clearly says -- or a man clearly says,
19 anything you say from here on out -- and then I
20 couldn't hear what they said. Anything that he said
21 from here on out is in.

22 Now, you argue, Mr. Clark, that the Miranda
23 violation in the beginning -- and I hesitate to call it
24 a violation. But his rights under the fifth amendment
25 are he has the right to remain silent and so forth and

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 so on. We know what the Miranda rights are. My ruling
2 is is that coupled with, what's going on, Bo, and that
3 prompting a role of conversation that really didn't end
4 until the rights were read, even though he said, I
5 don't need to hear them, he had a right to hear them.
6 I may be wrong about that. But in any event, from
7 3:39:45 -- or 3:39:18, when he does read him his
8 rights, anything from that point forward will come in.

9 Now, Mr. Clark, you made an argument that under
10 I guess State v. Navy, and there's a case called
11 Missouri v. Seibert, that it all had to be excluded
12 because it was all part of one violation. Under
13 Seibert, I have to take into account, according to the
14 Seibert opinion, the completeness and detail of the
15 questions and answers in the first round of
16 interrogation. There wasn't much completeness or
17 detail. All Mr. Browder said was, what's going on, Bo.

18 I also have to take into account the timing and
19 setting of the first questioning and the second. There
20 was no second round of questioning. All he did was
21 read him his rights and he kept on talking. So there
22 was no second round of questioning.

23 Continuity of police personnel: obviously, Mr.
24 Browder was there the whole time -- and the degree to
25 which the interrogator's questions treated the second

MIA PERRON, CVR-CM

-184-

1 round is continuous with the first. Again, there was
2 no second round. Once he read him his rights, Mr.
3 Browder, I didn't hear him say a word except -- and
4 maybe he's the one that said, watch your mouth.

5 Now, on the issue of the 403 argument, I have to
6 take into account whether or not the evidence -- I have
7 to determine whether or not it's relevant and if I do
8 determine that it is relevant, I can exclude it if its
9 probative value is substantially outweighed by the
10 danger of unfair prejudice, confusion of the issues, or
11 misleading the jury, or by considerations of undue
12 delay. I find that none of those circumstances exist.

13 We haven't talked about hearsay, but what those
14 other people say on the recording is really not offered
15 to prove the truth of the matter asserted. I didn't
16 hear anything in any of those statements that any of
17 those folks knew anything. They were just trying to
18 get him to be quiet.

19 Now, we'll leave for later on in the trial, if
20 the defendant testifies, whether or not under State v.
21 Victor, State v. --

22 I brought those in here.

23 MR. CLARK: Brown, Judge?

24 THE COURT: -- the State v. Brown. And there's
25 a U.S. Supreme Court case of Mincy v. Arizona, New

1 Jersey v. Portack [phonetic] --

2 MR. CLARK: Yes, sir.

3 THE COURT: -- and there are some others, as to
4 whether or not -- and Harris v. New York, whether or
5 not a statement -- those are the -- pre-Miranda
6 statements in here, whether or not those would be
7 admissible for impeachment.

8 Those cases are confusing. We'll have to sort
9 that out. The defendant, if he takes the stand, won't
10 be testifying today.

11 All right. Is my ruling clear, Mr. Corbett?

12 MR. CORBETT: Yes, sir, Your Honor.

13 THE COURT: Mr. Clark?

14 MR. CLARK: Yes, sir, Your Honor.

15 THE COURT: All right. Mr. Corbett, in light of
16 that ruling, does the State intend to go forward with
17 the trial? Or to appeal my ruling? Because obviously
18 if you want to appeal what I've excluded, you can do
19 that before the jury is sworn.

20 Do you need time to discuss that?

21 MR. CORBETT: Yes, Your Honor. If I could have
22 just a couple of minutes.

23 THE COURT: That'll be fine. That'll be fine.

24 [Whereupon, a recess is taken]

25 THE COURT: All right. Mr. Clark, do you have

1 something to tell me?

2 MR. CLARK: Yes, Your Honor. Please the Court.

3 In light of the Court's ruling on Mr. Gainey's
4 Duncan motion, he has decided to appeal the Court's
5 denial of his motion for immunity and it's our position
6 that that would serve as an injunction for this trial
7 going forward.

8 THE COURT: Okay. Well, the footnote in Duncan,
9 it's footnote number 2, it said that -- the Supreme
10 Court said, we find. And that's what we look for from
11 the Supreme Court: we find that a circuit court order
12 granting or denying a motion under this Act, which was
13 the Protection of Persons and Property Act, is
14 immediately appealable.

15 It's a little bit curious to me, but the Supreme
16 Court did say that the reason for that is is because
17 the ruling is in the nature of an injunction. I don't
18 have any choice in the matter but to have the jury come
19 in and what I'll tell the jury is that during the
20 course of the last day of so, we've heard testimony and
21 arguments on some detailed legal issues and that one of
22 the parties who is -- or the party who does not prevail
23 has the right to appeal and that party has chosen to do
24 that, and that their services in the case won't be
25 necessary.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 Now, Mr. Corbett, Mr. Clark discussed some --
2 another point as you were leaving my office and that
3 was if the appeal is abandoned, what will happen; would
4 another judge or me have another Duncan hearing. We'll
5 leave that for another day. Okay?

6 All right. Any objection to me bringing the
7 jury in and telling them that, Mr. Corbett?

8 MR. CORBETT: Your Honor, I believe that the
9 Supreme Court was clear in that opinion. I agree with
10 the Court that you don't have any choice. So, no,
11 there's no objection.

12 THE COURT: Mr. Clark?

13 MR. CLARK: No problem with that, Judge.

14 THE COURT: And for the folks who are here who
15 are -- probably their heads are spinning a little bit,
16 this is new ground for all of us. This is a new law.
17 It's similar, if not identical, to the law in Florida
18 that we've heard so much publicity about. But the
19 Supreme Court has said what it said. And that was a
20 case last year. And I assume there will be more
21 development in the law as we go forward. But the
22 wisdom of the Supreme Court certainly can't be
23 discounted. I'm telling you this just to explain why
24 we're doing this. And, frankly, as the lawyers have
25 indicated, I have no choice at all.

1 Okay. You can bring in the jury.

2 [Whereupon, the jury enters the courtroom at
3 3:05 p.m.]

4 THE COURT: All right. Thank you very much for
5 your patience, ladies and gentlemen. I know without
6 even asking that y'all are pretty perturbed, and I
7 don't blame you, for having been in that jury room for
8 an hour. But if it makes you feel any better, we have
9 very rarely today, or yesterday, even left the
10 courtroom. We broke yesterday about quarter to 6:00
11 and we started back this morning at 9:30, worked until
12 you got here at 11:00 and then until now. We took a
13 very brief lunch.

14 From time to time in cases there are issues that
15 are raised before a trial and I have to make rulings on
16 those issues. And issues have been raised in this case
17 pertaining to a certain statutory scheme -- that is
18 pretty much what we call the stand-your-ground law. I
19 have made rulings on motions in the case and under our
20 law, a party who is -- does not prevail in that setting
21 when I make those rulings has the right to appeal and
22 in this particular case an appeal is going to be
23 commenced from a ruling that I've made in this case.
24 And that's come after probably six or seven or eight
25 hours of testimony and argument and research. So

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 suffice it to say that your services in this case are
2 not going to be needed because the party that is
3 aggrieved, as we call it in the law, is going to file
4 an appeal from my decision. This case will not be
5 tried this week. It may be at some point in the
6 future, I have no clue.

7 But in any event, your instructions are this:
8 you are free to go. You are to call the phone number
9 that you have on that blue card after six o'clock this
10 evening. You will hear a recording and the voice,
11 whoever it might be, will say something. It won't be
12 me. I've never heard it. It will say to call back
13 tomorrow, come back tomorrow. Whatever the instruction
14 is, you simply follow it.

15 I also want you to realize that the lawyers
16 involved in this case and the parties involved in this
17 case -- the lawyers, first of all, are extremely able,
18 very capable, talented lawyers and they have an
19 obligation to put these issues to me for a pretrial
20 decision. Don't hold it against them at all. The law
21 enforcement officers, likewise, have a very important
22 job to do. Don't hold it against them. Don't hold it
23 against the defendant or anybody sitting out there.
24 Don't hold it against Mr. Compton. It's just the way
25 the system sometimes works. And I apologize for making

1 you wait. If you blame it on anybody, blame it on me,
2 because I'm the one that's supposed to run the
3 railroad.

4 You are free to go, and I will more than likely
5 see you tomorrow, but please call that number after six
6 o'clock this evening. If anybody don't have the card,
7 let Mr. Prince know. Thank you.

8 [Whereupon, the jury exits the courtroom at 3:09
9 p.m.]

10 THE COURT: All right. Just one final comment.

11 Technically, Mr. Clark, my denial -- I granted
12 in part and denied in part your Denno motion.
13 Technically, my denial is not an appealable issue.

14 Should the State now choose to appeal my partial
15 granting of it, the appellant court may, I assume, rule
16 on the whole thing because of the chances it'll come up
17 again. But unless it's appealed, my rulings on the --
18 whether or not my rulings stick on the Denno matter,
19 that's up for debate at a later time.

20 Thank you for your efforts. I do apologize to
21 Mr. Compton and his family, and all the other
22 participants.

23 Mr. Gainey, of course you're the one who's
24 choosing to appeal. I don't fault you for that. It's
25 certainly your right under the law.

State v. Gainey
Pretrial Motions - Volume 2 of 2
July 17, 2012

1 But I want to make sure that everybody
2 understands that this was not a waste of time; this is
3 part of the process. Thank you for your attention. I
4 appreciate everybody's calm behavior.

5 MR. CORBETT: May I -- may I pose one question
6 before we leave?

7 THE COURT: Yes, sir.

8 MR. CORBETT: Is the defendant's bond going to
9 remain as is?

10 THE COURT: Who is the bondsman?

11 MR. GAINNEY: Mr. Warren.

12 THE COURT: Keith Warren?

13 MR. GAINNEY: Yes, sir.

14 THE COURT: Well, he's delivered him to court.
15 The jury was never sworn. I believe his bond is back
16 in effect. Okay? And --

17 MR. CLARK: Thank you, Your Honor.

18 THE COURT: -- Mr. Warren probably doesn't know
19 that he's even here. But, Mr. Clark, you can keep tabs
20 on that.

21 MR. CLARK: Yes, sir.

22 THE COURT: All right. Thank you.

23 [WHEREUPON, PRETRIAL MOTIONS CONCLUDE]
24
25

C E R T I F I C A T E

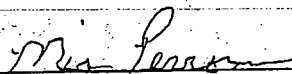
STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

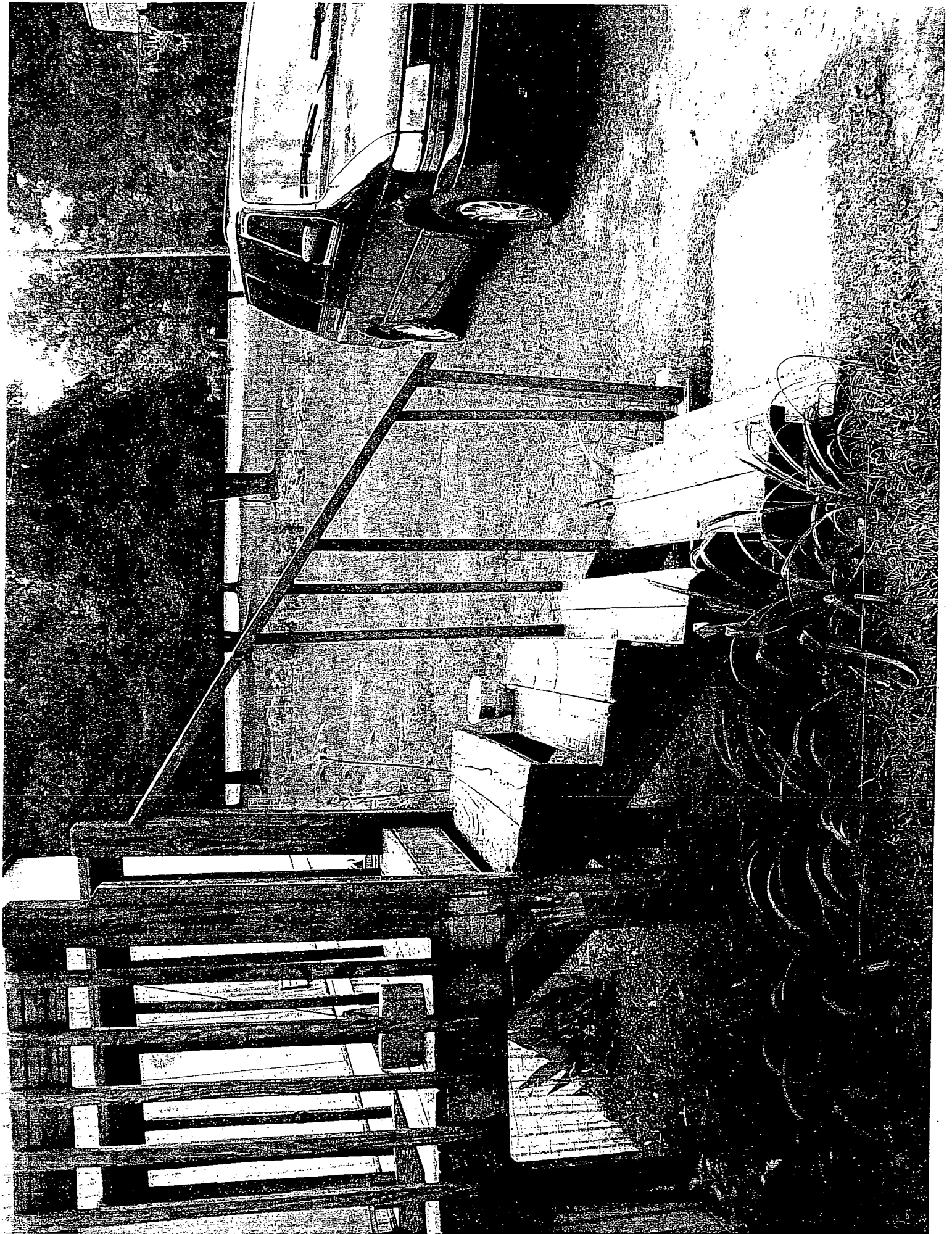
I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the pretrial hearings held before the Honorable George C. James, on July 17, 2012.

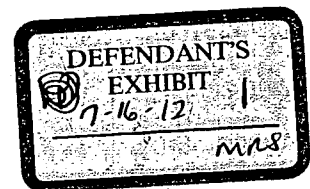
I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

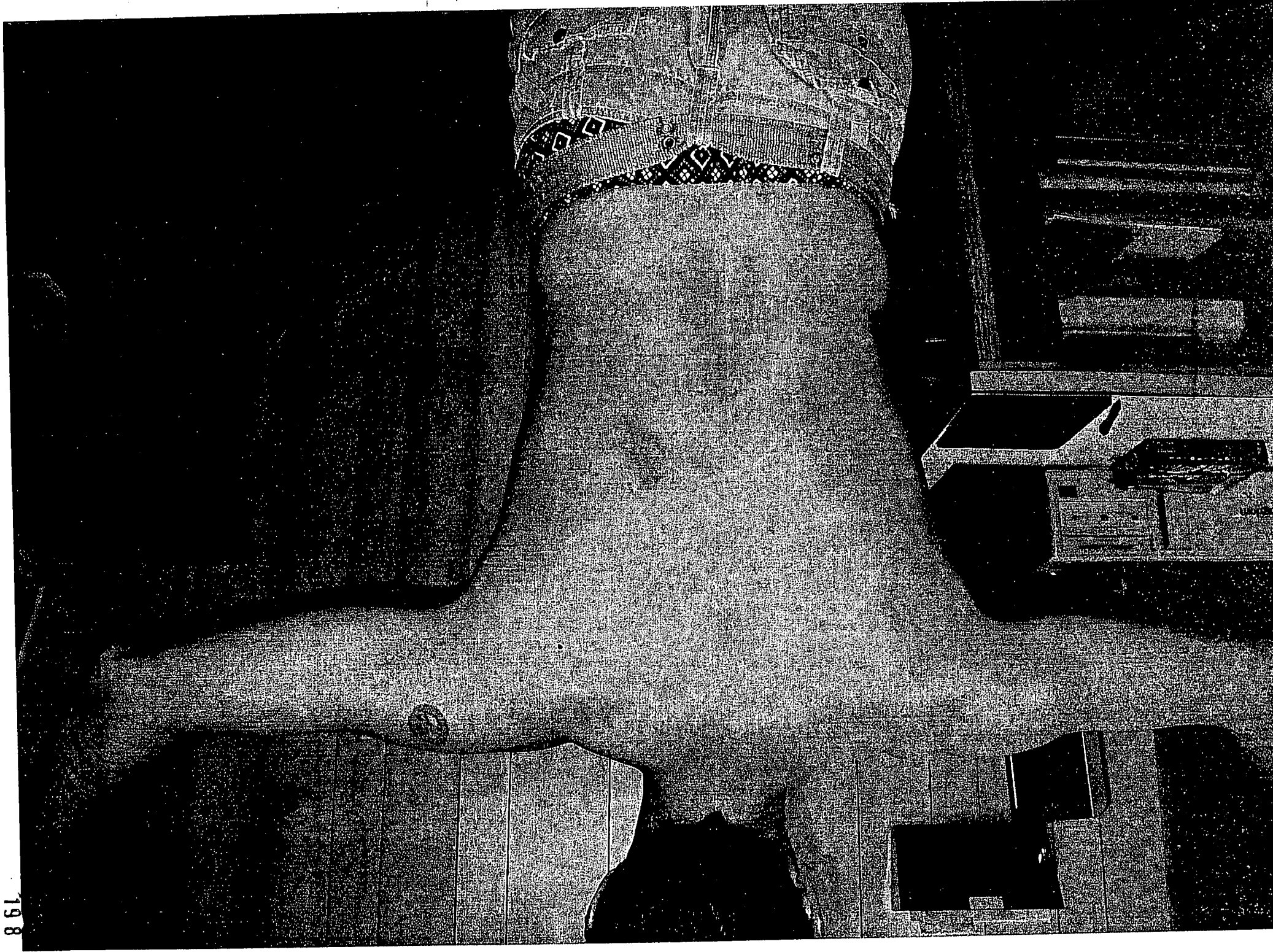
Dated this 28th day of September, 2012.

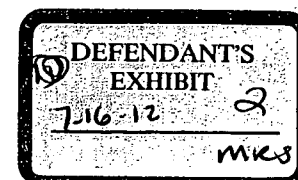

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9th Judicial Circuit

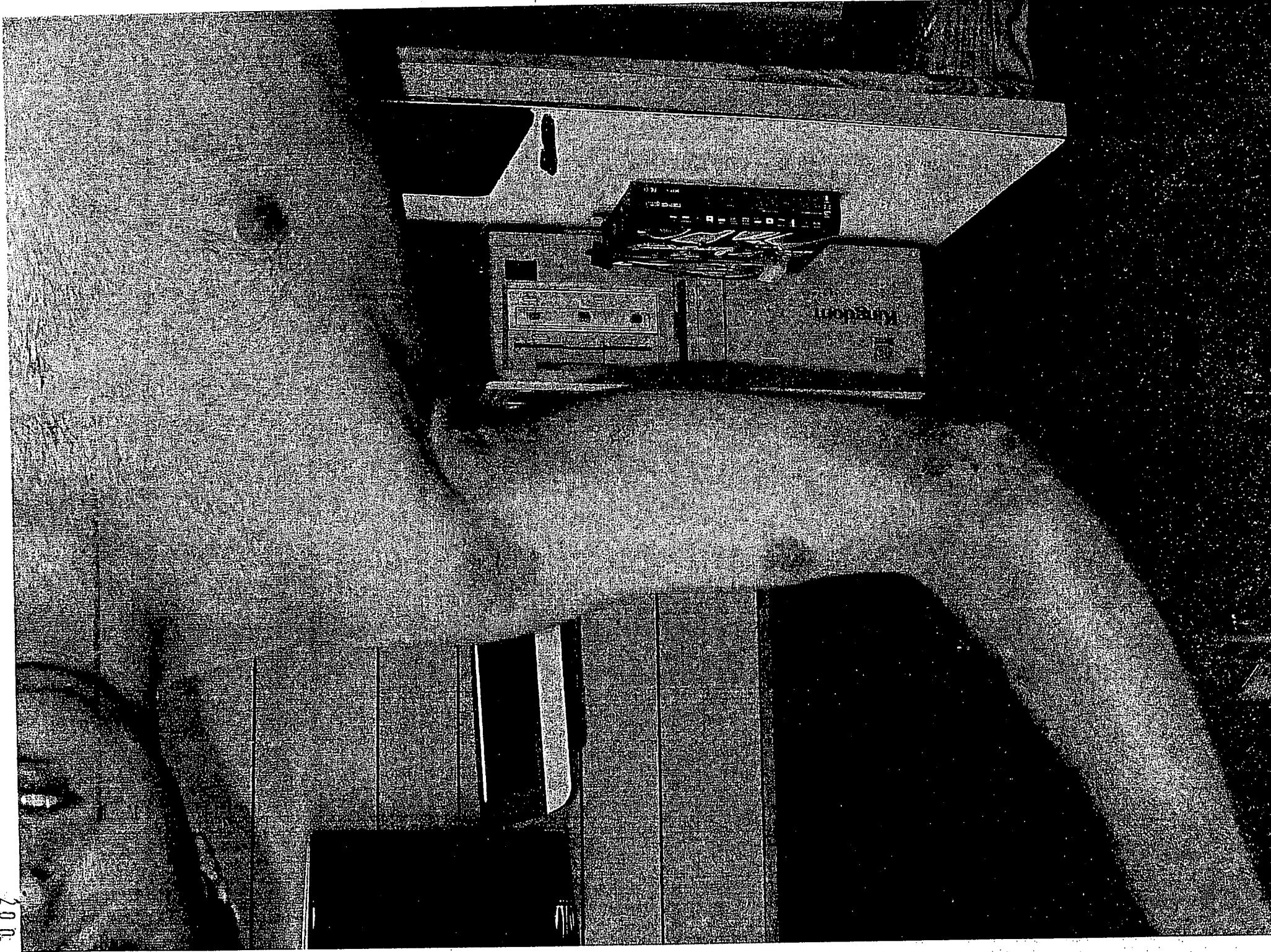
DEFENDANT'S EXHIBITS

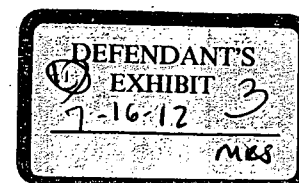


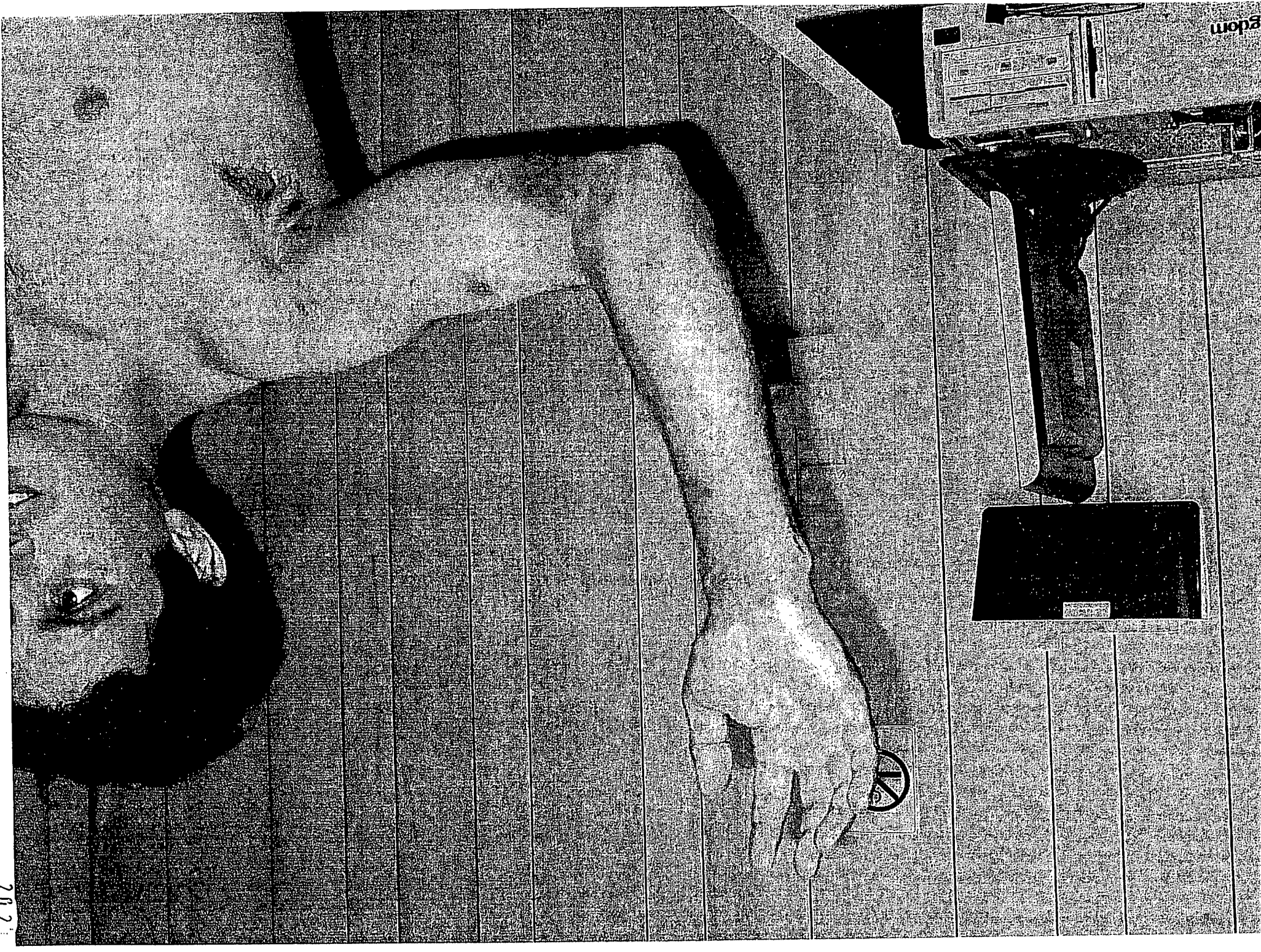


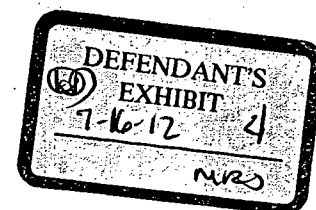


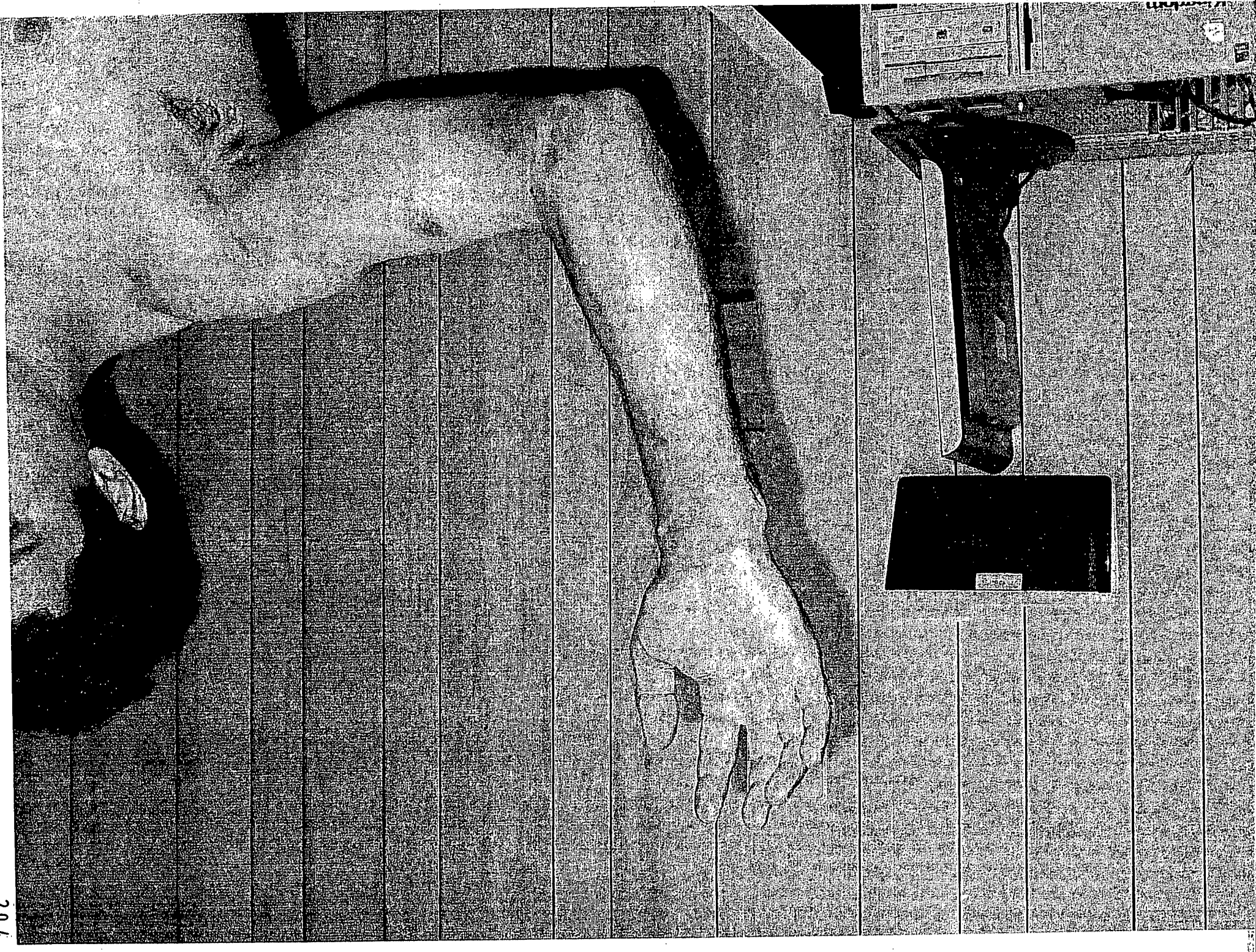




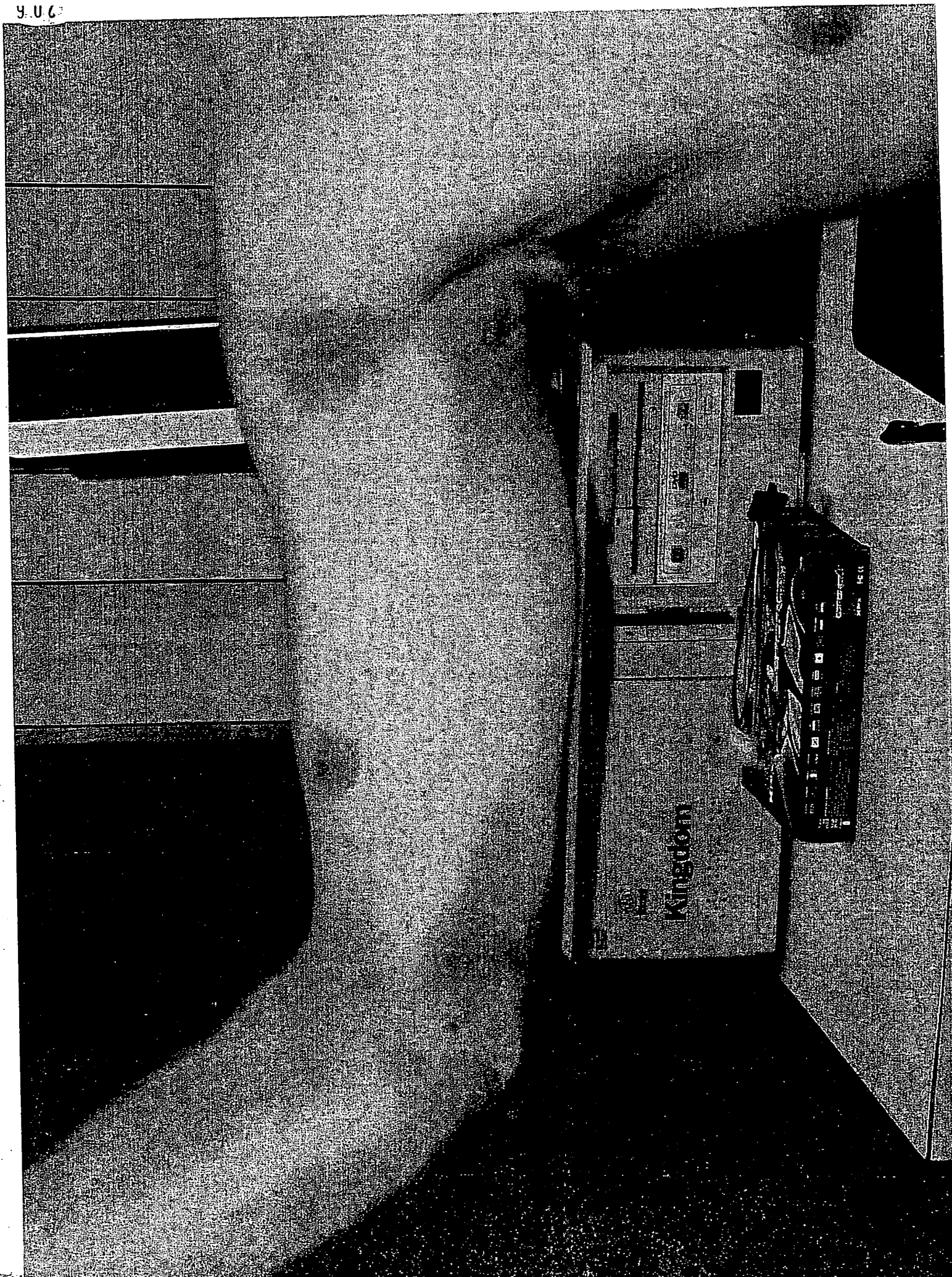


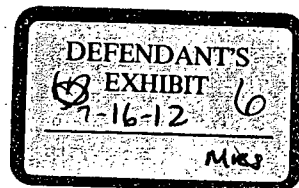






DEFENDANT'S
EXHIBIT
7-16-12
MCS





STATE'S EXHIBITS

CASE # 10085814

VOLUNTARY STATEMENT

LAST NAME <u>Compton</u>	FIRST NAME <u>Kimberly</u>	MIDDLE NAME <u>DAWN</u>	AGE <u>35</u>	D.O.B. <u>07/05/1975</u>
NICKNAME/AKA	M ☐ F ☒	SSN <u>585-71-5937</u>	STREET ADDRESS <u>3885 Peach Orchard Rd</u>	
CITY <u>Sumter</u>	STATE <u>SC</u>	ZIP <u>29150</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE <u>499-9887</u>	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>07/13/10 / 1:43 PM</u>		
LOCATION OF INTERVIEW <u>McLeod Regional Medical Center</u>				
INTERVIEWING AGENT <u>Sgt. Robert Burch</u>	DEPARTMENT	INTERVIEWING AGENT	DEPARTMENT	

I, Kimberly Compton understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the 12th grade in school.

At the house we, Chris, James, and Christopher Marquis were drinking Crown Royal and Brandy. Chris has a broken left hand from helping Brad Baker move a refrigerator. Chris went to Tummy for it and was prescribed pain pills. Chris had taken a pill before we started drinking. James said he wasn't drunk enough and wanted to go buy some beer but I said no let's go to the Wheel Inn bar because it is right down the street and we can walk there. We went there and drank more. After a while I started feeling sick and I went outside. Marquis came outside because he was feeling sick too. Chris and James were still inside drinking. Later they finished and when they came back they were getting along fine. We went home and walked to the back door. At that time they were arguing and then they started fighting. That's when I tried to unlock the back door to get in the house. I was having trouble getting the door unlocked and when I turned around I saw James getting hit and falling to the ground. Chris was still hitting him and I ran over and saw a big gash on James' head and tried to pinch it together to try and stop the bleeding. I was crouched over James and Chris was still hitting him and yelling at him. I could see light from inside my house and I heard my 15 year old

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 07/13/10 Time: 2:23 PM

Kimberly Compton
Signature of person giving voluntary statement

WITNESS: Sgt. Robert Burch

WITNESS: _____

I certify that I have been given a copy of this statement consisting of 2 pages.

VOLUNTARY STATEMENT SUPPLEMENTAL

Statement of, Continued.

daughter yelling at Chris "Dad stop, Dad stop your gonna kill him and your hurting Mom." That's how I knew the door was open. I stayed on top of Michael trying to protect him and Chris was hitting me and was yelling and screaming at me. I don't know what made Chris stop but he did. James came to and got up and started running away. I found him on a neighbor's porch and I ran to him and was cradling him in my arms and beat on the neighbor's door yelling for them to call the police and an ambulance. While Chris was beating James I kept trying to tell James everything was going to be OK. James told me "Just let him finish, just let him finish." The police came and then the ambulance came and took James to the hospital. I NEVER SAW JAMES HIT CHRIS AT ANYTIME.

Person giving statement to place initials behind last word of statement as appears on last page.



Signature of person giving voluntary statement

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
George C. James, Jr., Third Judicial Circuit Judge

Case No.: 2010-GS-43-1239
Appellate Case No.: 2012-212546

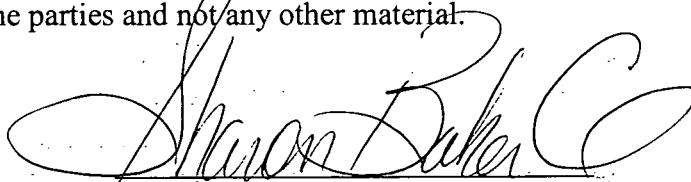
The State of South Carolina, ...Respondent,

v.

Christopher Wayne Gainey, ...Appellant.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Sharon Baker Clark, No. 8626
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Sumter, SC 29151-0880
(803) 775-1234
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
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The State of South Carolina, ...Respondent,

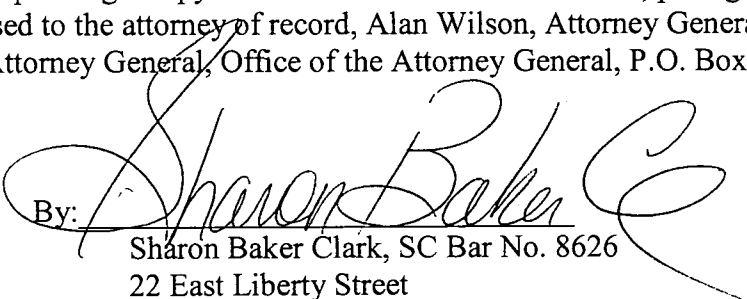
v.

Christopher Wayne Gainey, ...Appellant.

PROOF OF SERVICE

I, certify that I have served the Final Brief of Appellant and Record on Appeal to be on the above named Respondent by depositing a copy of same in the United States mail, postage prepaid, on April 29, 2013, addressed to the attorney of record, Alan Wilson, Attorney General, and J. Benjamin Aplin, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.

April 29, 2013

By: 

Sharon Baker Clark, SC Bar No. 8626
22 East Liberty Street
P.O. Drawer 880
Sumter, South Carolina 29151
(803) 775-1234

RECEIVED

APR 29 2013

SC Court of Appeals

