

Docket No:

UNITED STATES SUPREME COURT

STATE OF MAINE,
Plaintiff-Respondent,

v.

NOAH GASTON,
Defendant-Petitioner.

On Petition for Writ of Certiorari
TO THE MAINE SUPREME JUDICIAL COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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250 A.3d 137
Supreme Judicial Court of Maine.

STATE of Maine

v.

Noah GASTON

Docket: Cum-20-199

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Argued: March 10, 2021

|

Decided: April 29, 2021

Synopsis

Background: Defendant was convicted in the Superior Court, Cumberland County, Michaela Murphy, J., of intentional or knowing murder, and he appealed.

Holdings: The Supreme Judicial Court, Jabar, J., held that:

[1] defendant waived religious privilege by disclosing to a third party a significant part of the confidential communications that he had made to church leaders;

[2] trial court did not abuse its discretion by denying defendant's motion to continue the sentencing hearing;

[3] there was no violation of defendant's right to a public trial under the Sixth Amendment;

[4] trial court misapplied no legal principles in setting defendant's basic sentence at 35 years; and

[5] trial court acted well within its discretion in reaching the maximum sentence of 40 years.

Affirmed.

West Headnotes (20)

[1] **Criminal Law** Review De Novo

The Supreme Judicial Court reviews legal issues regarding nature and scope of religious privilege de novo. Me. R. Evid. 505.

[2] **Criminal Law** Questions of Fact and Findings

Appellate courts review trial court's factual findings for clear error.

[3] **Privileged Communications and Confidentiality** Clergy and spiritual advisers

Defendant waived religious privilege by disclosing to a third party a significant part of the confidential communications that he had made to church leaders. Me. R. Evid. 505.

[4] **Privileged Communications and Confidentiality** Clergy and spiritual advisers

Fact that the content of defendant's confidential communications to church leaders was discussed three years after the statement was made created no barrier to court's determination that defendant waived religious privilege by disclosing to a third party a significant part of the confidential communications that he had made to church leaders. Me. R. Evid. 505.

[5] **Homicide** Indictment and Information

Indictment was sufficient to apprise defendant of the murder charge against him and allow him to prepare a defense, and the fact that the State put the specific name of victim, as opposed to phrase "human being," in the indictment did not change the elements required by "murder" statute; indictment charged defendant with violating statute providing that person was guilty of murder if the person intentionally or knowingly caused the death of another "human being." 17-A Me. Rev. Stat. § 201(1)(A).

[6] **Criminal Law** \Leftrightarrow Elements and incidents of offense

Defendant was not entitled to additional jury instruction stating that the State was required to prove that he intentionally or knowingly killed a specific person and not just intentionally or knowingly killed another human being, given that trial court's instructions closely paralleled the language of statute providing that person was guilty of murder if the person intentionally or knowingly caused the death of another human being. 17-A Me. Rev. Stat. § 201(1)(A).

[7] **Criminal Law** \Leftrightarrow Failure or Refusal to Give Instructions

The Supreme Judicial Court reviews for prejudicial error the trial court's denial of a request for jury instructions.

[8] **Criminal Law** \Leftrightarrow Construction and Effect of Charge as a Whole

The Supreme Judicial Court reviews jury instructions in their entirety to determine whether they presented the relevant issues to the jury fairly, accurately, and adequately, and it will vacate the trial court's judgment only if the erroneous instruction resulted in prejudice.

[9] **Criminal Law** \Leftrightarrow Instructions Already Given
Criminal Law \Leftrightarrow Refusal of requests

Party can demonstrate that trial court erred by failing to give a requested instruction only when the instruction: (1) states the law correctly; (2) is generated by the evidence in the case; (3) is not misleading or confusing; and (4) is not otherwise sufficiently covered in the court's instructions.

[10] **Criminal Law** \Leftrightarrow Time of trial; continuance

The Supreme Judicial Court reviews trial court's denial of a motion to continue for an abuse of discretion examining whether the denial had any adverse prejudicial effect on the movant's

substantial rights and viewing each case largely upon its own facts and circumstances.

[11] **Criminal Law** \Leftrightarrow Sentence-related proceedings

Criminal Law \Leftrightarrow Nature or stage of proceeding

Sentencing and Punishment \Leftrightarrow Continuance

Trial court did not abuse its discretion by denying defendant's motion to continue the sentencing hearing; although defendant claimed that he was entitled to continuance because he was denied his Sixth Amendment right to a public trial and his right to confront witnesses, there was no violation of defendant's right to a public trial and the Sixth Amendment confrontation clause did not apply to sentencing proceedings, court was faced with a global pandemic and restrictions on courtroom access and courtroom occupancy applicable to all Maine state courts, anyone who wanted to address the court or access the proceeding was able to do so, despite the pandemic restrictions, and sentencing hearing did not result in actual prejudice to defendant. U.S. Const. Amend. 6.

[12] **Criminal Law** \Leftrightarrow Purpose of public trial

The goals advanced by the constitutional public-trial guarantee are: (1) to ensure a fair trial; (2) to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions; (3) to encourage witnesses to come forward; and (4) to discourage perjury. U.S. Const. Amend. 6.

[13] **Criminal Law** \Leftrightarrow Sentence-related proceedings

There was no violation of defendant's right to a public trial under the Sixth Amendment since trial court crafted plan that ensured that defendant's sentencing hearing was safely open to the public so that the case, which had been going on for four years, could finally reach a conclusion; court was faced with a global pandemic and restrictions on courtroom

access and courtroom occupancy applicable to all Maine state courts, and anyone who wanted to address the court or access the proceeding was able to do so, despite the pandemic restrictions. U.S. Const. Amend. 6.

[14] **Sentencing and Punishment** ↗ Factors or Purposes in General

Sentencing and Punishment ↗ Manner and effect of weighing or considering factors

Sentencing and Punishment ↗ Indeterminate Term

In fashioning a murder sentence, court is required to complete two steps: (1) court determines the basic term of imprisonment based on an objective consideration of the particular nature and seriousness of the crime; and (2) court determines the maximum period of incarceration based on all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case, including character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest.

1 Cases that cite this headnote

[15] **Criminal Law** ↗ Review De Novo

A basic sentence will be reviewed de novo, and will survive appellate scrutiny unless it appears to err in principle.

[16] **Sentencing and Punishment** ↗ Nature, degree or seriousness of offense

The sentencing court is not required to elucidate all the possible means by which the defendant's crime may be committed, find which method of commission is worse than the defendant's or which method is the worst possible way of committing the crime, and then assign the basic sentence according to where the defendant's conduct falls on that spectrum.

[17] **Sentencing and Punishment** ↗ Harm to third persons or to institutions

Fact that defendant's three minor children were in close proximity to the shooting could be considered by sentencing court when determining defendant's basic sentence for murder.

2 Cases that cite this headnote

[18] **Homicide** ↗ Murder

Sentencing and Punishment ↗ Intent, planning, premeditation

Trial court misapplied no legal principles in setting defendant's basic sentence at 35 years for defendant's conviction for intentional or knowing murder with respect to death of his wife; based on its determination that defendant was guilty of an act of domestic violence that was impulsive, rather than premeditated, court set the basic sentence at 35 years, and in doing so, court appropriately placed defendant's conduct along a continuum of seriousness. 17-A Me. Rev. Stat. § 1251.

2 Cases that cite this headnote

[19] **Criminal Law** ↗ Sentencing

The Supreme Judicial Court reviews the trial court's application of aggravating and mitigating factors in determining the maximum sentence for abuse of discretion.

[20] **Homicide** ↗ Murder

Sentencing and Punishment ↗ Intent, planning, premeditation

Sentencing and Punishment ↗ Degree of harm caused by offense in general

Trial court acted well within its discretion in reaching the maximum sentence of 40 years for defendant's conviction for intentional or knowing murder with respect to the death of his wife; court set defendant's basic sentence at 35 years based on its determination that defendant was guilty of an act of domestic violence that

was impulsive, rather than premeditated, and as aggravating factors, the court considered victim's pain and suffering before she died and the impact of her death on her family. 17-A Me. Rev. Stat. § 1251.

1 Cases that cite this headnote

Attorneys and Law Firms

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Aaron M. Frey, Attorney General, and Donald W. Macomber, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee State of Maine

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

Opinion

JABAR, J.

[¶1] In the early morning hours of January 14, 2016, Alicia Gaston died after Noah Gaston shot her with a shotgun. In November 2019, a jury found Gaston guilty of intentional or knowing murder, 17-A § 201(1)(A) (2021), and the court (Cumberland County, *Murphy, J.*) later entered a judgment of conviction on the verdict, sentencing Gaston to forty years in prison. We affirm the conviction and sentence.

I. BACKGROUND

[¶2] Viewing the evidence in the light most favorable to the State, the jury rationally could have found the following facts beyond a reasonable doubt. *See State v. Ouellette*, 2019 ME 75, ¶ 11, 208 A.3d 399.

[¶3] Noah Gaston stated that in the early morning hours of January 14, 2016, he heard a walkie-talkie-type noise that he thought came from intruders in the home. He checked on his two-year-old son, who was sleeping in the bed he and his wife shared; came out of his bedroom on the second floor; checked on his eight- and nine-year-old daughters, who were sleeping in their own rooms; and, while standing at the top of the stairs, he fired his shotgun once at a person located on the stairs.

[¶4] That person was his wife, Alicia Gaston. Gaston called 9-1-1, stating that he had just killed his wife, and the 9-1-1 dispatcher told him to start CPR. The police officers arrived on scene at 6:17 a.m. Alicia Gaston died from a gunshot injury to her abdomen and hand.

[¶5] On March 10, 2016, a grand jury indicted Gaston on one count of intentional or knowing murder, 17-A M.R.S. § 201(1)(A), and one count of manslaughter,¹ 17-A M.R.S. § 203(1)(A) (2021).² Gaston pleaded not guilty to both counts.

***141** [¶6] In a pretrial motion in limine, Gaston sought to claim a religious privilege, M.R. Evid. 505, to exclude from the evidence at trial statements that he made to two church leaders who picked him up from the police station on the day of the shooting. The State opposed the motion in limine, arguing that the church leaders were not clergy and, even if they were, Gaston had waived the privilege because he later disclosed the statements to third parties. On January 28, 2019, the court held a hearing on the motion at which the two church leaders testified regarding their conversation with Gaston, and the court took the matter under advisement.

[¶7] While the motion in limine was under advisement, the State reported to Gaston and the court that it had obtained a recording of a conversation between Gaston and a visitor at the jail. At a hearing on February 8, 2019, the State summarized that conversation as follows:

Mr. Gaston recounts to [the visitor] that they have now had the [motion in limine] hearing, that [the church leaders] have testified, and [Gaston] says essentially that I had a conversation with [the church leaders], that it was in the car, not at the church as one [of the church leaders] said. And Mr. Gaston affirms that he said to [the church leaders on the day of the shooting], "That's what I have to say." He claims in the conversation with [the visitor] that he then said immediately after that something about the children but that when he said "That's what I have to say," he meant it in a sarcastic way and that they completely misconstrued the meaning of what he said.

The State contended that Gaston had waived his religious privilege by disclosing to the visitor at the jail the contents of his conversation with the church leaders. Gaston contended that this disclosure did not constitute a waiver because everything he recounted had already been said in open court.

[¶8] The court denied the motion in limine, determining that Gaston could not claim the religious privilege. The court

found that the church leaders were individuals with a religious role and status. However, the court found that the statements made to the visitor at the jail constituted a waiver of the privilege because “[Gaston] [was] ratifying the statements he made [to the church leaders] ... and he [was] qualifying them in a way that makes it consistent with his theory that [the shooting] was an accident.” *See e.g., State v. Fournier*, 2019 ME 28, ¶¶ 24-26, 203 A.3d 801.

[¶9] The court conducted an eight-day jury trial in November 2019.³ The State's witnesses included both of the church leaders, and the following exchange occurred with one of those leaders:

PROSECUTOR: When Mr. Gaston at the church finished telling you his version of the shooting of his wife, did he then say something that was particularly notable to you?

CHURCH LEADER: Yes.

PROSECUTOR: After he told you his version of the shooting, what was the notable thing that he said to you?

*142 CHURCH LEADER: Ah, he said that – well, we asked him if there was anything else that he wanted to tell us and he said no, and that this was the only story that he could tell if he wanted to see his children again.

...

PROSECUTOR: ... Did [the other church leader] say anything to [Mr. Gaston] after [Mr. Gaston]'s statement about this is the only thing I can say?

CHURCH LEADER: Yes.

PROSECUTOR: What did [the other church leader] say to [Mr. Gaston]?

CHURCH LEADER: “Is there another story you could tell?”

PROSECUTOR: And did Mr. Gaston answer ...?

CHURCH LEADER: Yes.

PROSECUTOR: What did he say?

CHURCH LEADER: He said, no, that's – that's what happened.

[¶10] At the close of the evidence, the State and Gaston discussed the court's proposed jury instructions and verdict

form.⁴ Gaston contended that “in the case of an intentional or a knowing murder where depraved indifference is not charged, the intent has to be specific both to the idea of killing and to the idea of a specific person. It can't be just someone who ends up dying.” The State responded that the statute requires only the death of another human being.

[¶11] The court added Alicia Gaston's name in the instructions where appropriate, but the court was not persuaded by Gaston's argument that the State had to prove, as an additional element, that the defendant intended to kill the person whom he had, in fact, killed. The following instructions were given to the jury:

The law of the State of Maine provides that: A person is guilty of murder if the person intentionally or knowingly causes the death of another human being. In order for the State to prove beyond a reasonable doubt that Noah Gaston committed the crime of murder, the State must convince you beyond a reasonable doubt of the following three facts: First, that another person, Alicia Gaston, is dead; Second, that Noah Gaston caused her death, which means that Ms. Gaston's death would not have occurred *but for* Mr. Gaston's conduct; and, Third, that Mr. Gaston acted either intentionally or knowingly when he caused Alicia Gaston's death. A person causes death “intentionally” if it is his conscious object to cause another person's death. On other hand, a person causes death “knowingly” if he is aware that it is practically certain that his conduct will cause another person's death.

The jury returned a guilty verdict on one count of murder and found “that the crime of murder was committed with a firearm against a person.”

[¶12] After the verdict, Gaston renewed his motion for judgment of acquittal and made a motion for a new trial based on his argument that the State was required to prove an intent to kill a specific person. The court denied both motions, stating that “any rational fact-finder could have found beyond a reasonable doubt that Mr. Gaston acted intentionally or knowingly when he caused the death of Alicia Gaston” considering that from the testimony a “rational jury could have unanimously found beyond a reasonable doubt that Mr. Gaston actually knew that the person coming up the stairs was in fact his wife, Alicia Gaston, when he discharged a shotgun into her abdomen when standing in relatively *143 close proximately to her.” The court also determined that the jury instructions were appropriate.

[¶13] On June 17, 2020, Gaston filed a motion to continue the sentencing hearing on the ground that the COVID-19 restrictions imposed to protect the health and safety of those involved in a hearing unfairly restricted his due process rights. The court denied the motion after considering the need to balance access to courtrooms with the health and safety of participants; the four years that had passed since the events; and Gaston's constitutional right to a speedy trial.

[¶14] At the sentencing hearing, the court set the basic sentence at thirty-five years. The court described the slaying of Alicia Gaston as a "completely unprovoked, impulsive act of domestic violence," but placed it in the "lower quartile of basic sentences."

[¶15] The court identified Gaston's lack of a criminal record, his actions when the EMTs arrived, and his childhood experiences as mitigating factors. The court stated that it did not consider Gaston's "failure to be a good provider" or whether or not he had genuine remorse; however, the court did consider Alicia Gaston's conscious pain and suffering and the profound impact on Alicia Gaston's family. The court ultimately determined that "particularly given the victim impact in this case ... the aggravating factors do outweigh the mitigating factors, resulting in a final sentence of 40 years to the Department of Corrections."

[¶16] Gaston appealed his conviction and the sentence, and the Sentence Review Panel granted his application for review of his sentence. *See* 15 M.R.S. §§ 2115, 2151-2157 (2021); M.R. App. P. 2B(b)(1), 20; *State v. Gaston*, No. SRP-20-200 (Me. Sent. Rev. Panel Aug. 12, 2020).

II. DISCUSSION

[¶17] Gaston challenges the court's denial of his claim of religious privilege; the court's refusal to use his requested jury instructions; the court's denial of his motion to continue the sentencing hearing; and the court's calculation of both the basic and maximum sentence.

A. Religious Privilege

[1] [2] [3] [¶18] "We review the legal issues regarding the nature and scope of the privilege ... *de novo* and [we] review the factual findings for clear error." *Harris Mgmt., Inc. v. Coulombe*, 2016 ME 166, ¶ 12, 151 A.3d 7; *see Fournier*, 2019 ME 28, ¶ 24, 203 A.3d 801.

[¶19] "A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made to a member of the clergy who was acting as a spiritual adviser at the time of the communication," but that privilege is waived "if the person or the person's predecessor *while holding* the privilege voluntarily discloses or consents to the disclosure of any significant part of the privileged matter." M.R. Evid. 505(b), 510(a) (emphasis added); *see also* M.R. Evid. 511 ("A privilege is not waived by a disclosure that was: (a) [c]ompelled erroneously; or (b) [m]ade without opportunity to claim the privilege.").

[¶20] Gaston contends that the court erred when it found that he voluntarily waived his religious privilege by disclosing to the visitor at the jail his communications with the two church leaders because he was only reporting what the church leaders had already said in open court. However, the conversation with the visitor at the jail was much more than that. In speaking with the visitor, Gaston corrected the church leader's account that the conversation took place in the church, informing the visitor that it was actually in a car, and *144 Gaston told the visitor that he was being sarcastic in the conversation with the church leaders when he reported that "[t]hat's what I have to say" if he wanted to keep his children. As the court stated, Gaston provided commentary and ratified the statements he had made to the church leaders to make it consistent with his theory of the events.

[4] [¶21] Additionally, contrary to Gaston's contention, the fact that the content of the confidential communication was discussed three years after the statement was made creates no barrier to a court's determination that he had waived the privilege. *See e.g., State v. Boucher*, 652 A.2d 76, 77-78 (Me. 1994).

[¶22] The court correctly applied the law, and there is competent evidence supporting the court's finding that Gaston disclosed to a third party a significant part of the confidential communications that he had made to the church leaders. The court did not err in determining that Gaston had waived the religious privilege.⁵ *See Harris Mgmt., Inc.*, 2016 ME 166, ¶ 12, 151 A.3d 7.

B. Jury Instructions

[5] [6] [¶23] Gaston contends that the court erred by declining to give his requested jury instruction that the State was required to prove that he intentionally or knowingly

killed Alicia Gaston and not just intentionally or knowingly killed another human being.⁶

[7] [8] [9] [¶24] We review for prejudicial error the trial court's denial of a request for jury instructions. *State v. Doyon*, 1999 ME 185, ¶ 7, 745 A.2d 365. “[W]e review jury instructions in their entirety to determine whether they presented the relevant issues to the jury fairly, accurately, and adequately, and we will vacate the court's judgment only if the erroneous instruction resulted in prejudice.” *State v. Hansley*, 2019 ME 35, ¶ 8, 203 A.3d 827 (quotation marks omitted). A party can demonstrate that the court erred by failing to give a requested instruction only when the instruction “(1) states the law correctly; (2) is generated by the evidence in the case; (3) is not misleading or confusing; and (4) is not otherwise sufficiently covered in the court's instructions.” *State v. Gauthier*, 2007 ME 156, ¶ 15, 939 A.2d 77.

[¶25] “A person is guilty of murder if the person[] [i]ntentionally or knowingly causes the death of another human being.” 17-A M.R.S. § 201(1)(A). Here, the jury *145 instructions quoted the statutory language and then listed each element that the State needed to prove: (1) “that another person, Alicia Gaston, is dead”; (2) that but for Gaston's conduct, her death would not have occurred and; (3) that he acted intentionally or knowingly to cause the death.

[¶26] In *State v. Mann*, the defendant argued that the proposed jury instruction “needed to inform the jury that prosecutors bore the burden of proving that the fatal blow was not inflicted in self-defense.” 2005 ME 25, ¶ 11, 868 A.2d 183. In that case, we stated that “[e]ven if we assume[d] that [the defendant]’s proposed instruction adequately state[d] Maine law, was generated by the evidence, and was not misleading or confusing, the trial court's instructions adequately covered the prosecution's burden of proof.” *Id.* We concluded that “[w]hen jury instructions closely parallel the provisions of the Maine Criminal Code, they are adequate to provide the jury with the necessary information.” *Id.* ¶ 13.

[¶27] Here, the court's instructions closely paralleled the language of the statute, and the court properly denied Gaston's request for additional jury instructions.

C. Motion to Continue

[10] [11] [¶28] Gaston contends that the court erred when it denied his motion to continue the sentencing hearing because he was denied his Sixth Amendment right to a public trial

and right to confront witnesses. *See* U.S. Const. amend. VI.⁷

“We review a court's denial of a motion to continue for an abuse of discretion examining whether the denial had any adverse prejudicial effect on the movant's substantial rights and viewing each case largely upon its own facts and circumstances.” *State v. Dube*, 2014 ME 43, ¶ 13, 87 A.3d 1219 (quotation marks omitted) (citation omitted).

[¶29] We are not persuaded by Gaston's arguments that the Sixth Amendment Confrontation Clause applies to sentencing proceedings. *See United States v. Hinkley*, 803 F.3d 85, 92 (1st Cir. 2015) (“[T]here is no Confrontation Clause right at sentencing. The sentencing court has broad discretion to accept relevant information without regard to its admissibility under the rules of evidence applicable at trial, as long as it concludes that the information has sufficient indicia of reliability.” (citation omitted)); *United States v. Luciano*, 414 F.3d 174, 178-80 (1st Cir. 2005).

[12] [13] [¶30] We are also not persuaded by Gaston's arguments that he was denied a public trial. *See* U.S. Const. amend. VI.⁸ “The goals advanced by the public-trial guarantee are 1) to ensure a fair trial; 2) to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions; 3) to encourage witnesses to come forward; and 4) to discourage perjury.” *Roberts v. State*, 2014 ME 125, ¶ 19, 103 A.3d 1031 (quotation marks omitted). Even if these goals applied to a sentencing hearing, the court crafted a thorough and thoughtful plan that ensured that the hearing was safely open to the public so that the case, which had been going on for four years, could finally reach a conclusion.

*146 [¶31] The court was faced with a global pandemic and restrictions on courtroom access and courtroom occupancy applicable to all Maine state courts.⁹ The court decided to hold the contested sentencing hearing after “extensive planning and cooperation of counsel, members of the Office of Information Technology, who work for the State of Maine, the Marshal Service, the Clerk's Office, and other people who work for the Administrative Office of the Courts” to ensure access to the proceeding. In creating this plan, the court properly considered Gaston's constitutional rights while balancing the safety restrictions needed during the pandemic.

[¶32] Anyone who wanted to address the court or access the proceeding was able to do so, despite the pandemic restrictions. The court did not abuse its discretion by denying the motion to continue, and the sentencing hearing did not

result in actual prejudice. *See Dube*, 2014 ME 43, ¶ 13, 87 A.3d 1219 (“Although the trial court’s discretion must be exercised judiciously and with an eye toward fundamental fairness, even the arbitrary denial of a continuance cannot sink to the level of a due process violation unless it results in actual prejudice.” (quotation marks omitted)).

D. Sentence

[14] [¶33] Finally, we address Gaston’s challenge to the court’s calculation of the basic sentence and the maximum sentence.¹⁰ “A person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25.” 17-A M.R.S. § 1251 (2016).¹¹ In fashioning a murder sentence, a court is required to complete two steps: “First, the court determines the basic term of imprisonment based on an objective consideration of the particular nature and seriousness of the crime. Second, the court determines the maximum period of incarceration based on all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case, including the character of the offender and the offender’s criminal history, the effect of the offense on the victim and the protection of the public interest.” *State v. De St. Croix*, 2020 ME 142, ¶ 5, 243 A.3d 880 (citations omitted) (alteration omitted) (quotation marks omitted); *see* 17-A M.R.S. § 1252-C (2016),¹² *State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993).

*147 1. Basic Sentence

[15] [16] [¶34] A basic sentence will be reviewed *de novo*, *State v. Cookson*, 2003 ME 136, ¶ 38, 837 A.2d 101, and will “survive appellate scrutiny unless it appears to err in principle,” *State v. Nichols*, 2013 ME 71, ¶ 13, 72 A.3d 503 (quotation marks omitted). In *State v. Schofield*, we explained that at step one “the sentencing court … is required to measure the defendant’s conduct on a scale of seriousness against all possible means of committing the crime in order to determine which acts deserve the most punishment.” 2006 ME 101, ¶ 11, 904 A.2d 409. “[T]he sentencing court is not required to elucidate all the possible means by which the defendant’s crime may be committed, find which method of commission

is worse than the defendant’s or which method is the worst possible way of committing the crime, and then assign the basic sentence according to where the defendant’s conduct falls on that spectrum.” *Id.*

[17] [18] [¶35] Here, based on its determination that Gaston was guilty of an act of domestic violence that was impulsive rather than premeditated, the court set the basic sentence at thirty-five years.¹³ The court appropriately placed Gaston’s conduct along a continuum of seriousness, and there was no misapplication of principle when it set the basic sentence. *Nichols*, 2013 ME 71, ¶ 31, 72 A.3d 503.

2. Maximum Sentence

[19] [20] [¶36] “We review the trial court’s application of aggravating and mitigating factors in determining the maximum sentence for abuse of discretion.” *State v. Bates*, 2003 ME 67, ¶ 25, 822 A.2d 1129; *see State v. Ardolino*, 1997 ME 141, ¶ 26, 697 A.2d 73. As mitigating factors, the court considered Gaston’s childhood experiences, his lack of any criminal record, and his application of CPR to his wife. As aggravating factors, the court considered Alicia Gaston’s pain and suffering before she died, and the impact of her death on her family. Contrary to Gaston’s argument, the court acted well within its discretion in reaching the maximum sentence of forty years. *See Bates*, 2003 ME 67, ¶ 25, 822 A.2d 1129.

[¶37] In sum, the court misapplied no legal principles in setting Gaston’s basic sentence at thirty-five years, and it acted well within its discretion when, after considering the aggravating and mitigating factors, it set Gaston’s maximum sentence at forty years. *See De St. Croix*, 2020 ME 142, ¶ 5, 243 A.3d 880.

The entry is:

Judgment and sentence affirmed.

All Citations

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Footnotes

1 This count was later dismissed and instead the jury was instructed that it could consider manslaughter as a lesser included offense.

2 The indictment also alleges in each count the use of a firearm in violation of 17-A M.R.S. § 1158-A(1)(B) (2016). Section 1158-A was repealed and replaced after the commission of the charged crimes. See P.L. 2019, ch. 113, §§ A-1, A-2 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 1504 (2021)).

3 The court had previously held a jury trial starting on February 11, 2019. However, that trial resulted in a mistrial after the court found "a manifest necessity," but since Gaston consented to the finding, the court concluded that "there was no constitutional bar to retrying Mr. Gaston before a different jury."

4 Gaston and the State had each submitted proposed jury instructions to the court.

5 In furtherance of his argument that his privilege was violated, Gaston argues that protection of the right to worship is broader under article I, section 3 of the Maine Constitution than under the First Amendment of the U.S. Constitution. See Me. Const. art. I, § 3; U.S. Const. amend. I. But the issue here is not the breadth of the constitutional protection, or even the breadth of the privilege under Rule 505, but rather whether the privilege was waived. See M.R. Evid. 510.

6 Gaston also contends that his due process rights were violated when the State included Alicia Gaston's name in the indictment instead of the phrase "another human being." Although the indictment included Alicia Gaston's name, it also included that it was "all in violation of 17-A M.R.S. § 201(1)(A)"; this statute requires that the defendant cause the death of another human being. 17-A M.R.S. § 201(1)(A) (2021). Therefore, the indictment was sufficient to apprise Gaston of the charge against him and allow him to prepare a defense; the fact that the State put a specific name in the indictment does not change the elements required by the statute. See *State v. Gauthier*, 2007 ME 156, ¶ 17, 939 A.2d 77 ("The test for determining whether an indictment is sufficient is whether an accused of reasonable and normal intelligence would, by the language of the indictment, be adequately informed of the crime charged and the nature thereof, so that the accused could properly prepare his defense." (alteration omitted) (quotation marks omitted)).

7 Gaston argues that there was a violation of his right to confrontation under the Sixth Amendment of the U.S. Constitution, and not the Maine Constitution, article I, section 6. See U.S. Const. amend. VI; Me. Const. art. I, § 6.

8 Gaston argues that there was a violation of his right to a public trial under the Sixth Amendment of the U.S. Constitution, and not the Maine Constitution, Art. I, § 6. See U.S. Const. amend. VI; Me. Const. art. I, § 6.

9 Version Six of the Judicial Branch's Pandemic Management Order was in place at the time of the sentencing hearing and states that "proceedings will be governed by the latest version of the Judicial Branch COVID-19 Phased Management Plan." PMO-SJC-1 State of Maine Judicial Branch Pandemic Order (amended May 28, 2020). Version One of the Phased Management Plan was effective at that time and it did not explicitly permit contested sentencing hearings to be scheduled. COVID-19 Phased Management Plan Version One State of Maine Judicial Branch (May 27, 2020).

10 Gaston also contends that the court abused its discretion when setting his final sentence and violated his constitutional rights by not setting his basic sentence at or near the mandatory minimum of twenty-five years. We do not find these arguments persuasive and do not discuss them further.

11 Title 17-A M.R.S. § 1251 (2016) has since been repealed and replaced, but the new sentencing statute contains the same requirement. P.L. 2019, ch. 113, §§ A-1, A-2 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 1603 (2021)); see *State v. De St. Croix*, 2020 ME 142, ¶ 6 n.3, 243 A.3d 880 (noting that a person convicted of a crime "must be punished pursuant to the law in effect at the time of the offense rather than at the time of sentencing" (quotation marks omitted)).

12 Title 17-A M.R.S. § 1252-C (2016) has since been repealed and replaced; the two versions of the sentencing statute contain the same requirements. P.L. 2019, ch. 113, §§ A-1, A-2 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 1602 (2021)).

13 Although the court did not explicitly mention it when it determined the basic sentence, Gaston's three minor children were in close proximity to the shooting, and this fact can be properly considered at step one. *State v. Leng*, 2021 ME 3, ¶ 21, 244 A.3d 238 ("Here, the court properly considered the presence of the victim's children at the murder in setting the basic sentence at the higher end of the range."); see also *State v. Weyland*, 2020 ME 129, ¶ 36, 240 A.3d 841 ("Accordingly, children witnessing horrific violence exacted upon one parent by another is a significant factor in a sentencing decision." (quotation marks omitted)).

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-20-199

STATE OF MAINE,

APPELLEE

v.

NOAH GASTON,

APPELLANT

ON APPEAL FROM CUMBERLAND COUNTY SUPERIOR COURT

APPENDIX

Robert Andrews
Maine Bar No. 8980
117 Auburn St #201
Portland, ME 04103

James M. Mason
Maine Bar No. 4206
16 Union Street
Brunswick, ME 04011

Attorneys for Appellant

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STATE OF MAINE

NOAH GASTON
37 BROOKHAVEN DRIVE
WINDHAM ME 04062

CRIMINAL DOCKET
CUMBERLAND, ss.
Docket No CUMCD-CR-2016-00-188

DOCKET RECORD

DOB: 05/25/1982

Attorney: ROBERT ANDREWS
THE LAW OFFICE OF ROBERT C ANDREWS
ESQ, PC
177 AUBURN STREET, SUITE 201
PORTLAND ME 04103
APPOINTED 02/05/2018

Attorney: ANDREW WRIGHT
ANDREW WRIGHT ATTORNEY AT LAW
16 UNION STREET SUITE 104

BRUNSWICK ME 04011
WITHDRAWN 02/05/2018

Attorney: MERRITT HEMINWAY
HEMINWAY HAMLEN LAWCENTER PA
PO BOX 4784
PORTLAND ME 04112
WITHDRAWN 04/19/2018

Attorney: LUKE RIOUX
RIOUX DONAHUE CHMELECKI & PELTIER
LLC
97A EXCHANGE ST STE 404
PORTLAND ME 04101
WITHDRAWN 11/30/2016

Attorney: TEMMA DONAHUE
RIOUX DONAHUE CHMELECKI & PELTIER
LLC
97A EXCHANGE ST STE 404
PORTLAND ME 04101
WITHDRAWN 11/30/2016

Attorney: JAMES MASON
JAMES M MASON LLC
16 UNION ST 102
BRUNSWICK ME 04011
APPOINTED 07/11/2018

Filing Document: CRIMINAL COMPLAINT

Major Case Type: HOMICIDE

Filing Date: 01/25/2016

Charge(s)

1 MURDER 01/14/2016 WINDHAM
Seq 621 17-A 201(1)(A) Class M

2 MANSLAUGHTER 01/14/2016
Seq 4248 17-A 203(1)(A) Class A Charged with INDICTMENT on Supplemental Filing.

Docket Events:

01/25/2016 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 01/25/2016

WITH ATTACHED AFFIDAVIT

01/25/2016 Party(s): NOAH GASTON
ATTORNEY - RETAINED ENTERED ON 01/16/2016

Attorney: LUKE RIOUX

01/25/2016 Party(s): STATE OF MAINE
ATTORNEY - RETAINED ENTERED ON 01/25/2016

Attorney: DEBORAH CASHMAN

01/25/2016 MOTION - OTHER MOTION FILED BY DEFENDANT ON 01/25/2016

MOTION TO ALLOW DEFENDANT TO APPEAR IN CIVILIAN DRESS AND FREE OF RESTRAINTS

01/26/2016 MOTION - OTHER MOTION GRANTED ON 01/26/2016

M MICHAELA MURPHY , JUSTICE

MOTION TO ALLOW DEFENDANT TO APPEAR IN CIVILIAN DRESS AND FREE OF RESTRAINTS GRANTED IN PART.
CIVILIAN DRESS IS GRANTED. DENIED AS TO RESTRAINTS IF THEY CAN BE CONCEALED.

01/26/2016 Charge(s): 1

HEARING - INITIAL APPEARANCE HELD ON 01/26/2016

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: DEBORAH CASHMAN

Defendant Present in Court

HARNISH HEARING 5 DAY RULE WAIVED.

TEMMA DONAHUE, ESQ PRESENT

01/26/2016 BAIL BOND - NO BAIL ALLOWED SET BY COURT ON 01/26/2016

M MICHAELA MURPHY , JUSTICE

01/26/2016 HEARING - HARNISH BAIL HEARING SCHEDULED FOR 02/08/2016 at 01:00 p.m. in Room No. 8

M MICHAELA MURPHY , JUSTICE

01/26/2016 HEARING - HARNISH BAIL HEARING NOTICE SENT ON 01/26/2016

02/08/2016 MOTION - MOTION TO IMPOUND FILED BY DEFENDANT ON 02/08/2016

MOTION TO IMPOUND AFFIDAVIT OF DETECTIVE ETHEL ROSS

02/08/2016 OTHER FILING - OTHER DOCUMENT FILED ON 02/08/2016

AFFIDAVIT OF ETHEL ROSS IN SUPPORT OF HARNISH BAIL HEARING.

02/08/2016 HEARING - HARNISH BAIL HEARING HELD ON 02/08/2016

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: DEBORAH CASHMAN Reporter: JANETTE COOK

Defendant Present in Court

TEMMA DONAHUE CO-COUNSEL. STATES WITNESS #1: CHRISTOPHER FARLEY, EVIDENCE RESPONDER.
HEARING CONTINUED TO 2/9/16 @ 12:30.

02/09/2016 HEARING - HARNISH BAIL HEARING HELD ON 02/09/2016

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: DEBORAH CASHMAN Reporter: JANETTE COOK

Defendant Present in Court

TEMMA DONAHUE, CO COUNSEL. STATES TESTIMONY CONTINUES. WITNESS #2, ETHEL ROSS, PPD. UNDER
ADVISEMENT

02/10/2016 MOTION - MOTION TO IMPOUND GRANTED ON 02/08/2016

M MICHAELA MURPHY , JUSTICE

GRANTED IN PART. ANY AFFIDAVITS IN SUPPORT OF HARNISH BAIL HEARING SHALL BE KEPT UNDER SEAL
AND NOT RELEASED TO THE PUBLIC UNTIL ADMITTED INTO EVIDENCE AT HEARING.

02/10/2016 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 02/09/2016

02/10/2016 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 02/09/2016

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL

02/10/2016 ORDER - COURT ORDER ENTERED ON 02/01/2016

ORDER ON DEFENDANT'S MOTION TO PRODUCE. SCANNED AND SENT TO LISA REED, JENNIFER MULLINS.

NORA SOSNOFF AND BRIANA WHITE.

02/10/2016 ORDER - SPECIAL ASSIGNMENT ENTERED ON 01/25/2016

ROLAND A COLE , JUSTICE

IT IS HEREBY ORDERED THAT JUSTICE MICHAELA MURPHY IS HEREBY ASSIGNED TO HEAR AND DISPOSE OF ALL MATTERS THAT MAY ARISE IN CONNECTION WITH THIS CASE. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE PURSUANT TO RULE 79(A).

02/10/2016 OTHER FILING - OTHER DOCUMENT FILED ON 02/10/2016

DEFENDANT WAIVER OF HARNISH BAIL DEADLINE AND PRESENCE FILED.

02/17/2016 HEARING - BAIL HEARING SCHEDULED FOR 02/23/2016 at 10:00 a.m. in Room No. 8

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL.

02/17/2016 HEARING - BAIL HEARING NOTICE SENT ON 02/17/2016

02/18/2016 ORDER - COURT ORDER ENTERED ON 02/17/2016

M MICHAELA MURPHY , JUSTICE

ORDER ON STATE'S MOTION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE FILED. PROBABLE CAUSE IS FOUND THAT THE DEFENDANT COMMITTED THE OFFENSE OF INTENTIONAL OR KNOWING MURDER. THE CLERK WILL SET A TIME FOR THE PARTIES TO BE HEARD AS TO WHETHER BAIL SHOULD BE SET AS A MATTER OF DISCRETION BY THE COURT. COPIES MAILED.

02/23/2016 HEARING - BAIL HEARING HELD ON 02/23/2016

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: DEBORAH CASHMAN Reporter: JANETTE COOK

Defendant: Present in Court

ARGUMENT OF BAIL FACTORS

DEFENDANT HELD WITHOUT BAIL

02/23/2016 ORDER - COURT ORDER ENTERED ON 02/23/2016

M MICHAELA MURPHY , JUSTICE

FIRST SCHEDULING ORDER FILED. DISCOVERY DEADLINE 6/3/16. MOTION FOR MENTAL EXAM TO BE FILED BY 3/4/16. DEFENDANT HAS UNTIL 3/11/16 TO RESPOND. MOTION DEADLINE 8/8/16. TRIAL 3/17/17.

03/23/2016 TRIAL - JURY TRIAL SCHEDULED FOR 03/17/2017 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL.

03/08/2016 MOTION - OTHER MOTION FILED BY STATE ON 03/08/2016

MOTION TO RECORD GRAND JURY TESTIMONY.

03/08/2016 MOTION - OTHER MOTION GRANTED ON 03/08/2016

JOYCE A WHEELER , JUSTICE

MOTION TO RECORD GRAND JURY TESTIMONY.

03/11/2016 Charge(s): 1.2

SUPPLEMENTAL FILING - INDICTMENT FILED ON 03/10/2016

HM PAUL TURCOTTE , ASSISTANT CLERK

03/21/2016 Party(s): STATE OF MAINE

ATTORNEY - RETAINED ENTERED ON 03/21/2016

Attorney: MEGAN ELAM

03/21/2016 WARRANT - SEARCH RETURNED ON 03/21/2016

04/20/2016 Charge(s): 1.2

HEARING - ARRAIGNMENT SCHEDULED FOR 05/03/2016 at 08:30 a.m. in Room No. 8

M MICHAELA MURPHY , JUSTICE

04/20/2016 Charge(s): 1.2

HEARING - ARRAIGNMENT NOTICE SENT ON 04/20/2016

05/03/2016 Charge(s): 1.2

HEARING - ARRAIGNMENT HELD ON 05/03/2016 in Room No. 8

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: MEGAN ELAM

Defendant Present in Court

DEFENDANT INFORMED OF CHARGES.

FTR #8

05/03/2016 Charge(s): 1.2

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 05/03/2016

08/25/2016 Party(s): STATE OF MAINE

ATTORNEY - RETAINED ENTERED ON 08/25/2016

Attorney: PAUL RUCHA

08/25/2016 HEARING - CONFERENCE SCHEDULED FOR 08/30/2016 at 03:30 p.m.

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL

08/31/2016 HEARING - CONFERENCE HELD ON 08/30/2016

M MICHAELA MURPHY , JUSTICE

Attorney: LUKE RIOUX

DA: MEGAN ELAM

Defendant Not Present in Court

PHONE CONFERENCE HELD. SCHEDULING DEADLINES SET. MOTIONS TO BE HEARD 11/18/16. SETTLEMENT CONFERENCE WITH JUSTICE COLE TO BE SET. DESIGNATION OF EXPERT WITNESSES 11/18/16. JURY SELECTION 3/10/16. TRIAL TO START 3/13/16.

08/31/2016 HEARING - OTHER MOTION SCHEDULED FOR 11/18/2016 at 09:00 a.m. in Room No. 9

M MICHAELA MURPHY , JUSTICE

PRE TRIAL MOTIONS

08/31/2016 HEARING - OTHER MOTION NOTICE SENT ON 08/31/2016

PRE TRIAL MOTIONS

10/21/2016 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 10/14/2016

MOTION FOR TRANSCRIPTS AT STATES EXPENSE

10/21/2016 HEARING - OTHER MOTION NOT HELD ON 10/21/2016

PRE TRIAL MOTIONS

JUSTICE MURPHY IS IN TRIAL.

10/21/2016 HEARING - OTHER MOTION SCHEDULED FOR 11/30/2016 at 09:00 a.m.

M MICHAELA MURPHY , JUSTICE

PRE TRIAL MOTIONS

10/21/2016 HEARING - OTHER MOTION NOTICE SENT ON 10/21/2016

PRE TRIAL MOTIONS

10/24/2016 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 10/21/2016

JHD FRENCH , JUDGE

COPY TO PARTIES/COUNSEL

02/09/16

JANETTE COOK 10/24/16

HARNISH BAIL HEARING BEGAN ON 02/08/16

PAPER TRANSCRIPT OF HARNISH BAIL HEARING HELD
SCANNED & EMAILED TO OTO/COURT REPORTER
10.25.16 NOTIFIED BY COURT REPORTER

10/31/2016 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 10/31/2016

MOTION TO CONTINUE PRETRIAL MOTION HEARINGS.

11/01/2016 MOTION - OTHER MOTION FILED BY DEFENDANT ON 10/31/2016

MOTION TO EXCLUDE TESTIMONY OF CHILD WITNESSES FILED.

11/04/2016 MOTION - MOTION TO CONTINUE GRANTED ON 11/04/2016

M MICHAELA MURPHY ,JUSTICE

GRANTED IN PART. HEARING IS CONTINUED BUT COUNSEL WILL PERSONALLY APPEAR FOR SCHEDULING/STATUS CONFERENCE AT THE SET TIME.

11/29/2016 Charge(s): 1,2

MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 11/29/2016

11/30/2016 Charge(s): 1,2

MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 11/30/2016

M MICHAELA MURPHY ,JUSTICE

COPY TO PARTIES/COUNSEL

11/30/2016 TRIAL - JURY TRIAL NOT HELD ON 11/30/2016

ATTY RIOUX WITHDREW. TRIAL DATE MOVED TO SEPTEMBER 2017.

11/30/2016 TRIAL - JURY TRIAL SCHEDULED FOR 09/08/2017 at 08:30 a.m. in Room No. 11

M MICHAELA MURPHY ,JUSTICE

NOTICE TO PARTIES/COUNSEL

JURY SELECTION

11/30/2016 Party(s): NOAH GASTON

ATTORNEY - WITHDRAWN ORDERED ON 11/30/2016

Attorney: LUKE RIOUX

11/30/2016 Party(s): NOAH GASTON

ATTORNEY - WITHDRAWN ORDERED ON 11/30/2016

Attorney: TEMMA DONAHUE

11/30/2016 Party(s): NOAH GASTON

ATTORNEY - APPOINTED ORDERED ON 11/30/2016

Attorney: ANDREW WRIGHT

12/14/2016 Charge(s): 1,2

MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 12/05/2016

02/23/2017 HEARING - CONFERENCE SCHEDULED FOR 02/27/2017 at 10:00 a.m.

M MICHAELA MURPHY ,JUSTICE

NOTICE TO PARTIES/COUNSEL

02/23/2017 HEARING - CONFERENCE NOTICE SENT ON 02/23/2017

03/01/2017 HEARING - CONFERENCE HELD ON 02/27/2017

M MICHAELA MURPHY ,JUSTICE

AMENDED SCHEDULING ORDER FILED

03/01/2017 ORDER - COURT ORDER FILED ON 02/27/2017

M MICHAELA MURPHY ,JUSTICE

JURY SELECTION 9/8/17 TRIAL TO BEGIN 9/11/17. EXPERT TESTIMONY BY 4/28/17. WITNESS LIST BY 4/28/17.
MOTION HEARING TO BE HELD 6/28/17. SETTLEMENT CONFERENCE TO BE SCHEDULED.

03/02/2017 HEARING - OTHER MOTION HELD ON 12/01/2016

PRE TRIAL MOTIONS

03/02/2017 HEARING - CONFERENCE SCHEDULED FOR 05/10/2017 at 09:00 a.m.

FEBRUARY.

09/29/2017 MOTION - MOTION TO CONTINUE GRANTED ON 09/28/2017

M MICHAELA MURPHY , JUSTICE
COPY TO PARTIES/COUNSEL

09/29/2017 TRIAL - JURY TRIAL SCHEDULED FOR 02/12/2018 at 08:30 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL

09/29/2017 TRIAL - JURY TRIAL NOTICE SENT ON 09/29/2017

09/29/2017 MOTION - OTHER MOTION GRANTED ON 09/28/2017

STATES MOTION TO PERMIT THE TAKING OF TESTIMONY VIA VIDEO DEPOSITION, SKYPE OR TELEPHONE.
GRANTED IN PART. STATE MAY TAKE DEPOSITION BUT MAY NOT SUBSTITUTE THIS FOR LIVE TESTIMONY
UNLESS THERE IS A CHANGE IN CIRCUMSTANCES.

01/11/2018 Charge(s): 1,2

MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 01/11/2018

EMAILED

01/11/2018 HEARING - MOTION FOR WITHDRAWAL OF CNSL SCHEDULED FOR 01/19/2018 at 12:30 p.m. in Room No. 12

M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL

01/11/2018 HEARING - MOTION FOR WITHDRAWAL OF CNSL NOTICE SENT ON 01/18/2017

01/18/2018 Charge(s): 1,2

MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 01/18/2018

LETTER FROM DEFENDANT/ MOTION AGREEING WITH MY ATTORNEY'S WITHDRAWAL AND ASKING FOR A
NEW ATTORNEY.

01/19/2018 HEARING - MOTION FOR WITHDRAWAL OF CNSL HELD ON 01/19/2018

M MICHAELA MURPHY , JUSTICE

Attorney: DAVID PARIS

DA: MEGAN ELAM

Defendant Present in Court

FTR #8. JUSTICE MURPHY WILL TAKE MATTER UNDER ADVISEMENT UNTIL 2/26/18.

02/09/2018 TRIAL - JURY TRIAL CONTINUED ON 02/09/2018

NEW COUNSEL APPOINTED

02/09/2018 Party(s): NOAH GASTON

ATTORNEY - WITHDRAWN ORDERED ON 02/05/2018

Attorney: ANDREW WRIGHT

02/09/2018 Party(s): NOAH GASTON

ATTORNEY - APPOINTED ORDERED ON 02/05/2018

Attorney: ROBERT ANDREWS

02/09/2018 Party(s): NOAH GASTON

ATTORNEY - APPOINTED ORDERED ON 02/05/2018

Attorney: MERRITT HEMINWAY

02/12/2018 TRIAL - JURY TRIAL SCHEDULED FOR 11/05/2018 at 08:30 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL

02/12/2018 TRIAL - JURY TRIAL NOTICE SENT ON 02/12/2018

04/19/2018 MOTION - MOTION FOR WITHDRAWAL, OF CNSL FILED BY COUNSEL ON 04/19/2018

ATTORNEY HEMINWAY'S MOTION TO WITHDRAW FILED.

06/22/2018 MOTION - OTHER MOTION FILED BY STATE ON 06/22/2018

MOTION TO PERMIT THE TAKING OF TESTIMONY VIA VIDEO DEPOSITION

06/26/2018 HEARING - OTHER HEARING SCHEDULED FOR 07/12/2018 at 01:00 p.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

06/26/2018 HEARING - OTHER HEARING NOTICE SENT ON 06/26/2018

06/26/2018 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 06/26/2018

CERTIFIED COPY TO SHERIFF DEPT.

06/26/2018 Party(s): NOAH GASTON
ATTORNEY - WITHDRAWN ORDERED ON 04/19/2018

Attorney: MERRITT HEMINWAY

06/28/2018 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 06/28/2018

ROLAND A COLE, JUSTICE

06/28/2018 MOTION - OTHER MOTION GRANTED ON 06/27/2018

M MICHAELA MURPHY, JUSTICE

MOTION TO PERMIT THE TAKING OF TESTIMONY VIA VIDEO DEPOSITION

07/11/2018 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 07/10/2018

CO-COUNSEL

07/11/2018 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 07/11/2018

M MICHAELA MURPHY, JUSTICE

COPY TO PARTIES/COUNSEL.

07/11/2018 Party(s): NOAH GASTON
ATTORNEY - APPOINTED ORDERED ON 07/11/2018

Attorney: JAMES MASON

07/16/2018 HEARING - OTHER HEARING HELD ON 07/12/2018

DEPOSITION OF JEFFREY BRUNDAGE HELD IN COURT ROOM 9.

09/21/2018 MOTION - MOTION FOR MENTAL EXAMINATION FILED BY DEFENDANT ON 09/21/2018

MOTION FOR EVALUATION OF ABNORMAL STATE OF MIND BY THE STATE FORENSIC SERVICE.

09/27/2018 MOTION - MOTION FOR MENTAL EXAMINATION GRANTED ON 09/27/2018

M MICHAELA MURPHY, JUSTICE

COPY SENT TO STATE FORENSIC SERVICE

09/27/2018 PSYCHIATRIC EXAM - ORDER MENTAL EXAM-INSANITY ENTERED ON 09/27/2018

M MICHAELA MURPHY, JUSTICE

IMPOUNDED. PLEASE EXPEDITE. NEED BY 10-15-18.

10/04/2018 LETTER - FROM NON-PARTY FILED ON 10/03/2018

LETTER FROM STATE FORENSIC INFORMING PARTIES THAT AN EXAM IS SCHEDULED FOR 10-9-18.

10/10/2018 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 10/05/2018

Attorney: ROBERT ANDREWS

MOTION TO CONTINUE 11/5 TRIAL

10/10/2018 MOTION - MOTION TO CONTINUE GRANTED ON 10/05/2018

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL

1/2/19 PRETRIAL CONFERENCE TO BE SET JANUARY 2019 MOTIONS IN LIMINE AND PROPOSED VOIR DIRE DUE

2/8/19 JURY TRIAL 2/11/19 AND FOR THE NEXT TWO WEEKS JURY SELECTION (1 DAY)

10/10/2018 TRIAL - JURY TRIAL CONTINUED ON 10/05/2018

M MICHAELA MURPHY , JUSTICE

10/10/2018 Charge(s): 1.2

TRIAL - JURY TRIAL SCHEDULED FOR 02/08/2019 at 08:30 a.m.

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL

JURY SELECTION

10/10/2018 Charge(s): 1.2

TRIAL - JURY TRIAL SCHEDULED FOR 02/11/2019 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

10/17/2018 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 10/05/2018

TRIAL

10/17/2018 MOTION - MOTION TO CONTINUE GRANTED ON 10/15/2018

M MICHAELA MURPHY , JUSTICE

JURY SELECTION 2/8/19. TRIAL BEGINS 2/11/19-2/22/19.

11/28/2018 PSYCHIATRIC EXAM - ORDER MENTAL EXAM-INSANITY REPORT FILED ON 11/27/2018

IMPOUNDED FROM THE STATE PER ORDER.

01/02/2019 MOTION - MOTION IN LIMINE FILED BY STATE ON 01/02/2019

DA: PAUL RUCHA

STATE'S MOTION IN LIMINE AND MEMORANDUM

01/02/2019 OTHER FILING - OTHER DOCUMENT FILED ON 01/02/2019

Attorney: ROBERT ANDREWS

OBJECTION TO STATE'S REQUEST FOR A VIEW

01/02/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

FIRST MOTION IN LIMINE

01/02/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

SECOND MOTION IN LIMINE

01/02/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

DEFENDANT'S THIRD MOTION IN LIMINE

01/02/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

FOURTH MOTION IN LIMINE

01/02/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

DEFENDANT'S FIFTH MOTION IN LIMINE

01/02/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 01/02/2019

Attorney: ROBERT ANDREWS

TO FILE PROPOSED VOIR DIRE

STATE'S POSITION UNKNOWN

01/02/2019 HEARING - MOTION IN LIMINE SCHEDULED FOR 01/22/2019 at 09:00 a.m. in Room No. 8

NOTICE TO PARTIES/COUNSEL

01/02/2019 HEARING - MOTION IN LIMINE NOTICE SENT ELECTRONICALLY ON 01/02/2019

JIM PAUL TURCOTTE, ASSISTANT CLERK

01/04/2019 JURY FILING - PROPOSED VOIR DIRE FILED BY STATE ON 01/04/2019

DA: MEGAN ELAM

01/04/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 01/02/2019

M MICHAELA MURPHY, JUSTICE

COPY TO PARTIES/COUNSEL

PERIOD FOR FILING MOTIONS ENLARGED TO 1/14/19

01/15/2019 Charge(s): 1.2

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 01/14/2019

MOTION TO ENLARGE TIME TO FILE JUROR QUESTIONNAIRES AND PROPOSED VOIR DIRE

01/16/2019 JURY FILING - PROPOSED VOIR DIRE FILED BY DEFENDANT ON 01/16/2019

Attorney: ROBERT ANDREWS

01/16/2019 JURY FILING - PROPOSED JURY INSTRUCTIONS FILED BY DEFENDANT ON 01/16/2019

Attorney: ROBERT ANDREWS

01/25/2019 HEARING - MOTION IN LIMINE HELD ON 01/23/2019

M MICHAELA MURPHY, JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM

01/25/2019 HEARING - MOTION IN LIMINE CONTINUED ON 01/22/2019

M MICHAELA MURPHY, JUSTICE

TO JAN 28

01/25/2019 Charge(s): 1.2

HEARING - MOTION IN LIMINE SCHEDULED FOR 01/28/2019 at 09:00 a.m. in Room No. 8

NOTICE TO PARTIES/COUNSEL

01/29/2019 Charge(s): 1.2

HEARING - MOTION IN LIMINE HELD ON 01/28/2019 at 09:00 a.m.

M MICHAELA MURPHY, JUSTICE

Defendant Present in Court

01/29/2019 MOTION - MOTION IN LIMINE GRANTED ON 01/22/2019

M MICHAELA MURPHY, JUSTICE

Defendant Present in Court

COPY TO PARTIES/COUNSEL

GRANTED - STATE PROHIBITED FROM DESCRIBING

MOTIVE

01/29/2019 MOTION - MOTION IN LIMINE UNDER ADVISEMENT ON 01/22/2019

M MICHAELA MURPHY, JUSTICE

01/29/2019 MOTION - MOTION IN LIMINE DENIED ON 01/28/2019

M MICHAELA MURPHY, JUSTICE

COPY TO PARTIES/COUNSEL

SONG LYRICS ARE ADMISSIBLE

01/29/2019 MOTION - MOTION IN LIMINE MOOT ON 01/22/2019

M MICHAELA MURPHY , JUSTICE

STATE NOT TO REFER TO OR ADMIT PHYSICAL OBJECTS. DEF AGREES ISSUE RESOLVED WITH STATE PROFFER.

01/29/2019 MOTION - MOTION IN LIMINE UNDER ADVISEMENT ON 01/22/2019

M MICHAELA MURPHY , JUSTICE

CT TAKES UNDER ADVISEMENT TO READ DEPO TRANSCRIPT ONLY AS TO LIGHTING CONDITIONS.

01/29/2019 MOTION - MOTION IN LIMINE GRANTED ON 01/28/2019

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL GRANTED IN PART. WIT. BRUNDAGE CAN TESTIFY RE:
LIGHTS LOCATED. ETC BUT CANNOT TESTIFY RE: WHAT LIGHTS ILLUMINATED WHEN HE LIVED THERE.
RULING BASED ON RISK OF CONFUSION TO JURY UNDER 403.

01/29/2019 MOTION - MOTION IN LIMINE UNDER ADVISEMENT ON 01/22/2019

M MICHAELA MURPHY , JUSTICE

CT REQUIRES TESTIMONY OF WITNESSES.

BRIEFS TO BE FILED WITH COURT BY 2/1/2019.

TESTIMONIAL HEARING HELD 1/28/2019.

01/29/2019 MOTION - MOTION IN LIMINE DENIED ON 01/28/2019

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL DENIED IN PART. WIT. BRUNDAGE CANNOT TESTIFY
RE: WHAT LIGHTS ILLUMINATED WHEN HE LIVED THERE. CAN TESTIFY ABOUT WHERE LIGHTS LOCATED.
HOW WIRED. ETC.

02/05/2019 OTHER FILING - OTHER DOCUMENT FILED ON 02/04/2019

Attorney: JAMES MASON

DEFENDANT'S SUPPLEMENTAL BRIEF ON HIS FIRST MOTION IN LIMINE

02/08/2019 Charge(s): 1,2

OTHER FILING - OTHER DOCUMENT FILED ON 02/07/2019

DA: ROBERT ANDREWS

DEFENDANT'S PROPOSED JURY INSTRUCTIONS FILED

02/11/2019 Charge(s): 1,2

TRIAL - JURY TRIAL HELD ON 02/11/2019 at 09:30 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM Reporter: TIMOTHY THOMPSON

Defendant: Present in Court

TRIAL DAY ONE: TRIAL BEGINS. JURY SWORN. INDICTMENT READ. OPENING STATEMENTS. STATE'S
TESTIMONY BEGINS.

02/13/2019 MOTION - MOTION FOR SANCTIONS FILED BY DEFENDANT ON 02/13/2019

Attorney: ROBERT ANDREWS

02/13/2019 Charge(s): 1,2

HEARING - OTHER MOTION SCHEDULED FOR 02/14/2019 at 10:00 a.m. in Room No. 11

MOTION FOR SANCTIONS RE: DISCOVERY VIOLATION

02/13/2019 Charge(s): 1,2

HEARING - OTHER MOTION NOTICE SENT ON 02/13/2019

JIM PAUL TURCOTTE , ASSISTANT CLERK

MOTION FOR SANCTIONS RE: DISCOVERY VIOLATION

02/14/2019 Charge(s): 1,2

HEARING - OTHER MOTION HELD ON 02/14/2019 at 10:15 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM Reporter: TIMOTHY THOMPSON

Defendant Present in Court

MOTION FOR SANCTIONS RE: DISCOVERY VIOLATION

MOTION UNSEALED.

03/20/2019 HEARING - CONFERENCE SCHEDULED FOR 03/14/2019 at 10:00 a.m.

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL

SET FOR PHONE CONFERENCE WITH PARTIES TO

SCHEDULE RE-TRIAL

03/20/2019 HEARING - CONFERENCE HELD ON 03/14/2019 at 10:00 a.m.

M MICHAELA MURPHY , JUSTICE

PHONE CONFERENCE HELD WITH PARTIES. STATE SENDING OUT DR'S REPORT AS DISCOVERY. DEADLINE FOR FILING ALL PRE TRIAL MOTIONS IS 8/2/19. JURY SELECTION SET FOR 11/12/19 AND JURY TRIAL SET FOR 11/13/19.

03/25/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 03/25/2019

MOTION TO AUTHORIZE DEPOSITION FILED BY DEFENSE.

04/01/2019 TRIAL - JURY TRIAL SCHEDULED FOR 11/08/2019 at 08:30 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY. JURY TRIAL TO BEGIN AFTER JURY SELECTED.

04/09/2019 OTHER FILING - MEMORANDUM OF LAW FILED ON 04/05/2019

STATE'S OBJECTION TO DEFENDANT'S MOTION TO AUTHORIZE DEPOSITION.

05/03/2019 OTHER FILING - OTHER DOCUMENT FILED ON 05/02/2019

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM

TRANSCRIPT AND AUDIO ORDER FORM OF TRIAL AND MOTION FOR MISTRIAL
OTO ON THIS DATE.

ORDER FORM EMAILED TO

05/06/2019 ORDER - TRANSCRIPT ORDER FILED ON 05/06/2019

TRANSCRIPT & AUDIO ORDER FORM: REQUEST ASKING TO HAVE A PAPER TRANSCRIPT PRODUCED OF THE TRIAL & MOTIONS PROCEEDING HELD IN THIS MATTER DURING THE DATES OF 02/11/19-02/14/19.

COPY OF ORDER SCANNED & EMAILED TO OTO & OCR THOMPSON ON THIS DATE

06/03/2019 HEARING - OTHER MOTION SCHEDULED FOR 06/25/2019 at 01:00 p.m. in Room No. 11

HEARING ON DEFENDANT'S REQUEST FOR A DEPOSITION OF WITNESS.
ELECTRONICALLY.

NOTICE SENT TO PARTIES

06/25/2019 HEARING - OTHER MOTION HELD ON 06/25/2019 at 01:00 p.m. in Room No. 8

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: PAUL RUCHA Reporter: TIMOTHY THOMPSON

Defendant Present in Court

HEARING ON DEFENDANT'S REQUEST FOR A DEPOSITION OF WITNESS.
ELECTRONICALLY.

NOTICE SENT TO PARTIES

06/25/2019 MOTION - OTHER MOTION GRANTED ON 06/25/2019

MOTION TO AUTHORIZE DEPOSITION FILED BY DEFENSE. REPORT TO STATE DUE BY 8/1/19.

06/25/2019 MOTION - MOTION TO SET BAIL. FILED BY DEFENDANT ON 06/25/2019

Attorney: JAMES MASON

DEFENDANT'S MOTION TO ADMIT DEFENDANT TO BAIL.

08/07/2019 MOTION - MOTION IN LIMINE FILED BY STATE ON 08/05/2019

DA: MEGAN ELAM

STATE'S MOTION IN LIMINE REGARDING STATEMENTS OF ALICIA GASTON.

09/27/2019 HEARING - CONFERENCE SCHEDULED FOR 10/01/2019 at 12:00 p.m.

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY. PHONE STATUS CONFERENCE.

10/01/2019 HEARING - CONFERENCE HELD ON 10/01/2019 at 12:00 p.m.

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM

DEF TO FILE MOTION ON MEDICAL EXAMINER AND CHANGE OF VENUE. DEF TO FILE RESPONSE TO STATE'S MOTION IN LIMINE. DEF TO FILE MOTIONS BY 10/7/19. HRG TO BE HELD MORNING OF JURY SEL. PARTIES AGREE TO USE SAME JUROR QUESTIONNAIRE. JURY SELECTION TO BEGIN 10/8/19 AT 8:30A AND CONTINUE 11/12/19 AND INTO TRIAL.

10/10/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 10/10/2019

Attorney: ROBERT ANDREWS

10/10/2019 OTHER FILING - OTHER DOCUMENT FILED ON 10/10/2019

Attorney: ROBERT ANDREWS

DEFENDANT'S RESPONSE TO THE STATE'S MOTION IN LIMINE REGARDING STATEMENTS OF ALICIA GASTON

10/10/2019 MOTION - MOTION TO CHANGE VENUE FILED BY DEFENDANT ON 10/10/2019

Attorney: ROBERT ANDREWS

10/10/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 10/10/2019

Attorney: ROBERT ANDREWS

10/18/2019 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 10/18/2019

Attorney: ROBERT ANDREWS

AT STATE EXPENSE - WITH TRANSCRIPT/AUDIO REQUEST FORM

10/18/2019 HEARING - CONFERENCE SCHEDULED FOR 10/21/2019 at 09:30 a.m.

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL TELEPHONIC CONFERENCE

10/21/2019 HEARING - CONFERENCE HELD ON 10/21/2019 at 09:30 a.m.

M MICHAELA MURPHY , JUSTICE

10/21/2019 HEARING - MOTION IN LIMINE SCHEDULED FOR 10/29/2019 at 11:00 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY

10/29/2019 HEARING - MOTION IN LIMINE HELD ON 10/29/2019 at 11:00 a.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

Defendant Present in Court

10/29/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 10/29/2019

Attorney: JAMES MASON

DEFENDANT'S MOTION FOR INDIVIDUAL ATTORNEY LED VOIR DIRE

10/29/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 10/29/2019

Attorney: JAMES MASON

DEFENDANT'S PROPOSED JURY QUESTIONNAIRE.

10/29/2019 MOTION - MOTION TO CHANGE VENUE UNDER ADVISEMENT ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE
DEFERRED UNTIL TRIAL

10/29/2019 MOTION - MOTION TO SET BAIL DENIED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE
NOTICE TO PARTIES/COUNSEL GIVEN IN COURT

10/29/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE
NOTICE GIVEN IN OPEN COURT

10/29/2019 MOTION - MOTION IN LIMINE DENIED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE
DENIED WITHOUT PREJUDICE. IF ISSUES ARISE AT TRIAL, GO TO SIDEBAR.

10/29/2019 MOTION - MOTION IN LIMINE GRANTED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE
NOTICE GIVEN TO PARTIES/COUNSEL IN OPEN COURT

10/29/2019 JURY FILING - PROPOSED VOIR DIRE FILED BY STATE ON 10/29/2019

Attorney: PAUL RUCHA

STATE'S REQUEST FOR WRITTEN AND ORAL VOIR DIRE

10/29/2019 MOTION - OTHER MOTION DENIED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE

DEFENDANT'S MOTION FOR INDIVIDUAL ATTORNEY LED VOIR DIRE

10/29/2019 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 10/29/2019

M MICHAELA MURPHY ,JUSTICE

NOTICE GIVEN TO PARTIES/COUNSEL IN OPEN COURT

10/29/2019 TRIAL - JURY TRIAL CONTINUED ON 10/29/2019

JURY SELECTION TO BEGIN 11/12/19

10/29/2019 TRIAL - JURY TRIAL SCHEDULED FOR 11/12/2019 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY

10/30/2019 OTHER FILING - OTHER DOCUMENT FILED ON 10/30/2019

JIM PAUL TURCOTTE ,ASSISTANT CLERK

NOTICE OF REMOVAL OF EXHIBITS - STATE'S EXHIBITS VERIFIED AND RECEIVED BY DETECTIVE ETHEL ROSS
OF MAINE STATE POLICE.

11/07/2019 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 11/07/2019

CERTIFIED COPY TO SHERIFF DEPT. WRIT ISSUED FOR WITNESS FRED JACKSON (07/14/67) AT MAINE STATE
PRISON

11/07/2019 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 11/07/2019

CERTIFIED COPY TO SHERIFF DEPT. WRIT ISSUED FOR WITNESS AHMED SADEK (10/20/94) AT CCI.

11/12/2019 Charge(s): 2

FINDING - DIS BY DA/AG-OTHER ENTERED ON 02/11/2019

MANSLAUGHTER IS EXPECTED TO BE CHARGED AS A LESSER INCLUDED OFFENSE

11/13/2019 TRIAL - JURY TRIAL HELD ON 11/12/2019 at 08:30 a.m.

M MICHAELA MURPHY ,JUSTICE

Defendant Present in Court

JURY SELECTED. TRIAL TO BEGIN 11/13/19 AT 8:30A

11/13/2019 TRIAL - JURY TRIAL HELD ON 11/13/2019 at 08:30 a.m. in Room No. 11

M MICHAELA MURPHY ,JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM Reporter: TIMOTHY THOMPSON

Defendant Present in Court

JURY TRIAL DAY ONE

11/13/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 11/13/2019

Attorney: JAMES MASON

DEFENDANT'S SIXTH MOTION IN LIMINE

11/13/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 11/13/2019

Attorney: JAMES MASON

DEFENDANT'S SEVENTH MOTION IN LIMINE

11/13/2019 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 11/13/2019

Attorney: JAMES MASON

DEFENDANT'S EIGHTH MOTION IN LIMINE

11/14/2019 TRIAL - JURY TRIAL HELD ON 11/14/2019 at 12:00 p.m. in Room No. 11

JURY TRIAL DAY 2 HELD.

11/14/2019 MOTION - MOTION IN LIMINE GRANTED ON 11/13/2019

M MICHAELA MURPHY , JUSTICE

RULING MADE TO COUNSEL IN CHAMBERS ORALLY

11/14/2019 Charge(s): 1,2

TRIAL - JURY TRIAL HELD ON 02/08/2019

M MICHAELA MURPHY , JUSTICE

11/19/2019 TRIAL - JURY TRIAL HELD ON 11/15/2019 at 08:30 a.m. in Room No. 11

JURY TRIAL DAY 3 HELD.

11/19/2019 TRIAL - JURY TRIAL HELD ON 11/18/2019 at 08:30 a.m.

JURY TRIAL DAY 4 HELD

11/19/2019 TRIAL - JURY TRIAL HELD ON 11/19/2019 at 08:30 a.m. in Room No. 11

JURY TRIAL DAY 5 HELD.

11/19/2019 OTHER FILING - OTHER DOCUMENT FILED ON 11/19/2019

AGREEMENT OF PARTIES FILED.

11/20/2019 TRIAL - JURY TRIAL HELD ON 11/20/2019 at 08:30 a.m. in Room No. 11

JURY TRIAL DAY 6 HELD

11/21/2019 WRIT - HABEAS CORPUS TO TESTIFY REMANDED ON 11/21/2019

M MICHAELA MURPHY , JUSTICE

11/21/2019 WRIT - HABEAS CORPUS TO TESTIFY REMANDED ON 11/21/2019

11/21/2019 TRIAL - JURY TRIAL HELD ON 11/21/2019

JURY TRIAL DAY 7 HELD - JURY DELIBERATING

11/26/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 11/26/2019

Attorney: ROBERT ANDREWS

FOR ENLARGEMENT OF TIME TO FILE A MOTION FOR NEW TRIAL AND RENEWED MOTION FOR JUDGMENT OF ACQUITTAL TO 12/23/19 AND 1/27/2019 FOR RESPONSE FROM THE STATE
UNOPPOSED

11/26/2019 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 11/26/2019

M MICHAELA MURPHY , JUSTICE
COPY TO PARTIES/COUNSEL

01/03/2020 MOTION - MOTION FOR NEW TRIAL FILED BY DEFENDANT ON 01/03/2020

Attorney: ROBERT ANDREWS

DEFENDANT'S RENEWAL OF MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR NEW TRIAL.

01/27/2020 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 12/23/2019

Attorney: ROBERT ANDREWS

01/27/2020 MOTION - OTHER MOTION FILED BY STATE ON 11/12/2019

DA: MEGAN ELAM

REQUEST FOR PERMISSION TO BRING FIREARM OR WEAPON INTO A COURT FACILITY.

01/27/2020 MOTION - OTHER MOTION GRANTED ON 11/12/2019

M MICHAELA MURPHY , JUSTICE

REQUEST FOR PERMISSION TO BRING FIREARM OR WEAPON INTO A COURT FACILITY.

01/27/2020 MOTION - MOTION FOR ENLARGEMENT OF TIME MOOT ON 01/27/2020

M MICHAELA MURPHY , JUSTICE

02/05/2020 MOTION - OTHER MOTION FILED BY STATE ON 02/05/2020

DA: MEGAN ELAM

STATE'S RESPONSE TO DEFENSE MOTION FOR NEW TRIAL

02/14/2020 OTHER FILING - OTHER DOCUMENT FILED ON 02/14/2020

Attorney: ROBERT ANDREWS

DEFS REPLY TO STATE'S RESPONSE

02/26/2020 HEARING - MOTION FOR NEW TRIAL SCHEDULED FOR 02/26/2020 at 01:00 p.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY

02/25/2020 LETTER - FROM NON-PARTY FILED ON 02/25/2020

LETTER FROM DONOVAN GASTON

02/26/2020 HEARING - MOTION FOR NEW TRIAL HELD ON 02/26/2020 at 01:00 p.m. in Room No. 11

M MICHAELA MURPHY , JUSTICE

Attorney: ROBERT ANDREWS

DA: MEGAN ELAM Reporter: JANETTE COOK

Defendant Present in Court

03/02/2020 MOTION - MOTION FOR NEW TRIAL DENIED ON 03/02/2020

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL SENT ELECTRONICALLY

03/10/2020 HEARING - SENTENCE HEARING SCHEDULED FOR 03/27/2020 at 01:00 p.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY

03/10/2020 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 03/10/2020

03/17/2020 HEARING - SENTENCE HEARING NOT HELD ON 03/16/2020

CASE CONTINUED DUE TO EMERGENCY ORDER RE: COVID.

03/17/2020 HEARING - SENTENCE HEARING CONTINUED ON 03/16/2020

03/27/2020 LETTER - FROM NON-PARTY FILED ON 03/27/2020

LETTER FROM SONJA DUCHARME ON BEHALF OF DEF FOR SENTENCING
06/11/2020 HEARING - SENTENCE HEARING SCHEDULED FOR 06/26/2020 at 09:00 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL SENT ELECTRONICALLY
06/19/2020 OTHER FILING - SENTENCING MEMORANDUM FILED BY STATE ON 06/18/2020

DA: MEGAN ELAM
06/19/2020 LETTER - FROM PARTY FILED ON 06/17/2020

Attorney: ROBERT ANDREWS
LETTER TO COURT LISTING DEFENSE PARTICIPANTS FOR SENTENCING HEARING IN PERSON AND VIA VIDEO
AND LETTER.
06/19/2020 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 06/17/2020

Attorney: ROBERT ANDREWS
MTC SENTENCING HEARING
06/25/2020 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 06/23/2020

Attorney: JAMES MASON
06/25/2020 LETTER - FROM NON-PARTY FILED ON 06/22/2020

VICTIM IMPACT STATEMENTS FROM MOLLY AND RAY OUELLETTE, ANA ALICIA ABBOTT, KELLY QUIRION,
AMY PROCTOR AND TERRY VAIL.
06/25/2020 LETTER - FROM NON-PARTY FILED ON 03/27/2020

LETTER FROM SONJA E. DUCHARME ON BEHALF OF THE DEFENDANT
06/25/2020 LETTER - FROM NON-PARTY FILED ON 06/25/2020

LETTER FROM SALLY GRACE HAHN, EDWARD HAHN AND DONAVAN GASTON ON BEHALF OF THE
DEFENDANT.
06/26/2020 MOTION - MOTION TO CONTINUE DENIED ON 06/20/2020

RULING MADE FROM BENCH IN OPEN COURT.
06/29/2020 HEARING - SENTENCE HEARING HELD ON 06/26/2020 at 08:30 a.m. in Room No. 11
M MICHAELA MURPHY ,JUSTICE
Attorney: ROBERT ANDREWS
DA: MEGAN ELAM Reporter: TIMOTHY THOMPSON
Defendant Present in Court
06/29/2020 MOTION - OTHER MOTION MOOT ON 06/26/2020

STATE'S RESPONSE TO DEFENSE MOTION FOR NEW TRIAL
06/29/2020 MOTION - MOTION IN LIMINE MOOT ON 06/26/2020

06/29/2020 MOTION - MOTION IN LIMINE MOOT ON 06/26/2020

06/29/2020 MOTION - OTHER MOTION MOOT ON 06/26/2020
DEFENDANT'S PROPOSED JURY QUESTIONNAIRE.
06/29/2020 MOTION - MOTION FOR SANCTIONS MOOT ON 06/26/2020

06/29/2020 Charge(s): 1,2
MOTION - MOTION FOR ENLARGEMENT OF TIME MOOT ON 06/26/2020

06/29/2020 MOTION - MOTION IN LIMINE MOOT ON 06/26/2020

06/29/2020 Charge(s): 1,2
MOTION - MOTION FOR WITHDRAWAL OF CNSL MOOT ON 06/26/2020

06/29/2020 MOTION - MOTION TO CHANGE VENUE MOOT ON 06/26/2020

06/29/2020 MOTION - MOTION FOR WITHDRAWAL OF CNSL MOOT ON 06/26/2020

06/29/2020 Charge(s): 1,2
MOTION - MOTION FOR WITHDRAWAL OF CNSL MOOT ON 06/26/2020

06/29/2020 Charge(s): 1,2
MOTION - MOTION FOR APPOINTMENT OF CNSL MOOT ON 06/26/2020

06/29/2020 MOTION - OTHER MOTION MOOT ON 06/26/2020

MOTION TO EXCLUDE TESTIMONY OF CHILD WITNESSES FILED.
06/29/2020 Charge(s): 1

FINDING - GUILTY ENTERED BY COURT ON 11/21/2019
M MICHAELA MURPHY ,JUSTICE

06/29/2020 Charge(s): 1
RULING - ORIGINAL ORDERED ON 06/26/2020
M MICHAELA MURPHY ,JUSTICE
It is adjudged that the defendant is guilty of 1 MURDER 17-A 201(1)(A) Class M as charged and convicted.
The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 40 year(s).
\$ 35 VICTIMS COMPENSATION FUND
TOTAL DUE: \$ 35.00.

06/29/2020 Charge(s): 1
RULING - ORIGINAL ISSUED ON 06/26/2020

DEFENDANT ACKNOWLEDGES RECEIPT

06/29/2020 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 06/29/2020

INSTALLMENT PYMTS: 0:DAILY: F:WEEKLY: F:BI-WEEKLY: F:MONTHLY: F:BI-MONTHLY: F:PYMT BEGIN: AT
0:PYMT IN FULL: 20210115 AT 0:THRU PPO: F:PYMT DUE AMT: 35:PMT DUE: 20210115 AT 0:OTHER:
FINE PAYMENT SCHEDULE

Execution/payment stayed to pay in full by 01/15/2021 or warrant to issue.

A TRUE COPY

ATTEST: _____
Clerk

A TRUE COPY
Attest: Clerk, *[Signature]*
Clerk of Court

State Of Maine		UNIFIED CRIMINAL DOCKET		JUDGMENT AND COMMITMENT	
Docket No. CUMCD-CR-2016-00488	County/Location CUMBERLAND	<input checked="" type="checkbox"/> Male	<input type="checkbox"/> Female	Date: 6/26/2016	DOB 05/25/1982
State of Maine v. NOAH GASTON		Residence: 37 BROOKHAVEN DRIVE WINDHAM ME			
Offense(s) charged: MURDER Class: M DOV: 01/14/2016 Seq #: 621 Title: 17-A / 201 / 1 / A		Charge: 1		Charged by: <input checked="" type="checkbox"/> indictment	
MANSLAUGHTER Class: A DOV: 01/14/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A		Charge: 2		<input type="checkbox"/> information <input type="checkbox"/> complaint	
Plea(s): <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input checked="" type="checkbox"/> Not Guilty		Date of Violation(s): _____			
Offense(s) convicted: <input checked="" type="checkbox"/> MURDER Class: M DOV: 01/14/2016 Seq #: 621 Title: 17-A / 201 / 1 / A		Charge: 1		Convicted on: <input type="checkbox"/> plea <input checked="" type="checkbox"/> jury verdict	
<input type="checkbox"/> MANSLAUGHTER Class: A DOV: 01/14/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A		Charge: 2		<input type="checkbox"/> court finding	
It is adjudged that the defendant is guilty of the offenses as shown above and convicted.					
<input checked="" type="checkbox"/> It is adjudged that the defendant be hereby committed to the sheriff of the within named county or his authorized representative who shall without needless delay remove the defendant to: <input checked="" type="checkbox"/> The custody of the Commissioner of the Department of Corrections, at a facility designated by the Commissioner, to be punished by imprisonment for a term of <u>40 years</u> <u>(less than 40 yrs)</u> <input type="checkbox"/> A County jail to be punished by imprisonment for a term of _____ <input type="checkbox"/> This sentence to be served (consecutively to)(concurrently with) _____ <input type="checkbox"/> Execution stayed to on or before: _____ at _____ (a.m.)(p.m.)					
Notice to Defendant: Your sentence does not include any assurance about the location of the facility where you will be housed during your commitment.					
<input type="checkbox"/> It is ordered that all (but) _____ of the sentence (as it relates to confinement)(as it relates to the _____) be suspended and the defendant be placed on a period of _____ <input type="checkbox"/> probation <input type="checkbox"/> supervised release <input type="checkbox"/> administrative release for a term of _____ (years)(months) upon conditions attached hereto and incorporated by reference herein.					
<input type="checkbox"/> said probation or supervised release to commence (_____) (upon completion of the unsuspended term of imprisonment). <input type="checkbox"/> said administrative release to commence immediately. <input type="checkbox"/> The defendant shall serve the initial portion of the foregoing sentence at a County jail.					
<input type="checkbox"/> It is ordered that the defendant forfeit and pay the sum of \$ _____ as a fine to the clerk of the court, plus applicable surcharges and assessments. <input checked="" type="checkbox"/> All but \$ _____ suspended. The total amount due, including surcharges and assessments is \$ _____. This amount is payable immediately or in accordance with the Order on Payment of Fines incorporated by reference herein.					

It is ordered that the defendant forfeit and pay the sum of \$ 11640.00 as restitution for the benefit of VICTIMS' COMPENSATION FUND (17-A M.R.S. § 1152-2-A).

Restitution is joint and several pursuant to 17-A M.R.S. § 1326-E.
 Restitution is to be paid through the Office of the prosecuting attorney, except that during any period of commitment to the Department of Corrections and/or any period of probation imposed by this sentence, restitution is to be paid to the Department of Corrections.
 A separate order for income withholding has been entered pursuant to 17-A M.R.S. § 1326-B incorporated by reference herein.
 Execution/payment stayed to pay in full by _____
 Installment payments of _____ to be made (weekly) (biweekly) (monthly) or warrant to issue
 Restitution is to be paid to the Department of Corrections on a schedule to be determined by the Department.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended in accordance with notice of suspension incorporated herein.

It is ordered that the defendant perform _____ hours of court-approved community service work within _____ (weeks) (months) for the benefit of _____.

It is ordered that the defendant pay \$ _____ for each day served in the county jail, to the treasurer of the above named county, (up to \$80/Day) (17-A M.R.S. § 1341);

Execution/payment stayed to pay in full by _____ or warrant to issue.

It is ordered that the defendant shall participate in alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the office of substance abuse. (29 M.R.S. § 1312-B (2)(D-1), 29-A M.R.S. § 2411 (5)(F))

It is ordered that the defendant forfeit to the state the firearm used by the defendant during the commission of the offense(s) shown above. (17-A M.R.S. § 1158)

It is ordered that the defendant is prohibited from owning, possessing or having under the defendant's control a firearm. (15 M.R.S. § 393)

Other: _____

It is ordered that the defendant be unconditionally discharged. (17-A M.R.S. § 1201)

If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except _____).

A TRUE COPY, ATTEST:

Clerk

Judge / Justice

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT. I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

Date: 6/26/2020

SS Number Disclosure Required on separate form.

Defendant John S. Gaffney
Address

STATE OF MAINE

CUMBERLAND SS

SUPERIOR COURT

CRIMINAL ACTION

DOCKET NO. CUMCD-CR-16-488
LAW COURT NO. Cum-20-199

copy

STATE OF MAINE

FINDINGS AND ORDER
ON
PASTORAL PRIVILEGE

NOAH GASTON,

Defendant

FEBRUARY 8, 2019
PORTLAND, MAINE

BEFORE:

M. MICHAELA MURPHY, JUSTICE

APPEARANCES:

ON BEHALF OF THE STATE:

MEGAN L. ELAM, ASSISTANT ATTORNEY GENERAL
PAUL RUCHA, ASSISTANT ATTORNEY GENERAL

ON BEHALF OF THE DEFENDANT:

ROBERT C. ANDREWS, ESQ.
JAMES M. MASON, ESQ.

REPORTED BY:

TIMOTHY THOMPSON RMB CRR

OFFICIAL COURT REPORTER

1 beginning about who it was. And what we were trying to
2 do --

3 THE COURT: You thought it was somebody named
4 Gabriel?

5 MS. ELAM: We originally thought it was someone
6 named Gabe. And then we tried to sync up the visitor
7 logs with recordings, and then thought it was someone
8 with the last name Adams. I believe the defense thinks
9 it may, in fact, be Gabe.

10 And in that conversation, Mr. Gaston recounts
11 to him that they have now had the hearing, that Crabtree
12 and Smith have testified, and he says essentially that I
13 had a conversation with Ethan and Troy, that it was in
14 the car, not at the church as one of the witnesses said.
15 And Mr. Gaston affirms that he said to Ethan and Troy,
16 "That's what I have to say." He claims in the
17 conversation with his friend that he then said
18 immediately after that something about the children but
19 that when he said "That's what I have to say," he meant
20 it in a sarcastic way and that they completely
21 misconstrued the meaning of what he said. So he affirms
22 having made the conversation, the statement "That's what
23 I have to say."

24 THE COURT: And he affirms that he told them
25 that he shot his wife when she was coming up the stairs

1 point so we don't have to keep redoing the
2 questionnaires.

3 Do you have a complete name for him? I just
4 don't know -- I mean if --

5 MS. ELAM: I'm not in the best position to know
6 who it is.

7 THE COURT: Okay. I'm just thinking ahead.

8 MS. ELAM: Right.

9 THE COURT: No. His testimony about this, if
10 the defendant testifies and that comes up, if you
11 cross-examine him about that statement --

12 MS. ELAM: Yes, yes.

13 THE COURT: -- the jury should not be hearing
14 that for the first time.

15 MS. ELAM: Right. No, I agree. No, I think
16 it's a good idea for us to ask them about --

17 THE COURT: I'm going to ask somebody to make
18 sure that I have the correct name so I can ask the jury
19 orally once we pare them down.

20 All right. Mr. Mason.

21 MR. MASON: Thank you, your Honor.

22 Before I begin, I was requested that I bring
23 another paper copy of our supplemental brief to this
24 waiver issue. I brought that. I don't know if what I
25 sent in the mail is in the file. Just in case --

1 and that it was an accident?

2 MS. ELAM: There isn't a discussion of his
3 relating to them --

4 THE COURT: Okay, okay.

5 MS. ELAM: -- the preceding circumstances.

6 THE COURT: Right.

7 MS. ELAM: And as the Court knows from the
8 testimony, that that was essentially the element that was
9 most troubling to the defense. That was the source of
10 the claim of privilege because I believe everybody agrees
11 that he had told many, many, many people about the --

12 THE COURT: The shooting.

13 MS. ELAM: -- the accident of the shooting,
14 that's right.

15 THE COURT: Is the State intending to use the
16 testimony of Gabriel or whoever he made a statement to?

17 MS. ELAM: No, we intend to use the statement
18 of Crabtree and Smith.

19 THE COURT: And Smith, okay.

20 But do we need -- so that could conceivably
21 come up. We probably just need to ask the jury about
22 this individual, though, in case his name comes up.

23 MS. ELAM: I'm happy for the Court to do that.
24 I don't have a problem with that.

25 THE COURT: I can just do that orally at some

1 THE COURT: I interpreted Mr. Turcotte's email
2 to me that it did. But that was after Heidi sent an
3 email saying she had not seen it. That was Friday. So I
4 don't know -- Friday of last week I think.

5 MR. MASON: Well, I --

6 THE COURT: I'm sorry. I heard from
7 Mr. Turcotte on Monday.

8 MR. MASON: He did have it. So...

9 MS. ELAM: Maybe we should just give them a
10 second copy.

11 MR. MASON: I'd be happy to, if the State
12 received it. And for the record, it did go out
13 electronically earlier in the week.

14 MS. ELAM: We did receive it, Judge.

15 THE COURT: Thanks. Okay.

16 MR. MASON: Your Honor, I don't think we
17 disagree with the factual characterization of the State.
18 These conversations, you heard it yourself.

19 What I would argue, though, is that in its
20 context it doesn't -- it alone does not form the basis of
21 a waiver because what is recorded is Mr. Gaston talking
22 about the waiver hearing and recoupling about evidence.
23 Yes, he does affirm -- he does talk about the testimony
24 and then affirms that he did, in fact, make those
25 statements. But what I would argue is that in the

1 context of the discussion related to the hearing on
 2 waiver that I would say, in essence, anything that
 3 happens after the waiver hearing, we have decided that.
 4 I don't believe that --

5 THE COURT: Unless he is making new statements
 6 to third parties who have absolutely no pastoral status.

7 MR. MASON: I agree. And we're not asserting
 8 that any part of this conversation would be covered by --

9 THE COURT: But they are new statements.

10 MR. MASON: They are new statements taken after
 11 the Court's --

12 THE COURT: So what does it matter if it
 13 happened after the hearing? I guess I'm not
 14 understanding.

15 MR. MASON: I guess my point is that I think
 16 it's akin to he is recounting everything that was -- that
 17 was said in open court. It's a public record. That now
 18 recounting a public record is not establishing waiver of
 19 statements from three years prior. I think those
 20 conversations need to be looked at on their own. And his
 21 statements to the individual after -- three years later
 22 and after the hearing about this issue I think aren't
 23 sufficient to establish waiver and I don't think they
 24 themselves constitute waiver.

25 THE COURT: Anything else the State wants to

1 them. They certainly came across to the Court as very
 2 credible and very measured in their remarks about how
 3 they perceived their role. They also had some
 4 understanding of how others perceive their role. And
 5 particularly for I believe Mr. Smith, who talked about
 6 Ordination Sunday and that's how people became ministers,
 7 the Court would be hard pressed to conclude that that did
 8 not create a status that would create a privilege or
 9 allow assertion of a privilege in communications to
 10 actually both of them but particularly with respect to
 11 Mr. Smith, who, I think, said that the ministers were
 12 selected on Ordination Sunday. So I find that both of
 13 them were ordained or accredited as ministers or pastors,
 14 however we want to refer to them, within the Church even
 15 though Mr. Crabtree, I think in particular, was very
 16 modest about his role. But that does not completely
 17 vitiate what I think was pretty clear is that somebody in
 18 Mr. Gaston's position would have expected that he was
 19 communicating to people with a pastoral role and a
 20 pastoral status.

21 With respect to the issue of waiver, which is
 22 where the Court's decision comes down, at the time of the
 23 hearing the Court's concern was that the statements made
 24 to Mr. Crabtree that were of most concern -- or Smith and
 25 Crabtree which were of most concern to the defense.

1 say?

2 MS. ELAM: My only observation would be with
 3 regard to the issue of waiver and whether there is a
 4 knowing waiver. Boy, he sure got an education about what
 5 waiver is and, in fact, even areas of the argument
 6 talking about what constitutes waiver and if it's not to
 7 a person who is a clergy member it's not a privilege
 8 communication. And after the education he got by
 9 listening to the arguments of counsel and the Court, he
 10 then chose to make a statement to somebody who was not a
 11 member of the clergy. And he didn't just say Troy said
 12 this and Ethan said this, which I don't think would be a
 13 statement on his part that's waiver. What he said was
 14 but what I really said was the following. And that is
 15 the waiver.

16 THE COURT: All right.

17 Well, first of all, with respect to the status
 18 of Mr. Crabtree and Mr. Smith, the Court has reviewed all
 19 the cases proffered by both sides. The Court finds --
 20 well, first of all, the Court has concluded that it's
 21 obligated to broadly apply the pastoral privilege, given
 22 the importance in our -- basically in our republic, in
 23 our state, of religious freedom. And the Court believes
 24 that both individuals, Mr. Smith and Mr. Crabtree, had a
 25 pastoral role. That's the terminology that was used by

1 created a situation where the statements were actually
 2 inconsistent with the prior statements to police, which
 3 were the third parties that the State was asserting
 4 created a waiver situation. The problem with the
 5 defense's position is that that has now changed because
 6 the statements made to this individual, who I am going to
 7 refer to as Gabe because I don't know his last name,
 8 actually makes the entirety of the defendant's
 9 explanation of what occurred more consistent in that he
 10 says, yes, I said those things to both of them but they
 11 misunderstood them. And so he is ratifying the
 12 statements he made to them, to law enforcement, and he is
 13 qualifying them in a way that makes it consistent with
 14 his theory that this was an accident and that he
 15 thought -- or he is claiming that he did not understand
 16 the person coming up the stairs was his wife when he shot
 17 and killed her. So I am finding that the new statement
 18 made constitutes a waiver of the privilege, the pastoral
 19 privilege that has been asserted, and I will allow
 20 Mr. Crabtree and Smith to talk in full about their
 21 conversations with the defendant if they are called.
 22 Obviously, they are subject to cross-examination and I
 23 guess I'll wait to hear from the State if they are going
 24 to call Gabriel -- or perhaps -- I don't know if the
 25 defense is going to call him to rebut -- I mean I -- this

1 is all new information, I understand that. But that
 2 is -- it is conceivable the defense could call him if
 3 they wanted to put in the full statement from the
 4 defendant as to the claiming that, yes, he may have said
 5 that but that is not what he meant, assuming that's
 6 admissible under the Rules of Evidence. So I will wait
 7 to get his name so I can, first of all, talk to the jury.
 8 But you can reargue the issue if Gabriel is called. But
 9 with respect to the statements made to Smith and
 10 Crabtree, I will permit them to come into evidence.

11 MS. ELAM: Thank you, your Honor.
 12 THE COURT: All right. So anything else we can
 13 do?

14 And I'm sorry but the authority for this would
 15 be *State v. Boucher*, 652 A.2d 76, which refers to
 16 disclosure to third parties of key elements of
 17 communications that someone is asserting his privileged
 18 waiver protection as to all communications relating to
 19 the incident. That is the language that the Law Court
 20 has used. So under *Boucher*, I believe those statements
 21 are admissible.

22 All right. Anything else, Mr. Andrews?
 23 MR. ANDREWS: Yes, I'm on my feet because you
 24 had mentioned earlier at the start of this hearing that
 25 perhaps we would talk about the questionnaires and my

1 CERTIFICATE

2
 3 I hereby certify that the foregoing is a
 4 correct transcript of my stenographic notes of the
 5 proceedings at the trial of the above-entitled cause.

6
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 11 AHR-CRR
 12 official Court Reporter

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 15 A true copy, 
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1 objections to how that is done.
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STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CUMCD-CR-16-488

STATE OF MAINE

v.

ORDER ON DEFENDANT'S MOTION
FOR JUDGMENT OF ACQUITTAL AND
FOR NEW TRIAL

NOAH GASTON

The Court has reviewed the filings made by the parties, has considered their oral arguments from February 26, 2020, as well as the evidence presented at trial and issues the following order denying the Defendant's motion.

The Defendant makes two arguments. The first is that the State failed to prove beyond a reasonable doubt that Noah Gaston intentionally or knowingly caused the death of Alicia Gaston. Second, the Defendant argues that the jury instructions misstated the law regarding what the State was obligated to prove given the facts of this particular case.

The first argument requires the Court to review the evidence at trial and decide whether "viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Bickford*, 308 A.2d 561 (Me. 1973).

Given the evidence at trial, along with reasonable inferences that can be drawn from the evidence, any rational fact-finder could have found beyond a reasonable doubt that Mr. Gaston acted intentionally or knowingly when he caused the death of Alicia Gaston. The testimony from the three experts who testified about distances and path direction of the shot gun turned out, in

the end, to agree in many respects. A rational jury could have concluded based on the testimony of all three that Mrs. Gaston was very close to Mr. Gaston when he made the decision to discharge his shotgun at her as she approached the top of the stairs. In addition, the jurors had an opportunity to view the actual stairway where this occurred, and to spend time examining a mock scaffold constructed by the State. They were also entitled to either rely upon the testimony of the experts, or to come to their own judgments about what Mr. Gaston could have seen and heard on the date in question. They also could have reasonably inferred that he actually knew that his wife was not in fact in bed with him on the date in question and that her normal routine included being downstairs in the early morning hours before anyone else in the house was awake. The jury was also entitled to reject out of hand the various statements that Mr. Gaston made to law enforcement about why he fired the shotgun when it considered that the State had proven beyond a reasonable doubt that he was not acting in self-defense. And most importantly in terms of this first argument, a rational jury could have unanimously found beyond a reasonable doubt that Mr. Gaston actually knew that the person coming up the stairs was in fact his wife, Alicia Gaston, when he discharged a shotgun into her abdomen while standing in relatively close proximity to her. The Court therefore rejects this first argument, as it did at the close of the State's case.

With respect to the second argument, the Defendant makes much of the fact that the State's proposed jury instruction tracks exactly the language of Title 17-A which provides that in Maine a person commits murder if he or she "intentionally or knowingly causes the death of another human being." That is undeniably a correct statement of the law of Maine. The Defendant also notes that by contrast the Indictment states that Mr. Gaston acted intentionally or knowingly when he caused the death of *Alicia Gaston*. From these two observations the Defendant concludes that the Court was legally required to instruct the jury that they could *only*

convict the Defendant of murder if the State proved beyond a reasonable doubt that he actually knew that the person he was shooting was his wife. Setting aside the obvious and undeniable fact that this is precisely what the State has been arguing since Mr. Gaston was first arrested – that of course he knew it was his wife given where she was when she was shot – the Defense goes further and asks this Court to essentially re-write the substantive law of murder in Maine. The Court is not willing or permitted to do that.

The Court finds that the State's decision to name the Defendant as the victim in the Indictment is actually a benefit to the defense in terms of providing notice to them, and it should also be noted that no bill of particulars was requested in this case. The inclusion of the name does not, however, mean that the mens rea the State must prove has changed or that the State's burden has increased. Obviously, when the Legislature enacted the law of murder in Maine, it could not provide the name of a particular victim as one of the elements. It instead enacted a law that comes down to this: if a person intentionally or knowingly causes the death of a human being, and if the person's conduct is voluntary, and if the person is not acting in self-defense of himself or another, the person is guilty of murder if all of those elements have been proven beyond a reasonable doubt. In the Court's view, the State was required at the time of charging Mr. Gaston to put him on notice that they were going to try to prove beyond a reasonable doubt that he acted intentionally, or knowingly, when he caused the death of a human being, namely his wife Alicia Gaston. That notice was provided to the Defendant in the Indictment, and as noted previously this has in fact been the State's theory and the State's argument all along - that

¹ The defense insisted that it was not making an argument about notice. However, in its motion the Defendant expresses concern that at the initial charging conference, "It was then Mr. Gaston's counsel learned for the first time that the State intended to argue to the jury that it did not have to prove Mr. Gaston intended to kill his wife, but rather, that they only had to prove the lesser burden of intending to kill a human being." Defendant's Motion, pg. 2.

Noah Gaston acted intentionally and or knowingly when he killed his wife, that he knew it was his wife, and that he had no legal justification when he did so.

Essentially the defense is saying that the Court should have created a new element for the offense of murder when it instructed the jury; that is, the Court should have increased the burden of proof for the State given the facts of the case, by telling the jury that Mr. Gaston could not be guilty of murder unless he knew it was his wife. That is simply beyond the authority of the Court given the Maine Legislature's clear constitutional prerogative to define the elements of a crime, and to provide certain defenses or justifications for criminal conduct. In the Court's view, so long as Mr. Gaston had notice of what the State was going to try to prove, the State cannot be faulted for actually providing more notice in the Indictment than it was actually required to provide.

It also has to be remembered that the Maine Legislature decades ago decided – in 1976 – that it was the Legislature's prerogative, and not that of the judicial branch, to define and enact the elements of criminal offenses. It also decided that it was its prerogative, and not the prerogative of the Judicial Branch, to define and enact greater and lesser categories of crimes. It also defined and enacted justifications or defenses which provide in certain circumstances complete exoneration to accused persons; i.e., that Maine law under certain circumstances imposes no criminal consequences at all for accidental killings, or for killings for which the Legislature has created a legal justification, such as self-defense or defense of others. And the Defendant in this trial had fair and ample opportunity to make those arguments, and did.

This jury as fact-finder could have rationally rejected arguments made about lesser charges and about any of the justifications generated, based on the evidence presented at trial and reasonable inferences it was entitled to draw from that evidence. It also could have, for the

reasons stated previously, rationally found beyond a reasonable doubt that Mr. Gaston actually knew it was his wife coming up the stairs, and that he intentionally or knowingly caused her death without legal justification or mitigation. The Court therefore rejects the second defense argument as well.

The entry will be: The Motion for Entry of Judgment of Acquittal or for New Trial is DENIED.

2/22/2022

2/22/2022

DATE

Michael J.

SUPERIOR COURT JUSTICE

1 moment. But while we were watching on the computer, your
2 audio didn't cut out very much, you were just a little
3 soft to us.

4 So we're getting a little bit of a different
5 experience from two places -

6 MR. MASON: Your Honor, the jury assembly room
7 people just told me that you've been coming in and out
8 throughout your entire time speaking.

9 THE COURT: Mr. Mason, can you tell me who is
10 in there and about how many people are in there?

11 MR. MASON: There are about five or six people
12 in there. There is somebody who is a law student in
13 there. There is a detective in there.

14 MS. KAYLY MAILHOT: I can go and look and see
15 because #12 isn't reporting anything. So #12 is still
16 going.

17 THE COURT: Is there anybody in #12?

18 MS. KAYLY MAILHOT: There is a bunch of people
19 in #12. It's filled up.

20 THE COURT: What do you mean, it's not
21 recording anything?

22 MS. KAYLY MAILHOT: There is -- nobody is
23 reporting any issues from #12 --

24 THE COURT: Oh, reporting.

25 MS. KAYLY MAILHOT: -- so if it's only jury

1 secured area.

2 THE COURT: But the back doors are open.

3 THE COURT MARSHAL: They are open, your Honor.

4 THE COURT: Thank you.

5 (Pause.)

6 MS. KAYLY MAILHOT: The issue that they are
7 experiencing is actually a little bit different than
8 what's been reported. So all that happened was, when you
9 first started talking, somebody else had made a noise
10 that then cut you off for just a moment. So all they are
11 requesting is that you maybe slow down just a little bit
12 and then just speak up a little bit louder. Otherwise,
13 technically everything is working fine.

14 THE COURT: Great. Thank you very much.

15 MS. KAYLY MAILHOT: You're very welcome.

16 THE COURT: All right. I am going to try to
17 speak up as loud as I can. Um, I've asked the court
18 reporter, Tim Thompson also, who is very essential to
19 this proceeding, he's making a record, that if at any
20 time he cannot hear or understand me, or hear or
21 understand anybody else who is speaking, that he should
22 feel free to let us know that so that we can make sure we
23 make a good record.

24 MR. MASON: Your Honor, if I may?

25 I just also went into Courtroom 12. And

1 assembly is reporting an issue, then it could just be
2 jury assembly and have to take a look at that.

3 THE COURT: Okay. Why don't you do that.

4 MS. KAYLY MAILHOT: Absolutely.

5 (Pause.)

6 THE COURT: Mr. Rucha, so you're listening to
7 me through a microphone?

8 MR. RUCHA: I'm listening the same as anyone
9 doing it remotely, your Honor.

10 MR. MASON: You're on WiFi.

11 MS. ELAM: Which is different. I understand,
12 than...

13 (Pause.)

14 MR. RUCHA: My understanding is that at least
15 one of the detectives was able to hear you and see you.

16 THE COURT: Okay.

17 (Ms. Elam and Mr. Mason conferring.)

18 THE COURT: I just want to make sure that the
19 courtroom doors are not locked. They should not be
20 locked.

21 THE COURT MARSHAL: They are not all locked,
22 your Honor.

23 THE COURT: Okay. I thought I saw somebody
24 bring a key out.

25 THE COURT MARSHAL: For the side door, it's a

1 Detective Rose is in there, and Noah's family, said you
2 also -- they can't really hear you, you have been in and
3 out.

4 THE COURT: Mr. Mason, that's not what we're
5 hearing from the tech people.

6 MR. MASON: They are in that room (indicating).
7 I went to each of the courtrooms and asked the people who
8 have been sitting in those courtrooms, can they hear you,
9 including Detective Rose. And they said they have not
10 been able to consistently hear you.

11 THE COURT: All right. Well, I'm going to
12 start over then.

13 (Pause.)

14 Do you want Mr. Mason here for this,
15 Mr. Andrews?

16 MR. ANDREWS: No, your Honor. We've split the
17 tasks. Mr. Mason is here to sort of monitor that remote
18 connection, I guess I'm going to refer to it as. I'm
19 here to address the Court and to provide the information
20 the Court needs for sentencing. And we are fine with
21 Mr. Mason --

22 THE COURT: Okay.

23 MR. ANDREWS: -- taking care of those
24 responsibilities.

25 THE COURT: All right. So what the Court was

1 getting to was that there are a number of reasons why the
 2 motion to continue was denied. I've read both filings
 3 from both parties about the request. And as I was trying
 4 to say, the reason that we are proceeding has to do with
 5 a number of factors.

6 First of all, Mr. Gaston is entitled to a
 7 speedy trial. And as the defense has noted, this
 8 proceeding is a part of the trial process. This offense
 9 happened more than four years ago. It happened in
 10 January of 2016. This is the fourth set of defense
 11 counsel who have been representing Mr. Gaston. I'm not
 12 suggesting that there is anything that is his fault about
 13 that, but that's just the way things have gone in this
 14 case. And the jury that convicted Mr. Gaston was the
 15 second jury who was impaneled.

16 The record should further reflect that in
 17 cooperation with counsel and members of the Cumberland
 18 County Clerk's Office, Marshal Service and Judicial
 19 Branch staff, we have set up three courtrooms for this
 20 hearing. We are trying our best to adhere to the
 21 ten-person limitation per courtroom. There is a
 22 television in Courtroom 11, where we are, there is
 23 another screen in Courtroom 12, and there is another --
 24 sorry, another television screen in the jury assembly
 25 room. It's my understanding that there are approximately

1 nature of this crime and the nature of the liberty
 2 interests at stake, the Court has insisted from the
 3 beginning of our discussions of the planning for this
 4 case that this would have to be a proceeding where
 5 counsel and Mr. Gaston would be personally present in a
 6 courtroom along with as many public and family members
 7 that could be safely accommodated.

8 As it turns out, I believe that the entire
 9 group of family and friends of Alicia Gaston, who wish to
 10 be heard, as is their right, wanted to do that remotely
 11 and so we have done our best to accommodate those
 12 requests. That has also turned out to be the case for at
 13 least some of the defense friends and family of
 14 Mr. Gaston, although the Court intends to hear from
 15 anyone from either side of this case who wishes to be
 16 heard in support of the State or the defense's arguments
 17 as to what the Court should impose for a fair and just
 18 sentence. That includes bringing people in individually,
 19 if they wish to speak, in this courtroom.

20 Mr. Gaston has constitutional rights that must
 21 be protected for sure. Those include the right to a
 22 public proceeding for all the reasons the parties
 23 understand well. It should not be forgotten that he also
 24 has appellate rights he will most assuredly be pursuing,
 25 and those cannot be pursued until after he is sentenced.

1 ten people in Courtroom 12 and a similar number in the
 2 jury assembly room.

3 We have two people here from QIT, who are
 4 monitoring connectivity and sound quality to maximize the
 5 ability of people who want to participate and hear these
 6 proceedings to, in fact, do those things.

7 Because of the pandemic, we are all having to
 8 learn different ways of conducting court proceedings, so
 9 I'm really going to ask all of you to be patient and bear
 10 with us. But the truth is that there is just no way for
 11 any of us to know when or if things will ever go back to
 12 the way they were in February of 2020, but we cannot put
 13 this case on hold indefinitely, we cannot put court
 14 proceedings on hold indefinitely and the court's
 15 essential functions have to continue, albeit in a
 16 different way. And from the beginning of the pandemic,
 17 the Law Court has made it very clear that proceedings
 18 that implicate the liberty interests of a defendant are
 19 cases of the highest priority. And that has been top of
 20 mind for me in deciding when we should begin this
 21 sentencing proceeding.

22 And contrary to the assertions made by defense
 23 counsel, the courts across Maine have been conducting
 24 contested sentencing hearings during this pandemic. Most
 25 of them have been done by video. But because of the

1 And Alicia Gaston's family and friends have rights as
 2 well under Maine law.

3 In addition, the Court has previously informed
 4 the Marshal Service, court staff, that if any member of
 5 the media showed up or walked into the courthouse today,
 6 that they would be accommodated. And, in fact, if a TV
 7 camera or a TV reporter showed up, we were going to bring
 8 them into this courtroom, set up a pool camera system so
 9 that, if a TV station wished to broadcast these
 10 proceedings, that that would be permitted. It does not
 11 appear that anyone has shown up for that purpose.

12 In addition, court staff and marshals were
 13 advised this morning that if any member of the print
 14 media came, that they would also be accommodated. They
 15 could come into this courtroom or into another courtroom
 16 so that they could also record these events and report
 17 these events to the public. I'm not aware that anyone
 18 has done that. But if that changes during the course of
 19 this proceeding, someone should just let me know. And
 20 even if that means that we will have more than ten people
 21 in this courtroom, that will be accommodated.

22 So the motion for all of those reasons is being
 23 denied.

24 And we are all going to try to adhere, as best
 25 we can, to the physical distance requirements that are --

1 All right. I apologize for that, everyone, and
2 thank you for your patience.

3 Is the microphone picking me up all right now?
4 MR. MASON: Yes, thank you. They can hear you
5 very well.

6 THE COURT: Well, as the parties know well, in
7 trying to craft a fair and just sentence in this matter
8 the Court is required to undertake a two-step process.

9 And for those of you who are present here
10 today, either in the courtroom or in the other
11 courtrooms, I understand that the process that I have to
12 undergo – or undertake I should say – often seems to
13 people who do not do this for a living as artificial, or
14 overly legalistic, or very far removed from the emotions
15 and the – the devastation that has occurred for everyone
16 involved in this case, for everyone whose life has been
17 touched by this case. But I have to emphasize that, in
18 imposing any sentence, a judge is not allowed to simply
19 impose a sentence that makes sense to that judge, or that
20 it feels good to that judge, or will make one side or
21 another satisfied with the sentence. On the contrary, I
22 am bound by legal principles that I did not enact or
23 create. These are legal principles that the attorneys
24 did not enact or create either. But we all took oaths to
25 uphold the law, all of us who are lawyers or judges in

1 And, as the parties know and I'm sure other
2 people who have been listening today understand, there is
3 a 25 mandatory – 25-year mandatory minimum sentence that
4 has to be imposed in this case. I cannot go below 25
5 years. Whatever term of years I impose in this case,
6 none of those years can be suspended. And those are
7 principles of law that I have to follow.

8 So the first step – you've heard this
9 terminology, a basic sentence for first step, maximum
10 sentence for second step. And I have to use that
11 terminology because it will hopefully assist the
12 attorneys understand how I get to the final sentence in
13 this case.

14 The first step, according to the law of Maine
15 through the Legislature and the Maine Supreme Court, is
16 for the Court to determine the basic sentence by
17 considering the way in which an offense is committed by
18 the offender without regard for personal characteristics
19 of the offender or other factors that I am only permitted
20 to consider in the second step.

21 So in determining the nature of the offense,
22 the Court is also expected to place this offense on a
23 continuum of seriousness or heinousness with regard to
24 the minimum sentence, which, as I said, is 25 years and
25 the maximum sentence, which under Maine law is a tenth of

1 this courtroom, and I am bound to follow the principles
2 that have been given to me from our elected
3 representatives and also from time to time by the Maine
4 Supreme Court. So please bear with me as I am obligated
5 to consider what has been said here today but I also have
6 to use those principles that have been passed along to me
7 to arrive at what I hope will be a fair, legal and just
8 sentence.

9 Now, my starting point, of course, is and has
10 to be what the jury said. They said unanimously that
11 Mr. Gaston intentionally or knowingly caused the death of
12 his wife Alicia. They also said that the State proved
13 beyond a reasonable doubt that he did not act in
14 self-defense. They also said unanimously by implication
15 that this was not an accident. I am not allowed to
16 speculate on how they got on those conclusions but those
17 were – those were the conclusions of the jury and that
18 has to be my starting point. That's the law. I'm not
19 allowed to substitute my judgment for what the jury did.
20 I have to accept their verdict as the starting point in
21 analyzing the appropriate sentence for Mr. Gaston.

22 So my starting point is that Mr. Gaston
23 intentionally or knowingly caused the death of his wife
24 Alicia Gaston in January of 2016, and that is murder
25 under Maine law.

1 life.

2 Now, I understand the arguments that the State
3 has made about if we start with, you know, the first five
4 pages of the State's memorandum and focusing on
5 Shortsleeves, Shortsleeves, Shortsleeves, that skews the
6 Court's thinking about where the middle of that continuum
7 is, where the lower portion of that continuum is, what
8 the upper portion of that continuum is. What we never
9 talk about is, in fact, that a lot of courts give de
10 facto life sentences. So the Court could pick a
11 number -- 75, 85 years. That wouldn't be a life
12 sentence, I wouldn't have to consider Shortsleeves to do
13 that. The only thing that I have in the statutes is 25
14 years and life.

15 But I want to get just right to the heart of
16 this, which is that I do not see this as a life sentence.
17 I don't think anybody here is seriously asking that there
18 be a life sentence imposed. But it really is beyond
19 dispute that the continuum under Maine law for murder is
20 25 years to life.

21 So I don't fault the State for mentioning that.
22 I am considering what the defense had to say about
23 perhaps their strategy in getting me to think about that
24 upfront. But I think the most useful thing and the most
25 just thing in a situation like this is to do what I think

1 the Law Court has told us to do, which is to consider the
 2 particular cruelty and heinousness of the act, and decide
 3 if it's in the lower part of that continuum or the upper
 4 part of the continuum. I think Mr. Mason uses the term
 5 quartile or the lower quarter of that continuum. But
 6 that depends on the life expectancy of the offender as
 7 well, which we never really talk about in these
 8 sentences. So, for me, the most useful thing in a case
 9 like this is to consider Mr. Mason's suggestion that I
 10 think in terms of a quartile, if I'm pronouncing that
 11 correctly. And the reason that we reserve -- well, the
 12 Law Court has said you only impose a life sentence for
 13 cases that are extreme in cruelty and extreme in
 14 heinousness. And, unfortunately, for those of us who
 15 live in the world that we live in every day, who practice
 16 law or adjudicate cases, it is really difficult to say to
 17 a grieving family that this death was not cruel, this
 18 death was not heinous. But we have all seen the kinds of
 19 cases that the Law Court is describing, that we don't
 20 want to think about today or talk about today, that are
 21 those extreme cases. And this is not one of those cases.
 22 Now, that's not to suggest in any way that the
 23 numbers that the lawyers have suggested or talked about
 24 and the ones that I have to use, do not, should not and
 25 cannot be considered as equivalent with the value of a

1 that was described by various witnesses. It does equate
 2 with acting intentionally or knowingly, and that is what
 3 the jury found, but I do not think it equates with
 4 premeditation.

5 And the Court did say in its last order that
 6 the jury could have found beyond a reasonable doubt that
 7 Mr. Gaston knew that it was his wife when he made the
 8 dangerous and impulsive and devastating decision to kill
 9 her by discharging the shotgun. The Court does not
 10 agree, however, that this translates into a 25 years --
 11 translating into 25 years as the basic sentence or
 12 anything close to that.

13 I've considered the comparable cases that have
 14 been offered. I disagree with Mr. Andrews as to whether
 15 or not I can look at a final sentence and use that as a
 16 comp. to a basic sentence that's offered in another case.
 17 I think the Law Court has indicated that we've got to
 18 compare apples to apples and oranges to oranges if we are
 19 going to do any comparison at all, and often judges don't
 20 even try. But in this case I did find that there were a
 21 couple of cases that were useable. Specifically Leng, I
 22 thought, was a useful case. And given the Court's
 23 findings of the nature and of this offense as committed
 24 by Mr. Gaston, the Court would place the basic sentence
 25 at 35 years. Now, the second step -- and I would say 35

1 human life that has been lost. And sometimes, for very
 2 understandable reasons, that's how people experience a
 3 sentencing proceeding. They say, well, geez, 50 years,
 4 that doesn't -- that's an insult to the value of the life
 5 of the victim. But the law doesn't look at it that way.
 6 So I hope that as you go through this with me that it's
 7 understood that nobody is here suggesting that any of
 8 these numbers reflect any appropriate measure of the
 9 value of Alicia Gaston's life, because that's not at all
 10 what these numbers reflect.

11 So the Court is expected to make certain
 12 findings based upon reliable evidence in determining the
 13 basic sentence from the trial record, and I'm going to
 14 attempt to do that as I attempt to determine what I think
 15 is the appropriate basic sentence.

16 Based upon the trial record, the Court would
 17 describe this offense as a completely unprovoked,
 18 impulsive act of domestic violence. The Court does not
 19 agree that what the Brundages offered in terms of what
 20 could have seen in the bedroom or even at the top of the
 21 stairs equates with premeditation, as I understand it and
 22 I believe as the law understands it. I don't think it
 23 equates with that at all. It does equate, however,
 24 certainly with what the jury in their view could have
 25 seen from the top of the stairs and given the lighting

1 years, in my view, is in the lower quartile of basic
 2 sentences, and I think that's where this case fits as a
 3 basic sentence number.

4 The second step is for the Court to identify
 5 aggravating and mitigating factors and then to decide how
 6 those factors affect that basic sentence either by
 7 increasing or decreasing it. And the Court also has to
 8 decide if the factors basically have the same weight or
 9 if one category of factors outweighs the others -- the
 10 other category.

11 So as far as the mitigating factors the Court
 12 has identified in this case, the Court would identify the
 13 fact that Mr. Gaston does not have a criminal record to
 14 speak of. He does not -- he is not someone who has been
 15 in the criminal justice system on a regular basis. Like
 16 a lot of people that we see in these cases, that's just
 17 not true with Mr. Gaston.

18 In addition, the Court remembers vividly the
 19 descriptions of the behavior of Mr. Gaston when the EMTs
 20 arrived. And at least for a period of time, they
 21 actually let Mr. Gaston continue to provide CPR to
 22 Mrs. Gaston. He was administering first aid to her. He
 23 actually called for them to come into his home. That
 24 was -- that's a very unique fact in this sort of a case,
 25 and I consider that to be a mitigating factor.

1 I also consider -- give some consideration to
 2 the childhood experiences that Mr. Gaston -- that have
 3 been described about Mr. Gaston's life in Texas.

4 With respect to the aggravating factors, first
 5 let me say what I do not consider an aggravating factor:
 6 Throughout this case the State has developed
 7 this theme, and it's repeating itself in the sentencing,
 8 as Mr. Andrews points out, that Mr. Gaston and to some
 9 extent Alicia had very traditional, or maybe
 10 untraditional now, beliefs about the nature -- the
 11 appropriate relationship between a husband and wife.
 12 They were obviously very involved in religious life,
 13 religious thinking. The Court does not think that it
 14 could ever use those sorts of value systems or value
 15 judgments by an offender as an aggravating factor, let me
 16 just say that from the beginning. The fact that
 17 Mr. Gaston may have felt that his wife's place was at
 18 home, that's consistent with what's in the Bible,
 19 that's his right to believe that and it does appear that
 20 at least for a period of time during their marriage
 21 Mrs. Gaston also believed that and made the decision to
 22 try to have a marriage based on that arrangement.

23 In addition, there is testimony about his
 24 failure to be a good provider. There are a lot of young
 25 men Mr. Gaston's age who are terrible providers. They go

1 The issue of whether or not he is accepting
 2 responsibility: He has the right to have a trial. He
 3 has had two trials -- one and a half trials. I don't
 4 consider insisting on going to trial as a failure to
 5 accept responsibility. However, in listening to
 6 Mr. Gaston's allocution, it is clear to the Court that he
 7 doesn't understand the impact or the effects of what he's
 8 done. He does talk about it in terms of how it's
 9 affected him, but I don't think I can find that he
 10 accepts responsibility. He is uttering the words of
 11 apology, but I think that's quite different from
 12 accepting responsibility and having genuine remorse. So
 13 I am not using that as an aggravating factor but I'm also
 14 not saying that I can find that he does accept
 15 responsibility or experience remorse such that that could
 16 be a mitigating factor. So I'm not giving that any
 17 weight because, as I said, I don't think -- maybe he's
 18 not capable, I don't know, but I don't think he
 19 understands what he's done. And maybe he never will
 20 because of his psychological makeup. But it was clear to
 21 me in listening to him that he has no clue as to the
 22 impact that he has had on his own family, much less
 23 Alicia's family and his children.

24 Which brings us to the victim impact, which I
 25 think is the most significant aggravating factor. And

1 job to job. A lot has to do with the economy perhaps, a
 2 lot has to do perhaps with his personal characteristics,
 3 but I do not see those as the kinds of personal
 4 characteristics that could or should result in
 5 aggravating a murder sentence and increasing the amount
 6 of time that someone should spend in prison. Certainly,
 7 things like threats of violence, acts of violence, I
 8 think those are fair characterological factors that can
 9 aggravate a sentence. But I do not think that
 10 immaturity, irresponsibility, even selfishness, which is
 11 how he has been described, are the kinds of factors that
 12 means that he should do five or seven years more in
 13 prison. I just don't think -- I think Mr. Andrews put it
 14 in terms of no valid penological goal, and I agree with
 15 him. It's different from the kinds of conduct that have
 16 some connection to the offense itself that would
 17 aggravate the sentence in the Court's mind, and that
 18 would be other acts of domestic violence, other threats
 19 of violence, and the record just doesn't have -- we just
 20 don't have that evidence here. So I am not considering
 21 his poor employment record, the fact that he has certain
 22 feelings about women, perhaps, and their place in a
 23 family, in a marriage. That might be offensive to some
 24 people but I don't think that I could consider that to be
 25 an aggravating factor.

1 you can say, well, that's true in every homicide, but
 2 it's more true in this homicide than it is in many.

3 Alicia had some consciousness of her own death
 4 before she died. She was alive for minutes or moments
 5 before she died. She had experienced conscious pain and
 6 suffering and that to me is an aggravating factor.

7 The impact on the children is very difficult to
 8 measure and, to some extent, that is because of the
 9 extraordinary intervention in this tragedy of two
 10 individuals, Alicia's sister and Alicia's brother-in-law,
 11 who, remarkably, seem to have just scooped up these three
 12 children, brought them into their home and made them
 13 their own. And so we don't hear about these children
 14 being psychologically damaged, at least in the present.
 15 I hope and pray that that continues. And I think the
 16 only reason we're not hearing about that directly is
 17 because of the fact that they were there and immediately
 18 did everything humanly possible to provide love and
 19 security for those three children in addition to three of
 20 their own.

21 However, these are children who are very
 22 intimately closely connected to their mother. All the
 23 evidence in this case is that Alicia was there lifeline,
 24 she was their primary caretaker, and there is just no way
 25 that they don't feel her loss immensely. And in this

1 case, because the stability has been provided to them at
 2 this point in life, obviously they are at risk. And I
 3 think anybody would expect that at some point their
 4 suffering is going to be more manifest, perhaps than we
 5 know. They love their mother deeply, she loved them,
 6 especially the two older children, they were
 7 homeschooled, and the impact on them will extend for
 8 decades. And as they became older and become more keenly
 9 aware of the fact that it was their father that was the
 10 agent that caused their loss, the impact is going to, as
 11 I said, extend for decades.

12 And, of course, Alicia's brother and his wife,
 13 who spoke very articulately, I think, about who she was
 14 and how her death has changed them, the impact on them
 15 has been considerable.

16 And her sister Heather, who did testify in two
 17 trials, who is Alicia's confidant and closest friend, who
 18 was with her every step of the way growing up, becoming a
 19 wife and a mother, the loss to her is immeasurable.

20 And her parents, who have been in the
 21 courtroom for both trials, every proceeding, having to
 22 bury a child before their time, before their own time, is
 23 incalculable.

24 So all of this is to recognize that the victim
 25 impact in this case is profound and it will go on for

1 But I think, particularly given the victim
 2 impact in this case, which I hopefully described fairly,
 3 that the aggravating factors do outweigh the mitigating
 4 factors, resulting in a final sentence of 40 years to the
 5 Department of Corrections. I realize that was the
 6 sentence recommendation by the State but the Court took a
 7 very different route in getting there but I do think that
 8 that is a fair and just sentence in this case.

9 Mr. Gaston, you have the right to appeal the
 10 conviction, the verdict of the jury, as well as any
 11 rulings this Court made along the way.

12 You also have the right to ask that the Law
 13 Court review the sentence that was just imposed.

14 But based upon the analysis that I have tried
 15 to be careful with, I have given a lot of thought to, the
 16 final sentence in this case will be 40 years to the
 17 Department of Corrections.

18 You do have rights of appeal.

19 Restitution will be ordered consistent with
 20 what the State has recommended. That does not seem to be
 21 in dispute. The restitution will be up to \$11,640. I
 22 understand some of that has been paid. There will be
 23 credits.

24 There also will be a victim fee.
 25 Is there anything else either side wishes to

1 generations. And I don't think that's an exaggeration.
 2 Alicia was somebody who deeply affected people who knew
 3 and love her, and her loss is very difficult to measure.
 4 So let me just say something about the nature
 5 of the domestic violence, which we talked -- which I
 6 talked about a little earlier in this explanation. I
 7 want to be clear that the domestic violence is important
 8 for the first step. And I don't think it's the power and
 9 control aspect of it that goes -- that's the reason it's
 10 placed and is given weight in the basic sentence.
 11 Mr. Andrews, because I don't think we have a lot of
 12 evidence about that in this case. But what we have in
 13 this case is the fact that Alicia Gaston was murdered in
 14 her own home in the middle of the -- at the first light.
 15 It was completely unprovoked. And it's the nature of the
 16 violation of the husband killing the wife -- whether it's the
 17 a wife killing a husband, it doesn't matter -- it's the
 18 relationship and the violation of the trust that's
 19 implicit in that relationship. That's why the
 20 Legislature and the Maine Supreme Court has said domestic
 21 violence homicides are different than other homicides,
 22 which is why I don't think this is a beekeeper case, even
 23 close. And I also think that has to -- that goes to the
 24 gravity of the offense that occurred, which is one of the
 25 factors I have to consider in the final sentence.

1 say before we recess?

2 MS. ELAM: Your Honor, I have spoken with
 3 defense counsel about this, I'm wondering if the Court
 4 instruct the Clerk on the judgment and commitment in this
 5 matter --

6 THE COURT: Indicating with the basic sentence
 7 was?

8 MS. ELAM: Yes, exactly.

9 MR. ANDREWS: Yes, your Honor. We think these
 10 important data points --

11 THE COURT: I agree. I will,
 12 Thank you, Counsel, for your presentations. I
 13 do really understand how tough it is to do this work and
 14 I appreciate your efforts very much.

15 Thank you.

16 MS. ELAM: Your Honor, I'm sorry. Mr. Rucha
 17 whispered in my ear. The restitution will be paid to the
 18 Victim's Compensation Fund.

19 THE COURT: Right. They paid the money
 20 upfront?

21 MS. ELAM: They have.

22 THE COURT: Yeah. Understood. That is for the
 23 benefit of the Victim's Compensation Fund.

24 MS. ELAM: Yes. Thank you.

25 THE COURT: Thank you very much.

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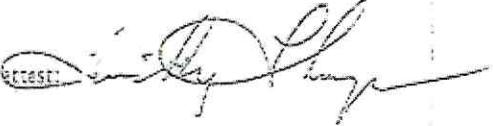
(Whereupon, at 3:29 p.m. the court recesses.)

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CERTIFICATE

I hereby certify that the foregoing is a
correct transcript of my stenographic notes of the
testimony and the proceedings at the hearing of the
above-entitled cause.


Dorothy L. Gray, Official Court Reporter

A true copy, 
Dorothy L. Gray

2968180

MANE COURT

ATN/GTN

District Superior
Docket No. _____

UNIFORM SUMMONS AND COMPLAINT

CRIMINAL: ARREST BAIL \$ _____
 CIVIL VIOLATION FISHERIES AND WILDLIFE MARINE RESOURCES
 TRAFFIC VIOLATION FOREST SERVICE

State of Maine / Municipality of _____ V.

Gaston, Noah 5

Last First Middle [Delete/All]

ing address: 37 Brookhaven

City/Town Windham State ME Zip Code 04092

LICENSE NUMBER STATE DATE ISSUED

OPERATOR	LICENSE NUMBER		STATE	DATE OF GIFT	
	1878263		ME	5/25/82	
HAIR	EYES	HEIGHT	WEIGHT	SEX	RACE
BR	GR	6'1"	180	M	W
VEHICLE	REGISTRATION NUMBER			STATE	
<input checked="" type="checkbox"/> C.M.V. >26,000 LBS. <input checked="" type="checkbox"/> LIAZ. MAT. <input checked="" type="checkbox"/> BUS > 15 PASSENGERS	100-11111111			MAINE	
U.S. DOT #	OFFENSE COMMITTED ON 10/05/81	MONTH	DAY	YEAR	TIME
AT	AT 1ST FLOOR	CITY / TOWN			
AT	37 Brookhaven Dr Windham				

Speeding: Alleged _____ Max Legal _____ mph.
VIOLATION (Title) 171A Section/Ordinance _____ Class Murder
Sequence No. 621 Domestic Violence
Murder

Officer's name, printed	Ross	Ethel	5
Date of service	1/22/16	Officer's signature	
Off.	MSP-MCLMS	ROSS, ETHEL S.	OFF. NO. 4592
YOU ARE HEREBY ORDERED TO APPEAR BEFORE THE COURT LOCATED AT			
205 Newbury Street Portland 04101			
STREET ADDRESS		CITY/TOWN	
Feb. 02, 2016		10:00 AM	ED
DATE	TIME	COURT TELEPHONE NO.	

I promise to appear in the Court at the place, date, and time described below.		
Signature	Date	10/21/06
STREET ADDRESS		CITY/TOWN
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)		

COURT/PROSECUTOR

STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL COURT
CRIMINAL ACTION
DOCKET NO.

STATE OF MAINE

v.

NOAH GASTON

DOB: 05/25/1982

Address: 37 Brookhaven Drive
Windham, ME 04062

Height: 6'1" Weight: 180 lbs.

Hair: Brown Eyes: Green

ATN No. 162203B

CTN No. 001

Sequence No. 000621

CRIMINAL COMPLAINT FOR
VIOLATION OF 17-A M.R.S. § 201(1)(A)
INTENTIONAL OR KNOWING MURDER

STATE OF MAINE
CUMBERLAND, ss.
CLERK'S OFFICE
2016 JUN 25 PM 12:31

6 1 9 0 0 6 0 2

Ethel Ross, Maine State Police Detective – Major Crimes Unit South, being first duly
sworn, deposes and states upon information and belief that:

On or about January 14, 2016, in the Town of Windham, Cumberland County, State of
Maine, NOAH GASTON (DOB: 05/25/1982), did intentionally or knowingly cause the death of
Alicia Gaston (DOB: 11/16/1981), all in violation of 17-A M.R.S. § 201(1)(A).

Ethel S. Ross
Complainant

Sworn to before me this 25 day of January, 2016.

CLERK/NOTARY PUBLIC/JUDGE

STATE OF MAINE
CUMBERLAND, SS.

UNIFIED CRIMINAL DOCKET
DOCKET NO. CR-16-488

STATE OF MAINE)
) INDICTMENT FOR VIOLATIONS OF:
)
 v.) COUNT 1:
)
 NOAH GASTON) 17-A M.R.S. § 201(1)(A) and § 1158-A 1(B)
 DOB: 05/25/1982) INTENTIONAL OR KNOWING MURDER
)
) COUNT 2:
 ATN No: 162203B) 17-A M.R.S. §203(1)(A) § 1252 (4) & (5), and § 1158-A (B)
 CTN No: 001/000621) MANSLAUGHTER (CLASS A)
 002 004248)

THE GRAND JURY CHARGES THAT:

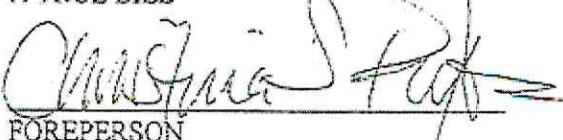
COUNT 1
INTENTIONAL OR KNOWING MURDER

On or about January 14, 2016, in the County of Cumberland, State of Maine, NOAH GASTON did intentionally or knowingly cause the death of Alicia Gaston (DOB: 11/16/1981), with the use of a firearm, namely a Mossberg 12 gauge shotgun, serial number T67889, all in violation of 17-A M.R.S. § 201(1)(A) and § 1158-A 1(B).

COUNT 2
MANSLAUGHTER

On or about January 14, 2016, in the County of Cumberland, State of Maine, NOAH GASTON did recklessly or with criminal negligence cause the death of Alicia Gaston (DOB: 11/16/1981), with the use of a firearm, namely a Mossberg 12 gauge shotgun, serial number T67889, all in violation of 17-A M.R.S. § 203(1)(A), 17-A M.R.S. §1252 (4) and (5) and 17-A M.R.S. § 1158-A (1)(B).

A TRUE BILL


Foreperson

DATED: 03/10/16

STATE OF MAINE

UNIFIED CRIMINAL DOCKET
 SUPERIOR COURT
 DISTRICT COURT

County: _____
Location: _____
Docket No: _____

STATE OF MAINE

v.

DISMISSAL
(M.R.U. Crim. P. 48(a))

Defendant

Pursuant to Rule 48(a) of the Maine Rules of Unified Criminal Procedure the (District Attorney for Prosecutorial District _____) (Attorney General of the State of Maine) hereby dismisses the indictment, information, complaint or count(s) _____ thereof against the defendant for the following reasons:

- 1) Defendant has pled to other charges: _____
(docket number(s) and count(s))
- 2) Defendant has been indicted on this or a substituted charge: _____
(docket number(s) and count(s))
- 3) Witness unavailable.
- 4) Insufficient evidence.
- 5) Defendant is a juvenile.
- 6) De Minimis.
- 7) Court has found Defendant not competent to stand trial and has ordered that all charges against Defendant in this matter are dismissed.
- 8) Other _____

Date: _____

(Asst.) District Attorney / Attorney General

TO BE COMPLETED IF DISMISSED DURING TRIAL:

I, _____, defendant, consent to the filing of the foregoing dismissal.

Date: _____

Defendant

STATE OF MAINE
CUMBERLAND, ss

UNIFIED CRIMINAL DOCKET
SITTING IN PORTLAND
CUMCD-CR-16-488

STATE OF MAINE)
)
 v.) DEFENDANT'S FIRST MOTION IN
) LIMINE
 NOAH GASTON)

NOW COMES Defendant Noah Gaston ("Gaston") moving for an order ruling as inadmissible all statements made by Gaston to Ethan Smith ("Smith") and Troy Crabtree ("Crabtree") on as being subject to religious privilege under Rule 505 of the Maine Rules of Evidence.

FACTS

Gaston and his family were formerly members of Missio Dei, a non-denominational Christian church that was an off shoot of The Rock Church. As part of The Rock Church, they met many of the individuals that made up their smaller religious community. When they left that church, they became part of a community made up of smaller, non-traditional offshoot church that became the heart of church member's lives. According to Smith, "we broke the church up into kind of small groups so like if you lived west of Portland, you were in our offshoot or small group." P.514. These offshoot groups socialized together, helped raise children together, and importantly, looked to the group and its leaders for both and moral guidance. Smith and Crabtree were, in Crabtree's words, "two of our church leaders of sort of like a small group." P.281. Smith's wife served as the Sunday School teacher for the Gaston children. P.554. There was a formal selection of these leaders within the Missio Dei organizational structure.

On January 14, 2016, Gaston was picked up from the police station by Smith and Crabtree, who were called by Matt Bolduc, a close friend of Gaston, because of their status as church leaders. Crabtree even had experience providing counseling outreach at the state prison. P.548. After searching nearby churches for a place to meet with Gaston, they went to First Baptist Church in Portland. Smith meet with the Church's pastor, who prayed with Smith. P.551. Smith and Crabtree then went into an unused classroom and tried to provide counsel and guidance to Gaston about the events surrounding Alicia Gaston's death. Id. Eventually, a third church leader, Dana Smith, eventually arrived at First Baptist and they all left together to meet other church members at a local restaurant.

ARGUMENT

All statements made by Gaston to Smith and Crabtree on January 14, 2016 are inadmissible because they were confidential communications made to church leaders while they were acting as spiritual advisors. Rule 505(b) of the Maine Rules of Evidence states "a person has a privilege to

refuse to disclose and prevent another from disclosing a confidential communication by the person to a member of the clergy acting as a spiritual advisor."

The protections given to communications made in a religious context are broader in Maine than they are federally. Whereas the First Amendment protection governs laws "prohibiting the free exercise [of religion], U.S. Const. amend I, Maine's protection is much deeper and broader:

All individuals have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no person shall be hurt, molested or restrained in that person's liberty or estate for worshipping God in the manner and season most agreeable to the dictates of that person's own conscience, nor for that person's religious professions or sentiments, provided that that person does not disturb the public peace, nor obstruct others in their religious worship; - and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law....

ME. CONST. art. I, § 3. This has been born out in how on the approach to the religious privilege has been established in Maine jurisprudence. Maine used to have a statutory exception (16 MRS § 57) however it was repealed in 1977. It was limited in its scope to confessions made to members of the clergy's congregation. In its place is the broader language of MRE Rule 505, which "reflect a desire to give the privilege a broader scope." *Maine Evidence*, 6th ed., § 505.1. There is no analogous federal rule. With its more expansive language, art. I §3 requires a Court to look at a communication: potentially privileged by Rule 505 with an equally expansive view. "The objective is to protect all communications of a person consulting a clergyperson in his or her professional character as a spiritual advisor." *Maine Evidence*, 6th ed., § 505.1; *see Portin v. The Roman Catholic Bishop of Portland*, 2005 ME 57, ¶¶ 58-59, 871 A.2d 1208, 1228.

The religious privileges of Rule 505 are easy to apply in more traditional religions, with clear definitions of who is "clergy." As *Field & Murray* notes by way of example, individuals functioning like "a Catholic priest, Jewish rabbi, or minister of an established Protestant denomination [are] plainly covered." *Maine Evidence*, 6th ed., § 505.1. Uncertain are "sects like Jehovah's Witnesses, where each member is designated a minister." *Id.* By all accounts, the religious fellowship to which Gaston, Smith and Crabtree belonged did not form to conventional Christian patterns. This Court must answer the question before it is whether Gaston, a participant in this fellowship, had a "reasonable belief" he was engaging in privileged communications in speaking with his "church leaders", Smith and Crabtree. *See State v. Boobar*, 637 A.2d 1162, 1170 (Me. 1994) (applying a "reasonable belief" test to the assertion of a religious or medical privilege of an AA counselor).

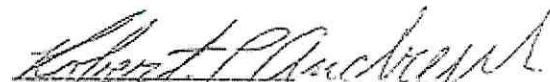
Crabtree and Smith picked Gaston up from police custody after he had been interrogated for ___ hours. They speak to him and try to provide spiritual aid. They had called around to churches in the area to find a place of privacy before picking him up, and they take him to First Baptist Church. There, they act in their roll as leaders of their "offshoot" and proceed to provide spiritual guidance and counseling. Gaston, under the emotional stress of learning of his wife's death and being

submitted to hours of police interrogation, sought help from those members of his faith whom held the roles of faith leaders. In so doing, he engaged in a religious practice covered by constitutional protections. To allow his words of faith to be used against him is antithetical to the breadth of religious protections given to people in Maine.

CONCLUSION

Because Gaston reasonably believed he was engaging in spiritual communications with Smith and Crabtree, spiritual leaders in his religious community akin to traditional clergy, throughout his private conversations with them on January 14, 2016, those communications should be excluded as falling under the religious protections of Rule 505 of the Maine Rules of Evidence.

Date 4/2/19



ATTORNEYS FOR DEFENDANT

Robert Andrews, Bar #8980

James Mason, Bar # 4206

STATE OF MAINE
CUMBERLAND, ss

UNIFIED CRIMINAL DOCKET
Sitting in Portland
CUMCD-CR-16-488

STATE OF MAINE)	DEFENDANT'S RENEWAL OF
)	MOTION FOR JUDGMENT OF
v.)	ACQUITAL AND MOTION FOR
)	NEW TRIAL
NOAH GASTON)	

NOW COMES Defendant Noah Gaston ("Gaston"), by and through his attorney's, moving this court for a judgment of acquittal pursuant to Rule 29(b) of the Maine Rules of Unified Criminal Procedure ("MRUPCP") and for a new trial pursuant to Rule 31 of the MRUPCP.

Standard of Review

Each of Gaston's motions raise two connected issues: (1) that the State failed to prove beyond a reasonable doubt Noah Gaston intentionally or knowingly caused the death of Alicia Gaston; and (2) the Court's instructions to the jury misstated the law as to what the State must prove for the jury to find Gaston guilty of the single count of murder. These errors raise fundamental concerns about the fairness of the jury's verdict requiring it to be set aside by this Court.

A motion for new trial includes, as an alternative, motion for judgment of acquittal, but an acquittal motion does not include new trial motion. *State v. Bickford*, 308 A.2d 561 (Me. 1973) (citing prior rules). In assessing Gaston's motions, the Court must decide whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Stinson*, 2000 ME 87, ¶ 6, 751 A.2d 1011, 1013-14 (citing *State v. Van Sickle*, 434 A.2d 31, 34 (Me.1981) (emphasis in original)). "This analysis considers only the factual evidence and permissible inferences that were placed before the factfinder; [the court does] not weigh the evidence or credibility of witnesses, but instead resolve ambiguities in favor of the State. In evaluating whether there is sufficient evidence to convict, [the court] will review the evidence as a whole, including any defense witnesses and rebuttal witnesses." *Stinson* at ¶ 6 (internal citations omitted).

Relevant Facts

Noah Gaston was indicted on March 10, 2016 for two charges: (1) "intentionally or knowingly [causing] the death of Alicia Gaston" and (2) "recklessly or with criminal negligence [causing] the death of Alicia Gaston." The second count was dismissed before the first trial in February, 2019. There was a second trial on the remaining murder charge in November, 2019. At the close of the State's case on November 18, 2019, Gaston asked the Court to grant a motion for judgment of acquittal, pursuant to Rule 29(a), on the grounds that the State had failed to prove beyond a reasonable doubt that Mr. Gaston had intentionally or knowingly caused the death of his wife, Alicia Gaston. Rule 29(a) requires the Court to grant the motion if "the evidence is insufficient to sustain a conviction of such crime or crimes." The Court denied this motion. At the close of Mr. Gaston's evidence on November 19, 2019, the fifth day of evidence, Gaston renewed his motion, again asserting the State had failed to prove beyond a reasonable doubt that Mr. Gaston had intentionally or knowingly caused the death of his wife Alicia Gaston. The Court again denied the motion.

After releasing the jury for the night, the Court held a charge conference with the parties in chambers. It was then Mr. Gaston's counsel learned for the first time that the State intended to argue to the jury in closing that it did not have to prove Mr. Gaston intended to kill his wife, but rather, that they only had to prove the lesser burden of intending to kill a human being. Mr. Gaston's counsel adamantly disagreed with that interpretation of the law and argued that the Court needed to prevent the State from arguing this generalized human being theory to the jury and should instruct the jury during instructions that they must find Gaston knew or intended to kill his wife to find him guilty of the murder charge. Mr. Gaston's counsel asked the Court's permission to tell the jury in closing that they needed to find beyond a reasonable doubt that Gaston intentionally or knowingly caused the death of his wife, not just a human being. The Court denied this request.

Over Mr. Gaston's objections made both before and after closing arguments, the State argued in closing to the jury that it need only find Mr. Gaston intentionally or knowingly acted to kill a human being, rather than having to establish beyond a reasonable doubt he knew it was his wife, Alicia. The Court, again over Mr. Gaston's objections, proceeded to instruct the jury in a way that was inconsistent with Maine Law by instructing them that the law of the State of Maine requires the State to prove a defendant "intentionally or knowingly causes the death of another human being." See p.2 of *Written Jury Instructions*. Later, the Court instructed the jury "in summary" that the State must prove Gaston "acted either intentionally or knowingly when he caused the death of Alicia Gaston." See p.4 of *Written Jury Instructions*.

Predictably, the first question sent out by the jury approximately two hours into their deliberation squarely addressed this conflict. In essence, the jury's question was "Did the State need to prove Mr. Gaston intended to kill his wife or that he just intended to kill a human being?" The parties conferred in chambers with the Court for nearly an hour until the Court, over Mr. Gaston's objections, sent a response saying the State had charged Mr. Gaston with

intentionally or knowingly causing the death of Alicia Gaston, and then told them to refer to page 2 and page 4 of the written instructions. Two days later, the jury returned a verdict of guilty on the single count of murder.

Historical Evolution of Murder, Malice and Depraved Indifference

By statute, there are two ways relevant to this case on how the State may charge a defendant with murder: intentionally or knowingly under 17-A MRS § 201(1)(A) or manifesting depraved indifference to the value of human life under 17-A MRS § 201(1)(B).¹ The evolution of these two charges in Maine's jurisprudence is centered on the historical interpretation of the concept of malice and its codification in the 1970's. While it was not necessary to prove that a specific plan to cause the death of a specific person existed under Maine's old murder rules, it was necessary for the evidence to support either a finding of express malice or implied malice:

Express malice exists where one with a sedate, deliberate mind, and a formed design, doth kill another; which formed design is evidenced by external circumstances discovering the inward intention, as by lying in wait, antecedent menaces, former grudges, and concerted schemes to take life. Implied malice is an inference of law upon the facts found by a jury. It exists where one attempts to kill or maim one person, and in the attempt kills another against whom no injury was intended, or in general, in any deliberate attempt to commit a felonious act, and death is occasioned in the execution of such attempt, although the original intention may not have been to take life. When the killing is unlawful, and neither express nor implied malice exists, the crime is reduced from murder to manslaughter. But in all cases where the unlawful killing is proved, and there is nothing in the circumstances of the case as proved, to explain, justify or excuse the act, the law presumes it to have been done maliciously; and if the accused would reduce the crime below the degree of murder, the burden is upon him to rebut the inference of malice which the law raises from the act of killing, by evidence in [defense].

State v. Knight, 43 ME 11, 35 (1857). Under the old rubric of malice it was not necessary to charge a specific express or implied theory of murder, but these historical distinctions of malice eventually served as the underpinnings of Maine's current murder statute. The concept of express malice would develop into what is referred to currently as intentional or knowing murder while the concept of implied malice would develop into what is currently referred to as depraved indifference murder.

¹ The third is "intentionally or knowingly causes another human being to commit suicide by the use of force, duress or deception." 17-A MRS § 201(1)(C).

A century before this would happen, however, the old rubric of malice would be reaffirmed. Historically, Maine always viewed murder either express or implied malice as a singular crime:

The first section of that chapter defines murder substantially as the common law does. The second and third sections do not in any respect qualify the first, but defines the different degrees of murder. Notwithstanding these provisions, the killing of a human being with malice aforethought is still murder, whether that malice be express or implied. There is still but one crime denominated murder, as at the common law, although by the provisions of the statute there are two degrees of that crime, liable to different punishments. The first degree of murder under the statute is precisely the same as the highest degree at common law. It is not claimed that this indictment is not sufficient in this respect, at common law, to set out the highest degree of murder. On the other hand, it contains apt words for that purpose. The words, "'malice aforethought'" would ordinarily be understood to express the same idea as "express malice;" and include cases of implied malice, only as the greater includes the less. It is perhaps clear that, under an indictment like this, alleging that the killing was done with "malice aforethought," it would be necessary to prove express malice even at common law, but for the principle of law, that the greater contains the less, or for the other principle of law, that in certain cases malice may be implied with the same effect upon the crime as though express were proved. It would therefore seem necessarily to follow that the indictment is sufficient to sustain the verdict. Because, under the[Massachusetts] constitution, as well as under ours, a person can only be held to answer to a charge "duly and technically set forth in apt and proper words."

State v. Verrill, 54 Me. 408, 415-16 (1867). Under the old murder rubric, it would have been enough for the state to charge Mr. Gaston with killing a human being with malice aforethought as a means of charging either intentional, knowing or depraved indifference murder. Yet, this is no longer the state of Maine's law in this area; now murder can be either intentional and knowing or it can be depraved indifference.

The Maine Supreme Judicial Court acknowledged the evolution of the depraved indifference standard shortly after the codification of the modern standard occurred.

When the Criminal Code went into effect on May 1, 1976, it created six degrees of "criminal homicide." In that original Criminal Code formulation, first degree criminal homicide was defined as the commission of second-degree homicide under any one of six aggravating circumstances specified in section 201(2). The

definition of second degree criminal homicide, which replaced the common law definition of murder contained in 17 M.R.S.A. § 2651, required proof that the accused caused the death of another "Intending to cause such death, or Knowing that death will almost certainly result." This new definition, coupled with the definition of the terms "intentionally" and "knowingly" in 17-A M.R.S.A. § 10(1) and (2), precluded convicting the accused of second degree homicide absent, at the very least, a Subjective awareness on the part of the accused that his conduct created a risk that the death of another would "almost certainly result." This definition did not permit a conviction for second degree homicide to rest upon proof that an Objective evaluation would lead a reasonable person to conclude that death would almost certainly result from the conduct of the accused. [T]he legislature repealed the statutory framework setting forth six degrees of criminal homicide and returned to the murder-manslaughter classification employed before the Code. The crimes of first and second degree criminal homicide were replaced with one definition of the crime of murder, which included the provision contained in section 201(1)(B) that a person is guilty of murder if "(h)e engages in conduct which manifests a depraved indifference to the value of human life and which in fact causes the death of another human being." By allowing a conviction for murder to rest upon proof that the "conduct" manifested a depraved indifference to the value of human life, section 201(1)(B) called for an application of an objective standard of evaluation, such as that which had been applied in decisions under former 17 M.R.S.A. § 2651.

State v. Woodbury, 403 A.2d 1166, 1171-73 (Me. 1979) (internal citations omitted). The Law Court has recently made clear the implication of this evolution on depraved indifference and its distinction between "intentional and knowing."

The depraved indifference murder statute, section 201(1)(B), has replaced a common law definition of murder that allowed a fact-finder to convict a person of murder upon proof of conduct which objectively evaluated is characterized by a high death producing potential. Depraved indifference is derived from the concept of "implied malice," which is distinct from the state of mind characterized by the Criminal Code as recklessness because recklessness requires a subjective awareness of a risk.

We have not construed depraved indifference as incorporating a culpable mental state. Instead, we have construed section 201(1)(B) to deal with those few instances in which, although the defendant did not act intentionally or knowingly, his conduct, objectively viewed, created such a high tendency to produce death that the law attributes to him the highest degree of blameworthiness.

State v. Cummings, 2017 ME 143, ¶¶ 18-19, 166 A.3d 996, 1001 (internal citations and quotations omitted).

Insufficient Evidence as the Sole Count Charged

The charge in Mr. Gaston's case fails to allege that Alicia was a human being, and it fails to charge depraved indifference murder. By charging Mr. Gaston with intentionally or knowingly causing the death of Alicia Gaston, the State committed to a theory that required proof that the intent was to kill Alicia and not some other human being. It cannot change its theory now. See *State v. Knight* 43 ME 11, 12-14 (1857). In this case, the State presented evidence Mr. Gaston knew it was his wife when he woke up that morning and suggested he was too close spatially to have not known it was Alicia. This is the historical "express malice" theory of homicide law. The State maintained this position until the charge conference. Only then did the State argue proof of the intent to cause the death of a human being - the "implied malice" theory - was sufficient for a conviction on the one remaining charge against Mr. Gaston. The Court's instruction included language reflecting the implied malice theory by including language referring to a "human being" despite Mr. Gaston's objections such references were not appropriate because the State had failed to charge depraved indifference.

The State was required to prove beyond a reasonable doubt the charge it actually brought against Mr. Gaston. It failed to do so, and that failure makes it appropriate for the Court to grant this motion. "In considering a motion for judgment of acquittal, [the court] must evaluate the evidence and such reasonable inferences as arise therefrom in the light most favorable to the government." *United States v. Cruz*, 156 F.3d 22, 27 (1st Cir. 1998). It must do so, however, only on the charge legally before it, not the State's alternative "implied malice" theory of the murder suggested by the instructions and at the State's closing.

Even in the light most favorable to the State, the State failed to put forward sufficient evidence to reach the very high bar of "proof beyond a reasonable doubt." The Court cannot for purposes of this motion, rely solely on the alleged words of Mr. Gaston with respect to this motion, to infer Mr. Gaston's intent. "The defendant's motion for judgment of acquittal triggers an analysis of the State's substantive burden of proving the corpus delicti. That analysis should include (1) whether there is sufficient evidence of the corpus delicti exclusive of any admission or confession of the defendant and (2) whether there is sufficient evidence on the whole record to establish the corpus delicti beyond a reasonable doubt." *State v. Curlett*, 459 A.2d 160, 164 (Me. 1983). The Court must look beyond this and determine if the State's other evidence is sufficient to support a conviction. It is left only with the inferences the State suggested the jury make and these are insufficient to support a conviction.

The State's interpretation of the murder statute is simply incorrect. Intentional or knowing is fundamentally different than depraved indifference. Moreover, depraved indifference murder as an alternative theory of murder is not necessarily included in every murder charge. Just like the Court has a responsibility to decide if the theory should be instructed, the prosecutors have an obligation to decide if it should be charged at all. In this case, the State's failure to charge that theory is conclusive on the jury's ability to convict on that basis. Even in the light most favorable to the State, even considering that the jury could infer intent from all of the circumstances, no properly charged jury could have found the specific intent and express malice necessary to sustain the conviction for intentional or knowing murder.

Improper Jury Instructions

Mr. Gaston was entitled to a jury instruction requiring the State to prove he intended to cause the death Alicia and not an intruder. When this Court gave conflicting instructions, the jury was left to its own devices as to the state of the law with respect to the murder charge facing Mr. Gaston. In attempting to split the difference between the State's position and Mr. Gaston's position, this Court left the jury without proper instruction on how to proceed on the sole charge before it.

"The United States Supreme Court has recognized that an error affects a criminal defendant's substantial rights if the error was sufficiently prejudicial to have affected the outcome of the proceeding." *State v. Pabon*, 2011 ME 100, ¶ 34, 28 A.3d 1147, 1155 (citing *United States v. Olano*, 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993)). An instructional error affects a defendant's substantial rights if there is a "reasonable probability" that the error affected the outcome of the proceeding. *State v. Thurlow*, 2019 ME 166, ¶ 17 (citing *Pabon*, 2011 ME 100, ¶¶ 34-36, 28 A.3d 1147); see also *State v. Weaver*, 2016 ME 12, ¶ 11, 130 A.3d 972 (describing obvious error as occurring if the incorrect instruction "reviewed with the charge as a whole constituted highly prejudicial error tending to produce manifest injustice" (quotation marks omitted)); *State v. Doughty*, 399 A.2d 1319, 1326 (Me. 1979) (stating that jury instructions contain obvious error when they "so taint[] the proceeding as virtually to deprive the aggrieved party of a fair trial"). If this Court erroneously instructed the jury on how to proceed on the State's single charge, it would be reversible error. The Court should not wait for appellate review, but should correct its error now.

As discussed *supra*, the theory espoused by the State is one derived from a charge of depraved indifference, not intentional or knowing murder. Instructions that direct the jury to decide Mr. Gaston's fate based on charges not brought by the prosecutor are clearly erroneous. This is not a situation where the jury is picking between one of two charges theories, as was seen in *State v. Erskine*, 2006 ME 5, 889 A.2d 312, where the defendant was charged with both intentional or knowing and depraved indifference. There the Law Court recognized:

the alternative theories of committing murder, through either intentionally or knowingly causing the death of another or by engaging in conduct that manifests a depraved indifference to the value of human life and that in fact causes the death of another, are permissible alternatives and not separate offenses....The trial court did not commit error in failing to instruct the jury that it had to unanimously agree on one of the alternative theories of committing murder.

Id. at ¶ 19; see also *State v. Cummings*, 2017 ME 143, ¶ 21, 166 A.3d 996, 1001 ("Because depraved indifference murder may be charged and tried as an alternative to intentional or knowing murder in a single charge, a unanimous verdict can be reached even if individual jurors disagree about whether the murder was an intentional or knowing murder or a depraved indifference murder, *id.*, as long as the evidence presented to the jury is sufficient to support each of the alternative theories."). Nor is this a case where the defendant didn't object to the instruction given as was seen in *Thurlow* and *Pabon*. Gaston not only objected to the Court's proposed instructions, he warned those instructions would lead to the very confusion evidence by the jury's first note.

The importance of properly instructing the jury is so we can have confidence they have fairly decided a defendant's fate. If they are properly instructed in the law, we can "presume that jurors follow instructions they are given." *See Baker*, 2015 ME 39, ¶ 18, 114 A.3d 214. If they do not receive correct instruction of the law then it will "seriously affect the fairness and integrity or public reputation of" the proceedings, *Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147. Because that happened in this case, Gaston deserves a new trial.

Conclusion

The State failed to prove beyond a reasonable doubt Noah Gaston intentionally or knowingly caused the death of Alicia Gaston. Because they failed to carry their burden, the Court should set aside the jury's verdict and grant Gaston's motion for judgment of acquittal. Alternatively, because the Court's instructions to the jury were erroneous and that error constituted highly prejudicial error producing a manifest injustice to Gaston, he should be given a new trial.

Date 1-3-2020



ATTORNEYS FOR DEFENDANT

Robert Andrews, Bar # 8980

James Mason, Bar # 4206

STATE OF MAINE
CUMBERLAND COUNTY, ss.

UNIFIED CRIMINAL COURT
SITTING AT: PORTLAND
CRIMINAL ACTION
DOCKET NO. CUMCD-CR-2016-488

STATE OF MAINE,)	
)	
)	
Plaintiff)	
)	MOTION TO CONTINUE
v.)	
)	
NOAH GASTON,)	
)	
)	
Defendant)	

NOW COMES the Defendant, Noah Gaston, by and through his attorney, Robert C. Andrews, and respectfully requests this Court to grant this motion to continue for the following reasons:

1. Sentencing is set for June 26, 2020. The Defendant requests that Sentencing be continued until such time as in person hearing can be safely conducted.
2. The State of Maine Judicial Branch Covid-19 Phased Management Plan ("Plan") requires Social Distancing measures employed in each courthouse must be observed. No more than 10 people, including court personnel, shall be present in a courtroom at any one time. No more than 50 people per courthouse floor may be present in common areas at any one time. These numbers may be reduced depending on the need for social distancing at a specific courthouse or on a specific floor of a courthouse. To the extent possible, court events will be scheduled at staggered times to prevent large numbers of people from entering and exiting a courthouse at any given time.

3. A contested sentencing hearing is not one of the types of hearings specifically enumerated under the current phase of the Plan.
4. Under current conditions it is not possible to both respect the need to protect the health and safety of the public and court personnel while respecting Mr. Gaston's due process rights afforded to him by the Sixth Amendment of the United States Constitution and the Constitution of the State of Maine. Specifically, the Court proposes limiting the number of people who may observe the proceedings including not just supporters of Mr. Gaston but the public generally and Mr. Gaston's in person right to confront witnesses against him.

WHEREFORE, Attorney, Robert C. Andrews requests this Court to ORDER:

1. That this case be continued until such time as it is safe to have more than 10 people in a courtroom, 50 people to courthouse floor, and witnesses can appear in person.

Dated: June 15, 2020



Robert C. Andrews
Bar Number 8980
117 Auburn St., Suite 201
Portland, Maine 04103
207-879-9850

INCORPORATED MEMORANDUM OF LAW

Mr. Gaston's protections under the Sixth Amendment extend to his sentencing hearing. Those rights are both individually held by him and entrenched in the necessary public perception of the fairness of the judicial system. "It is crucial in maintaining public perception of fairness

and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners “as people.” *Rosales-Mireles v. United States*, 138 S.Ct. 1897, 1907-08 (2018) (citing T. Tyler, Why People Obey the Law 164 (2006)). When a diminution of this perception of fairness stems from a judicial decision “[t]he risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings”. *Rosales-Mireles* at 1907 (finding plain error in the context of a mistake in using federal sentencing guidelines). The Court has proposed two limitations affecting Mr. Gaston’s Sixth Amendment Rights. First, the Court proposes limits on access to the courtroom to maintain the requirements of social distancing. Second, the Court proposes allowing witnesses to appear by video link. Mr. Gaston objects to the limitations because they violate the public trial clause and the confrontation clause of the Sixth Amendment.

While the Covid-19 pandemic is clearly a significant threat to the health and safety to the public, it has not created such an emergency that the United States Constitution has been suspended. The Sixth Amendment requires the Court to protect Mr. Gaston’s right to a public proceeding at which he may meaningfully confront the witness against him:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amend. VI, (West 2020). While some limits may be placed on both the right to public trial and the right to confront witness, those circumstances do not exist in this case and the limitations are not justified by the pandemic itself.

The Right to Public Trial

The Sixth Amendment right to a public trial requires an overriding interest before the courtroom can be closed in total. While there are circumstances where the right gives way, the court must make specific findings as to why the courtroom may be closed:

In each of these cases the Court has made clear that the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information. Such circumstances will be rare, however, and the balance of interests must be struck with special care. We stated the applicable rules in *Press-Enterprise*: "The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered."

Waller v. Georgia, 467 U.S. 39 45 (1984) (citations omitted). The pandemic emergency is not the kind of overriding interest that justifies the closure of the courtroom. The Maine Supreme Judicial Court has adopted *Waller* and its standards, *See Robert v. State* 103 A.3d 1031, 1038 (2014). While Maine has not held that any specific limitations constitute either a full or partial closure, Law Court has never been confronted with limiting the access of Mr. Gaston's family and supporters during a sentencing in the way proposed here.

The limitations necessitated by space concerns have historically been insufficient to justify a court room closure. The United States Supreme Court has articulated a very stringent standard:

Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials. Nothing in the record shows that the trial court could not have accommodated the public at Presley's trial. Without knowing the precise circumstances, some possibilities include reserving one or more rows for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members. Petitioner also argues that, apart from failing to consider alternatives to closure, the trial court erred because it did not even identify any overriding interest likely to be prejudiced absent the closure of *voir dire*. There is some merit to this complaint. The generic risk of jurors overhearing prejudicial remarks, unsubstantiated by any specific threat or incident, is inherent whenever members of the public are present during the selection of jurors. If broad concerns of this sort were sufficient to override a defendant's constitutional right to a public trial, a

court could exclude the public from jury selection almost as a matter of course. As noted in the dissent below, "the majority's reasoning permits the closure of voir dire in *every criminal case* conducted in this courtroom whenever the trial judge decides, for whatever reason, that he or she would prefer to fill the courtroom with potential jurors rather than spectators." 285 Ga., at 276, 674 S.E.2d, at 913 (opinion of Sears, C.J.).

Presley v. Georgia, 558 U.S. 209, 215 (2010). The Court has proposed limiting the Courtroom to 10 people. To ameliorate the situation, the court has proposed remote viewing at the courthouse, which will also be limited to ten people, and video links. This does not amount to an open and public hearing. The existence of a public health threat has never justified dispensing with the full due process protections of our judicial procedure and the Court's perceived need to push a case forward cannot be at the expense of Sixth Amendment protections

The Court has suggested that this is a partial closure and can be justified by something less than an overriding interest. Even assuming the proposed limitations do not amount to a complete closure, they cannot be done at the expense of the Sixth Amendment's core values:

Unlike the "total" closure in *Waller*, 467 U.S. at 42, 104 S.Ct. at 2213, which excluded *all* persons (other than court personnel, witnesses, parties and trial counsel) throughout the entire suppression hearing, the screening and identification procedure employed below effected at most a "partial" closure, as it (1) barred only those would-be spectators who opted not to submit written identification, and (2) presumably may have "chilled" attendance by some potential spectators who opted not to present themselves at the courthouse. Cf. *Woods*, 977 F.2d at 74 (finding "partial" closure where members of defendant's family were excluded while particular witness testified). Moreover, the district court supportably found that members of the general public, as well as members of the defendants' families, attended throughout the seven-day trial, cf. *id.* at 76, as did credentialed representatives of the print and electronic media, see *Douglas v. Wainwright*, 714 F.2d 1532, 1541 (11th Cir.1983) (noting that media presence and coverage renders court order one for "partial" closure rather than total, by increasing the likelihood that witnesses with material evidence who are unknown to the parties may learn of perjured testimony through media reports even though they themselves do not attend the trial), *vacated and remanded*, 468 U.S. 1206, 104 S.Ct. 3575, 82 L.Ed.2d 874 (1984), *reinstated*, 739 F.2d 531 (11th Cir.1984).

United States v. Deluca, 137 F.3d 24, 33-34 (1st Cir. 1998). The measures suggested by the Court are not designed to protect some significant due process interest threatened by Mr. Gaston

or his supporter's behavior. Moreover, asking questions that may have discouraged attendance is a far cry from limiting the number of people who may attend to 10 per courtroom even if two additional courtrooms are set up for remote viewing. In practical terms the Court's limits mean that approximately 20 people will be able to see the proceedings at the courthouse and that is unlikely to accommodate Mr. Gaston's family and supports let alone other members of the public.

The United States Court of Appeals for the Ninth Circuit has held that excluding family members requires something more than convenience or judicial preference. Generalized policy concerns caused by the pandemic do not qualify as a sufficient reason for either a full or partial closure:

As previously discussed, the presence of family at sentencing is a way of bringing home to the participants at the hearing, including the judge, that the impact of the sentence will be not only on the defendant but also on members of his family. Also, that family members were willing to come helps to confirm the defendant's community connections and support, which could have an impact on the district court's determination of his likely success in avoiding criminal behavior in the future. That the district court characterized these implicit messages as "manipulative" was a way of saying that it preferred to dispense with the important reminder of judicial responsibility to the community in the exercise of its functions, a reminder at the core of the public trial right. As the "manipulation" interest asserted is inconsistent with the values underlying the Sixth Amendment public trial right, it cannot justify either a total or partial closure. We therefore conclude that the district court's closure of the sentencing proceedings violated Rivera's Sixth Amendment right to a public trial.

United States v. Rivera, 682 F.3d 1223, 1236 (9th Cir. 2012). If the Court, persists in limiting public attendance in the way it has suggested, Mr. Gaston will be prejudiced. Because there is a less restrictive way to resolve the limitations by waiting for conditions to be safe enough that Mr. Gaston can receive the full protection of the right to a public trial, the sentencing should be continued.

The Right of Confrontation

Like the right to a public trial, the Court also proposes the use of video testimony and facial coverings as a means of reducing the public health risks. Again, these limitations fail to protect Mr. Gaston's right to confrontation:

That the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with. As we suggested in *Coy*, our precedents confirm that a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured. See 487 U.S., at 1021, 108 S.Ct., at 2803 (citing *Roberts, supra*, 448 U.S. at 64, 100 S.Ct., at 2538; *Chambers, supra*, 410 U.S. at 295, 93 S.Ct., at 1045); *Coy, supra*, 487 U.S., at 1025, 108 S.Ct., at 2805 (O'Connor, J., concurring).

Maryland v. Craig, 497 U.S. 836, 850 (1990). Maine law has adopted this standard. *See Oken v. State*, 716 A.2d 1007, 1011 n9. (Me. 1998). Again, the generalized policy concerns caused by the pandemic do not qualify as a sufficient reason for either a full or partial closure. The risk of transmission created by Covid-19 alone is not enough to overcome the need to respect the core of the right to confrontation.

Maine law has not fully recognized the extent of the confrontation clause's protection. While *Oken* recognizes the United States Supreme Court's precedent by which it is bound, it prefers to focus on the exceptions:

Assuming, without deciding, that the Confrontation Clause of the Sixth Amendment applies in a post-conviction review proceeding, there was no violation of that constitutional guarantee in this case. Oken had an opportunity for full and effective cross-examination of the witnesses who testified at the hearing, despite his physical absence from the hearing. Oken was represented by counsel at every stage of the proceeding. He was present at the deposition of his former Maryland attorney, and was represented by an attorney during the testimony of all other witnesses, including the attorney from Maine who formerly represented him. He was permitted to consult with his attorney, to review the hearing transcripts of the testimony of the witnesses in Maine, and, through his attorney, to recall and further cross-examine those witnesses. Indeed, that right to recall and further cross-examine key witnesses after reviewing their testimony and consulting with his attorney is more than Oken would have been entitled to if he had been present at the evidentiary hearing. For these reasons, Oken's Sixth Amendment argument is unavailing.

Okon at, 1010-11. While it is true that Mr. Gaston will have counsel and that the importance of cross examination at a sentencing is minimized, that is not the recognized extent of sixth Amendment protection. Moreover, it seems unlikely that the right to be physically present at a sentencing would not implicate the confrontation clause's protection like a post-conviction review proceeding. Allowing the victims to participate and offer testimony by video link is not sufficient protection to the core Sixth Amendment protection.

The United States Supreme Court explicitly recognizes that the in-person aspect of proceedings is a core Sixth Amendment protection. How the witness is affected by the courtroom and the presence of the person accused matters:

The perception that confrontation is essential to fairness has persisted over the centuries because there is much truth to it. A witness "may feel quite differently when he has to repeat his story looking at the man whom he will harm greatly by distorting or mistaking the facts. He can now understand what sort of human being that man is." Z. Chafee, *The Blessings of Liberty* 35 (1956), quoted in *Jay v. Boyd*, 351 U.S. 345, 375-376, 76 S.Ct. 919, 935-936, 100 L.Ed. 1242 (1956) (Douglas, J., dissenting). It is always more difficult to tell a lie about a person "to his face" than "behind his back." In the former context, even if the lie is told, it will often be told less convincingly. The Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions. Thus the right to face-to-face confrontation serves much the same purpose as a less explicit component of the Confrontation Clause that we have had more frequent occasion to discuss the right to cross-examine the accuser; both "ensur[e] the integrity of the fact-finding process." *Kentucky v. Stincer*, *supra*, 482 U.S., at 736, 107 S.Ct., at 2652. The State can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential "trauma" that allegedly justified the extraordinary procedure in the present case. That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult.

It is a truism that constitutional protections have costs.

Coy v. Iowa, 487 U.S. 1012, 1019-20 (1988). The Court's proposal puts up barriers of all forms to Mr. Gaston's confrontation rights. The video link to witnesses giving testimony remotely will not be the same as coming to the courthouse and being in the presence of Mr. Gaston. Moreover,

with the use of face coverings required by all participants, the core protections of the Sixth Amendment are diminished because this Court will not be able to properly assess issues of credibility without being able to observe the witness's facial expressions and demeanor. "The facial expressions of a witness may convey much more to the trier of facts than do the spoken words." *United States v. Walker*, 772 F.2d 1172, 1179 (5th Cir. 1985) (citation omitted). While masks are required under the Plan and are a necessary requirement to get the court system function again, the limitations they impose at this critical phase are unnecessary given the other options available to the Court.

The Sixth Amendment guarantees access to courthouses and courtrooms, and they cannot be replaced by virtual spaces over the objection of a defendant. While the Court has pointed to the fact that plea hearings in other cases have proceeded in the manner proposed by the Court in this case, those have been conducted by consent of the parties. Defendants are capable of waiving a full panoply of rights should they choose to do so. The Rule 11 process for pleas is entirely about making sure a defendant knows they are giving up their rights to proceed. Mr. Gaston is not doing that here and is unwilling to waive his Sixth Amendment rights for the sake of judicial economy.

Conclusion

To proceed in the manner the Court has suggested would violate Mr. Gaston's Sixth Amendment protections of a fair, open, and public proceeding. He deserves an opportunity to face the Court's judgement surrounded by and with the support of his family and friends. He deserves the right to be physically present in the same room when the State's witnesses address the Court. A simple continuance is a fair balance of the Court's concerns and Mr. Gaston's constitutional rights.

STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET
DOCKET NO. CR-16-488

STATE OF MAINE)
)
 v.) WRITTEN
) JURY INSTRUCTIONS
 NOAH GASTON,)
 Defendant)

The defendant in this case, Noah Gaston, is charged in the indictment with one count of "intentional or knowing" murder. "Reckless or criminally negligent" manslaughter is a lesser-included offense of "intentional or knowing" murder. The State has alleged that the crimes were committed with the use of a firearm, namely a Mossberg 12-gauge shotgun, serial number T67889.

First, I will instruct you on the law you must apply to determine whether the State has established beyond a reasonable doubt the elements necessary to constitute the crime of "intentional or knowing" murder. Second, I shall instruct you on the law you must apply to determine whether the State has established beyond a reasonable doubt the elements necessary to constitute the lesser crime of "reckless or criminally negligent" manslaughter. Third, because the issue of self-defense has been generated, I shall instruct you on the law you must apply to determine whether the State has met its additional burden of proving beyond a

reasonable doubt the absence of self-defense. Finally, I will instruct you on what it means to commit an offense with the use of a firearm.

"INTENTIONAL OR KNOWING" MURDER

The law of the State of Maine provides that:

A person is guilty of murder if the person intentionally or knowingly causes the death of another human being.

In order for the State to prove beyond a reasonable doubt that Noah Gaston committed the crime of murder, the State must convince you beyond a reasonable doubt of the following three facts:

First, that another person, Alicia Gaston, is dead;

Second, that Noah Gaston caused her death, which means that Ms. Gaston's death would not have occurred *but for* Mr. Gaston's conduct; and,

Third, that Mr. Gaston acted either intentionally or knowingly when he caused Alicia Gaston's death. A person causes death "intentionally" if it is his conscious object to cause another person's death. On the other hand, a person causes death "knowingly" if he is aware that it is practically certain that his conduct will cause another person's death.

Intent or mental state ordinarily cannot be proved directly, because there is rarely direct evidence of the operation of the human mind. But you may infer a person's intent or state of mind from the surrounding circumstances. You may consider any statement made and any act done or omitted by the person, and all other facts in evidence which indicate state of mind. You may consider it reasonable to infer and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you to decide what facts to find from the evidence.

The State does not have to prove that Mr. Gaston acted with premeditation – that is, with planning or deliberation – to establish that his conduct was intentional. Rather, the intent to cause death may arise in the instant before the death-producing conduct. However, you may consider any evidence of premeditation, if you find such exists, as it bears upon whether Mr. Gaston acted intentionally.

The State also does not have to prove motive - that is, the reason or reasons why a person acted as he or she did. Absence of motive does not necessarily raise a reasonable doubt respecting the guilt of an accused nor does the mere fact that it exists establish guilt. Instead, evidence of the presence or absence of motive is a matter for you to consider along with all the other facts and circumstances in evidence in determining whether the State has met its burden of proving beyond a reasonable doubt the crime charged.

To summarize, if you conclude that the State has proven beyond a reasonable doubt the following three facts--

1. that another person, Alicia Gaston, is dead;
2. that Noah Gaston caused Alicia Gaston's death; and
3. that Mr. Gaston was acting either intentionally or knowingly when

he caused Alicia Gaston's death

-- then you would be required to consider the law of self defense beginning on page 6 of these instructions.

If, on the other hand, you conclude that the State has failed to prove beyond a reasonable doubt either fact 1, or fact 2, then you would stop and return your verdict that Mr. Gaston is not guilty of either murder or manslaughter and you would not have to consider the issue of self-defense.

If you conclude that the State has proven beyond a reasonable doubt facts 1 and 2, but not fact 3, then your verdict would be that Mr. Gaston is not guilty of murder, and you must next consider the lesser-included crime of "reckless or criminally negligent" manslaughter, as well as the justification of self-defense.

RECKLESS OR CRIMINALLY NEGLIGENT MANSLAUGHTER

The law of the State of Maine provides that:

A person is guilty of manslaughter if that person recklessly, or with criminal negligence, causes the death of another human being.

Just as with murder, in order for the State to prove beyond a reasonable doubt that Noah Gaston committed the crime of manslaughter, the State must convince you beyond a reasonable doubt that Alicia Gaston is dead, and that Mr. Gaston "caused" her death - that is, Ms. Gaston's death would not have occurred *but for* Mr. Gaston's conduct.

In contrast to intentional or knowing murder, in order for the State to prove beyond a reasonable doubt that Noah Gaston committed the crime of manslaughter, the State must convince you beyond a reasonable doubt that Mr. Gaston was acting either "recklessly" or with "criminal negligence" when he caused Ms. Gaston's death.

A person acts recklessly when that person *consciously* disregards a risk that his conduct will cause death. To be reckless in the criminal sense, however, the law further requires that the nature and purpose of that person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

A person acts with criminal negligence when he *fails to be aware* of a risk that his conduct will cause death. To be criminal negligence, however, the law further requires that the person's failure to be aware of the risk, when viewed in light of the nature and purpose of his conduct and the circumstances known to him,

must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

When considering the standard for what constitutes a "gross deviation from the standard of conduct a reasonable and prudent person would observe in the same situation," both as to recklessness and criminal negligence, you may use your own experiences and common sense in order to determine how a reasonable and prudent person should act in a particular situation.

To summarize, if you conclude the State has proven beyond a reasonable doubt that Noah Gaston was acting either recklessly or with criminal negligence when he caused Alicia Gaston's death, then you would go on to consider the issues of self-defense.

If, on the other hand, you conclude that the State has not proven beyond a reasonable doubt that Mr. Gaston was acting either recklessly or with criminal negligence when he caused Alicia Gaston's death, then you would stop and return your verdict that Mr. Gaston is not guilty of either murder or manslaughter, and you would not be required to consider the issue of self-defense.

SELF-DEFENSE

If on the basis of my instructions provided to you up to this point you were to determine that Mr. Gaston had committed either murder or manslaughter, you must next consider the law relating to self-defense.

At the very outset, I must emphasize two points relative to self-defense. First, Mr. Gaston does not have the burden of proving that he acted in self-defense. Instead, the State has the burden of proving beyond a reasonable doubt that the murder or the manslaughter was not done in self-defense.

Second, the portion of the self-defense law that you will be considering in this case is that relating to the use of deadly force. "Deadly force" means physical force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing death or serious bodily injury. "Serious bodily injury" as used in this definition of "deadly force" means "a bodily injury" - that is, physical pain, physical illness or any impairment of physical condition - which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health."

Maine law provides that:

A person is justified in using deadly force upon another person when the person reasonably believes it necessary and reasonably believes such other person is about to use unlawful, deadly force against the person or a third person.

Applying this law in this case, if the State proves beyond a reasonable doubt at least one of the following two things --

(1) that Noah Gaston did not actually believe that a person was about to use unlawful deadly force against him or a third person; or
(2) that Mr. Gaston did not actually believe that his use of deadly force was necessary to defend himself or a third person against the person;

then the State has met its burden of demonstrating beyond a reasonable doubt the absence of self-defense.

If, on the other hand, the State has failed to prove beyond a reasonable doubt either of the two above-described things, you must consider a further aspect of Maine law. Specifically, Maine law also provides in relevant part:

If a defense provided is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices.

Based upon this law, if the State proves beyond a reasonable doubt at least one of the following two things:

- (1) That even if Noah Gaston actually believed that a person was about to use unlawful deadly force against him or a third person, Mr. Gaston's belief is not one a reasonable and prudent person would have believed in the same situation; or
- (2) That even if Noah Gaston actually believed that his use of deadly force was necessary to defend himself against the person or third person, Mr.

Gaston's belief is not one a reasonable and prudent person would have believed in the same situation -

then, you may only find Mr. Gaston guilty of manslaughter, even if you had earlier determined that the State had proven the elements of murder as set forth on pages 2-4 of these instructions.

If, however, the State has failed to establish beyond a reasonable doubt either of these two above-described facts, then the State has failed to meet its burden of demonstrating beyond a reasonable doubt the absence of self-defense and you must stop and return your verdict that Mr. Gaston is not guilty of all charges, even if you had earlier determined that the State had proven beyond a reasonable doubt the elements of either murder or manslaughter.

POSSIBLE VERDICTS/UNANIMITY REQUIRED

As noted above, the State has charged Mr. Gaston with only one crime, but the charge of manslaughter is a lesser included offense of murder. Therefore, depending on your finding as to the murder charge you may have to decide if the State has proven the charge of manslaughter beyond a reasonable doubt consistent with the above instructions. However, you may not convict Mr. Gaston of both murder and manslaughter.

There are three possible verdicts in this case: 1) Not Guilty of *both* Murder and Manslaughter; 2) Guilty of Murder; and 3) Not Guilty of Murder, but Guilty of Manslaughter.

The verdict you reach must represent the considered judgment of each of you. In order to return a verdict on any charge, your verdict must be unanimous. That is, whether the verdict is guilty or not guilty on any charge, all 12 of you must agree to it.

It is your duty as jurors to talk with one another and deliberate with a view to reaching an agreement, if you can do that without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, keep an open mind, and do not hesitate to reexamine your own

views. You should change your opinion if you become convinced that your opinion was erroneous. However, you should not give up your honest belief as the weight or effect of the evidence, solely because others think differently or merely to get the case over with.

Do not worry how long it takes to reach your verdict, whatever the verdict may be. Some verdicts can be returned quickly, others take time. You should be in the jury room so long as it takes to reach a unanimous verdict on any charge, and no more.

REPORTING THE VERDICT

When you have reached a verdict, simply notify the jury officer that you have a verdict. Do not tell him or her what the verdict is, simply tell him or her you have a verdict. He or she will come find me, and we will all return to open court to hear what your verdict is.

When you all come in, you will be asked to remain standing, and everyone else will be seated. The Foreman will be asked, "Has the jury reached a verdict?" He will respond, and if he says yes the Clerk or I will inquire as follows: "Members of the Jury, did you find Noah Gaston guilty or not guilty of Murder? If you say guilty to Murder you will not be asked about Manslaughter. If you say not

guilty to Murder, the Clerk or I will inquire as to your verdict on Manslaughter. The Clerk or I will ask, "Members of the Jury, did you find Noah Gaston guilty or not guilty of Manslaughter?"

USE OF A FIREARM

If you find Mr. Gaston guilty of either Murder or Manslaughter, you must also consider and report whether the State has proven beyond a reasonable doubt that he used a firearm, namely a Mossberg 12-gauge shotgun, against a person, namely Alicia Gaston, at the time he caused her death.

"Firearm" means any weapon, loaded or unloaded, and refers to any weapon commonly referred to as a pistol, revolver, rifle, gun or shotgun.

If your verdict is guilty as to either Murder or Manslaughter, the Clerk or I will then ask if the State has proven beyond a reasonable doubt that Mr. Gaston committed the offense with the use of a firearm as defined above. Your finding on this question must also be unanimous, and you will simply be asked to respond "yes" or "no" to this question.

Once all these questions are answered, the Clerk or I will then ask all of you: "So say you, so say you all?" This will be asked to make sure that whatever your verdict is, that it is unanimous.

STATE OF MAINE
CUMBERLAND, SS

UNIFIED CRIMINAL COURT
DOCKET NO.

AFFIDAVIT OF DETECTIVE ETHEL ROSS IN SUPPORT OF PROBABLE CAUSE
PURSUANT TO M.R.CRIM.P. 5(C)

The facts and circumstances which lead your affiant to believe there is probable cause to arrest are as follow:

I, Ethel S. Ross, being duly sworn as a Detective for the Maine State Police, Major Crimes Unit, with 13 years of cumulative service with the Maine State Police as a Trooper and Detective. I am a graduate of the Maine State Police Academy and the 93rd Maine Criminal Justice Academy. My primary responsibility as a Detective with the Maine State Police is the investigation of homicides, suspicious deaths and other serious crimes.

The following facts and circumstances that lead this affiant to believe that probable cause exist for a violation of Intentional or Knowing Murder pursuant to Title 17-A M.R.S.A. § 201 1(A) are attached:

On or about January 14, 2016, NOAH GASTON, date of birth 05/25/82, of 37 Brookhaven Drive, Windham, Maine, described as a white male, 6'1", 180bs., with Brown hair and Green eyes, did commit the crime of MURDER, in violation of Title 17-A M.R.S.A. § §201(1)(A).

The basis for my probable cause is as follows:

1. I, Detective Ethel S. Ross, was assigned as the primary investigating officer. I have interviewed several people and officers in connection with the investigation and the following information comes from those interviews.
2. On January 14th, 2016 at approximately 6:17 A.M. the Windham Police Department received a 911 call from Noah Gaston 5/25/82. Gaston stated he just shot his wife in the stomach, she is not breathing and her intestines are hanging out.
3. Gaston said she got up super early and he thought she was an intruder. The 911 Dispatcher instructed Gaston to start CPR on his wife, Alicia Gaston 11/16/81. He did so, while remaining on the line with 911. The 911 dispatcher asked Noah Gaston where the gun was and he advised it was upstairs. When asked if it was secure he stated there was only one shot in it.
4. The dispatcher also asked if the door was locked and he told her it was. On the recording of the 911 call, Noah Gaston can be heard asking one of his daughters to come down and unlock the door. Your affiant learned the 9 year old daughter

unlocked the door for the Windham Police Department first responding officers and advised she woke up to a loud bang. The 9 year old told the first responders that her dad was in the hall.

5. First responders observed a female lying face up on the floor with a gunshot wound to her abdomen surrounded by a pool of blood. Noah Gaston was performing chest compressions at the bottom of the stairs.
6. Your affiant learned Windham Police Officer Dubey proceeded to the top of the stairs and secured a 12 gauge shotgun. Officer Dubey also secured a white iPhone located near Alicia Gaston's side.
7. Windham Rescue personnel arrived on scene and took over chest compressions. Noah Gaston went into the kitchen to speak with Windham Police Officer Hudnor. Noah Gaston told Officer Hudnor he heard noises and proceeded to check to see if his girls were in bed. Noah Gaston said the girls sometimes go down stairs and make breakfast but he thought it was too early for that.
8. Noah Gaston said after he checked on the girls, he heard noises that sounded like walkie talkies and things moving downstairs. Noah Gaston told Officer Hudnor he grabbed his gun to be ready for a possible intruder.
9. Noah Gaston told Officer Hudnor he was not expecting to see or hear anyone and his wife turned around and started coming up the stairs. Noah Gaston said he did not know his wife was downstairs and he shot her. Noah Gaston told Officer Hudnor he thought his wife was upstairs in bed.
10. Noah Gaston also told the Officer his wife was most likely downstairs getting the laundry going. (Officer Hudnor could hear the laundry spinning as he spoke to Noah Gaston.)
11. Noah Gaston said he heard noises after he grabbed his shotgun and thought they were coming towards him. Noah Gaston told Officer Hudnor he did not think it was anyone on the phone.
12. Noah Gaston stated he shot his wife as she started up the stairs. Noah originally told Officer Hudnor his wife was half way up the stairs and then changed it to, she was at the first two stairs at the bottom of the staircase. Noah Gaston said he was not expecting to see anyone at the bottom of the stairs especially not his wife.
13. Noah Gaston told Officer Hudnor there was a light on downstairs that they always kept on so you could see to go up and down the stairs.
14. Noah Gaston told Officer Hudnor he thought his wife was an intruder and he thought she was going to make it to him before he could fire. Noah Gaston stated

he could tell it was his wife as soon as he fired. Noah Gaston said she fell back as the shot hit her and she let out a yell.

15. Noah Gaston told Officer Hudnor he tried to call 911 on the black phone and was not able to so he called 911 on the white iPhone.
16. Noah Gaston told Officer Hudnor he only fired one shot and he didn't know what kind of round was in the gun. Noah Gaston asked Officer Hudnor how bad the damage was.
17. Officer Hudnor asked Noah Gaston if he and Alicia Gaston were in an argument and Noah Gaston said they were not.
18. Officer Hudnor transported Noah Gaston back to the Windham Police Department.
19. I, along with Detective Kris Kennedy meet with Noah Gaston at the Windham Police Department. Noah Gaston told me he was in bed when he heard noises and got up to check. Noah Gaston told me he thought it was night time.
20. Noah Gaston told me he checked on his 8 and 9 year old daughters across the hallway from his bedroom, because they sometimes get up and make breakfast. He saw they were still in bed. Noah Gaston told me he stood at the top of the stairs and heard walkie talkies.
21. Noah Gaston said he "falsely assumed" his wife was still in bed because he felt their 2 year old in bed when he got up.
22. Noah Gaston told me it sounded like someone was flanking the stairs and giving positional commands, though he could not hear what they were saying on the walkie talkies.
23. Noah Gaston said he grabbed his gun and it was not loaded. He put a shell in and went to the top of the stairs.
24. Noah Gaston said his wife just started up the stairs with her head down and he fired. Noah Gaston said he knew it was her as soon as it hit her and she fell back at the bottom of the stairs.
25. Noah Gaston told me they keep a light on at the bottom so they can see to go up and down the stairs.
26. Noah Gaston said he went down stairs and he thought she said call 911, he went to find a phone and grabbed his niece's old phone and called Alicia's sister from the contacts because he could not get the phone to work, but she did not answer. Noah Gaston said he then found the white iPhone and called 911.

27. Noah Gaston said he was trying to hold her stomach in and she stopped breathing.
28. Noah Gaston told me he thought it was 2:00 in the morning before he saw the stove clock and it said 6:00. However he checked to see if his 8 and 9 year old daughters were possibly downstairs making breakfast.
29. Noah Gaston told me he thought his 2, 8, and 9 year old children were sleeping at the time of the shooting and he was not sure if the shot woke them up or not. Noah Gaston said he knocked on the wall to have one of his daughters come down to get his son and bring him upstairs. Noah Gaston told me his son was sitting on the stairs before the paramedics arrived. Noah Gaston said he believed his son came down after the shooting occurred.
30. Noah Gaston told me it all made sense now, and went on to say she got up early to do laundry, get her bangs cut, and go to the mall to return some things at Macy's.
31. Noah Gaston provided inconsistent statements as to the location of his wife. Noah Gaston stated she was: running upstairs, closing the gap, at the bottom of the stairs, and half way up the stairs. At one point during my interview, Noah Gaston estimated he was approximately 4-6 feet away from Alicia Gaston when he shot her. (Detective Chris Farley measured the 12 gauge shotgun from the end of the stock/butt to the end of the barrel. It was approximately 40 inches.)
32. Noah Gaston told me he did not have an argument with his wife on this day.
33. Detective Corey Pike interviewed the 8 year old daughter of Noah and Alicia Gaston. She told Detective Pike she thought she heard her mom and dad arguing, what she described as a baby gate failing, and then mom falling down the stairs. Your affiant also interviewed the 8 year old daughter, and she told me she heard mom and dad arguing in their scared voices. She told me she heard mom fall down the stairs and say ouch and start crying and then she heard muffled noises. The 8 year old told me she saw the gun on the floor in the hallway and smelled what she described as smoke and blood.
34. Alicia Gaston was pronounced dead at the scene.
35. I learned from Maine Computer Crimes Investigator Moran that the iPhone used to call 911 made a call approximately 3 minutes before the 911 call and it lasted approximately 41 seconds. I verified that the number called was to the EBT Automated Benefits line for the State of Maine.
36. Det. Farley learned from first responders that they had observed ice in the coffee on the table next to the couch in the living room when they arrived on scene.

37. While assisting investigator Taylor Slemmer from the Medical Examiner's office Det. Farley observed soot on the ring finger on the left hand of Alicia Gaston. Det. Farley also observed part of the wadding in the wound on her stomach.

38. Your affiant learned from Dr. Mark Flomenbaum that the cause of death was a "shotgun wound of abdomen with perforation of aorta." Detective Farley learned from Dr. Flomenbaum "the general direction of this abdominal shotgun wound is: from front to back, from right to left, and very slightly downward."

39. MSP ERT Det. Chris Farley informed me on the second step from the top, part of a broken EBT card was located. Det. Farley also observed red/brown stains on the same step. Det. Farley observed more red/brown staining on the right side of the wall, looking down the stairs from the second floor, closer to the bottom of the stairs. Det. Farley later learned from MSP Det. Leighton that there was spatter that was red/brown in color and presumptive tested positive for blood on the right side of the stairway by the second step from the top. Also observed behind the molding at the top of the stairs, from the stairwell side, was a red/brown stain. There were no red/brown stains observed in the hallway upstairs. There were no red/brown stains on the left side of the stairwell.

40. In the master bedroom, on the floor by the closet, Det. Farley observed a pair of camouflage socks next to an orange vest. In the closet on the shelf Det. Farley observed a yellow wire gun lock with the key in it. Det. Farley observed the wire was secured in the lock itself and was not loose.

41. Det. Farley learned from Forensic Scientist Kim James that using gunshot residue chemicals, specifically sodium rhodizonate, used to detect the presence of lead, there were fibers that were positive for lead located in the same area on the wall as the red/brown spatter.

42. Using a forensic dummy, Dr. Mark Flomenbaum placed a red in the location and angle of the wound path. Using the angle of the wound path, and referencing the lead fibers on the wall, a general direction was observed. Det. Farley observed the dummy appeared to be somewhere between the first and second step down from the top and the shot came from the general direction of the top of the stairs. The shot went from the left side of the stairway to the right side of the stairway (looking down from the top of the stairs.) Using a tape measure Det. Farley measured out approximately 4 feet from the dummy. Det. Farley observed 4 feet was about midway in the upstairs landing.

43. The landing at the top of the stairs is described as a square area where the three rooms of the second floor open, namely two bedrooms which are directly across from each other and a bathroom which is directly across from the top of the stairs. The space, at the top of the stairs was measured to have a distance of approximately 5.5 feet across from bedroom to bedroom and approximately 3.2 feet across from the bathroom wall to the wall by the top of the stairs.

44. The evidence at the scene is not consistent with Alicia Gaston being at or near the bottom of the stairs when she is shot. Rather the evidence shows that she was standing somewhere between the first and second step down from the landing area of the stairs when she was shot.

Therefore, based on the aforementioned details, I believe probable cause exists to believe that NOAH GASTON, date of birth 05/25/82, of 37 Brookhaven Drive, Windham, Maine, described as a white male, 6'1", 180bs., with Brown hair and Green eyes, committed the crime of MURDER, in violation of Title 17-A M.R.S.A. § 201(1)(A).

Dated: 1/25/16

Det. Ethel S. Ross

Detective Ethel Ross
Maine State Police
Major Crimes Unit

State of Maine
County of Cumberland

Personally appeared the above named Ethel Ross of the Maine State Police, Major Crimes Unit, and made oath to the truth of the foregoing affidavit.

Dated: 1-25-16

Stephanie L. Paulino
~~Maine Superior Court~~ PC Club

11/20/19 2:05 PM
11/20/19 2:05 PM

11/20/19 2:05 PM

To SATISFY ELEMENT 3 OF MURDER

MUST MR. GASTON HAVE ACTED
EITHER INTENTIONALLY OR KNOWINGLY
TO CAUSE THE DEATH OF ALICIA GASTON
SPECIFICALLY?

OR IS IT SUFFICIENT TO ACT EITHER
KNOWINGLY OR INTENTIONALLY TO CAUSE
THE DEATH OF ANOTHER PERSON?

2:30 p.m.

In this case, the State charged
Mr. Gaston as follows:

"On or about January 14, 2016, ... Gaston
Gaston intentionally or knowingly caused the death
of Alicia Gaston..."

I will direct you to page 2 of 12
instructions as well as what the Court said on

page 4 about what must be proven in
this case.

I apologize for the delay in
responding.

J. Nicole Murphy

11/21/19 12:15 p.m. SMT

Members of the Jury: You may of
course go to lunch. Please ~~not~~ remember:
no recording, no media, & please do not begin
re-deliberating until you are all back together.

J. Murphy

361 21/81
MURPHY 61/02/11

1 Defendant's Exhibit 1 (proffering).
 2 A. Uh-hum.
 3 Q. And there is a highlighted portion. Could you,
 4 without out loud, could you just read that?
 5 A. And is --
 6 MR. RUCHA: Judge --
 7 BY MR. MASON:
 8 Q. I'm sorry. Could you just read that to yourself?
 9 A. Oh, okay.
 10 Yes.
 11 MR. MASON: May I approach?
 12 THE COURT: You may.
 13 BY MR. MASON:
 14 Q. Ms. Gilbert, I previously asked you that -- whether
 15 you believed they had a loving relationship and you had
 16 answered yes. Isn't that correct?
 17 A. Yep.
 18 MR. MASON: No further questions, your Honor.
 19 THE COURT: Redirect?
 20 MR. RUCHA: Nothing, your Honor.
 21 THE COURT: All right.
 22 You can step down. Thank you.
 23 THE WITNESS: Thank you.
 24 THE COURT: Next witness for the State.
 25 MS. ELAM: Excuse me, your Honor.

1 A. Good morning.
 2 Q. I'm just going to make sure everybody can hear you.
 3 So if you can just try to be conscious of staying close
 4 to the mic so everybody can hear, that would be great.
 5 What do you do for work?
 6 A. I'm a 9-1-1 dispatcher.
 7 Q. And where do you work as a 9-1-1 dispatcher?
 8 A. Cumberland County Communications.
 9 Q. And how long have you worked as a dispatcher for
 10 Cumberland County Communications?
 11 A. Six years.
 12 Q. And what departments do you dispatch for, what
 13 police departments?
 14 A. Cumberland, Bridgton, Windham, Gorham and the
 15 Cumberland County Sheriff's Office.
 16 Q. And do you also dispatch for other emergency
 17 services besides police?
 18 A. Yes, police, fire, rescue.
 19 Q. At the Cumberland County Regional Communications
 20 Center are calls that are received there recorded?
 21 A. Yes.
 22 Q. And I'm going to ask you some questions specifically
 23 about January 14th of 2016. Were you working in the
 24 early morning hours of that day at the Cumberland County
 25 Regional Communications Center?

1 MR. RUCHA: Your Honor, can Ms. Gilbert be
 2 excused finally?
 3 MR. ANDREWS: Yes, your Honor.
 4 THE COURT: All right. Yeah, you're all set to
 5 go. Thank you.
 6 Next witness.
 7 MS. ELAM: Thank you.
 8 Maria Jensen.
 9 (Whereupon, Maria Jensen enters the courtroom
 10 and takes the witness stand.)
 11 THE CLERK: Would you please state your name
 12 for the record, spelling your last name.
 13 THE WITNESS: Maria Jensen, J-E-N-S-E-N.
 14 THE CLERK: Do you solemnly swear or affirm
 15 that the testimony you shall give in the cause now in
 16 hearing shall be the truth, the whole truth and nothing
 17 but the truth, so help you God?
 18 THE WITNESS: I do.
 19 THE CLERK: Thank you.
 20 Please be seated.
 21 MARIA JENSEN, called by the State, having been duly
 22 sworn, testified as follows:
 23 DIRECT EXAMINATION
 24 BY MS. ELAM:
 25 Q. Good morning, Ms. Jensen.

1 A. Yes.
 2 Q. And at 6:17 in the morning, did you receive a 9-1-1
 3 call from someone who identified himself as Noah Gaston?
 4 A. I did.
 5 Q. Do you recall what shift you were working that day?
 6 A. I worked the overnight shift, so I would either have
 7 gone in at 7:00 p.m. or 11:00 p.m. to 7:00 in the
 8 morning.
 9 Q. All right. Regardless of when you started, you
 10 would be there until 11:00 in the morning?
 11 A. 7:00 in the morning.
 12 Q. Sorry, 7:00 in the morning?
 13 A. Yes.
 14 Q. And did you listen -- since that day have you
 15 listened to the 9-1-1 call you received from Noah Gaston
 16 on January 14th of 2016?
 17 A. Yes.
 18 Q. I'm going to show you what's been marked here with a
 19 sticker on the lower right-hand corner as State's Exhibit
 20 No. 26 (proffering). Do you recognize what that is?
 21 A. Yes, it's the recording.
 22 Q. Of the 9-1-1 call by Mr. Gaston?
 23 A. Yes.
 24 Q. Have you listened to that several times since the
 25 day that you took the call?

1 A. Yes.
 2 MS. ELAM: Your Honor, I would move for the
 3 admission of State's Exhibit 26.
 4 MR. MASON: No objection, your Honor.
 5 THE COURT: It's admitted.
 6 Members of the jury, I want to let you know
 7 that you will have that in the jury room with you. I do
 8 not believe we have recording equipment in the jury room.
 9 But if at some point you wish to hear the recording
 10 again, if you think that's necessary, we can make
 11 arrangements to bring you back into the courtroom to hear
 12 it again but it is in evidence.
 13 Go ahead.
 14 MS. ELAM: Thank you.
 15 BY MS. ELAM:
 16 Q. And have you listened to this exhibit, State's
 17 Exhibit 26? Is that an accurate recording of the call
 18 you took at -- shortly after 6:00 a.m. on January 14th,
 19 2016?
 20 A. Yes.
 21 MS. ELAM: Your Honor, I would move for the
 22 opportunity to play State's 26 for the jury.
 23 MR. MASON: No objection, your Honor.
 24 THE COURT: Go ahead.
 25 MS. ELAM: Thank you.

1 Q. -- how to deal with that?
 2 MS. ELAM: May I have a moment, your Honor?
 3 THE COURT: You may.
 4 (Pause.)
 5 MS. ELAM: Thank you.
 6 THE COURT: Cross-examination.
 7 MR. MASON: No questions, your Honor.
 8 THE COURT: All right. Thank you. You can
 9 step down.
 10 The next witness for the State.
 11 MR. RUCHA: We call Officer Paul Dubay.
 12 THE COURT: Okay, Officer Dubay.
 13 MS. ELAM: I'm sorry, I neglected to ask if
 14 Ms. Jensen can be excused finally.
 15 MR. MASON: Yes, your Honor.
 16 THE COURT: Yes, she may. Thank you.
 17 MS. ELAM: Thank you.
 18 THE COURT: She is all set to go.
 19 (Whereupon, Paul David Dubay enters the
 20 courtroom and takes the witness stand.)
 21 THE CLERK: Can you please state your name,
 22 spelling your last name for the record?
 23 THE WITNESS: Paul David Dubay, D-U-B-A-Y.
 24 THE CLERK: Do you solemnly swear or affirm
 25 that the testimony you shall give in the cause now in

1 If I may, Judge, we have tried to set a volume
 2 that we think is appropriate but I'll try to look to the
 3 jury if they need it higher or lower.
 4 THE COURT: If any of you can't hear it, let us
 5 know.
 6 MR. RUCHA: Your Honor, if you would like, I
 7 can pull down that poster.
 8 THE COURT: That would be great. Thank you.
 9 Appreciate it.
 10 MR. RUCHA: I apologize, your Honor.
 11 (Whereupon, a recording is played in open
 12 court.)
 13 BY MS. ELAM:
 14 Q. Having heard that, is that an accurate recording of
 15 the 9-1-1 call that you took on January 14th from
 16 Mr. Gaston?
 17 A. Yes.
 18 Q. Fair to say that as a 9-1-1 dispatcher you have a
 19 series of -- I don't know if scripts is the right word
 20 but protocols that you use for callers to try to direct
 21 them to do emergency medical care if it's indicated?
 22 A. Yes.
 23 Q. And were you actually reading from a script or
 24 essentially a script --
 25 A. Yes.

1 hearing shall be the truth, the whole truth and nothing
 2 but the truth, so help you God?
 3 THE WITNESS: I do.
 4 THE CLERK: Please be seated.
 5 THE COURT: Go ahead, Mr. Rucha.
 6 MR. RUCHA: Your Honor, it might be a good time
 7 at this point to -- for the Court to read Stipulation
 8 No. 2.
 9 THE COURT: Okay.
 10 Stipulation No. 2 --
 11 Again, this is just an agreement that the facts
 12 that are described here have been proven without the need
 13 for other testimony or documentary evidence.
 14 The parties stipulate that if called to testify
 15 Donald Ellis, the EBT program manager for the Department
 16 of Health and Human Services, would testify that if an
 17 EBT recipient called the EBT number of 1-800-477-7428 on
 18 January 14th, 2016, a female automated voice would.
 19 Number one, thank the person for calling;
 20 Number two, ask the person to press "1" for
 21 English or "2" for Spanish;
 22 Number three, request that the person punch in
 23 the account number;
 24 Number four, the voice would provide the
 25 balance on the account;

1 THE COURT: Next witness.
 2 MS. ELAM: Justin Hudnor, please.
 3 (Whereupon, Justin Hudnor enters the courtroom
 4 and takes the witness stand.)
 5 THE CLERK: Can you state your full name, spell
 6 your last name for the record?
 7 THE WITNESS: Justin Hudnor, H-U-D-N-O-R.
 8 THE CLERK: Do you solemnly swear or affirm
 9 that the testimony you shall give in the cause now in
 10 hearing shall be the truth, the whole truth and nothing
 11 but the truth, so help you God?
 12 THE WITNESS: I do.
 13 THE CLERK: Thank you.
 14 Please be seated.
 15 JUSTIN HUDNOR, called by the State, having been duly
 16 sworn, testified as follows:
 17 DIRECT EXAMINATION
 18 BY MS. ELAM:
 19 Q. Help yourself to some water if you would like.
 20 A. Thank you.
 21 Q. Mr. Hudnor, can you tell the jury what you do for
 22 work?
 23 A. I'm a police officer for the Town of Windham.
 24 Q. And how long have you been a police officer for the
 25 Town of Windham?

1 6:25 a.m.?
 2 A. No.
 3 Q. All right.
 4 Did you get into the house once you got there?
 5 A. Yes.
 6 Q. Were you the first of the police officers to arrive
 7 or had other officers arrived ahead of you?
 8 A. Other officers had arrived ahead of me, correct.
 9 Q. Who were those officers?
 10 A. It was at the time Sergeant William Andrew and
 11 Officer Paul Dubay.
 12 Q. Were there any medical providers there ahead of you?
 13 A. No.
 14 MS. ELAM: Could we have State's 56, please?
 15 BY MS. ELAM:
 16 Q. So what we have put on the monitor for you I'll put
 17 up for the jury to look at.
 18 (Pause.)
 19 Are you able to see the monitor from where you
 20 are?
 21 A. Yep.
 22 Q. Okay. Do you recognize this diagram or what it
 23 depicts?
 24 A. Yes.
 25 Q. What is that?

1 A. I've been a police officer there since January of
 2 2014.
 3 Q. And how long have -- had you worked for the Windham
 4 Police Department as of January 14th, 2016?
 5 A. Two years.
 6 Q. Were you working on that day, January 14th of 2016,
 7 at about 6:00 in the morning?
 8 A. I was.
 9 Q. And were you dispatched to 37 Brookhaven Drive for a
 10 report of a man having shot his wife?
 11 A. Correct, yes.
 12 MS. ELAM: Could we have State's Exhibit 2,
 13 please?
 14 BY MS. ELAM:
 15 Q. We are going to show you up on the monitor what has
 16 been marked as State's Exhibit No. 2.
 17 Is that the residence at 37 Brookhaven Drive
 18 that you went to that morning?
 19 A. Yes.
 20 Q. Do you know about what time you arrived at the house
 21 that morning?
 22 A. 6:25 in the morning.
 23 Q. Approximately?
 24 A. Approximately, yes.
 25 Q. Okay. Was it as bright as this picture at

1 A. That would be the first floor of 37 Brookhaven.
 2 Q. Okay. How did you get into the house?
 3 A. I got in through the kitchen door.
 4 Q. All right. I may ask you to take that pointer, if
 5 you would, and step closer to the diagram just so you can
 6 point out where you are going.
 7 (Whereupon, the witness approaches the well.)
 8 A. Okay. So I came in through this door right here
 9 (indicating), which is -- led to the kitchen.
 10 Q. And because we have got -- I moved you a little way
 11 from the microphone, you just need to make sure you
 12 keep --
 13 A. Okay.
 14 Q. -- your voice up so everybody can hear you.
 15 A. So I came in through this door right here
 16 (indicating), which is the kitchen of 37 Brookhaven.
 17 Q. How did you get into the kitchen? Did you walk
 18 right in through the door?
 19 A. Yes.
 20 Q. Was it unlocked by the time you got there?
 21 A. Yes.
 22 Q. What did you find once you got into the kitchen?
 23 A. I got into the kitchen, I found a young girl who I
 24 later found out to be Patience. And she was right here
 25 (indicating).

1 Q. What was she doing --
 2 A. So she was -- Patience was standing right here
 3 (indicating).
 4 If you are looking into the kitchen, on the
 5 left-hand side right here (indicating).
 6 Q. And you're pointing to the right-angled corner to
 7 the right of the stove; is that right?
 8 A. Correct.
 9 Q. And what was Patience doing when you walked into the
 10 kitchen and saw her there?
 11 A. She was standing there and she had her hands over
 12 her ears.
 13 Q. Can you show us?
 14 A. She was (hand cupping ears).
 15 Q. Did you see anybody else in the kitchen besides
 16 Patience?
 17 A. No, not when I first went in, it was just Patience.
 18 Q. All right. Did you speak to Patience when you got
 19 inside?
 20 A. Yes, I did.
 21 Q. What was your point in asking her or speaking to
 22 Patience? What did you want to find out?
 23 A. I was -- just wanted to kind of comfort her in a
 24 way. Just was small talk, you know, you're getting ready
 25 for school, it's morning, um -- you know, I introduced

1 were together in the kitchen and you were there, did you
 2 see any interaction between Patience and Mr. Gaston?
 3 A. None.
 4 Q. Did you see any hand-holding?
 5 A. No.
 6 Q. Hugging?
 7 A. No.
 8 Q. Comforting?
 9 A. No.
 10 Q. Exchange of words between the two of them at all?
 11 A. No.
 12 Q. Did you speak to Noah Gaston in the kitchen?
 13 A. I did.
 14 Q. I think you can sit down now. I don't need to make
 15 you stand there.
 16 (Whereupon, the witness returns to the stand.)
 17 A. Okay.
 18 Q. Did you ask Mr. Gaston to describe to you what had
 19 happened between him and his wife in the house?
 20 A. Yes.
 21 Q. Tell us what Mr. Gaston told you had happened that
 22 led to the shooting of his wife.
 23 A. So he had been sleeping and he was awoken by noises
 24 he heard downstairs. And he got out of bed and he heard
 25 what he thought was, um, low talking and he described as

1 myself to her and just trying to get her to feel
 2 comfortable talking to me.
 3 Q. All right.
 4 And at some point did you see Mr. Gaston in the
 5 kitchen as well?
 6 A. Yes.
 7 Q. All right. Where was he when you saw him in the
 8 kitchen?
 9 A. He came into the kitchen, was in this area
 10 (indicating). And he came through this door into the
 11 kitchen (indicating).
 12 Q. And where did he go when he came into the kitchen?
 13 A. If I remember correctly, he went to the sink. I
 14 believe he washed his hands.
 15 Q. Okay. And did he stay at the sink?
 16 A. He stayed in this area right here (indicating), in
 17 the corner of the kitchen.
 18 Q. All right. And at some point did someone come into
 19 the kitchen to take Patience out of the kitchen?
 20 A. Yes.
 21 Q. Who was that?
 22 A. Sergeant William Andrew.
 23 Q. From the time you got let into the house by Patience
 24 or got let into the house and found Patience there, and
 25 the time that Mr. Gaston was there, the time that they

1 walkie-talkie -- with a walkie-talkie type noise. So he
 2 left his bedroom and went to his daughter's room, where
 3 both his daughters were sleeping, to check to see if they
 4 were there. He confirmed that them there.
 5 Excuse me.
 6 And he -- once he left there, he went -- and he
 7 still heard moving downstairs. And what appeared to be
 8 the movement, the sounds were getting closer to him. So
 9 he went and got his shotgun for a possible intruder. And
 10 he was at the top of the stairs and he told me that
 11 the -- a figure had come around the left-hand side of the
 12 stairs if you are looking down the stairs.
 13 Q. Can I stop you just there? I'm sorry.
 14 When you say he described the figure coming
 15 around the left-hand side of the stairs, which side of
 16 the stairs did you believe he was referring to?
 17 This one (indicating)?
 18 A. Yes.
 19 Q. Not this one (indicating)?
 20 A. Correct.
 21 Q. And did he gesture that made you believe it was that
 22 side of the stairs?
 23 A. Yes, he was pointing, yeah.
 24 Q. It wasn't just that he said the word "left," he was
 25 making some pointing gestures to let you know which side?

1 A. Yes.
 2 Q. And did he tell you that when he saw the figure come
 3 around from the left side of the stairs, that he was
 4 standing at the top of the stairs?
 5 A. That is correct.
 6 Q. I'm sorry. What did he describe the person doing
 7 then after they came around the left side of the stairs?
 8 A. Um, so he was -- he was standing at the top of the
 9 stairs, you know, waiting for a possible intruder. And
 10 then once the figure came around the stairs, he said that
 11 it -- that the figure made it up halfway up the stairs
 12 when he -- when he shot. But then he changed his story
 13 that it was only two stairs up and he -- he fired his
 14 shotgun. And as he was firing the shotgun is when he
 15 realized it was his wife, and that she fell backwards,
 16 um, was letting out a yell.
 17 And at that point he didn't really know what to
 18 do. He went down. Didn't know if he could pick --
 19 should pick her up. And then he tried calling 9-1-1 on
 20 one of the cell phones but couldn't get through and
 21 actually ended up calling his -- his wife's sister but
 22 ultimately ended up getting through to 9-1-1 dispatch
 23 that told him what to do from there.
 24 Q. Okay.
 25 Do you remember Mr. Gaston, in your interaction

1 in January 2016. Did they provide officers with
 2 recording equipment in their cruisers and to wear on
 3 their bodies?
 4 A. Yes.
 5 Q. Can you tell us what that is or that was back then?
 6 A. Yes, the cruisers are equipped with -- it's called a
 7 WatchGuard System. So there is a video camera inside --
 8 well, there's two cameras inside the cruiser. One's
 9 facing, you know, out the front part of the cruiser and
 10 the other camera is in the back seat. Um, and we are
 11 equipped with what is called a -- it is pretty much a
 12 microphone that records all the audio.
 13 Q. All right. And did you have that on you and in your
 14 cruiser on the day you responded to Brookhaven?
 15 A. Yes.
 16 Q. And this -- pardon me -- this recording is sort of
 17 two tracks, both recording what's happening inside, sound
 18 inside your cruiser and sound in the vicinity of your
 19 shoulder mic?
 20 A. Correct.
 21 Q. You wear it as a shoulder mic?
 22 A. Yes. It's -- usually it's on my left-hand shoulder,
 23 right here (indicating).
 24 Q. Okay. Excuse me.
 25 So, Officer Hudnor, I'm going to show you

1 while you were in the kitchen, telling you what the
 2 figure was doing or what he saw about the figure when he
 3 saw her come around from the left side of the stairs?
 4 A. The head was down.
 5 Q. Did he tell you at one point that she was only a
 6 couple of stairs up when he shot her?
 7 A. Yes, yeah, and that she fell down the couple of
 8 stairs that she was up after he had shot her.
 9 Q. All right. And he had also described at one point
 10 as her being not a couple up but halfway up?
 11 A. Yes. That was the first time he said that.
 12 Q. At some point did he ask you about his wife's
 13 condition?
 14 A. Ah, yes. He -- he -- he asked how bad the damage
 15 was.
 16 Q. I'm sorry. Is that a quote you remember, how bad is
 17 the damage?
 18 A. Yeah. He said -- I believe he said he didn't even
 19 know how bad the damage was.
 20 Q. Do you know about how long it was into your
 21 discussion before he finally asked about Alicia's
 22 condition?
 23 A. About, I'd say, 15 minutes.
 24 Q. Does the Windham Police Department provide
 25 officers -- I guess I should ask you specifically about

1 something, a disk, that we have marked as State's Exhibit
 2 No. 28. Do you see that sticker on the bottom right-hand
 3 corner of that disk?
 4 A. Yes.
 5 Q. Have you seen this disk before?
 6 A. Yes.
 7 Q. And have you listened to the audio on this disk
 8 before?
 9 A. Yes, multiple times.
 10 Q. All right. And this is the audio from your
 11 microphone, both shoulder and cruiser, during the time
 12 that you were at 37 Brookhaven in January of 2016?
 13 A. Correct.
 14 MS. ELAM: Your Honor, I would move for the
 15 admission of State's Exhibit 28.
 16 MR. ANDREWS: No objection.
 17 THE COURT: Admitted.
 18 MS. ELAM: Your Honor, I'm wondering if we
 19 might take a break now because we have to get the
 20 transcripts and start the sound. And I wanted to check
 21 and make sure it was not too loud.
 22 THE COURT: All right. Fair enough.
 23 All right. We will take a recess, ten minutes.
 24 (Whereupon, at 2:09 p.m. the jury recesses.)
 25 (Jury absent.)

1 THE COURT: All right. Please be seated.
 2 Counsel, I want to see you at sidebar before we
 3 recess.

4 And, Tim, I don't need you.
 5 (Whereupon, there is discussion off the
 6 record.)

7 (After recess.) (2:28 p.m.)

8 THE COURT: Are we ready for the jury?
 9 MS. ELAM: By agreement, Judge, we prepared a
 10 transcript --

11 THE COURT: Okay.

12 MS. ELAM: -- of the recording and we have put
 13 it on the jurors' chairs.

14 THE COURT: All right. Fine.

15 MS. ELAM: And I think we've left one for you
 16 as well. And all of us have one. And I'll move for the
 17 admission of 28 when they come back in.

18 THE COURT: All right.

19 Please bring them in.

20 Ms. Elam, you are playing the recording --

21 MS. ELAM: (Nods in the affirmative.)

22 (Jury present.)

23 THE COURT: All right. Please be seated.

24 Ms. Elam.

25 MS. ELAM: Thank you, Judge.

1 For the Court's benefit, we -- the State Police
 2 did the transcript. We provided it to the defense for
 3 their review and they are in agreement for its admission
 4 today.

5 THE COURT: I understand it is admitted in
 6 evidence but the best evidence of what was said is what's
 7 on the recording. Everybody agrees with that.

8 MS. ELAM: Yes. I just wanted to make it
 9 clear --

10 THE COURT: I understand. Yes.

11 BY MS. ELAM:

12 Q. Officer Hudnor, before we play State's Exhibit
 13 No. 28, which is the audio from your body mic, the camera
 14 that you have also described, is there a camera on your
 15 body or was there back in January of 2014 (verbatim)?

16 A. No, we do not have body cameras.

17 Q. All right. Where was the camera that was activated
 18 at the same time as the audio on your shoulder?

19 A. The camera is inside the -- it's mounted in the
 20 police vehicle in the front windshield. And there is
 21 also a camera in the back seat as well for when we have
 22 prisoners, it records them.

23 Q. So in this case, if we had watched the video, we
 24 would just have seen a view of the parking of your
 25 cruiser as it sat parked outside 37 Brookhaven; is that

1 I think when we broke, I had shown Officer
 2 Hudnor State's Exhibit 28, which is a disk of the audio
 3 recording from his body microphone.

4 We have left for the jurors a copy of the
 5 transcripts, State's Exhibit No. 71. By agreement
 6 State's Exhibit 71 will be admitted.

7 THE COURT: Mr. Andrews.

8 MR. ANDREWS: Oh, I'm sorry. By agreement,
 9 your Honor.

10 THE COURT: And the disk is going in as well?
 11 MS. ELAM: And 28 also.

12 THE COURT: All right.

13 Members of the jury, Exhibit 71 is a transcript
 14 that's been made of the recording that's also going into
 15 evidence. I don't know if this will be an issue at all,
 16 but I need to tell you that if there is any discrepancy
 17 between what has been transcribed by one of the litigants
 18 in this case and what is actually on the recording, the
 19 recording is the best evidence of what was said. This is
 20 just being used by agreement for each of you to use as an
 21 aid in listening to the recording. But I just wanted to
 22 make sure you understand the difference between the two.
 23 Thanks.

24 Go ahead.

25 MS. ELAM: Thank you, Judge.

1 right?

2 A. Correct.

3 Q. Besides you, who was on this recording?

4 Is Noah Gaston also heard in this recording?

5 A. Yes.

6 Q. And Sergeant Bill Andrew?

7 A. Yes.

8 Q. And is James Boudreau, Lieutenant of the Windham
 9 Police Department, also on here briefly?

10 A. Yes.

11 Q. And do you also, having listened to it before,
 12 recognize the voice of Patience Gaston who was in the
 13 kitchen when you first arrived?

14 A. Yes.

15 Q. Do you know if Officer Dubay was caught on your
 16 shoulder recording at all?

17 A. Yes, I -- yes, I've heard his voice on the
 18 recording.

19 Q. Okay.

20 A. And also some EMTs as well.

21 Q. All right. And at the time that you first arrived
 22 and the audio begins, are you not yet inside 37
 23 Brookhaven?

24 A. Sorry. Repeat the question.

25 Q. I don't blame you. It's a very poor question.

1 When you first get there, the first part of the
 2 audio that you have now listened to and we're about to
 3 listen to, you are not yet in the house when that audio
 4 recording begins; is that right?

5 A. Correct.

6 MS. ELAM: Could we play the recording, please?
 7 THE COURT: Go right ahead.

8 MS. ELAM: The jury can let us know if they
 9 need it louder or softer.

10 (Whereupon, a recording is played in open
 11 court.)

12 BY MS. ELAM:

13 Q. At the end, when you start talking about getting
 14 warmed up, that is when you had gotten into the car with
 15 him; is that right?

16 A. Yes, yeah. At that point we were en route back to
 17 the station.

18 Q. And the rest is you and he discussing various things
 19 on the way back to the station but not him talking to you
 20 about what happened during the shooting?

21 A. No.

22 Q. When you left 37 Brookhaven Drive, where did you
 23 drive with Mr. Gaston?

24 A. I drove him to the Windham Police Department.

25 Q. When you got there, where did you go with

1 MS. ELAM: May I have a moment, your Honor?
 2 THE COURT: You may.
 3 MS. ELAM: Thank you. I don't have anything
 4 else.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MR. ANDREWS:

8 Q. Good afternoon, Officer Hudnor.

9 A. Good afternoon.

10 Q. I know we have met before but I'm here to ask you
 11 some questions about your role in the investigation that
 12 you participated in on January 14th, 2016. Do you
 13 understand my purpose?

14 A. I do.

15 Q. Okay. Now, you ended when Ms. Elam was questioning
 16 you with dropping Noah Gaston off.

17 I'm sorry, is it now Captain Jim Boudreau?

18 A. I'm sorry, yeah.

19 Q. Okay. I knew him when he was a detective.

20 A. He was a good detective.

21 Q. He was.

22 You actually did one more thing that day,
 23 right, in relation to your investigation?

24 A. I wrote the report?

25 Q. That's correct.

1 Mr. Gaston?

2 A. I escorted him upstairs.

3 Q. Okay. Into the police department?

4 A. Sorry. Yes, into the police department.

5 Q. Do you know if anyone stayed with Mr. Gaston once
 6 you brought him to the second floor of the police
 7 department?

8 A. Yes.

9 Q. Is that you or someone else?

10 A. No, it was someone else.

11 Q. Who was that?

12 A. It was Detective Paul Cox and at the time Lieutenant
 13 Jim Boudreau.

14 Q. And when you say "at the time" --

15 A. He is -- he has been promoted now, so he is now a
 16 captain.

17 Q. He is still Jim Boudreau but --

18 A. He is still Jim Boudreau.

19 Q. All right.

20 Did you see Mr. Gaston again after you left him
 21 with Mr. Cox or Mr. Boudreau?

22 A. No.

23 Q. Did that conclude your involvement in the
 24 investigation of Alicia's Gaston's death?

25 A. Yes.

1 A. Okay.

2 Q. You wrote a report; correct?

3 A. Correct.

4 Q. Okay.

5 Now, in that report, you tried to summarize or
 6 include what you thought were important details.

7 A. Correct.

8 Q. Okay. And what you did was go into the station and
 9 access a computer terminal and then enter in that
 10 summary; right? You wrote it?

11 A. Correct.

12 Q. Okay. And then you hit Enter, or you closed out
 13 that report, or you called dispatch to close out that
 14 report.

15 A. No.

16 Q. Okay. Can you tell me how you closed out that
 17 report?

18 A. Okay. Um, when I finish my report, I basically just
 19 say add supplement so it puts it into Spillman. And then
 20 I wouldn't -- dispatch wouldn't know -- they didn't clear
 21 out that call, the report, but I let them know that I was
 22 off duty when I was -- completed everything.

23 Q. So what you -- you want dispatch to know whether you
 24 are on duty or off duty and where you are at all times;
 25 right?

1 A. Correct.
 2 Q. So one of the things that you did to let dispatch
 3 know that you were leaving the scene and heading to the
 4 department was use a code; right?
 5 A. Correct.
 6 Q. And is that code 10-19?
 7 A. Correct.
 8 Q. And we, in fact, see that on page 15 of the
 9 transcript, even if we didn't hear it very clearly on the
 10 recording; right?
 11 A. It's in there. Yes, I read it.
 12 Q. Right. And dispatch reported back at 6:53; right?
 13 A. I -- without looking at it but...
 14 Q. If you're looking at the transcript, is that what
 15 dispatch --
 16 A. You said it was page 15?
 17 Q. Yes, I did.
 18 A. Okay. Yes, I see that, 6:53.
 19 Q. It says "6:53"; right?
 20 A. Correct.
 21 Q. Now, does your department use military time?
 22 A. Some guys do, some guys --
 23 Q. I'm just curious I mean because it would -- there it
 24 would be the same; right? Is that 6:53 in the morning?
 25 A. Yes.

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1 about the same time as Captain Andrew?
 2 A. Yeah. Cleared -- I guess I'm confused. Cleared --
 3 I was on a call.
 4 Q. Yes.
 5 A. Yes.
 6 Q. And you cleared it?
 7 A. Yes, I left that call.
 8 Q. Did it take time between when then-Sergeant,
 9 now-Captain Andrew sent to you 37 Brookhaven Drive?
 10 A. Yes, after he told me to respond. I mean I was
 11 going to respond anyways, but, yes.
 12 Q. Right, I understand. I'm just trying to figure out
 13 the time.
 14 A. Okay. Yeah, it was a few minutes. I had to put my
 15 stuff back on and --
 16 Q. Okay. So it wasn't that long?
 17 A. No.
 18 Q. Okay. So you got there; right?
 19 And the first person you encountered was a
 20 young child and you learned that her name was Patience.
 21 A. Correct.
 22 Q. Okay.
 23 Now, I was looking at page 2 of the transcript.
 24 And is that the audio portion of when you met who you
 25 learned to be Patience?

1 Q. And, in fact, you recall that you were leaving at
 2 six -- at sometime in the morning, it wasn't nighttime.
 3 A. No, it was not nighttime. It felt like it was
 4 nighttime after working all night.
 5 Q. But it was, in fact, the morning.
 6 A. Correct.
 7 Q. Now, you got there at approximately 6:25; right?
 8 A. That's when I arrived on scene.
 9 Q. And you were leaving the scene at 6:53.
 10 A. Correct.
 11 Q. You were there approximately 30 minutes.
 12 A. Approximately.
 13 Q. Okay. So how long after the call had come through
 14 did it take you to get to the scene at 37 Brookhaven
 15 Drive in Windham, Maine?
 16 A. When I left the police station to go to the scene?
 17 Q. (Nods in the affirmative.)
 18 A. Um, approximately six minutes. And the roads were
 19 pretty snowy --
 20 Q. Okay.
 21 A. -- and icy.
 22 Q. But that's pretty quick; right? Six minutes, that
 23 is not a long time?
 24 A. I was going with lights and sirens. I was moving.
 25 Q. Okay. And did you clear your call and leave at

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1 A. Yes.
 2 Q. Okay. And you said it's nice to meet.
 3 A. Yes, I believe I did say that.
 4 Q. Okay. Then she responded it's nice to meet you.
 5 A. Yes.
 6 Q. And you asked her, so are you -- you just waking up
 7 to go to school?
 8 A. Yes, I did ask that.
 9 Q. Okay. Did she respond?
 10 A. Yes.
 11 Q. Well, did she also tell you why she woke up?
 12 A. Yes.
 13 Q. Okay.
 14 Now, why she woke up wasn't included in the
 15 transcript; was it?
 16 A. I don't see it, no.
 17 Q. Okay.
 18 Now, when you were all done and you had
 19 ten-nineteen the scene and you had dropped Noah off and
 20 you wrote that report; right? You recounted this
 21 conversation in that report; right?
 22 A. Correct.
 23 Q. Okay. And what did you say that Patience told you
 24 was the reason she woke up in your report?
 25 A. She said it is because I heard a loud noise. It was

1 when she woke up.
 2 Q. She heard a loud noise when she woke up. She didn't
 3 say I was awake and I heard a loud noise; right?
 4 A. No.
 5 Q. And, in fact, you thought that was an important
 6 enough detail that you put it in your separate written
 7 report almost as soon as you were done with your role in
 8 the investigation; right?
 9 A. Correct.
 10 Q. Okay. Now, when you put your report into the
 11 system, right, does everyone then have access to it at
 12 the Windham Police Department?
 13 A. Yes.
 14 Q. Okay. And, in fact, maybe even some other
 15 departments have access to it.
 16 A. Yes.
 17 Q. Okay. So anyone who has access to what you call
 18 Spillman?
 19 A. Spillman is the database we use, yes.
 20 Q. Anyone who has access to that database can then pull
 21 out that report; right?
 22 A. They can – they can read it, correct.
 23 Q. Okay.
 24 Now, this transcript, right, did you -- did you
 25 review this transcript for accuracy?

1 A. Correct.
 2 (Whereupon, a recording is played in open
 3 court.)
 4 MS. ELAM: I'm sorry. Can we know what this is
 5 and have the number?
 6 MR. ANDREWS: We are playing seven minutes into
 7 the video, which is the recording made from the car that
 8 has audio on it. And it was the same audio that I
 9 presume they played.
 10 THE COURT: Okay.
 11 Ms. Elam, any issues?
 12 MS. ELAM: Well, I think he has to put a
 13 different number because I think there is audio from the
 14 car and audio from --
 15 THE COURT: Why don't you do that?
 16 MS. ELAM: I don't need him to do it now but at
 17 some point it --
 18 THE COURT: Yep. We will take care of that.
 19 It is a housekeeping matter.
 20 Why don't you go right ahead.
 21 MR. ANDREWS: So can you play that, please,
 22 from seven?
 23 MR. MASON: Okay.
 24 (Whereupon, a recording is played in open
 25 court.)

1 A. I did.
 2 Q. Okay. And you -- you didn't point out that detail;
 3 did you?
 4 A. The -- about her waking up with a loud noise?
 5 Q. Yes.
 6 A. No.
 7 Q. Okay. Did you correct that detail after you
 8 reviewed the transcript?
 9 A. No.
 10 Q. Okay. Now, when you first came on the stand this
 11 morning -- or, I'm sorry, this afternoon, you said that
 12 you've reviewed that recording several times; right?
 13 A. Multiple.
 14 Q. Multiple times; right?
 15 And so when you listened to that recording,
 16 right, you were able to hear quite clearly what Patience
 17 told you; right?
 18 A. Correct.
 19 Q. And you just didn't let anyone know that the
 20 transcript was wrong.
 21 A. No.
 22 Q. Okay.
 23 Now, you -- you were wearing a microphone that
 24 transmits what the audio around you is to your car;
 25 right?

1 MR. ANDREWS: Stop.
 2 (Whereupon, the recording is stopped.)
 3 MR. ANDREWS: What is the time, please?
 4 MR. MASON: I stopped it at 7:15.
 5 BY MR. ANDREWS:
 6 Q. So did you hear that, Officer Hudnor?
 7 A. Yes, I did.
 8 Q. And what was Patience's response?
 9 A. I woke up when I heard the loud noise.
 10 Q. Okay. And you caught that on your body mic; right?
 11 A. Yeah, it was on my body mic, correct.
 12 Q. Now, you went into the house, right, from that
 13 point? Or were you in the house when you were talking to
 14 Patience?
 15 A. I was in the house.
 16 Q. Okay. And you encountered Noah Gaston.
 17 A. Correct.
 18 Q. Okay. What is it that you noticed about Noah
 19 Gaston?
 20 A. Um, you know, he was in night clothes, you know,
 21 pajamas, um, had blood on him and, um, just, ah, appeared
 22 to be emotionless, just kind of a blank look on his face.
 23 Q. Now, I want to talk first about what you noticed
 24 about blood on him; right? It wasn't just that he had
 25 some blood on him; was it?

1 A. I guess I don't understand your question.
 2 Q. Well, do you remember where the blood was?
 3 A. It – not a hundred percent.
 4 (Pause.)
 5 MR. ANDREWS: Your Honor, may I approach?
 6 THE COURT: You may.
 7 BY MR. ANDREWS:
 8 Q. I'm going to show you what has been previously
 9 marked as Defendant's Exhibit 12. I don't want you to
 10 comment on that but I do want you to look at that and see
 11 if that refreshes your memory as to where the blood was
 12 when you encountered Noah Gaston.
 13 A. Okay. He did have blood on his hands and feet.
 14 Q. Okay.
 15 Now, when did you allow Noah to get the blood
 16 off his hands and his feet?
 17 A. It was right in the beginning. He -- he went first
 18 to the kitchen and washed his hands.
 19 Q. Washed his hands.
 20 A. Right.
 21 Q. Okay. And was he allowed to get the blood off his
 22 feet?
 23 A. No.
 24 Q. Okay. So when you encountered Noah Gaston, right,
 25 he was freshly from the other room; right?

1 he gave you a basic summary of what he said occurred;
 2 right?
 3 A. Yes.
 4 Q. And that was almost immediately after you had been
 5 introduced to Patience and Patience had then covered her
 6 ears because she didn't want to hear the story; right?
 7 A. No. She had her ears covered when I first went into
 8 the house.
 9 Q. Did she tell you why she had her ears covered?
 10 A. No.
 11 Q. Now, you asked Noah what the situation was; right?
 12 A. I – I asked him what happened.
 13 Q. Okay. And he told you I shot my wife, I thought she
 14 was an intruder.
 15 A. And some more but, yes.
 16 Q. What else did he say?
 17 A. Um, you want me to read?
 18 Q. Sure.
 19 A. Okay. So I heard -- you know, he said he heard
 20 noises down here, referring to being downstairs where we
 21 currently were.
 22 MS. ELAM: I'm sorry. What page are you
 23 reading from?
 24 THE WITNESS: Sorry. Page 2.
 25 A. And it was probably like in the middle of the night

1 A. Correct.
 2 Q. I mean you had seen him come into the kitchen?
 3 A. Yes. From the door that I pointed out earlier.
 4 Q. And you began talking to him and you allowed him to
 5 wash his hands.
 6 A. I don't know if I allowed. I think he went and did
 7 that before.
 8 Q. Okay.
 9 A. I didn't say you can wash your hand or anything.
 10 Q. Okay. I'm curious because before you testified that
 11 he didn't hug his children and he wasn't holding his
 12 children; right?
 13 A. Correct.
 14 Q. But he was also covered in blood.
 15 A. I don't -- he had blood on his hands and his feet
 16 from what I put here. I just don't recall if it was on
 17 his shirt or anything else.
 18 Q. Okay.
 19 You started asking him questions; right?
 20 A. Correct.
 21 Q. And how long did it take you from encountering Noah
 22 Gaston to start asking him questions about what happened?
 23 A. Within a couple minutes I kind of asked him just
 24 what happened.
 25 Q. So on page 2 of the transcript, State's Exhibit 71,

1 and I checked the bed to see if the girls were in bed.
 2 Normally, they come down early if they are going to,
 3 like, make breakfast.
 4 I said uh-hum.
 5 Um, I'm pretty sure it was, like, too early for
 6 that. So after checking their beds, and I was pretty
 7 sure it sounded like a walkie-talkie that I heard and
 8 with noises moving around, so I went and grabbed my gun,
 9 like I was going to be ready and – and did not expecting
 10 to hear or see anyone. And my wife's turned around and
 11 started coming up the stairs. And I shot her thinking –
 12 thinking it was an intruder, like thinking holy shit,
 13 someone is about to come up the stairs at me. Um, just
 14 because of all of – and of the other noises.
 15 Q. I'm going to stop you there; right?
 16 And then you switched the topic; right? You
 17 wanted to know who you were talking to.
 18 A. Correct.
 19 Q. And you wanted to know who his wife was.
 20 A. Correct.
 21 Q. And he wasn't exactly Johnny-on-the-spot with the
 22 answers; was he?
 23 A. No.
 24 Q. He had some difficulty putting that information
 25 together; right?

1 A. Meaning like his wife's name and --
 2 Q. (Nods in the affirmative.)
 3 A. -- and date of -- yes.
 4 Q. Okay.
 5 A. Excuse me.
 6 Q. He made some mistakes about her name.
 7 A. Yes.
 8 Q. They were close but still mistakes.
 9 A. Correct.
 10 Q. And he asked and he -- you asked him her date of
 11 birth and it took him a little bit to figure that out;
 12 right?
 13 A. (Nods in the affirmative.)
 14 (The court reporter asks for a verbal answer.)
 15 THE WITNESS: Yes, yes.
 16 MR. ANDREWS: Sorry. I'll try to remind you --
 17 THE WITNESS: Yeah.
 18 MR. ANDREWS: -- to use words.
 19 BY MR. ANDREWS:
 20 Q. And then there is this comment about the laundry;
 21 right?
 22 A. Correct.
 23 Q. And you actually mistake what he said; right?
 24 A. Yeah -- well, I heard him say something. I said,
 25 "What's that?"

1 THE COURT: Ms. Elam, do you want to be heard
 2 at sidebar?
 3 MS. ELAM: I would just like him to read from
 4 the transcript or ask the officer to read from the
 5 transcript, not summarizing.
 6 BY MR. ANDREWS:
 7 Q. He told you he was checking for noises?
 8 A. "I was checking for noises," correct.
 9 Q. He said, "I didn't grab my gun"?
 10 A. Correct.
 11 Q. "I listened at the top of the stairs."
 12 A. Correct.
 13 Q. And that's when he said, "I heard what sounded like
 14 the walkie-talkie."
 15 A. Correct.
 16 Q. "So I checked on the girls."
 17 A. Yes.
 18 Q. And it was after checking on the girls that he went
 19 to go and do what?
 20 A. And so then I grabbed, you know, I grabbed the
 21 shotgun.
 22 Q. Okay.
 23 And a little bit later he tells you, "Yeah, I
 24 was hearing it upstairs down here."
 25 A. "Yeah, I was hearing upstairs down here," correct.

1 Q. And you asked him, "That's what she said to you?"
 2 MS. ELAM: I'm sorry. What page please?
 3 MR. ANDREWS: Four, right after the line.
 4 A. Yes, I did ask that.
 5 BY MR. ANDREWS:
 6 Q. Okay.
 7 And someone says, "No, I didn't see it"; right?
 8 Do you remember who that was? Did you
 9 recognize the voice when you reviewed it?
 10 A. I'd have to listen to it again but -- I -- no.
 11 Q. That's when you rewalk, when you say to Noah, "Let's
 12 rewind"; right?
 13 A. Yes.
 14 Q. Okay. And that's when you bring him through a more
 15 detailed version of the story; right?
 16 A. Correct.
 17 Q. He tells you again that he was checking for noises.
 18 A. Yes.
 19 Q. And he says I didn't grab my gun when I did that, I
 20 went to investigate first; right?
 21 MS. ELAM: Objection. That is not what he
 22 said.
 23 THE COURT: Mr. Andrews, are you reading from
 24 the transcript?
 25 MR. ANDREWS: I am.

1 Q. What was he referring to?
 2 MS. ELAM: I'm going to object. He doesn't
 3 know what Noah Gaston was referring to.
 4 THE COURT: Sustained.
 5 BY MR. ANDREWS:
 6 Q. Okay. And then there is the conversation between
 7 Bill Andrew, Noah Gaston and Patience; right?
 8 A. It was a conversation between Sergeant Andrew and
 9 Patience.
 10 Q. Okay. And but you're --
 11 A. But we were in the room, correct.
 12 Q. You were sort of interjected into that in the
 13 transcript; right?
 14 A. Yes.
 15 Q. Okay. And you asked, "So at that point, when you
 16 thought you heard the radio or whatever you heard
 17 downstairs, and when you grabbed the shotgun and started
 18 coming down the stairs," what did Noah respond with?
 19 A. "No, I just stood at the top of the stairs, at the
 20 top -- top of the stairs."
 21 Q. Okay. And you asked, "Who -- who was," and you
 22 didn't get to finish your sentence.
 23 A. Correct.
 24 Q. And he responded with...
 25 A. "And I totally didn't expect to see anybody. And

1 then my wife coming up over like turning the stairs, like
 2 it didn't look like my wife."
 3 Q. And you asked, "Where was she coming from?"
 4 A. Correct.
 5 Q. And Noah Gaston responded with?
 6 MS. ELAM: I'm sorry. He should read the whole
 7 question.
 8 THE COURT: Let's go to sidebar, please.
 9 (Sidebar Conference No. 7.)
 10 THE COURT: All right. They have the
 11 transcript, it's in evidence, the tape's in evidence, so
 12 why are we doing it this way?
 13 MR. ANDREWS: Because I need to go through --
 14 THE COURT: Are the lines numbered?
 15 They are not.
 16 MR. ANDREWS: They are not.
 17 MS. ELAM: I'm sorry, are they what?
 18 THE COURT: The lines are not numbered.
 19 All right. So why don't you just read
 20 specifically from the transcript and say, "that a couple
 21 lines down I asked or you asked..." just so that we don't
 22 get objections, "That's not what it says." It may say
 23 that but just make it clear that you had jumped down.
 24 Can you do that?
 25 MR. ANDREWS: I can do that, your Honor.

1 of 18 of the transcript, you say, "Um-hum." And Noah
 2 Gaston says what?
 3 A. "And like her head went down and" dot, dot, dot.
 4 Q. He couldn't finish the sentence; right?
 5 A. No.
 6 Q. And you asked, "So she was coming around which way?"
 7 A. Correct.
 8 Q. And he said, "This way."
 9 A. Correct.
 10 Q. But he made some gesture sort of giving you some
 11 indication of motion.
 12 A. Correct.
 13 Q. Okay.
 14 And then what did he say?
 15 A. Sorry. Did you say "he" or "me"?
 16 Q. I'm saying you.
 17 A. Okay.
 18 "When you say this way your fingers -- your
 19 fingers kind of going everyplace so you" dot, dot, dot.
 20 Q. And he said?
 21 A. "I -- I -- I think it was this way because again,
 22 the way the stairs are, and I would like -- and I would
 23 like check, taking the safety off the gun and -- and --
 24 so, you know, because I heard, you know, the coming."
 25 Q. And you responded with?

1 THE COURT: And you're not going to object if
 2 he does that; right?
 3 MS. ELAM: If he reads the whole question, I'm
 4 not. You can't read half of the sentence and then say
 5 "What did he say" without reading the balance. That was
 6 my objection.
 7 MR. ANDREWS: I'm fine doing that.
 8 THE COURT: Let's do that so we don't have to
 9 come back here.
 10 (Open Court.)
 11 THE COURT: Mr. Andrews, go ahead.
 12 BY MR. ANDREWS:
 13 Q. You had asked, "Where was she coming from?"
 14 And then you made a statement, "When you were
 15 standing at the top of the stairs." And what was Noah's
 16 response?
 17 A. This is at the bottom of page 5, correct?
 18 Q. Yes.
 19 A. Right, yeah.
 20 Q. Okay. Did that make sense to you?
 21 What was the next thing you said?
 22 A. "I know you have got a lot going on, Noah. I know
 23 you have got a lot going on."
 24 Q. Now, a couple of lines down from that, right, on the
 25 next page -- a couple of lines down from that on page 6

1 A. "Um-hum."
 2 Q. And he said?
 3 A. "Or whatever. And so it looks -- it looks as if she
 4 had swung around this corner, um, and then started
 5 heading up the stairs, um."
 6 Q. And you said, "At that point."
 7 A. "At that point," dot, dot, dot.
 8 Q. And Mr. Gaston responded with?
 9 A. "Yeah."
 10 Q. And then you asked?
 11 A. "Between?"
 12 Q. And Noah Gaston said?
 13 A. "Yeah, you know, I think she was even -- that's
 14 not -- that's -- I don't even think that's accurate.
 15 Like I don't -- I think when I got to the top of the
 16 stairs with the gun, I don't think there was anyone on
 17 the stairs. But I don't think she started. And then by
 18 the time I kind of raise the gun like of an end case, she
 19 was like halfway up the stairs or something or -- or a
 20 couple stairs up."
 21 Q. Now, you took that to mean he was trying to place
 22 her on the stairs; right?
 23 A. Sorry. Repeat the question.
 24 Q. You took that to mean that he was trying to place
 25 her on the stairs?

1 MS. ELAM: It's irrelevant what he thought it
2 meant. It speaks for itself.

3 THE COURT: Let's go to sidebar.
4 (Sidebar Conference No. 8.)

5 THE COURT: Mr. Andrews.

6 MR. ANDREWS: It is relevant what he thought it
7 meant because he's trying to explain where it was. And
8 then later the police take that and choose to say he
9 changed his story. I'm trying to say he didn't know what
10 his story was.

11 THE COURT: Okay.

12 So what comes after you say -- your last
13 question to him was "You took that to mean what?"
14 Objection. And what does he say? What comes next from
15 him in the transcript?

16 MR. ANDREWS: Well, I don't have the transcript
17 to read it.

18 THE COURT: Well --

19 MR. ANDREWS: That's -- that's there.

20 THE COURT: Are you trying to get to what he
21 then turned to, or that you were trying to say at that
22 moment he interpreted as he's trying to figure out where
23 she is on the stairs to make the best possible story for
24 his defense, or he is changing his story so he can't be
25 trusted and this is where, in your view, the case goes

1 story multiple times.

2 THE COURT: Okay. Take that second statement
3 about where she is now on the stairs and build the case
4 on that.

5 MR. ANDREWS: That's right.

6 THE COURT: That is what you say is wrong?

7 MR. ANDREWS: That is what I'm saying.

8 THE COURT: And it is relevant -- hold on.
9 It's relevant but at this point the only thing

10 you can do -- you can't say -- you can ask him what that
11 meant to him but you can't say what was Mr. Gaston
12 thinking.

13 MR. ANDREWS: And I don't intend to --

14 THE COURT: I will allow to you ask, given what
15 the State is arguing, as I understand your argument that
16 he is unreliable, he is changing his story because he's
17 guilty.

18 Well, that adds up to part of your argument;
19 right?

20 MS. ELAM: So if the officer says I thought he
21 was making up a story, he is stuck with that answer?

22 THE COURT: Correct.

23 MR. ANDREWS: That's right.

24 THE COURT: Right. Or at that point, he
25 interpreted that as he had now changed his story about

1 sideways? Is that what you are saying?

2 MR. ANDREWS: I'm not sure that I understand
3 everything you just said, your Honor.

4 THE COURT: Okay. I'm trying to figure out why
5 this is relevant.

6 MR. ANDREWS: Right. The reason that this is
7 relevant is because Noah tries to tell --

8 MS. ELAM: I think they can hear.
9 (Open court.)

10 THE COURT: Bruce, can you hit -- it won't come
11 on? (Referencing the air conditioner.)

12 It's late in the day. Okay.

13 THE COURT MARSHAL: It won't come on.
14 MR. ANDREWS: I'll try, your Honor. It is hard

15 for me to modulate.

16 MS. ELAM: Maybe if you told them they could
17 stand up and move around, it would make some sound.

18 THE COURT: There we go.
19 (Air conditioner went on.)

20 MR. ANDREWS: The reason that this is
21 relevant --

22 THE COURT: It went off again.

23 Go ahead.

24 MR. ANDREWS: The reason this is relevant is
25 because the police are going to say that he changed his

1 where she was when the gun went off. And then you do the
2 rest at your peril. Okay?

3 (Open Court.)

4 BY MR. ANDREWS:

5 Q. You took that to mean that Noah Gaston was trying to
6 position whoever that was on the stairs?

7 A. Yes.

8 Q. Now, you go down in the next paragraph --

9 MS. ELAM: I don't know where we are anymore.
10 THE COURT: Just give us the page, Mr. Andrews.

11 MR. ANDREWS: Page 6.

12 THE COURT: There are no lines on this
13 transcript, so it's going to -- you are just going to
14 have to bear with him, Ms. Elam.

15 Go ahead.

16 BY MR. ANDREWS:

17 Q. And you say, "Um-hum"; right?

18 A. There is like three times that I say, "Um-hum."

19 Q. Okay. So let's go -- you say the first one at the
20 first top of the page, right, three lines in?

21 A. Correct.

22 Q. You say the second one, um, I want to say a quarter
23 of the page down?

24 A. Quarter of the page down, yeah.

25 Q. Right?

1 And the next time?
 2 A. About three-quarters.
 3 Q. Yeah, you say, "um-hum"?
 4 A. Um-hum.
 5 Q. And what did Noah say after that?
 6 A. "And it's like it surprised me. It's like, oh, like
 7 someone like, you know, like it was just sort of far off
 8 guess thinking someone was in the house, and all of a
 9 sudden someone is on the stairs and I didn't expect her
 10 to be there."
 11 THE COURT: That is Mr. Rucha's transcript.
 12 BY MR. ANDREWS:
 13 Q. That is when, after that paragraph, you ask him
 14 about the lights; right?
 15 A. Correct.
 16 Q. And he said that there were lights on that he
 17 usually left on; right?
 18 A. Correct.
 19 Q. Did he say that he could see clearly in the light?
 20 A. He says, so you can -- so you can, you know, go up
 21 and down the stairs without falling.
 22 Are you referring to that or are you referring
 23 to --
 24 Q. Well, I'm asking if he said he could see clearly.
 25 A. At daytime --

1 A. I'll say that's an accurate...
 2 Q. Like he wasn't emotionally understanding what was
 3 going on around him?
 4 MS. ELAM: I'm going to object. How does he
 5 know that?
 6 THE COURT: Sustained.
 7 Rephrase.
 8 BY MR. ANDREWS:
 9 Q. You just characterized it as detached; right?
 10 A. You did but...
 11 Q. But you agreed that that's a fair --
 12 A. I'd say yes.
 13 Q. Okay. And is what the two of us together trying to
 14 describe is that he didn't seem to be experiencing his
 15 emotions at that point in time?
 16 A. I would say, based on what I could see in his face,
 17 he was emotionless, just talking like you and I are
 18 talking right now.
 19 MR. ANDREWS: Thank you, Officer Hudnor.
 20 THE COURT: Redirect.
 21 MS. ELAM: Thank you.
 22 REDIRECT EXAMINATION
 23 BY MS. ELAM:
 24 Q. Officer Hudnor, was the very first thing Mr. Gaston
 25 did when he came into the kitchen was to go to the sink

1 Q. Right, when he was talking to you.
 2 A. No.
 3 Q. Okay. And did he ever say that he could see the
 4 figure clearly?
 5 A. He said he saw the figure, yes.
 6 Q. He saw a figure. But did he say he could see it
 7 clearly?
 8 A. I don't believe he said I could see it clearly but
 9 he said I saw a figure, yes.
 10 Q. Okay. Did he say that he could distinguish anything
 11 about the figure?
 12 A. The head -- the figure's head was down.
 13 Q. But that is all he could see?
 14 A. He said after he had shot her he knew it was his
 15 wife.
 16 Q. And that's when he said I could see her falling down
 17 the stairs.
 18 A. Yes.
 19 Q. All right.
 20 Now, in your report, Officer Hudnor, you refer
 21 to Noah as being in shock. Did you mean as a medical
 22 condition?
 23 A. No.
 24 Q. Okay. Would it be fair to characterize what that
 25 meant to you as he was detached?

1 and wash his hands?
 2 A. Yes.
 3 Q. After he washed his hands, did he ever hold
 4 Patience's hand?
 5 A. No.
 6 Q. Or hug her?
 7 A. No.
 8 Q. Is there anything about having blood on his hands or
 9 his feet that would have prevented him from speaking to
 10 her and offering her words of comfort?
 11 A. No.
 12 Q. When you wrote your report, um, as a police officer,
 13 you understand that the police reports you write get
 14 turned over to the prosecutors; is that right?
 15 A. Yes.
 16 Q. And you understand the prosecutors are then bound to
 17 turn all of that material over to defendants and their
 18 lawyers; right?
 19 A. Correct.
 20 Q. And so when you wrote in your statement that you
 21 recalled Patience hearing a loud bang, you knew that
 22 eventually that would get to the defendant and to his
 23 attorneys; isn't that right?
 24 A. Correct.
 25 Q. And you did, in fact, provide that to the

1 prosecutors in this case; isn't that right?
 2 A. Yes.
 3 Q. And you know that the defense attorneys have that
 4 with them now, too, as a result of getting it from us; is
 5 that fair to say?
 6 A. Yes.
 7 Q. And is it also fair to say that there are things in
 8 a transcript that are marked as inaudible?
 9 A. I believe I've seen that multiple times; correct.
 10 Q. Right. And what that means is the transcriptionist,
 11 whoever that person is, doesn't hear or understand what's
 12 being said; is that right?
 13 A. That's what I would take it as.
 14 Q. Okay. And your understanding or you can fill in the
 15 blanks about that inaudible is because you were actually
 16 there in the room and recall Patience saying the loud
 17 noise; right?
 18 A. Loud noise, correct.
 19 Q. All right.
 20 And the other thing that you know that
 21 Mr. Gaston could see, because he told you, is that the
 22 person coming up the stairs had come from a particular
 23 side of the stairs; is that right?
 24 A. Correct.
 25 Q. Because he told you he saw the figure come from the

1 He didn't say that?
 2 A. No.
 3 Q. Okay. But he did provide facts, right, from your
 4 perspective; right?
 5 A. Correct.
 6 Q. And, in fact, he kept correcting those facts during
 7 that conversation; right?
 8 A. Correct.
 9 Q. Now, if I were talking to you and it was raining
 10 outside and someone came in from outside, right, not
 11 having looked out the window, right, came -- and someone
 12 came inside to where you and I were talking and they were
 13 all wet, would you be able to infer that there was water
 14 making them wet?
 15 MS. ELAM: I'm going to object to the relevance
 16 of what Officer Hudnor could infer from that.
 17 THE COURT: It's cross-examination, I'll allow
 18 it.
 19 Go ahead.
 20 THE WITNESS: Can you repeat the question one
 21 more time?
 22 MR. ANDREWS: I hope so.
 23 BY MR. ANDREWS:
 24 Q. If you and I were inside, right, and you didn't know
 25 what was going on outside and someone came into where we

1 left side of the stairs.
 2 A. He did tell me that.
 3 Q. Fair to say that unless you're clairvoyant to know
 4 what side people came from onto the stairs, you have to
 5 be able to see it; right?
 6 A. Correct.
 7 Q. And unless you're clairvoyant, you have to see the
 8 figure to know whether its head is up or down as it turns
 9 the corner; fair to say?
 10 A. Correct.
 11 Q. And fair to say Mr. Gaston didn't admit to you that
 12 he saw his wife at the bottom of the stairs and waited
 13 upstairs to shoot her; did he?
 14 A. Can you read the first part of the question? I
 15 didn't hear it.
 16 Q. Sure. Mr. Gaston didn't say to you, by the way, I
 17 saw my wife all the way coming up the stairs and I shot
 18 her anyway? He never said that to you; did he?
 19 A. No.
 20 Q. Thank you.
 21 THE COURT: Recross.
 22 RECROSS-EXAMINATION
 23 BY MR. ANDREWS:
 24 Q. Now, he didn't say she was coming up the stairs and
 25 I saw her and I shot her anyway; right?

1 were talking and they were soaking wet, right, could we
 2 infer that there was water outside that was making them
 3 wet?
 4 A. Could have been outside, could have been -- yeah.
 5 Q. Could we infer that?
 6 A. Yeah, we could infer that.
 7 Q. Okay. So you can infer things, right, without
 8 knowing all of the details; right?
 9 A. I suppose, yes.
 10 Q. Is it possible that that's what Noah Gaston was
 11 trying to do when you were asking him questions about
 12 what happened?
 13 MS. ELAM: I'm going to object --
 14 THE COURT: Overruled.
 15 MS. ELAM: -- whether it is possible or not.
 16 THE COURT: Overruled, given the redirect.
 17 Overruled.
 18 BY MR. ANDREWS:
 19 Q. Is it possible?
 20 A. Is it possible?
 21 Q. Yeah. That he was inferring facts from what he knew
 22 happened?
 23 A. Yeah, it's possible.
 24 Q. Thank you.
 25 REDIRECT EXAMINATION

1 BY MS. ELAM:
 2 Q. Is it possible he was also making stuff up?
 3 A. It's possible.
 4 Q. Thanks.
 5 MR. ANDREWS: No further questions, your Honor.
 6 THE COURT: Anything else?
 7 All right. You can step down, sir. Thank you.
 8 Is he free to go?
 9 MR. ANDREWS: He is, your Honor.
 10 MS. ELAM: Yes.
 11 THE COURT: He is excused?
 12 MS. ELAM: Yes.
 13 THE COURT: Thank you, sir.
 14 Next witness.
 15 MS. ELAM: Thank you.
 16 Les Baker, please.
 17 (Whereupon, Lester L. Baker enters the
 18 courtroom and takes the witness stand.)
 19 MR. ANDREWS: Your Honor, may I approach?
 20 I just want to leave what was marked as
 21 Exhibit 2.
 22 THE COURT: Sure.
 23 THE CLERK: Please state your name, spelling
 24 your last name for the record.
 25 THE WITNESS: Lester L. Baker, B-A-K-E-R.

1 A. No, ma'am. I retired as a paramedic as of
 2 April 30th of this year.
 3 Q. Are you currently working as a firefighter?
 4 A. I am – no, ma'am. I am currently working as a fire
 5 police. We direct traffic at accidents and fire scenes
 6 and wherever the police want us to.
 7 Q. That was my demonstration that I didn't understand
 8 what you said the first time.
 9 A. Yes, ma'am.
 10 Q. Back in January of 2014, what were you doing for
 11 work?
 12 A. I was a firefighter/paramedic with the Town of
 13 Windham.
 14 Q. All right. And before you retired, how long had you
 15 worked as a firefighter/paramedic?
 16 A. As a firefighter/paramedic, a little over 12 years.
 17 I had been on the department at that time 22 years.
 18 Q. And tell us what kind of specialized training you
 19 have to have to become a paramedic.
 20 A. Um, before I became a paramedic, I was first a basic
 21 EMT, then an advanced EMT. That was a total of about 750
 22 hours of training, another 200 for firefighter. And then
 23 an additional 900 and some odd hours on top of my
 24 advanced to become a paramedic.
 25 Q. All right.

1 THE CLERK: Do you solemnly swear or affirm
 2 that the testimony you shall give in the cause now in
 3 hearing shall be the truth, the whole truth and nothing
 4 but the truth, so help you God?
 5 THE WITNESS: I do.
 6 THE CLERK: Thank you, please.
 7 Be seated.
 8 MS. ELAM: Excuse me, Mr. Baker, I'm just going
 9 to put up a diagram.
 10 LESTER L. BAKER, called by the State, having been duly
 11 sworn, testified as follows:
 12 DIRECT EXAMINATION
 13 BY MS. ELAM:
 14 Q. I'm back.
 15 Mr. Baker, can you tell us what you're
 16 currently doing for work?
 17 A. I'm currently with Windham Fire Rescue, working with
 18 fire police. I retired as a firefighter/paramedic at the
 19 end of April of this year.
 20 Q. Okay. I think you're going to need to slow down and
 21 speak up a little more loudly, please.
 22 A. Okay.
 23 Q. At least for me, if no one else.
 24 All right. I'm sorry, you currently work as a
 25 paramedic?

1 And in your tenure as a paramedic, have you
 2 attended scenes of violent or unexpected deaths?
 3 A. Yes, ma'am.
 4 Q. Can you give us an estimate about how many scenes of
 5 violent or unexpected deaths you have had to attend?
 6 MR. MASON: Objection, your Honor.
 7 THE COURT: Sidebar.
 8 (Sidebar Conference No. 9.)
 9 THE COURT: Mr. Mason.
 10 MR. MASON: Your Honor, I think -- I think by
 11 getting in the numbers that he is talking about, we are
 12 treading on this ground that we are --
 13 THE COURT: I thought you said in chambers that
 14 she could ask about the number of times he's responded
 15 but not what his opinion was.
 16 And I think that other witness was asked,
 17 without objection, how many times he had -- I can't
 18 remember his name. It was number six I think.
 19 MS. ELAM: Dyer.
 20 THE COURT: Dyer. And that was without
 21 objection.
 22 So that's all you are going to do with this
 23 guy --
 24 MS. ELAM: Um-hum.
 25 THE COURT: -- and you're moving on from here?

1 BY MS. ELAM:
 2 Q. Is it possible he was also making stuff up?
 3 A. It's possible.
 4 Q. Thanks.
 5 MR. ANDREWS: No further questions, your Honor.
 6 THE COURT: Anything else?
 7 All right. You can step down, sir. Thank you.
 8 Is he free to go?
 9 MR. ANDREWS: He is, your Honor.
 10 MS. ELAM: Yes.
 11 THE COURT: He is excused?
 12 MS. ELAM: Yes.
 13 THE COURT: Thank you, sir.
 14 Next witness.
 15 MS. ELAM: Thank you.
 16 Les Baker, please.
 17 (Whereupon, Lester L. Baker enters the
 18 courtroom and takes the witness stand.)
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 22 THE COURT: Sure.
 23 THE CLERK: Please state your name, spelling
 24 your last name for the record.
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 2 April 30th of this year.
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 4 A. I am – no, ma'am. I am currently working as a fire
 5 police. We direct traffic at accidents and fire scenes
 6 and wherever the police want us to.
 7 Q. That was my demonstration that I didn't understand
 8 what you said the first time.
 9 A. Yes, ma'am.
 10 Q. Back in January of 2014, what were you doing for
 11 work?
 12 A. I was a firefighter/paramedic with the Town of
 13 Windham.
 14 Q. All right. And before you retired, how long had you
 15 worked as a firefighter/paramedic?
 16 A. As a firefighter/paramedic, a little over 12 years.
 17 I had been on the department at that time 22 years.
 18 Q. And tell us what kind of specialized training you
 19 have to have to become a paramedic.
 20 A. Um, before I became a paramedic, I was first a basic
 21 EMT, then an advanced EMT. That was a total of about 750
 22 hours of training, another 200 for firefighter. And then
 23 an additional 900 and some odd hours on top of my
 24 advanced to become a paramedic.
 25 Q. All right.

1 THE CLERK: Do you solemnly swear or affirm
 2 that the testimony you shall give in the cause now in
 3 hearing shall be the truth, the whole truth and nothing
 4 but the truth, so help you God?
 5 THE WITNESS: I do.
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 18 fire police. I retired as a firefighter/paramedic at the
 19 end of April of this year.
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 21 speak up a little more loudly, please.
 22 A. Okay.
 23 Q. At least for me, if no one else.
 24 All right. I'm sorry, you currently work as a
 25 paramedic?

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 15 but not what his opinion was.
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 18 remember his name. It was number six I think.
 19 MS. ELAM: Dyer.
 20 THE COURT: Dyer. And that was without
 21 objection.
 22 So that's all you are going to do with this
 23 guy –
 24 MS. ELAM: Um-hum.
 25 THE COURT: -- and you're moving on from here?

1 at those.
 2 Q. But the better bet would be to look at both wounds?
 3 A. Or the better bet is to look at everything, of
 4 course.
 5 MR. MASON: Thank you.
 6 No further questions.
 7 THE COURT: Anything else?
 8 MS. ELAM: No, thank you.
 9 THE COURT: Thank you, Doctor. You are all set
 10 to go.
 11 THE WITNESS: Thank you.
 12 THE COURT: You're excused.
 13 MR. ANDREWS: Some of these are admitted. I
 14 don't know which ones.
 15 THE COURT MARSHAL: I don't know either.
 16 MR. ANDREWS: Your Honor, may I approach?
 17 I'm going to leave these on the table. They
 18 have all been marked and shown.
 19 THE COURT: Right.
 20 MR. ANDREWS: So they should be a part of the
 21 record. I believe they were admitted also.
 22 THE COURT: Okay. Next witness.
 23 MR. RUCHA: The State would call Ethel Ross.
 24 (Whereupon, Ethel Ross, present in the
 25 courtroom, takes the witness stand.)

1 Q. And when you first joined Maine State Police, were
 2 you a detective then?
 3 A. No.
 4 Q. When did you become a detective?
 5 A. In 2009.
 6 Q. And as a detective, did you gain or do any special
 7 training?
 8 A. Yeah. Yes. I've been trained in evidence,
 9 interview, interrogation and crime scene processing.
 10 Q. I'm sorry. I did not understand.
 11 A. Crime scene processing.
 12 Q. Is that a specialty in the Maine State Police?
 13 A. It is.
 14 Q. So special people come in and do that?
 15 A. We have what's called an Evidence Response Team and
 16 I used to be a member of it. I am no longer a member of
 17 it but I used to be and at the time of this I was.
 18 Q. So you were – I'm going to call it an ERT for
 19 short. You were an ERT in January of 2016?
 20 A. Yes.
 21 Q. And depending upon the scene as to determine who is
 22 an ERT and who is going to be, for example, just a
 23 primary detective or be the primary detective?
 24 A. I was -- at this -- on this case, I was assigned as
 25 a -- as a primary investigator.

1 THE CLERK: State your full name and spell your
 2 last name for the Court.
 3 THE WITNESS: Ethel Ross, R-O-S-S.
 4 THE CLERK: Thank you.
 5 Do you solemnly swear or affirm that the
 6 testimony you shall give in the cause now in hearing
 7 shall be the truth, the whole truth and nothing but the
 8 truth?
 9 THE WITNESS: I do.
 10 THE CLERK: Thank you.
 11 ETHEL ROSS, called by the State, having been duly sworn,
 12 testified as follows:
 13 DIRECT EXAMINATION
 14 BY MR. RUCHA:
 15 Q. Would you tell us what you do for work, please.
 16 A. I'm a detective with the Maine State Police.
 17 Q. How long have you worked as a police officer?
 18 A. Since 2000.
 19 Q. Have you worked anywhere prior to your time before
 20 joining the Maine State Police?
 21 A. I did. I worked for the Portland Police Department.
 22 Q. And how long did you work for Portland?
 23 A. A little over two years.
 24 Q. So how long have you been with Maine State Police?
 25 A. Since 2002.

1 Q. Okay. So there would be other people who would, as
 2 you said, analyze the scene or collect the evidence?
 3 A. Yes.
 4 Q. So that was not your role on this investigation?
 5 A. Yes, that is correct.
 6 Q. As a Maine State Police detective, what kind of
 7 duties are you called upon to perform?
 8 A. We investigate major crimes, suspicious deaths,
 9 gross sexual assaults and serious child abuse cases.
 10 Q. And I believe you kind of already answered this but
 11 on January 14th of 2016, were you working as a Maine
 12 State Police detective?
 13 A. Yes, I was.
 14 Q. And at that point were you in the Major Crimes Unit?
 15 A. Yes, I was.
 16 Q. And how did you learn of the shooting at 37
 17 Brookhaven Drive?
 18 A. I received a call from our dispatch and Sergeant
 19 Chris Harriman.
 20 Q. So at that point you had a sergeant and his name was
 21 what?
 22 A. Chris Harriman.
 23 Q. And at some point were you assigned a special
 24 investigation in this -- a special role in this
 25 investigation?

1 A. Yes, I was assigned as one of the primary
2 investigators.
3 Q. What does it mean to be one of the primary
4 detectives?
5 A. Well, we have detectives that, um, like -- our way
6 of doing is we usually have two detectives assigned as
7 like the primary role. And then we have other detectives
8 assigned as evidence team members and they will process
9 the crime scene. But we all work together as a team.
10 Q. So when you received knowledge of the shooting at 37
11 Brookhaven Drive, where did you go?
12 A. I went to the Windham Police Department.
13 Q. And approximately what time did you arrive?
14 A. Shortly after 8:00.
15 Q. At that point, Detective, what did you know about
16 the shooting before you got to the Windham Police
17 Department?
18 A. Um, I just know that Windham police requested our
19 assistance in their death investigation and that a
20 husband had shot his wife in their residence.
21 Q. And when you arrived at Windham Police Department,
22 did you interview Noah Gaston?
23 A. I did.
24 Q. And was that interview recorded?
25 A. Yes, it was.

1 Q. And was there anyone else present when you
2 interviewed Mr. Gaston?
3 A. In the interview room, Detective Kris Kennedy was in
4 there with me.
5 Q. And can you just briefly describe where and what
6 type of a room it was you were speaking to Mr. Gaston at
7 at the Windham Police Department?
8 A. Yeah. It's on the second floor. If you come in the
9 main entrance of Windham PD, it's on the second floor.
10 And it's a room -- there is no window in it but there is
11 a table and then there is a chair over here (indicating),
12 a chair right here at the end (indicating), and then a
13 chair on another other side of the table (indicating).
14 Q. And in regards to the placement of the door, we are
15 going to see during the recording we will play in a few
16 moments, um, where were you seated and where was
17 Mr. Gaston?
18 A. So if you walk in the interview room, Mr. Gaston is
19 right here by the door (indicating), Detective Kennedy is
20 right over here in this corner (indicating) and I'm on
21 this side of the table (indicating).
22 Q. Did you say anything to Mr. Gaston regarding his
23 ability to leave the interview room?
24 A. Yeah, I told him that we -- we shut the door for
25 privacy because, as you'll probably figure out during

1 this, I have a hard time hearing and also that he could
2 get up and go to the bathroom if he wanted to but that I
3 wanted to talk to him.
4 Q. Can you tell us approximately what time it was that
5 the interview started?
6 A. Around 8:28.
7 Q. And how many breaks were there?
8 A. There were three breaks.
9 Q. And just so that we give the jury an idea of how
10 long this took, you started about 8:30, a little before
11 8:30, you had three breaks, what time was it that
12 Mr. Gaston left the Windham Police Department?
13 A. I think it was 3:11 when he left.
14 Q. And I think you said that there were breaks in
15 between. Did you spend all that time, basically from
16 8:30 to 3 o'clock, with Mr. Gaston?
17 A. No, I did not.
18 Q. And during these breaks, how long would these breaks
19 approximately be?
20 A. Close to an hour or even over an hour.
21 Q. So at the time when you went in to speak to
22 Mr. Gaston, basically you were told it was a husband who
23 shot his wife, had you been to the scene at all?
24 A. No, I had not.
25 Q. Had you spoken to any witnesses or anything else

1 prior to going in and speaking to Mr. Gaston?
2 A. Not witnesses but I spoke with a Windham officer
3 briefly when I went in just to understand what, ah --
4 what the call was. But I basically had no information.
5 Q. And so during these breaks while Mr. Gaston was
6 taking a break, what were you doing?
7 A. While I'm in there interviewing Mr. Gaston, other
8 detectives are interviewing other people. Um, and so
9 when we have a break, I go out and I speak to the other
10 detectives and they tell me what information they have
11 learned.
12 Q. Now, before we go into detail in regards to the
13 interview from January 14th, I want to speak -- go to
14 some other areas, okay, before we play the interview.
15 Um, did you go to 37 Brookhaven Drive after
16 your interview, so on January 15th of 2016?
17 A. I did.
18 Q. And what was the purpose in going to 37 Brookhaven
19 Drive on the 13th?
20 A. I wanted to see, in close proximity to the day of
21 the event and the time of the event, the following day,
22 what I could see based on what Mr. Gaston had told me was
23 on for the lighting.
24 Q. And who was with you when you went there on the
25 15th?

1 A. Ah, Trooper Libritz was there, Detective Farley and
2 Detective Rose.
3 Q. And what time did you go there?
4 A. I -- we started the, ah -- the process at around
5 6:00 a.m.
6 Q. Why did you choose to go there at 6:00 a.m.?
7 A. Because that was the time that the incident had
8 occurred the previous day.
9 Q. So -- and I apologize for jumping around a little
10 here but during your interview with the defendant on the
11 14th, did you discuss with him the lighting that was on
12 in the house?
13 A. I did.
14 Q. So when you went there on the 15th, were you looking
15 at the lighting in the house?
16 A. Yes, I was.
17 Q. And was there anything you were trying to do with
18 regards to documenting the lighting in the house?
19 A. I was trying to document what you could see with the
20 lights that he -- he said were on.
21 Q. And what did you understand -- well, what lighting
22 did you try to show what could be seen in the house?
23 A. With the corner light in the living room, the light
24 in the media stand and then no light.
25 Q. Okay. So I want to make sure I get this right. So

1 Q. Okay. So you were in the doorway or back in the
2 bathroom?
3 A. In the bathroom like...
4 Q. You said there was a camera?
5 A. Yes.
6 Q. And where was the camera placed?
7 A. It was in front of me. Like right -- right there in
8 the threshold of the door of the bathroom.
9 Q. And which -- which direction was it filming or was
10 it facing?
11 A. It was facing the stairs.
12 Q. And at this point you were at the top of the stairs;
13 is that correct?
14 A. Yes.
15 Q. Now, you said that Trooper Libritz was there. What
16 was the purpose in having Trooper Libritz there?
17 A. She was about the same physical size as Alicia
18 Gaston, the victim.
19 Q. And what did you ask -- or what was Ms. -- Trooper
20 Libritz asked to do during this reenactment?
21 A. Just simply walk up the stairs.
22 Q. And how many times did you have her go up and down
23 the stairs? Just approximately.
24 A. Um, well, with the media light, with the corner
25 light and with the -- no light. And then, um, in

1 you looked when there was no lights on?
2 A. Uh-hum.
3 Q. I'm sorry?
4 A. Yes. Sorry.
5 Q. And in regards to -- you said the corner light,
6 would the corner light be on and any other lights?
7 A. I didn't understand the question.
8 Q. Okay. You said that the corner light would be on?
9 A. Right, in the corner of the living room.
10 Q. Okay. When that light was on, was there any other
11 lights on?
12 A. No.
13 Q. And then you said media light. What light are you
14 referring to there?
15 A. So in the living room of the residence, there is a
16 media stand. And then, um, on the shelf in the media
17 stand there is a light in there.
18 Q. So on the morning of the 15th, you had the media
19 light on basically in the house, in the living room?
20 A. Yes.
21 Q. Where were you positioned during this reenactment,
22 if you will?
23 A. I stood behind one of the evidence technician's
24 cameras up on the second floor on the landing in the
25 bathroom doorway.

1 different times; like we started at 6:00 and went in
2 five-minute increments.
3 Q. At 6 o'clock you have no lights, Trooper Libritz
4 would go up the stairs?
5 A. Um-hum.
6 Q. And then she -- you turn on the corner light,
7 Trooper Libritz would go up and down the stairs; right?
8 A. Right.
9 Q. Okay. So basically at 6:00, 6:05 you would repeat
10 those three times of Trooper Libritz going up and down
11 the stairs?
12 A. Correct.
13 Q. And approximately how long did you do that?
14 A. I think it was 6:20.
15 Q. And just to set the scene, was it dark there that
16 morning at 6:00 when you got there?
17 A. Yes.
18 Q. And was it dark while you were doing this
19 reenactment?
20 A. Yes.
21 Q. What was the weather like compared to January 14th?
22 A. It appeared to be similar.
23 Q. At 6:15 was there any difference between what you
24 saw at 6 o'clock?
25 A. No.

1 Q. Did you notice if there was an outside light source
 2 when you were there on January 15th?
 3 A. I did.
 4 Q. And what outside light source did you see?
 5 A. There is a floodlight in the backyard on a tree.
 6 Q. And was that on for the entire time?
 7 A. Yes.
 8 Q. So I'm going to ask you, Detective Ross, as you were
 9 standing at the top of the stairs looking down, what did
 10 you observe when Trooper Libritz was walking up the
 11 stairs with the media center light on?
 12 A. I could see her come around the corner and come up
 13 the stairs.
 14 Q. And what was Trooper Libritz wearing at this
 15 reenactment?
 16 A. Dark pants, a dark fleece, and she had gray booties
 17 on.
 18 Q. So let's take this a little slower. And I'm going
 19 to say at 6:15, when Trooper Libritz was at the bottom of
 20 the stairs, could you see her?
 21 A. Yes.
 22 Q. And could you try to explain to the jury how well
 23 you could see her at that time?
 24 A. I could tell that it was Trooper Libritz.
 25 Q. How long have you known Trooper Libritz?

1 Q. And could you see her at all when it was no lights
 2 on?
 3 A. I could see someone coming up when there was no
 4 lights, yes.
 5 Q. Okay. And as she got closer to the top of the
 6 stairs, could you see better, or worse, or the same?
 7 A. I could see -- I could see her better as she got
 8 closer to the top of the stairs with the no light.
 9 Q. Now, you indicated that Trooper Libritz was wearing
 10 dark clothes?
 11 A. (Nods in the affirmative.)
 12 Q. Did you learn, as part of the investigation, what
 13 color shirt Alicia was wearing that morning?
 14 A. I did.
 15 Q. And what color was the shirt?
 16 A. She had a pink outer shirt on.
 17 Q. Now, you said that there were -- a camera going on
 18 at the top of the stairs. Did you review those
 19 recordings?
 20 A. I did.
 21 Q. And what did you see in the recording?
 22 A. You couldn't see anything in the recordings.
 23 Q. But when you reviewed it, could you see -- what did
 24 you see?
 25 A. I -- it's just black, you can't see anything.

1 A. Since she started at the State Police. And I'm not
 2 sure exactly how long, um -- she started after me but I
 3 don't know how long.
 4 Q. Okay. The media center light on as Trooper Libritz
 5 was coming up the stairs at 6:15, could you observe her
 6 as she traveled up the stairs?
 7 A. Yes.
 8 Q. And as she traveled along the stairs, did she get
 9 darker, lighter? What did you observe?
 10 A. It's a little bit dimmer in the middle but you can
 11 still see her.
 12 Q. And how about as you she got closer to the top --
 13 A. I could see her face.
 14 Q. At that point you could see her face?
 15 A. Uh-hum.
 16 Q. I'm sorry?
 17 A. Yes. Sorry.
 18 Q. And just to clarify, so at that point all the -- the
 19 only light on in the house, or at least in the living
 20 room, would have been the media center light; is that
 21 right?
 22 A. Yes.
 23 Q. What about when the corner light was on, could you
 24 see her better?
 25 A. Yeah -- yes. Sorry.

1 Q. And you had indicated that Detective Farley was
 2 there as well as Detective Rose. Where was Detective
 3 Rose?
 4 A. He was in the master bedroom -- or what we are
 5 referring to as the master bedroom.
 6 Q. So the room -- if you are coming up the stairs, it
 7 would be the room to the right?
 8 A. Yes.
 9 Q. And where was he positioned in that bedroom?
 10 A. He was positioned, um, behind the camera that was
 11 set up in that bedroom.
 12 Q. And did you go into the master bedroom that morning?
 13 A. I did.
 14 Q. And what could you see when you were in the master
 15 bedroom?
 16 A. So standing behind the camera in the master bedroom,
 17 I could see the bed, I could see the blankets, the
 18 pillows, the folds in the blanket and a binky pacifier on
 19 the bed.
 20 Q. And what light source was there in that master
 21 bedroom when you were in there?
 22 A. The light source was from the flood -- floodlight in
 23 the backyard.
 24 Q. Going back to the morning you learned of the
 25 shooting, had you ever met Noah Gaston before

1 January 14th, 2016?
 2 A. No, I had not.
 3 Q. Had you ever met Alicia Gaston?
 4 A. No.
 5 Q. And had any interactions or knew the children?
 6 A. No.
 7 Q. I believe we have already discussed this but you did
 8 not go to the scene prior to interviewing Mr. Gaston?
 9 A. I did not.
 10 Q. I want to go over some of the general topics that we
 11 are going to hear during the interview.
 12 Did you discuss with Mr. Gaston the family
 13 morning routine?
 14 A. I did.
 15 Q. And what did he tell you about who got up with the
 16 children?
 17 A. Alicia got up with the children.
 18 Q. And did he tell you who was responsible or who
 19 normally got them breakfast?
 20 A. Alicia would.
 21 Q. Did you discuss with Mr. Gaston whether or not he
 22 and Alicia drank coffee?
 23 A. I did.
 24 Q. And what did Mr. Gaston tell you regarding the
 25 routine for coffee?

1 Q. And you said that a part of it was to go get
 2 Alicia's hair cut, did you investigate and determine what
 3 time that appointment was for?
 4 A. Yes.
 5 Q. And when was that?
 6 A. At 9 o'clock.
 7 Q. As part of your investigation in going to the scene,
 8 did you learn of the French doors that were in the
 9 defendant and Alicia's bedroom on the second floor were
 10 they covered or uncovered?
 11 A. Uncovered.
 12 Q. So there was no drapes?
 13 A. No.
 14 Q. During your interview with the defendant, did you
 15 discuss his eyesight?
 16 A. I did.
 17 Q. And did you discuss with the defendant if he had a
 18 requirement to wear glasses while he was driving?
 19 A. He said he did.
 20 Q. So he indicated to you he did have to wear glasses?
 21 A. Yes.
 22 Q. Did you check to see if he had any restriction on
 23 his license?
 24 A. I did.
 25 MR. RUCHA: If I could have just a moment, your

1 A. He said they would make it the night before and then
 2 in the morning they would drink iced coffee.
 3 Q. What was the reason it has to be brewed or was
 4 brewed the night before?
 5 A. It was like an old-fashion kind of coffee maker, so
 6 it took a while. So they would brew it the night before
 7 and then they would just be able to pour it cold in the
 8 morning.
 9 Q. And what did Mr. Gaston tell you about the issue of
 10 getting coffee on the morning of the 14th about whether
 11 there would be coffee available?
 12 A. He said there wouldn't be.
 13 Q. And why did he say that?
 14 A. Because they were watching a movie that night before
 15 and they didn't have time to make the coffee.
 16 Q. Did Mr. Gaston tell you what the plan was for the
 17 morning of the 14th?
 18 A. The plan -- during my interview he tells me that
 19 the -- they had errands to run and they were going to --
 20 Alicia was going to get her bangs cut and then they were
 21 going to go to the mall to return some stuff and then,
 22 um, to Cabela's to have a right-handed knife switched to
 23 a left-handed knife.
 24 Q. And that was at Cabela's; is that correct?
 25 A. Cabela's, yep.

1 Honor?
 2 THE COURT: You may.
 3 (Pause.)
 4 MR. RUCHA: Your Honor, at this point I would
 5 ask the Court to read Stipulation No. 6, please.
 6 THE COURT: All right.
 7 Stipulation No. 6: The parties stipulate that on
 8 the Bureau of Motor Vehicles' records show that on
 9 January 14, 2016, that Noah Gaston was not required to
 10 wear glasses while driving.
 11 Again, this will be with you in the jury room.
 12 MR. RUCHA: Thank you, your Honor.
 13 BY MR. RUCHA:
 14 Q. Detective Ross, during your interview with the
 15 defendant, did you discuss with him what his routine was
 16 regarding his wearing glasses?
 17 A. Yes, he said he wore them all the time.
 18 Q. And did he indicate at what point or what -- when he
 19 would take them off?
 20 A. When he went to sleep.
 21 Q. And did he tell you where it was that he kept them
 22 at night?
 23 A. On his nightstand.
 24 Q. And you had been -- I'm sorry. You weren't there
 25 when you did the interview but subsequently did you go to

1 37 Brookhaven?
 2 A. Yes, after I did.
 3 Q. And was there a nightstand?
 4 A. Um, no.
 5 Q. Okay. What was there?
 6 A. There was a dresser in the master bedroom.
 7 Q. And did you see a pair of glasses?
 8 A. I did.
 9 Q. And where were they?
 10 A. On top of the dresser.
 11 Q. During your interview with Mr. Gaston, did he indicate to you whether or not he had the glasses on or off at the time he shot his wife?
 12 A. Off.
 13 Q. Did you ask him why he didn't put on his glasses when he got out of bed?
 14 A. He said he thought it was the middle of the night.
 15 Q. Did you discuss with Mr. Gaston what lighting was on at the house in the night?
 16 A. I did.
 17 Q. And what did he say were sources of light?
 18 A. He referred to the nightlight in the daughters' room, there were...
 19 Q. Oh, go ahead.
 20 A. The nightlight in the daughters' room, and then the

1 whether he turned on any lights when he went downstairs?
 2 A. Did, um -- I don't understand your question.
 3 Q. Did Mr. Gaston tell you specifically whether he had to turn on any lights when he went downstairs in the middle of the night?
 4 A. No, that's why that light was on.
 5 Q. During your interview with the defendant, did he ever tell you -- I'm sorry. Did he tell you whether he ever alerted his wife to his concern of an intruder?
 6 A. At one point he says that he -- he thought he said something to her -- to her or he was thinking out loud in his head.
 7 Q. I'm sorry. He said he was thinking out loud?
 8 A. Yes.
 9 Q. Detective Ross, are you familiar with shotguns?
 10 A. I've fired one before.
 11 Q. Okay. And just -- can you tell the members of the jury -- I don't have a shotgun. But how loud is a shotgun when you rack it or load it?
 12 A. It's loud. It makes a statement when you rack it.
 13 Q. And at what point is it that a person would rack or load a shotgun?
 14 A. After you feed the shell in, then you would rack it.
 15 Q. And is it necessary to rack it in order to then fire it?
 25

1 floodlight out back, and then the media light downstairs in the media center.
 2 Q. So he referred to three different lights that were on at night?
 3 A. Yes.
 4 Q. Did he give you any indication of how bright that outside light was in the backyard?
 5 A. Yes.
 6 Q. What did he tell about that brightness of that light?
 7 A. He said that he would sleep on his bed in his master bedroom in the opposite direction with his head down by the foot board because the light was -- was bright.
 8 Q. Did he give you any indication of what was -- what he could see from the nightlight that was in the girls' room?
 9 A. He said he could see the hallway landing.
 10 Q. At some point did he tell you whether the doors at night were kept open?
 11 A. Yes. He said they were open.
 12 Q. And what did he tell you about the entertainment center light when that was up and what it allowed them to do?
 13 A. To see to go up and down the stairs.
 14 Q. And did he specifically tell you anything about

1 A. That's my understanding, yes.
 2 Q. Did you discuss with the defendant whether he racked the shotgun that morning?
 3 A. Yes.
 4 Q. And what did he say about where he was when that took place?
 5 A. He said he was by the side of the bed next to the closet.
 6 Q. Now, during this interview, Detective Kennedy was in there with you as well?
 7 A. Yes, he was.
 8 Q. And at that point did he ask Mr. Gaston a question about racking the shotgun near his wife?
 9 A. Yes.
 10 Q. And what did he ask specifically?
 11 A. Well, I'll let you paraphrase. We'll see here.
 12 Q. What did he say?
 13 A. I'm not sure exactly what he said. What did you -- did -- he was asking about racking the shotgun on the side of that bed.
 14 MR. ANDREWS: Objection, your Honor.
 15 THE COURT: Let's go to sidebar.
 16 (Sidebar Conference No. 3.)
 17 MR. ANDREWS: I was going to let it go because it's going to be on the video.
 25

1 THE COURT: Why are we doing -- why are you
 2 reading this Q and A when people are going to hear the
 3 whole thing? Otherwise, she is going to say a lot.
 4 Basically, do you need to have your recollection
 5 refreshed or what he actually asked?
 6 Aren't they going to hear the whole thing?
 7 MR. RUCHA: They are not going to hear
 8 everything, your Honor. As I said, I'm just going into
 9 some of the topics. I will be done very shortly.
 10 THE COURT: So it's going to be cumulative,
 11 this recording?
 12 MR. RUCHA: Beg your pardon.
 13 THE COURT: So it's going to be cumulative,
 14 this recording. I'm just thinking about the time,
 15 Mr. Rucha.
 16 MR. RUCHA: I understand, your Honor.
 17 THE COURT: Okay. So you're going to -- you're
 18 just hitting the highlights.
 19 MR. RUCHA: Exactly.
 20 THE COURT: Okay.
 21 MR. ANDREWS: I just want to make sure those
 22 highlights don't include hearsay statements from other
 23 folks.
 24 THE COURT: Well, a question from an officer
 25 would not be hearsay. But if she is going to say, well,

1 first thing in the morning?
 2 MS. ELAM: That gets us to 5:30.
 3 THE COURT: Okay. That's fine.
 4 And then you have -- do you have anybody after
 5 that? Do you have anybody after that?
 6 MS. ELAM: (Turns head from side to side in the
 7 negative.)
 8 THE COURT: We're doing okay schedule-wise?
 9 MS. ELAM: Yes, our witnesses are up to --
 10 THE COURT: Up to snuff?
 11 MS. ELAM: Yes.
 12 THE COURT: So we are going to finish Ethel
 13 today.
 14 MR. ANDREWS: No.
 15 THE COURT: Just the direct.
 16 MR. ANDREWS: Direct today.
 17 THE COURT: Okay.
 18 MR. RUCHA: Because I still have other
 19 questions because there is portions we are not playing.
 20 So I just want to --
 21 THE COURT: All right. That's fine.
 22 MR. RUCHA: -- ask her questions about that
 23 too.
 24 THE COURT: And then you have got it all --
 25 it's been edited, so it just is smooth, you don't have to

1 the officer said blah, blah, blah, blah, I don't
 2 know what she is going to say he said. That's -- so...
 3 MR. RUCHA: I'll just move on, your Honor.
 4 They're going to see it.
 5 THE COURT: Yeah. They are going to -- it's
 6 audio or video?
 7 MR. RUCHA: This is video. We're going to
 8 actually see the two of them in there and --
 9 THE COURT: And it's all going to be over
 10 there. That's all they --
 11 MR. RUCHA: That's correct.
 12 THE COURT: Are they going to be able to see
 13 anything?
 14 MR. RUCHA: We have done the best we can.
 15 The other --
 16 THE COURT: You can't move it any closer to
 17 them?
 18 MR. RUCHA: And, unfortunately, it's going to
 19 be two hours and 42 minutes. So...
 20 THE COURT: We are starting that today? Doing
 21 it today?
 22 MR. RUCHA: I expect we would.
 23 MS. ELAM: We will finish it today.
 24 THE COURT: The video?
 25 Are you sure you don't want to do the video the

1 go --
 2 MR. RUCHA: No, we have got it. There is one
 3 play. And, your Honor, what we --
 4 THE COURT: With little dead spots. Okay.
 5 MR. RUCHA: What we're actually going to do, if
 6 it's okay with the Court, I'm going to ask for a break.
 7 We've got transcripts for them. Their transcripts go
 8 from 1 to 100, the page numbers. And then we --
 9 THE COURT: Which makes me even more concerned
 10 about you doing this, a preview of the 100-page.
 11 But, okay, let's get going.
 12 (Open Court.)
 13 THE COURT: Go ahead, Mr. Rucha.
 14 MR. RUCHA: Thank you, your Honor.
 15 BY MR. RUCHA:
 16 Q. Detective Ross, did the defendant tell you if the
 17 shotgun was kept in a safe or how he protected it and
 18 secured it?
 19 A. He said that he kept it on the top shelf in the
 20 closet and with a trigger lock.
 21 Q. And did you discuss further with him about the
 22 trigger lock?
 23 A. I did.
 24 Q. And that's a portion we are going to see in the
 25 interview?

1 I'm sorry. That's a portion we are going to
 2 see on the interview?
 3 A. Yes.
 4 Q. Did you discuss with Mr. Gaston his employment?
 5 A. I did.
 6 Q. Did Mr. Gaston indicate to you if the, um -- if he
 7 was thinking about the Pillsbury catering job on the
 8 morning or the night of the 13th and the morning of the
 9 14th?
 10 A. He did.
 11 Q. And what did he say was on his mind?
 12 A. Sorry, I didn't hear you.
 13 Q. That is okay.
 14 What did he say was on his mind as he was
 15 thinking about the Pillsbury job?
 16 A. He was thinking -- one of the things that he was
 17 thinking is that he might give them money back because
 18 they were disappointed with the job that he did.
 19 Q. And did he give you an indication of when it was he
 20 was thinking that? Where he was and when it was.
 21 A. In bed that night.
 22 Q. Did he discuss with you any other job prospects?
 23 A. Um, there was, a -- a restaurant that was possibly
 24 going to open in Biddeford. And he thought that they
 25 were going to hire him as a chef but he had just recently

1 jury?
 2 MR. RUCHA: We are.
 3 THE COURT: All right. Please bring them in.
 4 (Jury present.)
 5 THE COURT: Okay. Please be seated.
 6 MR. RUCHA: Your Honor, by agreement of the
 7 parties we would admit State's Exhibit 66.
 8 THE COURT: All right. State's 66 is admitted
 9 by agreement of the parties.
 10 MR. RUCHA: Thank you, your Honor.
 11 I have provided the jury copies of the
 12 transcript as 66-B. They don't have the numbers on
 13 theirs but except...
 14 THE COURT: All right. Members of the jury,
 15 I'm told that this is a video of the interview of the
 16 defendant by this Detective Ross, Detective Ethel Ross.
 17 And again, this is a transcript. It's given to
 18 you just as an aid to help you listen or -- and view the
 19 video. But if you think there is something different
 20 between what you hear and see on the video and what's on
 21 the transcript, it's the video that should control.
 22 You will have access to this video during your
 23 deliberations if you think you need to listen to part or
 24 all of it as part of your deliberations.
 25 Go ahead, Mr. Rucha.

1 learned that they were advertising for that chef's
 2 position.
 3 MR. RUCHA: Your Honor, at this point can we
 4 take a break and we will go up -- cue up to the...
 5 THE COURT: That makes sense.
 6 Ladies and gentlemen, we are going to take a
 7 break now. When we come back, there is going to be a
 8 video of the interview of the defendant by Detective
 9 Ross. And there will be transcripts provided for you
 10 just like with the other interview.
 11 Is that correct, Mr. Rucha?
 12 MR. RUCHA: That's correct, your Honor.
 13 THE COURT: All right. So we will take a break
 14 so that they can set that up.
 15 MR. RUCHA: Thank you.
 16 (Whereupon, at 2:44 p.m. the jury recesses.)
 17 (Jury absent.)
 18 THE COURT: Be seated.
 19 I wanted to see counsel about a scheduling
 20 issue very briefly.
 21 (Whereupon, there is discussion off the
 22 record.)
 23 (Whereupon, at 2:44 p.m. the court recesses.)
 24 (After recess.) (2:58 p.m.)
 25 THE COURT: All right. Are we ready for the

1 MR. RUCHA: Thank you, your Honor.
 2 With your permission, we would like to play
 3 this for the jury.
 4 THE COURT: You may.
 5 (Whereupon, a recording is played in open court
 6 and stopped.)
 7 BY MR. RUCHA:
 8 Q. Detective Ross, did you -- as part of the
 9 investigation, were these lyrics found on the family
 10 computer?
 11 A. Yes.
 12 Q. Let me show you what has been marked as State's 48
 13 (proffering).
 14 Are they a copy of the lyrics?
 15 A. Yes.
 16 MR. RUCHA: By agreement, your Honor, we would
 17 move State's admission 48.
 18 THE COURT: Mr. Andrews?
 19 MR. ANDREWS: It is. It's by agreement, your
 20 Honor.
 21 THE COURT: Yep. They are admitted. Thank
 22 you.
 23 (Whereupon, the recording is restarted in open
 24 court.)

1 with that.
 2 MS. ELAM: Judge, the transport officer asked
 3 us this morning about transporting him to the view. And
 4 I think --
 5 THE COURT: Do we have a final decision?
 6 MR. MASON: We will get them a final decision
 7 by noon.
 8 THE COURT: Does he really want to go out to
 9 that house?
 10 MR. MASON: He just hasn't given us a
 11 definitive answer yet --
 12 THE COURT: Okay.
 13 MR. MASON: -- but he will know he --
 14 THE COURT: But he will be nowhere near the
 15 jury if he is there. I'm not even sure if he is going to
 16 go in the house if he is there.
 17 MR. MASON: Okay.
 18 THE COURT: It's a very small place.
 19 (Attorney Andrews goes to speak to his client.)
 20 THE COURT: But I understand that he has the
 21 right to be there.
 22 (Counsel confers with the defendant and returns
 23 to sidebar.)
 24 MR. ANDREWS: He is not going.
 25 THE COURT: Okay. All right. Thank you for

1 (Jury present.)
 2 THE COURT: All right. Good morning.
 3 Mr. Rucha.
 4 MR. RUCHA: Thank you, your Honor.
 5 DIRECT EXAMINATION (Continued)
 6 BY MR. RUCHA:
 7 Q. Detective Ross, when we left off yesterday, we were
 8 watching your interview with Mr. Gaston. Last night were
 9 you asked -- let me back up again.
 10 Yesterday you testified that you reviewed video
 11 of the recreation basically of the steps on the 15th?
 12 A. Yes.
 13 Q. When you -- last night were you asked to review
 14 another video from the recreation?
 15 A. Yes.
 16 Q. Do you remember reviewing that video prior to your
 17 testimony yesterday afternoon?
 18 A. I do not.
 19 Q. On the video you reviewed last night, was that
 20 totally black as you testified yesterday?
 21 A. No, it wasn't.
 22 Q. And what could you see on the video you reviewed
 23 last night?
 24 A. I could see Trooper Libritz come around the corner
 25 and come up the stairs.

1 letting us know. I will let transport know.
 2 All right. Ready to go.
 3 MR. ANDREWS: Your Honor, I didn't bring this
 4 up last night. Is there any chance that we could do it
 5 after Arden, even if that meant Tuesday?
 6 THE COURT: We're -- we are a half day behind.
 7 MR. ANDREWS: No, no, I understand that.
 8 THE COURT: It needs to be done at the end of
 9 the day. I think this is the most sensible way to do it.
 10 MR. ANDREWS: I agree with that. I'm just
 11 wondering if Tuesday is a possibility.
 12 THE COURT: Well, yesterday I was here at
 13 sidebar and said Tuesday afternoon and you both corrected
 14 me and said, no, it is Monday afternoon. So that's what
 15 we set in motion.
 16 MR. ANDREWS: I apologize.
 17 THE COURT: I thought you were trying to push
 18 it back and I was fine with that.
 19 MR. ANDREWS: I was trying to. I --
 20 THE COURT: All right. We will talk about this
 21 later. Let's get going.
 22 MR. ANDREWS: Okay.
 23 (Open Court.)
 24 THE COURT: I guess we are ready for the jury,
 25 please.

1 Q. And how many other recreations or times up the
 2 stairs?
 3 A. Um...
 4 Q. I'm not asking for a number but was the -- was the
 5 light source seemed to be consistent each time you could
 6 see her?
 7 A. Yes.
 8 Q. Okay. Detective Ross, you've testified previously
 9 yesterday that your interview with the defendant --
 10 THE COURT: Can you folks hear us through those
 11 phones? (Referring to the hearing assist devices.)
 12 THE COURT MARSHAL: Are they working now?
 13 (Pause.)
 14 THE COURT: Can you hear us now?
 15 Can you hear us?
 16 No.
 17 (Pause.)
 18 THE COURT MARSHAL: All set. Thank you.
 19 THE COURT: Thank you.
 20 Go ahead, Mr. Rucha.
 21 BY MR. RUCHA:
 22 Q. So yesterday we watched a portion of your interview
 23 with Mr. Gaston?
 24 A. Yes.
 25 Q. And was that -- most of it was basically for the

1 first break; is that accurate?

2 A. Yes.

3 Q. You testified yesterday that there were three
4 breaks. Um, was there – how much time do you think you
5 spent with Mr. Gaston during your actual face-to-face
6 with Mr. Gaston out of the – between – I think you
7 started at 8:28 and he left at around 3:00.

8 A. Well, I know we went from 8:28 to – I think it was
9 a little after 10:00 for the first section. And, um,
10 then the second section is like 11 – I'm not sure
11 exactly the exact time. It was around three and a half
12 hours I think.

13 Q. Okay.

14 And from when Mr. Gaston got to Windham Police
15 Department was the recording turned on even before you
16 came into the room?

17 A. Yes, it was.

18 Q. And the recording from when he came into the room to
19 the time when he left the room, was that a recording that
20 you provided to the State?

21 A. Yes, I did.

22 Q. And as you understand how discovery works, was that
23 entire recording turned over to the defense?

24 A. Yes, it was.

25 Q. And that entire time period, including when you

1 house?

2 A. Um, his plan is that he was going to yell, he was
3 going to say something.

4 Q. And we heard on the portion we played yesterday you
5 discussed gun safety with him. Did you discuss that with
6 him any further later in the interview?

7 A. I did.

8 Q. And what did you discuss with him and what did he
9 say?

10 A. Um, I -- I asked him what the number one rule of
11 hunter safety was. And he advised me to identify his
12 target.

13 Q. Did you discuss with the defendant anything more in
14 regards to the distance between him and Alicia at the
15 time that he pulled the trigger?

16 A. I did.

17 Q. Now, we heard on the transcript -- or heard on the
18 recording that he thought Alicia had made it up the first
19 couple of stairs. Did he say anything further about
20 that?

21 A. He -- he said at one point the first couple of
22 stairs, and then he said halfway up the stairs.

23 Q. So halfway up the stairs and then a couple of ways
24 up the stairs? (Verbatim)

25 A. Yes.

1 weren't in the room and other officers were in with
2 Mr. Gaston, sitting with him, was that all transcribed?

3 A. Yes, it was.

4 Q. And the same situation, it was provided to us for
5 discovery?

6 A. Yes, it was.

7 Q. And provided to the defense attorneys?

8 A. Yes, it was.

9 Q. I just want to go over a couple of things and then
10 we will talk about the other portions that we didn't play
11 after the two hours and 40 minutes that we did.

12 During the portion that we did hear, Mr. Gaston
13 said he realized it was Alicia as he shot. Did you
14 discuss that further with him after those portions?

15 A. I did.

16 Q. And what did he say in regards to when he realized
17 it was Alicia?

18 A. He said he realized it was Alicia as soon as he shot
19 and she fell back into the light.

20 Q. In the portion that we played yesterday, he
21 indicated that he had planned if an intruder came into
22 the house. Did you discuss with that with him any
23 further?

24 A. I did.

25 Q. And what was his plan if an intruder came into the

1 Q. Okay. And did he ever indicate, again, as we have
2 heard on the transcript -- or heard on the recording
3 yesterday, that she was like right there?

4 A. Yes.

5 Q. On the recording yesterday, we heard he said he was
6 wearing big socks or some fluffy socks or something like
7 that?

8 A. Yes, he did.

9 Q. Did you discuss that with him further?

10 A. I did.

11 Q. And what did he tell you about the socks?

12 A. He said that he took the socks off right beside the
13 bed and he indicated it was the side that Alicia would
14 have been on.

15 Q. Did he say he took them off anywhere else?

16 A. Yeah, at one point he makes reference to -- in the
17 hallway, he thought he might have taken them off in the
18 hallway there.

19 Q. So he indicated in later portions of the recording,
20 he said he took them off in the hallway and then he said
21 he took them off by the bed?

22 A. Yes.

23 Q. And are you aware of where the socks were actually
24 found?

25 A. Yeah, they were found in that master bedroom by the

1 bed that, um -- that would be considered Alicia's side of
 2 bed.
 3 Q. During your time with Mr. Gaston, did you determine
 4 or learn whether he was right or left-handed?
 5 A. I did.
 6 Q. And what did you learn?
 7 A. He is left-handed.
 8 Q. And can you tell the jury what observations you made
 9 of Mr. Gaston to make that determination?
 10 A. Um, when he signed a form for us, when he, um, drew
 11 the diagram, and when he made the comment about the knife
 12 for changing the right-handed knife for the left-handed
 13 knife, and, um, he also demonstrated how he raised the
 14 shotgun.
 15 MR. ANDREWS: Your Honor, could we have a
 16 sidebar, please?
 17 THE COURT: We can.
 18 (Sidebar Conference No. 2.)
 19 MR. ANDREWS: They are about to show a picture
 20 that purportedly shows -- demonstrates him holding a gun.
 21 The problem is is they didn't play that section in the
 22 video yesterday. They are taking it out of context. And
 23 he never says this is how I held the gun.
 24 MR. RUCHA: Your Honor, I can ask the
 25 foundation questions with Detective Ross.

1 THE COURT: So why do you need to show this
 2 picture of him holding a gun?
 3 MR. RUCHA: Because it shows --
 4 THE COURT: We know he killed her.
 5 MR. RUCHA: Because we are showing, your Honor,
 6 how he was holding up the gun and how it would have
 7 positioned him at the time of the crime.
 8 THE COURT: Was that the question he was asked?
 9 MR. ANDREWS: No, it's not.
 10 And the other issue is, your Honor, is --
 11 sorry -- to put this into context, your Honor, all right,
 12 there is a picture. He is left-handed.
 13 THE COURT: Meg, can you put the transcript --
 14 yep.
 15 MR. ANDREWS: He is left-handed. He has got a
 16 right-handed shotgun. If he's holding the left-handed
 17 shotgun -- or right-handed shotgun as you would hold a
 18 right-handed shotgun, that puts him behind the wall. If
 19 he is holding a right-handed shotgun as if he was
 20 left-handed, he would be in front of the stairs.
 21 MR. RUCHA: All the more reason for why this
 22 elevation --
 23 MR. ANDREWS: No, no, I --
 24 THE COURT: So we need to find out what he was
 25 actually asked to do and what he said his actions were

1 THE COURT: You can ask what?
 2 MR. RUCHA: We can ask the foundation questions
 3 of Detective Ross. But he was asking her -- she was
 4 asking him how he was doing or what he was doing. He was
 5 talking about where he was at the stairs. And he's the
 6 one who is actually moving his hands as he's talking
 7 about bringing the gun up.
 8 MR. ANDREWS: They edited it out of the video
 9 for some strange reason, we're not really sure why. But
 10 now they are taking it out of the context by offering the
 11 still from the video that's edited out.
 12 THE COURT: Do you have an unedited thing to
 13 see what he actually said and what the actual question
 14 was? Because I don't know what she is going to say she
 15 said or he said. Do we know what she is going to say?
 16 MR. RUCHA: We all have copies of the
 17 transcript, your Honor.
 18 THE COURT: Mine is re --
 19 MR. RUCHA: We do. We have copies of the
 20 unredacted. It also has the time stamp right on it. So,
 21 arguably, I could play right around it. But my
 22 preference is to just --
 23 THE COURT: Is there any -- is there any
 24 dispute about the fact that he is left-handed?
 25 MR. RUCHA: No, your Honor.

1 representing --
 2 MR. RUCHA: The defendant could always put on
 3 their side --
 4 THE COURT: Well, let's find out before we get
 5 into a muddle on this.
 6 (Counsel conferring at sidebar.)
 7 MS. ELAM: Do you know where it is? Do you
 8 know the time?
 9 MR. ANDREWS: No, I --
 10 THE COURT: Can we move on and do this at a
 11 break so we don't lose time?
 12 MS. ELAM: I'll speak to him.
 13 THE COURT: Yep.
 14 (Open Court.)
 15 THE COURT: Ms. Elam, may I have that -- I have
 16 that --
 17 MS. ELAM: Oh, I'm sorry.
 18 THE COURT: -- so I can perhaps help out.
 19 MS. ELAM: Yes. Yep.
 20 THE COURT: Thank you.
 21 Go ahead, Mr. Rucha.
 22 BY MR. RUCHA:
 23 Q. Detective Ross, we saw Mr. Gaston writing or drawing
 24 a diagram during the recording; is that right?
 25 A. Yes, he did.

1 Q. Did you preserve that recording or that record?
 2 A. I did.
 3 MR. RUCHA: Your Honor, we have shown counsel.
 4 And if we could admit, by agreement, State's Exhibit 64?
 5 MR. ANDREWS: That's correct, your Honor.
 6 THE COURT: It's admitted without objection.
 7
 8 BY MR. RUCHA:
 9 Q. At the bottom of the screen as we see what's
 10 State's 64, Detective Ross, there is some initials. Who
 11 wrote that?
 12 A. Noah Gaston.
 13 Q. So those are his initials.
 14 And we're going to go from left to right as we
 15 are seeing it on the screen, if that's okay.
 16 A. Yes.
 17 Q. So can you tell us --
 18 Can I see -- do you have that pointer behind
 19 you, please?
 20 Yesterday, when we were watching this on the
 21 recording, it was difficult to see what Mr. Gaston was
 22 showing or writing.
 23 A. Yes.
 24 Q. Can you tell us what this object was as he was
 25 drawing it?

1 A. That's the floodlight.
 2 Q. Floodlight in the backyard?
 3 A. Yes.
 4 Q. So that this is the area of the house; is that
 5 correct (indicating)?
 6 A. Yes, it is.
 7 Q. Okay.
 8 And what is this object (indicating)?
 9 A. The staircase.
 10 Q. And do you remember what this was here (indicating)?
 11 A. The nightlight.
 12 Q. So this would be -- he was drawing what was the
 13 second floor?
 14 A. Yes, he was.
 15 Q. Do you remember what these -- this box represented
 16 (indicating)?
 17 A. I believe that represents -- that -- the bunk beds.
 18 Q. And then this rectangle here would be what
 19 (indicating)?
 20 A. The bathroom.
 21 Q. And then this rectangle up here (indicating) would
 22 be what?
 23 A. The master bedroom.
 24 Q. Okay. Now, we see some items drawn here -- and by
 25 "here" for the record, I'm indicating in that bedroom.

1 There appears to be a small rectangle in the top
 2 left-hand corner of that rectangle or that bedroom; do
 3 you remember what that represented?
 4 A. Yes, that's the dresser.
 5 Q. And I see that there is something written or at
 6 least some writing is on top or some marks on top of it.
 7 What was that to reflect?
 8 A. His glasses.
 9 Q. Now moving to the right from there, we see another
 10 rectangle with some objects or some marks inside of them.
 11 What does that represent?
 12 A. The bed.
 13 Q. And we see circles on top of some lines, if you
 14 will. What were they to represent?
 15 A. Um, Alicia and Prophet.
 16 Q. Okay. So the ones with the arrows -- or I'm
 17 sorry -- the circles at the top, would be whom?
 18 A. Alicia and Prophet.
 19 Q. And the ones further down or towards the bottom of
 20 the diagram, if you will, what was that to represent?
 21 A. Himself, Noah.
 22 Q. Again moving to the right, do you remember what this
 23 object was meant to represent (indicating)?
 24 A. He was telling me that there is a closet there
 25 (indicating), the door, that's the door I think that you

1 just pointed to. And then there is the closet to the --
 2 on the right side of the diagram.
 3 Q. Okay. And we have a mark up at the top next to the
 4 right-hand side of the bed, if you will, or the right of
 5 the bed. What was that mark to reflect?
 6 A. The closet.
 7 Q. And then moving further to the right, I see there is
 8 an X. What is that meant to represent?
 9 A. Where he was standing at the top of the stairs.
 10 Q. So is that a mark that he made or that you made?
 11 A. He made that.
 12 Q. And now moving again to the right, is that where we
 13 had the stairway?
 14 A. Yes.
 15 Q. Now, I notice that the lines on the stairway seems
 16 to be more than one line, did he make more than one line?
 17 A. He did.
 18 Q. And when did he make that line?
 19 A. When he was telling me the different locations on
 20 the stairs that he thought she was.
 21 Q. That she was, meaning Alicia?
 22 A. Yes.
 23 Q. And then I see at the bottom there is some more
 24 marks, again moving to the right on this diagram. What
 25 do we have at the bottom of the stairs?

1 A. Some of those marks represent where she was laying,
2 where she fell. I don't know which marks you are talking
3 about.

4 Q. I'm talking about the bottom of the stairs, these
5 steps.

6 A. Yeah, where she came -- where she ended up.

7 Q. Okay. And I notice I neglected to mention this line
8 (indicating), which appears to be maybe in the closet,
9 what was that to represent?

10 A. Where the gun was.

11 Q. So, Detective Ross, it is hard for me to look at
12 this and walk backwards, but there appears to be one long
13 mark (indicating) at the base of the stairs. What was
14 that to represent?

15 A. Do you mind if I either look at that or get up to
16 look? Because I'm looking at it from a side view --

17 Q. That's fine.

18 A. -- it's hard for me.

19 Q. Would it be helpful if I give you the exhibit?

20 A. Yes.

21 Q. This long mark right here (indicating)?

22 Q. No. This one (indicating).

23 So that you're clear, I'm pointing to this mark
24 (indicating).

25 A. He's showing -- he wrote over top of the marking

1 like he -- where he put her and then he also motions
2 where she is coming from.

3 Q. Okay. So there is marks here, more than one mark?

4 A. Yes.

5 Q. Okay.

6 A. They are like over top of, they overlay each other.

7 Q. And this may help. I want to make sure the jury
8 gets this. Could you take the marker please or take the
9 pointer?

10 (Whereupon, the witness approaches the well.)

11 And you just said that there was something
12 where he drew where she was coming from. What was that?

13 A. Right. That's -- that's these right here

14 (indicating) And they kind of go over the top of that

15 (indicating).

16 But this is where she is, ah -- I believe where
17 he was demonstrating where she came to rest.

18 And then he goes back and forth here to say --

19 because he says at one point she is on the first couple
20 of stairs and then he says she's halfway up.

21 Q. And that was where he was drawing on the diagram?

22 A. Yes.

23 Q. Thank you.

24 And I'm not sure if I asked you this or not.

25 At the bottom of the diagram, if I could while you're

1 still up, what is that?

2 A. I believe that was the nightlight in the girls' room
3 because this is the second -- second floor.

4 Q. You can take your seat. Thank you.

5 (Whereupon, the witness returns to the stand.)

6 Q. Before I move on, you indicated that the X at the
7 top of the stairs, when did he indicate he was standing
8 there?

9 A. He said he was standing there when he shot.

10 Q. Did you discuss with Mr. Gaston an EBT card that was
11 found?

12 A. I did.

13 Q. And what did he tell you about the EBT card?

14 A. He said that she may have had that in her hands when
15 she was walking up the stairs.

16 Q. Did he say he knew how it got on the stairs?

17 A. I can't remember his exact words. I think he said
18 that she may have had that in her hands when she was
19 walking up the stairs.

20 Q. Did you ever ask Mr. Gaston if he had anyone break
21 into any of his homes while he lived in Maine?

22 A. I did.

23 Q. And what was his response?

24 A. No.

25 Q. So we watched your first meeting with the defendant,

1 the first proportion of the interview. How many times
2 before you took the first break did Mr. Gaston ask about
3 his wife?

4 A. Once.

5 Q. And how long was that in the interview?

6 A. It was at 10:06 I believe.

7 Q. So from 8:28, I believe, is when you started?

8 A. Yes.

9 Q. To 10:06?

10 A. Yes.

11 Q. During the second time you came in and spoke to
12 Mr. Gaston, did he ask during that session?

13 A. Yes, he did.

14 Q. And when did he ask in that session?

15 A. I think it was at 11:50.

16 Q. And how close was that to the break?

17 A. Right around the break.

18 Q. So at that point you had been talking to him for a
19 few minutes before he had asked?

20 A. Yes.

21 Q. During the second break or after the second portion,
22 did you get him some lunch?

23 A. I did.

24 Q. And when did you start the third session, if you
25 remember?

1 my conversation with him.

2 MS. ELAM: Oh, I don't think we've heard this
3 second part.

4 MR. ANDREWS: No.

5 THE COURT: All right. He came in. And he was
6 emphatic again that he did not want -- he was not trying
7 to get out of jury service. He says he's listened
8 carefully and he'd like to complete his service. He said
9 he thought it was important to do as a citizen. And so I
10 suggested to him that he go home and talk to his family
11 and figure out what -- it sounded like he was a person in
12 the family that was going to be tasked with going to this
13 place where his -- I guess it's his grandma's husband who
14 passed. She died a year ago. That he is the person in
15 the family who would be tasked to go down there and
16 perhaps gather things up. And so he was feeling that
17 because if there had been a delay in him finding out that
18 there might be an issue. So he was going to come in at
19 8:30 and report back to me.

20 I don't know if he's an alternate or not.

21 MS. ELAM: He is not.

22 THE COURT: Oh, he's not.

23 Who are our alternates?

24 THE CLERK: Juror Number 233.

25 THE COURT: Okay.

1 end. Okay. All right.

2 So, Mr. Andrews, you have some things you want
3 to put on the record.

4 MR. ANDREWS: I do.

5 So yesterday there was a discussion, when we
6 weren't on the record, that any person would do in terms
7 of who the intent was formed --

8 THE COURT: Say that again to me.

9 MR. ANDREWS: That any person, it didn't have
10 to be specific to Alicia Gaston. And I'm taking issue
11 with that. I think that in the case of an intentional or
12 a knowing murder where depraved indifference is not
13 charged, that the intent has to be specific both to the
14 idea of killing and to the idea of a specific person. It
15 can't be just someone who ends up dying.

16 THE COURT: So you're saying you think that it
17 should be. Do you have any case you're citing or any
18 support in the law for that? Or are you saying --

19 MR. ANDREWS: I do.

20 THE COURT: -- you think that is what it should
21 be?

22 MR. ANDREWS: No, no, I do.

23 THE COURT: It should be specific intent as to
24 that particular victim?

25 MR. ANDREWS: Well --

1 THE CLERK: Juror Number 295.

2 THE COURT: Yep.

3 THE CLERK: Juror Number 99.

4 THE COURT: Okay.

5 So the foreman's number -- what's his number?

6 THE CLERK: The foreman is number 108.

7 THE COURT: Okay.

8 MS. ELAM: So I know that two of the alternates
9 are the last person in the front row --

10 THE COURT: Okay.

11 MS. ELAM: -- and in the back row, he's the
12 second person from your end of that row.

13 THE COURT: So you're calling him number 2
14 because number 1 would be the woman in the chair?

15 MS. ELAM: No. I'm sorry, the other end. The
16 end closest to you.

17 THE COURT: Oh, closest to me. I'm sorry.

18 MS. ELAM: Yeah, the other end closest to you.

19 MR. ANDREWS: The one that was requiring
20 everyone to stand up and let that person out. Right?

21 THE COURT: Yep, that's true. That's what --
22 that's how we sat them. So...

23 Okay. So let's see what happens with 156.

24 MR. RUCHA: 156.

25 THE COURT: And then we can discuss that at the

1 THE COURT: Just to be clear, we left her name
2 in everywhere except defense of premises.

3 MR. ANDREWS: Right, I know. And I'm talking
4 about what Meg plans to argue.

5 THE COURT: Okay.

6 MR. ANDREWS: Okay?

7 MS. ELAM: My argument is a soft soap. It's
8 not: By the way, he didn't have to know it was her when
9 he --

10 MR. ANDREWS: No, no, I get that. But this is
11 important to the next issue, which is the waiver of the
12 defenses.

13 THE COURT: So what do you wish me to say? Is
14 it in here?

15 MR. ANDREWS: That instead of a person, that it
16 just be intended to kill Alicia Gaston. I don't know if
17 it made it into these. I have not reviewed these drafts
18 and I have not had this discussion with Mr. Mason because
19 I was formulating this after hours yesterday.

20 THE COURT: All right. Well, why don't we take
21 a look at what's here?

22 MR. ANDREWS: No, I know what they say.

23 THE COURT: The law says a person is guilty of
24 murder if the person intentionally or knowingly causes
25 the death of another human being. That's correct.

1 So it says --
 2 MR. ANDREWS: But that suggests that it could
 3 be any other person.
 4 THE COURT: May I have a second? Hang on a
 5 second.
 6 And you read below: So in order for the State
 7 to prove, first, that Alicia Gaston is dead, second, that
 8 Noah Gaston caused her death, which means that
 9 Ms. Gaston's death would not have occurred but for
 10 Mr. Gaston's conduct and that he acted either
 11 intentionally or knowingly when he caused her death.
 12 Want me to say Alicia Gaston's death?
 13 MR. ANDREWS: Yes.
 14 THE COURT: And that lays that issue to rest?
 15 MR. ANDREWS: Well, I don't know if it lays it
 16 to rest. I mean I'm likely to -- if Meg strays from the
 17 notion that it could be anyone, if he killed anyone on
 18 those stairs, then he is guilty of intentional or knowing
 19 murder, then at the end of that I'm going to -- I won't
 20 interrupt you or -- and that's just not how I do it. But
 21 at the end, I will go and say: I object to that
 22 argument. It's not the law. Depraved indifference
 23 wasn't charged here. I believe that in order for it to
 24 be that generalized, the State would have to prove
 25 depraved indifference. In the old language it was the

1 maybe.
 2 THE COURT: US Supreme Court?
 3 MR. RUCHA: US Supreme Court, where they were
 4 talking about transferred intent. And it was a midwest
 5 state. And they had the same statute we had, the death
 6 of another human being. And the US Supreme Court flipped
 7 the Sixth Circuit, I guess, when they ruled that it had
 8 to be specific intent to the individual. And it's not.
 9 So, for example, in our statute, if Mr. Gaston shoots
 10 someone on the stairs not knowing who that person is, we
 11 don't have to prove who that person is. It could be an
 12 unidentified --
 13 THE COURT: They just have to prove what he
 14 believed.
 15 MR. RUCHA: Right, he intended to kill the
 16 person.
 17 THE COURT: And whether or not -- and you have
 18 to prove that he had no self-defense or imperfect
 19 self-defense.
 20 MR. RUCHA: Right. And if you reply or you
 21 require that it has to be that individual, then you have
 22 to show that that person knew who that person was. And I
 23 don't think that's required in any murder situation. So
 24 if I'm in a crowd --
 25 THE COURT: Does it apply in other crimes or

1 idea of implied malice instead of you could do something
 2 so terrible that, you know, if you were outside -- I
 3 think the example in Maine law is that if you were
 4 sitting by railroad tracks and you had a rifle and you
 5 shot at a train passing by and you ended up killing
 6 someone, that that would require depraved indifference;
 7 you wouldn't know any specific person on that train but
 8 that you would be doing something so terrible that the
 9 intent could be implied.
 10 MS. ELAM: Does anybody want to know what I'm
 11 going to say?
 12 THE COURT: Yes.
 13 MR. ANDREWS: Well, this is really -- I'm
 14 really just making an argument to preserve this, Meg.
 15 So...
 16 MS. ELAM: Yes.
 17 MR. ANDREWS: Okay.
 18 MR. RUCHA: The State objects with that
 19 interpretation.
 20 MR. ANDREWS: I understand.
 21 THE COURT: And can you state why?
 22 MR. RUCHA: Because it is -- because the
 23 statute specifically says the death of another human
 24 being. I had it and I didn't think we were going there,
 25 so I did not print off a Supreme Court decision from 2005

1 just murder?
 2 MR. ANDREWS: Just murder. It's the difference
 3 between the depraved-indifference murder as intentional
 4 murder, right. Depraved indifference -- if they had
 5 charged depraved indifference --
 6 THE COURT: That's not an intentional murder.
 7 MR. ANDREWS: Well, it can be. Under Maine
 8 law, if you look at *State v. Fortune* --
 9 THE COURT: State versus what?
 10 MR. ANDREWS: *State v. Fortune*, *State v.*
 11 *Cummings*, they talk about -- in a way about depraved
 12 indifference and why depraved indifference is there.
 13 Right? And because depraved indifference isn't charged
 14 here, it does matter. It does matter that it's specific
 15 to the individual. I understand what Mr. Rucha is
 16 saying. But what I'm trying to say is that that's not
 17 how Maine has chosen to interpret its murder statute,
 18 including in very recently decided cases like *State v.*
 19 *Cummings*.
 20 THE COURT: Can we come off the record?
 21 (Whereupon, there is discussion off the
 22 record.)
 23 THE COURT: We're on the record.
 24 So go ahead.
 25 MR. ANDREWS: I just want to say that it's a

1 product of -- it has to be intent to the action and
 2 intent to the result. So you have to intend for the
 3 result and the result is to kill a specific person.
 4 That -- I understand you're shaking your heads but that
 5 is -- that is the difference between intentional and
 6 knowing as a specific murder and depraved indifference
 7 murder.

8 THE COURT: Okay. I understand the State
 9 objects to that based on our prior discussion and I agree
 10 with the State that, in my view, the Legislature has
 11 defined the elements of the crime and the elements of the
 12 crime of murder have been enacted as the death of a human
 13 being. I have, however, added language indicating --
 14 placing her name in these instructions where I think it's
 15 appropriate but I do not think that's an element of the
 16 State's burden of proof.

17 MR. ANDREWS: Are you going to prevent me from
 18 saying to the jury that it has to be a specific person?
 19 Because I'm going to do that.

20 MS. ELAM: Yes. That's not the law.

21 THE COURT: That's not the law. Yes, I would
 22 instruct you not to do that. And your objection is
 23 preserved.

24 MS. ELAM: Judge, do you want to know what I'm
 25 going to say about that?

1 right? And we think that by not waiving self-defense
 2 that those standards will, in fact, bolster the State's
 3 case instead of doing the opposite, which is what the
 4 instruction is intended for, to be a defense. It's not
 5 really a defense in this case. There are too many
 6 problems for it to be a defense. The question is is who
 7 did he intend to kill and why.

8 THE COURT: Okay. So I had thought a lot about
 9 this -- and, Mr. Andrews, you've brought this up
 10 repeatedly -- but when I was doing these instructions, I
 11 wanted to make sure that it was clear to the jurors that
 12 if they find that there was not a gross deviation, which,
 13 as I understand, your primary argument, that there was
 14 not a gross deviation, they don't even get to
 15 self-defense.

16 MR. ANDREWS: That's right.

17 THE COURT: He is not guilty of manslaughter --
 18 I mean they only get to manslaughter if they find him not
 19 guilty of murder.

20 MR. RUCHA: Correct.

21 THE COURT: They only get to self-defense if
 22 they find him -- that the State has not proven the gross
 23 deviation. So you are completely protected. Hold on,
 24 let me finish. So if the State is -- you wanted them to
 25 have to be required to prove beyond a reasonable doubt a

1 THE COURT: Yes.

2 MS. ELAM: Okay. So I think this is really my
 3 only passing reference to it: Noah Gaston pulled the
 4 trigger on his Mossberg shotgun in order to kill the
 5 person on the stairs. He succeeded in killing the person
 6 on the stairs. That's murder. And then I go on to say
 7 he killed Alicia on the stairs.

8 That's in conformity with your instruction
 9 about killing a person, intending to kill a person.

10 THE COURT: I don't know why it would matter to
 11 the defense that you are articulating a self-defense,
 12 whether it's --

13 MR. ANDREWS: Because that's the second part of
 14 the argument.

15 THE COURT: -- whether it's Alicia or whether
 16 it's Joe Felon who broke into the house.

17 MS. ELAM: Right.

18 THE COURT: Do you want to be heard about that?

19 MR. ANDREWS: I do.

20 THE COURT: Go ahead.

21 MR. ANDREWS: All right. So that's the second
 22 part of the argument. Right? We think that we should be
 23 able to waive self-defense, right, in its total. We
 24 believe that the instruction is neither helpful nor
 25 useful in analyzing the situation where intent is. All

1 gross deviation. These instructions make it clear that
 2 if they haven't done that, they don't even get to the
 3 self-defense and your guy is not guilty and he walks out
 4 of the courtroom.

5 Do you agree with that?

6 MS. ELAM: (Nods in the affirmative.)

7 MR. RUCHA: With one exception. Even if we
 8 prove the murder in all three elements, they still have
 9 to go to self-defense.

10 MR. ANDREWS: And that's the problem.

11 THE COURT: Hold on a second.

12 MR. ANDREWS: They are right. They are.

13 THE COURT: Okay. But you want -- I thought
 14 you wanted to just argue the manslaughter.

15 MR. ANDREWS: I do, which is why I want to
 16 waive self-defense and argue intentional murder with
 17 respect to a specific person, because that is really the
 18 defense here and that is really what makes sense under
 19 these facts. Right? He didn't intend to kill a specific
 20 person, he intended to kill an intruder, which they say
 21 and the Court has agreed I can't get to unless I ask for
 22 self-defense.

23 THE COURT: Well -- but self-defense has been
 24 in this case from the first time Mr. -- hang on --
 25 Mr. Gaston told the police -- I don't know how many, a

1 dozen times perhaps – that he was trying to protect
2 himself, he was trying to protect his family.

3 So this jury is not stupid. Everybody in Maine
4 and America knows you have the right to defend yourself.
5 It's sort of a sacred thing that people believe.
6 However, that -- because I think that is what these
7 people are going to be thinking about because of the
8 facts, I have to instruct them on the law of self-defense
9 so that they are given the correct law.

10 MR. ANDREWS: Well -- and that's the problem,
11 right? The problem is, is that if we had a pure case of
12 self-defense, right, we'd be arguing that. We don't have
13 a pure case of self-defense that qualifies for --

14 THE COURT: You might. You might if they can't
15 prove that what he did was not reasonable. Right? If
16 the State can't prove -- if they can't disprove
17 self-defense, then he is not guilty.

18 MS. ELAM: (Nods in the affirmative.)

19 MR. ANDREWS: And you mentioned that we've been
20 talking about this from Day 1 and the problem is he shot
21 his wife in her own home on the stairs. And there is --
22 there is -- that's the --

23 THE COURT: True.

24 MR. ANDREWS: -- resistance that I've been
25 trying to avoid with this -- with this discussion from

1 opened with and as he just stated, he is going to argue
2 gross deviation, arguing that it's a reckless act.
3 Basically gross deviation used in *State v. Lowe*, which
4 has kind of muddied the waters for what a reasonable
5 person would do, which is self-defense. That is what our
6 laws have set out. And I think it's appropriate, if he's
7 going to argue self-defense, then the Court has to
8 instruct on what the real law is. He may not like what
9 the law is but that doesn't -- the Judge has -- you have
10 to make sure that the jury is aware of the real law, not
11 a poor man's attempt.

12 MS. ELAM: But if he argues it, he hasn't
13 actually waived it, has he?

14 THE COURT: Right. And I think there's a case
15 that discusses what waiver is. Waiver is not --

16 MR. RUCHA: They are all cited in *State v.*
17 *Ford*.

18 THE COURT: And there is a case that suggests
19 that if you waive it, you cannot argue it.

20 MR. RUCHA: Correct.

21 THE COURT: And you will be doing that,
22 Mr. Andrews.

23 MR. ANDREWS: I won't be doing that with
24 respect to murder; I will be doing that with respect to
25 manslaughter.

1 Day 1 because, in reality, I don't see how we get around
2 it. I don't see how the jurors get around it. Right? I
3 agree that it's been raised. I agree that every one of
4 those people is going to think I have a right to defend
5 my home.

6 THE COURT: Because you said that, by the way,
7 in your opening --

8 MR. ANDREWS: Yeah, no.

9 THE COURT: -- that he had a right to defend
10 his family.

11 MR. ANDREWS: Yeah. And the problem is that
12 the instructions here are not helpful. And that's --

13 THE COURT: When you say "helpful," you mean
14 they don't -- they don't help your --

15 MR. ANDREWS: They don't help --

16 THE COURT: You get to not guilty.

17 MR. ANDREWS: That's right. And that's what
18 I'm trying to say. And I think there's a way around that
19 within the law --

20 THE COURT: How? Waiving the self-defense?

21 MR. ANDREWS: Waiving self-defense and arguing
22 that this is about intent, a specific person with respect
23 to murder, and then gross deviation with respect to
24 manslaughter.

25 MR. RUCHA: And the State's position is, as Rob

1 MS. ELAM: Self-defense is the same either way.
2 THE COURT: Can we come off a second?
3 MR. ANDREWS: Sure.
4 (Whereupon, there is discussion off the
5 record.)

6 THE COURT: Let's go back on the record.
7 I could see a case, Mr. Andrews, where a
8 defendant could effectively waive that. For example, if
9 he had at the time he called the police or he was
10 interviewed by the police if he simply said -- made
11 statements, or invoked, or made statements about other
12 things, like, I feel terrible, what has happened, how is
13 my wife doing, blah, blah, blah, but never said I
14 was trying to protect my family. And if those -- or if
15 those statements had been suppressed for whatever reason,
16 then I think you could tailor a defense where
17 self-defense is not in the case by way of evidence. And
18 you've already told the jury that he is trying to defend
19 his family and there is no way around that. So if you
20 say that -- even if I gave you these instructions, you
21 would have to say that.

22 MR. ANDREWS: Well --

23 THE COURT: Then -- and they would have the
24 right to request that I give a proper description of what
25 the law of self-defense is because it's in the case. So

1 I'm afraid that, given facts of this case, it is in the
 2 case and I have to instruct on that.

3 MR. ANDREWS: And I have articulated a theory
 4 that I believe gets me around that. I understand the
 5 Court's position about what it believes the law is but I
 6 have to -- I have structured this defense with that
 7 theory in mind and I will -- I will, I guess, preserve
 8 that and take that up.

9 THE COURT: Okay.

10 Mr. Rucha, do you have any thoughts on how we
 11 could avoid that issue?

12 You're not willing to simply argue murder or
 13 the lesser included offense of reckless and criminally
 14 negligent manslaughter?

15 MR. RUCHA: No. I think that self-defense has
 16 now been generated and if --

17 THE COURT: Because of the statements.

18 MR. RUCHA: -- and Rob is going to be arguing,
 19 as he's already said, that it's within what a reasonable
 20 and prudent person would do. Once you go there, he is
 21 invoking self-defense.

22 THE COURT: And I have got to instruct on what
 23 the law is.

24 MR. RUCHA: Right.

25 MS. ELAM: And it's reversible error even if we

1 that -- well, it's reasonable to mistake your wife.

2 THE COURT: Well, I think there --

3 MR. ANDREWS: But yet it's possible to do that.

4 THE COURT: It is possible to do that, that
 5 under certain circumstances it would be reasonable to
 6 mistake your neighbor coming in to return something, or
 7 your wife doing something surprising and you react in
 8 such a way. And then the jury has to decide, putting
 9 themselves in the position of the defendant, which I
 10 think is what we are asking them to do under Lowe, think
 11 about your own common sense and experience, I think the
 12 language is, or directs them to consider -- well, that's
 13 for gross deviation, I guess. But it's also I mean a
 14 reasonable person standard; what would a reasonable
 15 person do when they find themselves awoken by the noise
 16 and all the rest of it. So there is a defense, there is
 17 a path to an exoneration here through the existing law.
 18 So I disagree with you that it's impossible on these
 19 facts. But...

20 All right. So I understand that you would --
 21 you wish to elect an all-or-nothing defense even though
 22 you are going to be arguing that he was defending his
 23 family.

24 MR. ANDREWS: And since this is about
 25 preserving the argument, I intend to argue self-defense.

1 agreed.

2 THE COURT: Based on what case? It's not
 3 Bartolo --

4 MR. RUCHA: No, it's -- it starts with a T, I
 5 think.

6 THE COURT: Right. I --
 7 Can we come off a second?
 8 (Whereupon, there is discussion off the
 9 record.)

10 THE COURT: We are back on the record.
 11 Is there anything that you want to say,
 12 Mr. Andrews, to make sure that you preserve this issue
 13 and that it's fully articulated for the record?

14 MR. ANDREWS: Yes, your Honor.

15 So I understand the risks associated with
 16 turning this into an all-or-nothing case. All right?
 17 The idea here is that the case for murder, in my opinion,
 18 has always been weak with respect to intent. He wasn't
 19 trying to kill Alicia Gaston, he was trying to defend his
 20 family. And because of that intent problem and because
 21 of the unique circumstances associated with mistakenly
 22 shooting your wife in your own home that she shares with
 23 you, that that situation isn't addressed by Maine law
 24 because the belief has to be reasonable and the actions
 25 have to be reasonable. I don't see how anyone says

1 I don't have a choice.

2 THE COURT: Okay. All right.

3 Anything else then if I -- but --

4 And it's clear the defense wants me to remove
 5 the defense of premises --

6 MR. ANDREWS: Yes.

7 THE COURT: -- under these circumstances?

8 MR. ANDREWS: Yes.

9 MR. MASON: Your Honor, there are several
 10 places scattered throughout where defense of premises is
 11 mentioned. And that I have red lines under them.

12 THE COURT: Okay. That is helpful.

13 MR. RUCHA: If we go through them, your Honor,
 14 that might be the best, if we can.

15 THE COURT: So page 4, taking out -- I have
 16 added language: If, on the other hand, you conclude the
 17 State has failed to prove blah, blah, blah, then you
 18 would stop and return your verdict. If he is not guilty
 19 of either murder or manslaughter, then you would not have
 20 to consider the issue of self-defense.

21 MR. RUCHA: Okay. But before that I don't
 22 think you can pull out the "then you would need to" if
 23 the first part is, "if you find the State has proved the
 24 following three facts --"

25 THE COURT: Yeah.