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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Appellate Case No. 2020-000049

The Honorable Thomas Anthony Russo

The State of South Carolina Respondent,

v.

Royal Daniel Williams, III Appellant.

RECORD ON APPEAL

VOLUME I OF IV

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5 **C O P Y**
B E F O R E: The Honorable Thomas A. Russo
6 June 13, 2019

8 STATE OF SOUTH CAROLINA,
9 Plaintiff,
10 vs.
11 ROYAL WILLIAMS, III,
12 Defendant.

14 || APPEARANCES:

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16 Attorney for the Plaintiff.

17
18 Thurmond Brooker, Esq.
Attorney for the Defendant.

21 Natalie Dahl, RPR

22 Court Reporter:

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MOTIONS

P-R-O-C-E-E-D-I-N-G-S

THE COURT: We're dealing with pretrial matters?

MR. BROOKER: This is correct.

THE COURT: Solicitor?

MR. CLEMENTS: Yes, Your Honor.

THE COURT: Are these State's motions or defense motions?

MR. CLEMENTS: Mr. Brooker's motions.

THE COURT: Mr. Brooker, then I recognize the defense, sir.

MR. BROOKER: Thank you, Your Honor. We have a couple of motions, Your Honor, that we will present to the Court this morning. Of course is, that I filed at least four of them, something written, explaining the four of them. If you don't have them in the file, I have a copy I can provide to you.

THE COURT: I think I have them.

MR. BROOKER: The first one that I intend to deal with or argue before the Court is there is a motion to invalidate 2004 -- excuse me, February 4, 2019 dated search warrant for the VA of the defendant based upon Franks versus Delaware. I think my motion has Delaware versus Franks; excuse me, that is Franks versus Delaware. That is the specific caption of the case.

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MOTIONS

1 Your Honor, this motion is -- obviously, Your
2 Honor is aware of the fact that under the Franks
3 versus Delaware under the 4th and 14th Amendment, it
4 gives the defendant the right to be able to challenge
5 the veracity of the affidavit portion of any search
6 warrant that was obtained by law enforcement. In this
7 particular case, I think on February 4, 2019, law
8 enforcement, specifically I think it was Investigator
9 McClendon (phonetic), who went before I think Judge
10 Brown, and of course the circuit court Judge Brown, to
11 obtain search warrants to obtain DNA evidence from
12 Mr. Williams to compare it to DNA evidence that they
13 collected at the time of the processing of the
14 homicide scene I think back in January of 2016.

15 Of course is, this warrant is -- obviously this
16 motion is based on the fact that we believe that there
17 was falsehoods, at worse; and, at best, materially
18 misleading information provided to Judge Brown in that
19 search warrant. Of course is, we believe that that
20 materially misleading information, false information,
21 was the primary basis for the judge reaching a
22 conclusion that probable cause existed to obtain
23 Mr. Warren's (sic) buccal swab.

24 I think under Franks versus Delaware, it sets out
25 a two-step prong that anyone seeking a challenge of

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MOTIONS

1 the affidavit portion of a search warrant has to
2 satisfy, and of course that two-prong test is listed
3 in the motion itself on Page 3 at Paragraph 10. It
4 says that the challenger must first allege specific
5 allegations of deliberate falsehood or of reckless
6 disregard for the truth as to the statements included
7 within the affidavit, and those allegations must be
8 accompanied by some offer of proof.

9 Of course is, that the specific allegations -- of
10 course on Page 1 of the motion I included the entire
11 text of the affidavit that was sworn to by Officer
12 McClendon (phonetic). And of course it says on -- on
13 January 23 of 2016, Florence County Sheriff's Office
14 responded to 3618 Century Drive, Apartment A, in
15 Florence, South Carolina to investigate the homicide
16 of Joseph -- excuse me, Cherilyn (phonetic) Joseph,
17 who had been shot in the head.

18 Of course the portion that we think are
19 falsehoods, or at least materially misleading, is that
20 the investigation revealed that Joseph had been in the
21 company of Williams in the hours leading up to the
22 discovery of her body in her home. The investigation
23 further revealed that Williams had taken a taxi from
24 Joseph's home just before her body was discovered by
25 her mother, and that Joseph had expressed fear of

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MOTIONS

1 Williams and that he was attempting to remove text
2 messages from the records of her phone calls involving
3 Williams from the cell phone the morning of her
4 murder. The investigation of the crime scene revealed
5 presence of a condom, which contained semen.

6 I'll start with the first sentence of the
7 investigation. It revealed that Joseph had been in
8 the company of Williams in the hours leading up and to
9 the discovering of her body in her home. Of course
10 basically what happened in this case, Your Honor, is
11 that Ms. Joseph, who was the victim in this case, I
12 think on the morning of January 23 of 2016, I think
13 got up early that day, as far as we can tell, and went
14 to work at Starbucks off of West Palmetto Street. My
15 understanding is that from her mother, and I think
16 also from her co-workers who were interviewed that
17 day, that she was scheduled to get off of work around
18 2 o'clock. Of course is, as far as we can tell, and I
19 think there is no dispute with respect to these facts,
20 she did get off of work around 2 o'clock.

21 Now, while she was at work, she discussed with
22 some of her co-workers that she had met a man -- well,
23 it doesn't specifically say a man, but met a person I
24 think on this hook-up website or dating website,
25 however you want to describe it. Of course is, all of

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MOTIONS

1 this is contained within Investigator McFaddin's
2 (phonetic) report, which was attached to the motion.
3 Of course is, I think that Investigator McFaddin
4 interviewed all of her co-workers that she talked with
5 that day, and of course is that various co-workers
6 explained to Investigator McFaddin that Ms. Joseph had
7 advised them that the gentleman or person, you know,
8 that she had met on the app, that that person spent
9 the night at her house, and that of course is that
10 they were involved in a relationship. That when she
11 left I think to go to work that morning, she noticed
12 text messages, phone call messages, other evidence of
13 the communication between herself and this particular
14 person, this unidentified person, that that
15 information had been removed from the phone.

16 Of course she also advised her co-workers,
17 various co-workers, that the unidentified person also
18 behaved strangely, that that person washed the sheets
19 that they slept in, that the person slept in the
20 clothes that he had worn when he had come to the
21 house, and she thought all of this was strange. She
22 advised them that they were involved in a
23 relationship. This unknown person tended to be
24 aggressive, and also is that this unknown person
25 wanted a relationship beyond what she was interested

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MOTIONS

1 in. She was interested in a casual relationship.
2 This person wanted something more than that. So she
3 explained all of this information.

4 Investigator McFaddin was meticulous in asking
5 them, well, did she identify who this person was, and
6 did she state a name, and each and every one of the
7 witnesses that Investigator McFaddin interviewed, the
8 co-workers, they all indicated to Investigator
9 McFaddin that the identity of the person was not
10 disclosed by Ms. Joseph and that they did not
11 otherwise know who the identity of the person was,
12 each and every one of the co-workers. And, of course
13 is, that my understanding is that those co-workers
14 were Amber Morgan told Investigator McFaddin that he
15 could not -- she could not identify who this unknown
16 person was.

17 THE COURT: Mr. Brooker, and I apologize, I
18 didn't mean to interrupt. If you could note your
19 position where you are at right this minute and give
20 me one moment, I have an emergency I need to take care
21 of.

22 (A recess was taken.)

23 THE COURT: Thank you, Mr. Brooker. You might
24 want to back up a sentence and then -- go ahead.

25 MR. BROOKER: Thank you, Your Honor.

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MOTIONS

1 Like I said, Investigator McFaddin was meticulous
2 in that when he interviewed all of the co-workers that
3 saw Ms. Joseph the day that she was found dead, that
4 all of the co-workers had specifically indicated to
5 Investigator McFaddin that Ms. Joseph did not give the
6 identity of the unknown person who allegedly spent the
7 night at her house and was still waiting for her at
8 her home to talk when she got off work at 2 o'clock.

9 I think the first person she talked with, Your
10 Honor, was Jasmine Cooper. Investigator McFaddin also
11 talked with Hanna Harver, Jodie Wheeler, Sarah Warren,
12 Amber Morgan, Chelsea Branton. I think each and every
13 one of them was asked that same question, did
14 Ms. Joseph identify who the person was, and each and
15 every one says, no, that Ms. Joseph did not identify
16 who the person was.

17 I think that during the course of this
18 investigation is that it was either Investigator
19 McFaddin and/or also I think Investigator Collins also
20 spoke with Ms. Joseph's mother, and of course asked
21 her whether or not she had any idea who this person
22 could have been. Of course is, my understanding, at
23 least from Investigator Collins' report and also from
24 Investigator McFaddin's report, that she indicated
25 that she had no idea who this person could be, and

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MOTIONS

1 that she didn't know anyone who would want to harm her
2 daughter.

3 It was also determined during the investigation
4 that on the day that Ms. Joseph was murdered, that a
5 taxicab came to Ms. Joseph's residence and picked up a
6 male. If my memory serves me correctly, that taxicab
7 came to Ms. Joseph's residence around 3:40, somewhere
8 in there, 3:30, 3:40. It had been called to pick up
9 someone at that residence. Of course is, the taxicab
10 driver indicated -- when she was interviewed by
11 Investigator Collins, the taxicab driver indicated
12 that she picked up the male, and then, of course is,
13 that the male was wearing I think a cap and a hoody.
14 Of course is, that she picked up that male, and of
15 course took that male to a street and dropped him off
16 on a street in Darlington, South Carolina.

17 Now, I think as part of their investigation, they
18 had obtained access to Ms. Joseph's phone and, of
19 course is, they showed various pictures that was
20 contained within Ms. Joseph's phone, various males
21 that she had on her phone, and asked not only the
22 driver, but the driver also had two passengers --
23 taxicab driver also had two passengers in the vehicle
24 with her when she picked up this unknown person.

25 Of course they showed those photographs that they

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MOTIONS

1 obtained from Ms. Joseph's phone to the driver and
2 also to the passenger -- at least one of passengers.
3 And, of course is, I think Investigator Collins'
4 investigative report, Investigator Collins stated that
5 both said that the photographs of the men that they
6 showed to them had similar features of a person they
7 had picked up, but of course he could not say that any
8 of those persons were the passenger.

9 They also later showed the passenger and also the
10 driver of the taxicab a picture of Royal Williams, who
11 is the defendant. And of course is, I think in either
12 McFaddin or Collins' report, they specifically stated
13 that they both said that he looks similar to the
14 person that they picked up, but they could not say
15 that it was that unknown person.

16 They also talked with as part of their
17 investigation to Ms. Joseph's sister, who said at the
18 time in which Ms. Joseph had left from work, I think
19 on January 23rd, 2019, to go home, that she
20 discussed with her that she would be talking with this
21 person that she was associating with that was at her
22 home. Of course they asked Ms. Joseph's sister
23 whether or not Ms. Joseph provided them with the
24 identity of the person, and she said that, no,
25 Ms. Joseph had not and that they could not otherwise

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MOTIONS

1 provide any identifying information.

2 In short, no one was able to provide the identity
3 of this particular person, whatsoever. So the
4 identity of that person still has not been positively
5 identified, or was not positively identified at the
6 time in which Investigator McClendon went to Judge
7 Brown to seek a search warrant to obtain the buccal
8 swab from Mr. Williams so they can compare it from DNA
9 from a condom that was collected at the scene.

10 So in the affidavit portion of the search
11 warrant, when Investigator McClendon said to Judge
12 Brown in the search warrant, the investigator revealed
13 that Joseph had been in the company of Williams, and
14 of course Joseph is the victim in this case, Cherilyn
15 Joseph, and of course Williams is the defendant, Royal
16 Williams. When that affidavit says the investigation
17 revealed that Josephs had been in the company of
18 Williams in the hours leading up to the discovery of
19 her body in her home, that information was false, at
20 worse. That information obviously was false, is that
21 they had absolutely no witnesses, no information that
22 positively identified Williams as this unknown person
23 who was at Ms. Joseph's home when she came home
24 roughly around 2 o'clock this afternoon from work.

25 It goes on to state that the investigation

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MOTIONS

1 further revealed that Williams had taken a taxi from
2 Joseph's home just before her body was discovered by
3 her mother, and that Joseph had expressed fear of
4 Williams. Now, when it says that Joseph had taken a
5 taxi from -- excuse me, Williams had taken a taxi from
6 Joseph's home just before her body was discovered
7 later on by her mother; again, false information. And
8 of course is -- of course is that I cannot say whether
9 or not it was intentionally false, but even if it was
10 not intentionally false, obviously it was given with
11 reckless disregard for the truth because, in fact, at
12 that time they had interviewed the taxicab driver,
13 also interviewed the passengers within that taxicab
14 and also showed both the driver and also the
15 passengers a photograph of Mr. Williams and, at best,
16 they said he kind of looks like the person that we
17 saw, but we can't say for sure that this is the
18 unknown passenger.

19 But, of course is, that they state this
20 information to Judge Brown that Williams had been
21 identified as this person with no qualification that
22 we interviewed all of these people and, of course is,
23 that -- also, if I might add, Your Honor, and
24 interrupt myself, that when -- in Franks versus
25 Delaware underneath that first prong, Franks versus

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MOTIONS

1 Delaware also states that the first prong is based
2 upon rather or not false information or information
3 that was -- information that was given with reckless
4 disregard for the truth was included in the affidavit,
5 and it also says that the first prong may also be
6 satisfied -- should be considered. And I'll read it:
7 This challenge may be based upon false information
8 being included in the search warrant affidavit, or
9 exculpatory material being omitted from the affidavit.

10 And, of course is, I think the reason why Franks
11 says it's not only based upon false information
12 included in the affidavit, but also could be based
13 upon exculpatory information within the affidavit
14 because it may give a false or misleading impression.

15 And, of course, in addition -- in addition to
16 telling the judge that the identity of this unknown
17 person had been established as Williams, and in
18 addition to that they failed to inform Judge Brown
19 that they had specifically talked with the cab driver
20 and passenger and said they could not identify
21 Williams as the person. They specifically talked with
22 Williams' (sic) co-workers, and they always said that
23 the identity of the unknown person within the house
24 had not been identified.

25 In addition to that, Your Honor, they also failed

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MOTIONS

1 to advise the judge that they also took a report --
2 the statement of a taxicab driver, and that the
3 recorded statement of the taxicab driver did give a
4 description what she believed -- believed or the
5 general features, you know, of this unknown person
6 that was picked up from Ms. Joseph's apartment. And,
7 of course is, specifically there was one thing that
8 the taxicab driver said that was completely
9 inconsistent with the description of Mr. Williams.
10 The taxicab driver said, and I quote, that the person
11 had what she described as good hair pulled back in a
12 ponytail. Of course is, the investigators at this
13 time had photographs of Mr. Williams, and of course
14 all of the photographs -- and of course we have
15 photographs as well, too -- all the photographs of
16 Mr. Williams ensure that -- Mr. Williams had a
17 challenge with respect to hair for a long time, that
18 he has always been relatively bald or close to bald,
19 that he had never had long hair pulled back in a
20 ponytail. No evidence of that, whatsoever. That was
21 an inconsistent description with the photographs that
22 they had of Mr. Williams at that time, but they
23 excluded that information. I imagine they excluded
24 that information because they wanted to make
25 absolutely certain that this was a slam dunk, that the

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MOTIONS

1 judge would sign the warrant giving them authorization
2 to obtain this DNA evidence.

3 So there is not only falsehoods in the affidavit,
4 but also information that was exculpatory information
5 that was excluded from the affidavit that did not give
6 Judge Brown the full picture. I would submit that
7 that information was excluded to make it easier for
8 Judge Brown to reach the conclusion that probable
9 cause existed.

10 The affidavit goes on to say -- I think we
11 covered that the investigation further revealed that
12 Williams had taken a taxi from Joseph's home just
13 before her body was discovered by her mother, and that
14 Joseph had expressed fear of Williams and that he was
15 attempting to remove text messages and recordings of
16 phone calls involving Williams from her cell phone the
17 morning of the murder. That is the information they
18 got from Ms. Williams' co-workers -- excuse me, from
19 Ms. Joseph's co-workers, that Ms. Joseph allegedly
20 told them the day that she was murdered.

21 Of course if you go back and take a look at
22 Investigator McFaddin's statement, and I already
23 repeated this, each and every one of those persons
24 when Investigator McFaddin asked can you identify who
25 this person was, did Ms. Cherilyn tell you who this

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MOTIONS

1 person was, and they all said, no. So when
2 Investigator McClendon says in this report, you know,
3 that the statements -- those statements that have been
4 said by Joseph's co-workers, and I think Joseph said I
5 fear this person, this person was deleting text
6 messages and e-mails messages and other contact
7 information from my phone the morning before she went
8 to work, the identity of that unknown person was never
9 identified. So when they told Judge Brown that those
10 statements allegedly made by Williams -- excuse me,
11 allegedly made by Joseph to her co-workers on the day
12 that she died, that those statements was made about
13 Williams, that was absolutely false; at best, a
14 reckless disregard for the truth of the facts they had
15 in their hands because each and every one of those
16 persons says we don't know who she was talking about.
17 We know it was a person that -- she explained it was a
18 person, you know, that she was associating with --
19 whom she discovered on this app, Badoo, but she never
20 disclosed the identity of this person. That was
21 absolutely false or, at best, a reckless disregard for
22 the truth.

23 The affidavit goes on to say that the
24 investigation of the crime scene revealed the presence
25 of a condom which contained semen. That statement was

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MOTIONS

1 partially true, and partially false. The
2 investigation of the crime did reveal an open condom
3 at Ms. Joseph's home on the night they processed the
4 crime scene, so that was true. The part that is not
5 true is that they submitted that condom to their
6 forensic experts, and I think specifically the lab
7 at -- I think the Richland County forensics lab, I
8 think they did the examination of that condom. And,
9 of course is, they got back a report I think about two
10 years or more before they requested -- went before
11 Judge Brown to obtain this search warrant.

12 In that report, and I think it was March 1, 2016,
13 if memory serves me correctly, that was the date of
14 the analytical report from the lab from Richland
15 County Sheriff's Department. Of course is, one of the
16 first things he says at the very top of the analytical
17 report is that there was no -- that the condom did not
18 contain, you know, any seminal fluids, semen fluid.
19 So they knew that, but of course they still put that
20 in there because it had a greater impact.

21 There was a DNA found on the condom; it was not
22 semen. It was not semen. I think if you look at the
23 investigative reports, the investigative reports of
24 Investigator McFaddin, the investigative reports of
25 Investigator Collins and the investigative reports of

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MOTIONS

1 McClendon, no one identified this unknown person.
2 They had no information to identify who this unknown
3 person was. They had suspicions, and of course they
4 had circumstantial evidence; that is true and good,
5 but you can't tell the judge that this person has been
6 identified when you have not identified who this
7 person is.

8 Now, it would be true for them to say in the
9 affidavit portion that we have suspicions and this is
10 the evidence to cause us to believe that this unknown
11 person might be Williams, and they would have put that
12 in the warrant, that this is the evidence we have of
13 our suspicion, but they told the judge that he had
14 been identified, this person was identified as
15 Williams, and that was false.

16 Now, if the judge finds the first prong was
17 satisfied of Franks, and that is the information
18 contained within the search warrant was false or that
19 it was asserted to, you know -- it was asserted in
20 reckless disregard for the truth, and I think there
21 was more than enough evidence to prove that, then of
22 course the Court moves to the next prong.

23 The next prong says that if you exclude -- if you
24 exclude the false or reckless information that was
25 included within the search warrant, if you exclude

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MOTIONS

1 that information, the Court has to make a
2 determination as to whether or not the remaining
3 information contained within the affidavit still
4 satisfied probable cause. If it does, if the
5 remaining information still satisfies probable cause,
6 you know, I think this will would be a harmless error
7 situation because you could probably make the argument
8 that, you know, by removing that false information,
9 the judge still could have found probable cause on the
10 remaining truthful or factual information.

11 Now, if you exclude that information, this is
12 what -- this is what would be left, Judge. What is
13 left is on January 23, 2016, Florence County Sheriff's
14 Department responded to 3618 Century Drive,
15 Apartment A, in Florence, South Carolina to
16 investigate a homicide of Cherilyn Joseph, who had
17 been shot in the head.

18 Of course you would go down to -- that a condom
19 had been found at the crime scene, which is accurate,
20 and -- from which a DNA profile of an unknown male was
21 abstracted. The DNA profile of Williams obtained from
22 the buccal swab of the inner cheek, slash, mouth would
23 be compared to the DNA profile of the unknown male,
24 would not satisfy probable cause because there would
25 be absolutely nothing in which the judge could

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1 determine why they would suspect that if they were to
2 obtain a DNA from Williams, that that DNA might
3 have -- or might match the DNA found at the scene.
4 They have absolutely nothing that would be contained
5 in the facts that is left to answer to the judge, Why
6 Williams? Why do you want this DNA from Williams? So
7 the judge would have absolutely nothing to base that
8 on, because all of the information that they put in to
9 explain why they would want this information, want
10 this DNA from Williams, why do they think it may be
11 necessary to get DNA to match to see if there would be
12 a match or to the DNA that they had, there would be
13 nothing for the judge to base that conclusion on. It
14 would simply say that someone was killed, that DNA was
15 found at the scene and we want Royal Williams' DNA to
16 do a comparison. That is what is left, but it would
17 not explain why.

18 Also, I'll say this, Your Honor, because in
19 Franks -- Franks also goes on to say -- and this is
20 where I disagree with Franks, so I'll let you decide
21 that -- Franks also goes on to say with respect to the
22 first prong, and that is deliberate falsehood or
23 reckless disregard for the truth of the matter
24 asserted, it says the first prong has to be proven by
25 the defendant by a preponderance of the evidence. Of

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1 course this was done back in -- I think Franks was
2 heard back in 1978. The reason why I would challenge
3 that portion of Franks, even though it is the supreme
4 court, that I would argue that it is inappropriate
5 burden shifting. I think once the defendant has
6 established a prima facie showing that the parts of
7 the statement that we just mentioned are actually
8 false or was asserted with reckless disregard for the
9 truth, then, of course is, I think the burden shifts
10 to the prosecution. Once we make that prima facie
11 showing, the burden shifts to the prosecution to show
12 that that information is truthful and accurate;
13 otherwise, you would have a situation where the burden
14 of proof is, at least to prove at the affidavit
15 portion of that warrant is false, lies entirely with
16 the defendant.

17 Of course it is my understanding that in a
18 criminal case that the burden of proof rests entirely
19 with the State, and of course it never shifts to the
20 defendant. Sometimes the defendant has to make a
21 prima facie showing, you know, to establish there is
22 something -- that there is something there that
23 requires attention, and of course once he establishes
24 that prima facie case, the burden shifts to the State.

25 With that being said, Your Honor, if you would

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1 give me just a second to look over my notes to make
2 sure that I don't have anything to add to this
3 particular motion.

4 THE COURT: All right.

5 (A brief pause in the proceedings.)

6 MR. BROOKER: Thank you, Your Honor.

7 THE COURT: Solicitor.

8 MR. CLEMENTS: First, Your Honor, I think there's
9 a chronology that you need to be aware of that has a
10 bearing on this situation.

11 On January 23, 2016 is when the murder occurred.
12 On January -- February 16, 2016, Florence County
13 Sheriff's Office, Investigator McFaddin and
14 Investigator Collins and Forensic Officer McClendon
15 were involved in this. But on 2/16/16 they got a
16 search warrant for phone number (843)260-8624, which
17 was the phone of the deceased victim. On the
18 19th of February 2016, Florence County Sheriff's
19 Office got a search warrant for (843)468-6516, which
20 was the phone number for Royal Williams. On the
21 22nd of February, 2016, they got a search warrant,
22 along with the Darlington law enforcement authorities,
23 to get a search warrant for 225 Plum Street in
24 Darlington, which was about a block or so away from
25 where the taxi let out the person that upon

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1 information and belief of the law enforcement from
2 Florence, they believed him to be Royal Williams and
3 believed him to be the person that committed the
4 crime. That was 3/2/16 that they got an arrest
5 warrant.

6 2/4 of 2019, which was 27 days shy of three
7 years, they went to Judge Brown and got a search
8 warrant to swab Mr. Royal Williams for DNA. He had
9 been arrested. There was probable cause met to show
10 before a neutral and detached magistrate that he was
11 the person that did this crime, at least met the
12 probable cause standard, and he was arrested.

13 Mr. Brooker said this is a case that is
14 circumstantial. I submit that he is leaving out a
15 large, large portion of the totality of the
16 circumstances that he's sharing with you here today.
17 I don't think he did it on purpose to mislead you, but
18 he left a lot out, just like I don't think that there
19 was anything done by the Sheriff's office, the
20 investigators to mislead Judge Brown or anyone else.
21 They had a lot of circumstantial evidence, Your Honor.
22 They got one link in the chain and it led them to the
23 next link in the chain.

24 It is true that Investigator McFaddin went to
25 Starbucks and spoke to employees and co-workers and

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1 continually got a report that this guy was worrying
2 the defendant's -- the victim, excuse me, that the
3 defendant had her worried. That is consistent, and
4 also consistent with her sister from New York that she
5 was on the phone with when she left work to go home,
6 that she was concerned about this guy being here and
7 being too clingy and aggressive, and she was trying to
8 get him to leave.

9 None of them name him; that is correct. But they
10 were led to the next circumstance, and the next
11 circumstances were looking at the phone calls. When
12 they got the phone records, they were able to see
13 where 468-2516 some of the contact information and
14 some of the contacts that were made back and forth
15 from those phones were deleted from the victim's
16 phone; however, they were not deleted from the phone
17 records. So they looked at those and saw that and it
18 verified some of what they were told about what the
19 defendant was doing that had the victim worried. They
20 followed up on the phones and looked at addresses that
21 were in her phone, and they found addresses that they
22 looked to see where they were, and they all matched up
23 or went back to Mr. Royal Williams. They had an
24 address on Orange Street in Darlington, Mr. Williams'
25 brother. They had an address for Plum Street. It was

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1 Mr. Williams' co-worker at one time, LaRon Whitten,
2 who worked with Mr. Royal Williams, and occasionally
3 Mr. Williams would go by there and frequent his house.
4 They also had an address for Westwood Court in
5 Bennettsville, which had been where Mr. Royal Williams
6 stayed with his grandmother, and they went there a
7 little bit later in the investigation and they had a
8 sketch done by a SLED forensic artist and went looking
9 to see if they could find him there. A lady came to
10 the door, his grandmother, saw the sketch and said,
11 That is my grandson, what has he done now? So she
12 identified the sketch that it was him.

13 When they talked to the cab driver and talked to
14 the passengers there, it was not relayed exactly how
15 it was phrased to you by Mr. Brooker. What was in the
16 report is that Royal's picture was shown to the cab
17 driver and they said it looked more like him, but
18 didn't want to say for a fact because of the hoody and
19 hat he wore that day; however, one of the passengers
20 in the taxicab sat beside him the whole trip. She
21 worked with the forensic artist from SLED to come up
22 with a composite that people would notice and
23 recognize and compare it to the picture; you can see
24 it is Royal Williams. The driver got a view of him
25 going by and looking in the rearview mirror while she

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1 was driving. She did say that he had the kind of hair
2 like -- fine hair like pulled back in a ponytail. We
3 know she said that. We don't think in the totality of
4 the circumstances it is not a favorable error. In all
5 of the aspects that identified him, that that one
6 misconception doesn't completely invalidate what they
7 had done to identify him through doing the composite
8 sketch.

9 The phone records were checked and the cell phone
10 towers were checked about where phones were pinging
11 off of. Her phone and his phone pinging off the same
12 area between 3:00 and 4:00 when she got home from
13 work, and they were together making phone calls. At
14 separate times, they were pinging off the same tower.
15 About 4:33, if I'm correct, is when the taxicab came
16 and picked up a person from Ms. Cherilyn Joseph's
17 home, and we believe everything points to the
18 circumstances that it was Royal Williams. He was
19 taken by, dropped off about a block from Plum Street,
20 and then there was a cell phone tower in Darlington
21 off of Friendship Street, and his phone started
22 pinging off of there.

23 THE COURT: That is in that area?

24 MR. CLEMENTS: Right in the Darlington area, a
25 block or two -- or maybe a mile away. So his phone

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1 began pinging there. Her phone wasn't pinging anymore
2 because it had gone silent. People were calling her,
3 texting her, nobody got any response from her, and
4 that is when they got worried enough that her mother
5 went and found her.

6 What is critical about the phone records is that
7 they first seem to make contact around the 14th of
8 January 2016. From that point in time up until the
9 22nd of June, day before the murder, they had about
10 300 plus contacts between Royal Williams' phone and
11 Cherilyn Joseph's phone, back and forth texting, some
12 voice mail, voice calls, but mostly texting. And that
13 revealed by the records 300 and some contacts that
14 stopped on the 23rd, and he didn't try again to
15 contact her. No contacts. Other people tried to
16 contact her, and she wasn't answering. The reason we
17 believe he didn't try to contact her is because he
18 knew she was dead.

19 There would be other circumstantial evidence
20 presented at trial, but the full totality of the
21 circumstances show that there was not an intent to
22 misinform Judge Brown, there was no intentional effort
23 to give a falsehood or have reckless disregard for the
24 truth. They were looking at the totality of the
25 circumstances, which they didn't include all in the

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1 narrative because they were extremely too long and
2 included enough. But upon the information and belief
3 and by probable cause and arrest warrant, Mr. Williams
4 was the person they named and they think to be the
5 perpetrator, or they would have not charged him or
6 arrested him in the first place. So there is nothing
7 there that is being presented with the intentions to
8 deceive or cover up or mislead anyone.

9 In regards to the part about the semen, Your
10 Honor, we submit that really that is like a
11 scrivener's error. What happened is John Barring at
12 the Richland County lab tested it and said we have
13 this condom and an unknown male sample and a female
14 sample that matches the victim. I think Andy
15 McClendon went thinking he had a used condom and it is
16 a positive extraction of someone's DNA, that there
17 must be semen, is what you would normally expect. If
18 he would have dug a little deeper, he would have
19 realized it was not seminal fluid, but other
20 biological product like skin cells or something else.
21 Ultimately, when they made a comparison, it matched
22 Royal Williams. There was nothing to deceive. It
23 does not fit Franks versus Delaware. If you leave the
24 words out that was false, which we said was not
25 intentional, but by mistake, it would read -- or with

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1 nothing deleted it would read: The investigation of
2 the crime scene revealed the presence of a condom
3 which contained semen from which a DNA profile of an
4 unknown male is extracted.

5 If you take three words out, "which contains
6 semen," take those three words out, then it reads:
7 The investigation of the crime scene revealed the
8 presence of a condom from which a DNA profile of an
9 unknown male was extracted. That being corrected, or
10 the false information being left out, and we believe
11 the information and allegations about Mr. Williams
12 being with Ms. Joseph and catching a taxicab, all of
13 that is left in the affidavit, then you have probable
14 cause.

15 But I do not believe that any threshold has been
16 met to show that there is an omission or a false
17 information that was to mislead Judge Brown in any
18 way, shape or form. They knew the totality of the
19 investigation because they had been working on it for
20 almost three years.

21 MR. BROOKER: If I could do a reply? The reason
22 I reply is to bring this back to the proper scope of
23 Franks v. Delaware. Basically, Franks v. Delaware
24 basically says that in making a determination as to
25 whether or not these prongs had been met, that you are

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1 confined to the evidence -- confined to the statements
2 that was presented to Judge Brown.

3 Now, if Investigator McClendon told the judge all
4 of this information that Mr. Clements just explained,
5 is it possible that Judge Brown would say I think
6 probable cause is here; that is possible. But Franks
7 says that you are confined to what was told to the
8 judge. You are confined to the corners of the
9 information that was told to the judge.

10 Like I said, if you look at the affidavit
11 portion, if you look at the affidavit, it doesn't say
12 to Judge Brown -- and I think Mr. Clements uses that
13 word a lot, "we believe" -- we believe or we concluded
14 from all of this circumstantial evidence -- we
15 concluded from all of the circumstantial evidence that
16 our suspect might be Williams. That is why I think in
17 Franks it says that Franks can be satisfied by the
18 providing false information or either information that
19 indicates reckless disregard for the truth, and also
20 could be satisfied by excluding exculpatory
21 information. I think what Franks is saying is so that
22 the judge can consider the information in context.
23 But you can't say to the judge that -- that the person
24 who was picked up at Ms. Cherilyn's home is Royal
25 Williams -- excuse me, at Ms. Joseph's home was Royal

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1 Williams, that the person erasing text messages and
2 erasing e-mail messages persuade to MS. Joseph's
3 statement from her home on the morning of the murder
4 that it was Royal Williams. They told the judge that
5 they knew the identity of that person, and you can't
6 do that. You have to let the judge make that only
7 conclusion. You have to say, Judge, here is the
8 circumstantial evidence, you make the conclusion as to
9 whether or not you believe there is enough to believe
10 that it is Williams.

11 You can't say, Judge, we've already done your
12 job, we've already concluded from our evaluation of
13 the evidence that it is Williams. You can't take that
14 responsibility from the judge. The judge has to
15 evaluate that information. The judge has to determine
16 whether or not it satisfied probable cause, not the
17 prosecutor or not the law enforcement officers. You
18 have to give that information to the judge.

19 And, of course is, some of the best affidavits
20 that I've ever seen in search warrants, and I've had
21 some affidavits and search warrants where the
22 affidavit portion would be five or six or seven pages
23 long because the officer does not draw conclusions and
24 say to the judge, we've already concluded half of your
25 job, we've already made a determination that the

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1 identity of this person is Williams. That is false
2 and misleading. You have to present the
3 circumstantial evidence to the judge and let the judge
4 make a determination.

5 And, of course is, on Franks, when you are
6 evaluating false and misleading information, you are
7 looking at what was actually provided to the judge in
8 the affidavit. What Mr. Clements is attempting to do
9 is Mr. Clements is attempting to argue probable cause
10 all over again before a different judge. He's asking
11 you, Judge, let me give you all of this information
12 that was not given to Judge Brown and, Judge, you make
13 the determination whether or not probable cause
14 exists, but you can't do that. When you are
15 evaluating a motion under Franks, you are evaluating
16 what was given to Judge Brown; nothing more. It can't
17 go beyond that, can't go beyond what was given to
18 Judge Brown. And, of course is, what Mr. Clements
19 explained, in all of this information that Mr.
20 Clements explained, it is not contained within this
21 affidavit.

22 So, now, it might be -- I don't know whether or
23 not this was done on the record before Judge Brown.
24 It might be necessary to see whether or not it was.
25 And, of course is, to get a copy of the transcript and

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1 see whether everything that Mr. Clements just
2 explained was explained to Judge Brown, and Judge
3 Brown made his determination based upon all of the
4 other factors. But absent that, what we do know is
5 what is contained in the affidavit, that is what we
6 know. Or, it may be necessary to call Judge Brown as
7 a witness if there was no record made and say, well,
8 Judge Brown, was all of this explained to you? Did
9 you have all of these other information and factors
10 that you used to make a determination that probable
11 cause existed? Absent that, the rule says you have to
12 look to the affidavit, have to make a determination as
13 to whether or not what is contained in that affidavit
14 satisfied probable cause, but you can't argue probable
15 cause after the fact.

16 Even if it had been Williams -- let's assume it
17 had been Williams like Mr. Clements says, assume that
18 it is, you can't say, well, Judge, you know, we --
19 once we got the DNA, and once we present the DNA,
20 turns out we were right after the fact that there was
21 a match. And I'm not saying there is, because if this
22 thing goes to trial there is going to be arguments
23 with regard to that, with regard to the DNA. But I
24 don't want to -- you know, I don't want to get this
25 thing too muddled and straight off the point. The

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1 point is what they provided to Judge Brown, was it
2 truthful? Was it truthful, or was it presented to
3 Judge Brown in a way that represents a reckless
4 disregard of the truth? So when they told Judge Brown
5 that they identified the person, was that the truth?
6 Or, was the truth that we did not identify the person,
7 but we have cause to believe that the person is Royal
8 Williams? We have circumstantial evidence. We have
9 interviewed a lot of witnesses. We have interviewed
10 six, seven, eight -- I think up to ten witnesses.
11 None of them says -- none of them could identify Royal
12 Williams, but based upon the circumstantial evidence,
13 we have that belief.

14 That would have been the appropriate way to
15 present it to Judge Brown so he would make an
16 evaluation as to whether or not all of the
17 circumstantial evidence is sufficient enough to
18 satisfy probable cause. But you can't draw a
19 conclusion, a definite conclusion, and say to the
20 judge it is -- it is Royal Williams, because that is
21 false. It is misleading and a reckless disregard for
22 the truth.

23 The reason they were trying to obtain DNA was to
24 identify who the person was. They had not identified
25 the person. They thought it was Royal Williams, and

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1 they wanted the DNA to prove it.

2 I want to get off the point, Your Honor. If you
3 look at Franks versus Delaware, it says that you are
4 confined by what was presented to the judge and, of
5 course is, anything -- any argument that Mr. Clements
6 made, that was not the same factual information that
7 was given to Judge Brown, is irrelevant to conclude as
8 to whether or not there was falsehoods -- deliberate
9 falsehoods or either if not deliberate -- I hate to
10 impugn the integrity of the law enforcement officers.
11 It is not too late. My job is to state what is in the
12 record, and I think that is why Franks says whether it
13 was deliberate falsehood or whether it was done with
14 reckless disregard, which means that it may not have
15 been intentional, but it was recklessly done. I think
16 if it was not intentional, it was recklessly done when
17 they knew the identity had not been established. They
18 could simply have said to Judge Brown, We've
19 interviewed X amount of witnesses, none of them could
20 identify this unknown person, but this is why we think
21 it might be Williams, this is why we think it would be
22 useful to get his DNA to compare to what we have. But
23 none of that was said to the judge.

24 You can't re-litigate probable cause before you,
25 Your Honor, and you are not here to determine whether

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1 or not probable cause exists. You're here to
2 determine under Franks whether or not what was
3 presented to Judge Brown alone, within that box, if
4 you removed the information that was false or either
5 recklessly stated, whether or not it would satisfy
6 probable cause. Thank you, Your Honor.

7 MR. CLEMENTS: Your Honor, Mr. Brooker keeps
8 saying that the perpetrator was not identified. They
9 identified him long before they got a warrant for the
10 DNA. They had him arrested. They had to show
11 probable cause on an arrest warrant, same standard as
12 here. He is saying I can't argue probable cause. I'm
13 arguing there is probable cause here. It says the
14 investigation, and it includes the totality of the
15 circumstances they were looking at. I don't know if
16 Judge Brown asked what was in the investigation, what
17 did you do or ask any further questions or not, but
18 they would have acted in good faith. They didn't do
19 anything intentionally to mislead anyone. And just
20 because he doesn't like it, he says they mislead him.

21 Now, what they did was they went to Judge Brown,
22 presented the affidavit and said the investigation
23 reveals this and how it transpired. Just on the
24 affidavit alone, I don't know in what order it was
25 done, but if it was -- if there was something wrong

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1 with the warrant, United States versus Leon covers
2 this completely when it says the U.S. Supreme Court
3 held that a good faith reliance on a search warrant,
4 even if the warrant was subsequently found to be
5 defective, the evidence is admitted. United States
6 versus Leon, 1984 case. You do not suppress the
7 evidence because of the exclusionary rule, and the
8 purpose is for that. But it says that you do not
9 exclude evidence when they acted on a warrant
10 reasonably in good faith and relied on that warrant,
11 and even if the warrant was subsequently found to be
12 defective.

13 So that covers that area. If it is defective,
14 which I don't believe it is at all. I know they
15 didn't do anything -- submit anything -- only thing
16 they submitted that was wrong is when they said that
17 the condom held semen; that was it. I believe that
18 was just a scrivener's error, because all it was was a
19 harmless assumption on the positive result. They
20 knew -- they didn't have semen; they had sufficient
21 biological material because they got a DNA profile
22 that they wouldn't have otherwise.

23 I believe that Forensic Officer McClendon, when
24 he knew it was a used condom and it had DNA in it, he
25 just assumed -- I believe he assumed reasonably that

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1 they were talking about semen. But remove that which
2 is false, you have probable cause. In the
3 investigation, nothing about that is false. That is
4 what the investigation revealed to them.

5 The thing that really makes me wonder is they had
6 the entire investigation when they went to Judge Brown
7 and they had been working on it for almost three
8 years. It wasn't like they were in a rush to do
9 something that they didn't even need to identify him,
10 because they had him locked up -- or he was already
11 locked up and they served the warrant on him, so he
12 had been identified. He had been pointed out by a
13 standard of probable cause, which is the standard
14 here, probable cause.

15 MR. BROOKER: Can I take 15 seconds, Judge?

16 THE COURT: I bet you can't, but I'll let you
17 try. (laughing)

18 MR. BROOKER: 15 seconds. I just want to say
19 something for the record, and that is when the
20 argument was made that someone is arrested -- when a
21 warrant -- when you go before a magistrate judge and
22 get a warrant and the person is arrested, then the
23 identity has been established. Of course they said
24 they already identified him because they had a
25 warrant. That blows me away. Because, otherwise,

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1 when someone is arrested for a criminal offense, then
2 law enforcement, thereafter, would never have to go
3 before a judge to get a warrant, because it already
4 was justified because there is an arrest warrant.

5 That was the argument, that once you get an arrest
6 warrant, then the crime is identified, person has been
7 identified, there is no -- if you need a court order
8 to get information, search warrant, there is no need
9 to do it because it already has been established when
10 the magistrate judge issues the arrest warrant. Blows
11 my mind. Blows my mind.

12 I'll say this for the record, in case it gets to
13 the court of appeals, that they can consider that
14 argument. It is not the way it works, at all.

15 Thank you, Your Honor.

16 THE COURT: All right. What is the next motion?

17 MR. BROOKER: The next is the Franks motion and,
18 of course is, this will be a lot shorter because we
19 got a lot of the information covered.

20 The next Franks motion is discovered in the
21 first. This is the motion to invalidate the March 22,
22 2016 dated search warrants for the backpack believed
23 to be of Royal Williams that was taken at the 225 Plum
24 Street address in Dillon, South Carolina. Of course
25 is, that in Paragraph 1, Your Honor, we have the

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1 affidavit contained within the search warrant in its
2 entirety. And, of course is, the portion of the
3 information that we contend is false stated with
4 reckless disregard to the truth is actually the same
5 information that was argued in the affidavit on the
6 first motion.

7 In the affidavit for this search warrant, it
8 says: On the day of the murder, a taxi driver did
9 give information that she picked up the suspect at
10 3618 Century Drive, Apartment A, Florence, South
11 Carolina and dropped the suspect off in the vicinity
12 of this address -- I guess they are referring to the
13 225 Plum Street -- and did have a black bag matching
14 this description. A taxi driver information was
15 corroborated by the taxi company.

16 Again, they told the judge -- and I will repeat
17 that again -- that on the day of the murder a taxicab
18 driver did give information that she picked up -- so
19 they are saying that the taxicab driver said that she
20 picked up Royal Williams at the 3618, Apartment A,
21 Century Drive, and that is not what the taxicab driver
22 said. When they showed the taxicab driver Royal
23 Williams' photograph, she says this looks like the
24 person -- more like the person. Because they showed
25 the taxicab driver previously photos of others. The

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1 taxicab driver said these gentlemen have similar
2 features as this person, but we can't say that these
3 gentlemen are the person. Of course when they showed
4 Royal Williams' photograph, they said he looks more
5 like the person, but, still, we can't say that he is
6 the person. But they told the judge something that is
7 completely different. Of course, they also neglected
8 to mention in the affidavit portion, underneath
9 Delaware, with exculpatory information you also have
10 to inform -- you also have to inform the judge of
11 exculpatory information. So if you have any
12 exculpatory information, you have to allow the
13 judge -- tell that to the judge, and the judge has to
14 consider that in determining probable cause. And, of
15 course is, they failed to tell the judge that Royal
16 Williams is bald, has always been bald, and the
17 taxicab driver said this person had long, good hair
18 pulled back in a ponytail, which is completely --
19 completely different.

20 THE COURT: How would they know that if he had a
21 ball cap and hoody?

22 MR. BROOKER: That's what she said, though.
23 They'll have to ask her on the stand, but in her
24 statement she said the only way she would have known
25 is unless he had a large hoody that was flared out,

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1 and you could see the sides of the person's face. If
2 he had his drawstring pulled and was just showing just
3 his face, they can't see that, but we don't know that
4 because the statement didn't get that specific. They
5 said he had on a hoody, but we don't know if it is one
6 of these large ones that are open on the sides, or
7 whether or not he had a drawstring pulled and you
8 could only see the front of his face.

9 But she said in her statement that he had good
10 hair -- quote, good hair -- pulled back in a ponytail.
11 I don't know whether or not Royal Williams -- and
12 Royal Williams has more hair on his head than he had
13 then. We have a photograph of him showing he is
14 completely bald, always been bald. That is something
15 they -- they have photographs of him. That
16 exculpatory evidence, which conflicts with the
17 statement that they put in the search warrant, Franks
18 says you have to let the judge know that so the judge
19 can consider it, like Mr. Clements said, the totality
20 of the circumstances. And it could be that in the
21 totality of the circumstances the judge could say,
22 well, I'll -- there is a way to explain away and
23 justify -- you know, this exculpatory evidence is
24 insufficient to validate, but Franks says that you
25 have to let them know about the exculpatory evidence

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1 so the judge can make an intelligent decision looking
2 at the totality of the information, and of course he
3 or she can consider anything in context, but that is
4 not what was done here.

5 So based upon the same information we discussed
6 and the arguments I just explained to the Court, based
7 upon the same information we discussed as part of the
8 previous motion, we argue to the judge that on the two
9 prongs under Franks has been satisfied, that the
10 information is false. We know it is false. Whether
11 it was deliberately false, that is a determination
12 that judge has to make. The judge has to make that
13 determination based up what is contained in the
14 information, what they knew about the identity of the
15 person, whether or not they had any identifiable
16 information. They admitted they had no identifiable
17 information. No one identified this person being
18 Royal Williams. They said that this was a deducted
19 conclusion, you know, from other circumstantial
20 evidence.

21 If it is a deducted conclusion that you reached
22 from circumstantial evidence, you can't tell the judge
23 that you have identified the person, which would be
24 false. You have to tell the judge there is no
25 positive identification of Williams, but we inferred

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1 or deducted, concluded from this other circumstantial
2 evidence, and here it is, Judge, here is the
3 circumstantial evidence, now you make the
4 determination, but you can't make it for the judge. I
5 think that is why Franks is so important, it prevents
6 law enforcement officers that is probably held to a
7 higher standard than anybody going before a judge and
8 presenting information before a judge, under oath,
9 that they know is not factual, or at least they know
10 has a substantial likelihood of misleading the judge.
11 And of course it could be the judge saying, okay, they
12 say Royal Williams was identified, the driver said it
13 was Royal Williams, that makes it easy, here is my
14 signature. It may be more complicated if they said,
15 well, Judge, nobody actually said it was Royal
16 Williams. We believe it is Royal Williams based upon
17 the circumstantial evidence. The judge can be misled
18 by that. Like I said, whether it was intentionally
19 false or recklessly said, either one of those
20 standards satisfies Franks.

21 So based upon that information, we believe that
22 this search warrant should be invalidated, and we ask
23 the Court to so void or invalidate the search warrant.
24 Thank you, Your Honor.

25 THE COURT: Thank you, sir.

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1 MR. CLEMENTS: Briefly, Your Honor. Number one,
2 I don't believe Royal Williams has any standing or any
3 reasonable expectation of privacy in LaRon Whitten's
4 house, so I don't think he has standing to challenge
5 the search warrant.

6 Number two, the highlighted portion of the
7 affidavit that Mr. Brooker wants to focus on did give
8 information that she did pick up the suspect at 3618,
9 Apartment A, Century Drive in Florence and dropped the
10 suspect in the vicinity of this address, and he did
11 have a black bag matching this description. The
12 taxicab driver information was corroborated by the
13 taxi company.

14 Then, in No. 2, Pages 1, Number 2, where he says
15 Investigator Collins stated in the affidavit portion
16 of the backpack search warrant that the taxi driver
17 stated she picked up the defendant from the victim's
18 apartment, 3618 Century Drive, Florence, South
19 Carolina and dropped defendant off in the vicinity of
20 Plum Street. Your Honor, Investigator Collins said
21 nothing of the sort. That is just outright false
22 information stated here by Mr. Brooker. No one said
23 anything about a defendant in this affidavit. No one
24 said anything about Royal Williams in this affidavit.
25 They said a suspect. A suspect is someone that they

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1 got suspicious about. Doesn't mean they know who he
2 is, but they want to find out because he is a suspect.
3 I just think this motion should be quashed; number
4 one, he has no standing to oppose it. And, Number
5 two, they didn't make any identification of someone
6 other than a suspect because he got picked up from the
7 vicinity where the murder happened about the time
8 everything went silent on communication with
9 Ms. Joseph, and that person who is a suspect unknown,
10 unnamed, at this time rode with him and got dropped
11 off. Nothing wrong with that. Didn't name a
12 defendant. Didn't name anyone.

13 MR. BROOKER: I can briefly reply?

14 THE COURT: Sure.

15 MR. BROOKER: With respect to whether or not he
16 has standing, the search warrant was not for the 225
17 Plum Street address. I think the 225 Plum Street
18 address, the owner/occupier of that residence gave
19 consent to search it. When they searched the home,
20 they picked up a bag that they believed to be Royal
21 Williams', and the search warrant was searching that
22 bag, I believe to be Royal Williams', so he does have
23 standing with respect to that bag.

24 THE COURT: Is it his bag?

25 MR. BROOKER: Well, they found items that belong

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1 to him in the bag. They found a cell phone that
2 belonged to him in the bag.

3 THE COURT: Does he claim it's his bag?

4 MR. BROOKER: I can't make a statement for him
5 because we have -- there is a Fifth Amendment issue
6 here, so I can't say if it was his bag or if Royal
7 Williams said it wasn't his bag, he would be violating
8 his Fifth Amendment right of silence, and I can't do
9 that.

10 THE COURT: Well, would that not be the same as
11 if they searched your briefcase there and I challenge
12 the search of your briefcase? I mean, for me to
13 challenge it, don't I have to say that that is mine
14 and they had no reason to go in it?

15 MR. BROOKER: Let me get to that point, and my
16 argument would be something that Mr. Clements says.
17 Mr. Clements says that the search warrant did not
18 identify the owner of the bag. It says a suspect.
19 Which if the search warrant didn't identify the owner
20 of the bag, the question then is -- when it says on
21 the day of the murder a taxicab driver did give
22 information that she did pick up a suspect at 3618
23 Century Drive, Florence, South Carolina. There was
24 only one person that they picked up at that address,
25 and it was Royal Williams. When they got this search

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1 warrant, there was only one person that had been
2 arrested at that time, and of course that was Royal
3 Williams. When they picked up the bag -- when they
4 picked up the bag is that -- they even said -- and
5 this is what draws the connection between Royal
6 Williams. They said that the person that was picked
7 up at the house was Royal Williams, and of course then
8 they said -- I think the driver said that suspect was
9 carrying a bag that is similar to the bag that is at
10 225 Plum Street. So they are making argument, you
11 know, that --

12 THE COURT: We believe it is him, and we believe
13 he had this bag.

14 MR. BROOKER: Yeah. That is what they are
15 telling the judge. That is what they are telling the
16 judge. Otherwise, if they are telling the judge, hey,
17 we're not identifying anyone. Judge, we're asking you
18 to issue a search warrant for the property of an
19 anonymous person, somebody that we don't know and
20 somebody we're not identifying and somebody we're not
21 saying is involved, then that would give the judge
22 even probable cause. The judge would have to know and
23 give a reason as to why he or she should issue the
24 search warrant for this particular bag that belongs to
25 this particular person.

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1 So even if it is their argument that, hey, you
2 know, we didn't say who it is, we just told the judge,
3 hey, we have a bag. Judge, we don't know who it
4 belongs to, issue us a search warrant without being
5 able to explain that, Judge, we think this bag is
6 connected to this particular person. We think this
7 particular person is connected to this bag. That
8 probably would be even worse.

9 So it is a clever argument, but it is an argument
10 that doesn't work. I think everyone understood, based
11 upon the context of what is contained within the
12 search warrant, who they are referring to, and that is
13 Royal Williams. So the only question becomes whether
14 or not what they said to the judge, that the identity
15 of this suspect, i.e., everyone knows Royal Williams,
16 was picked up from the victim's house soon after,
17 within hours of her death, whether or not that was
18 directly false or they recklessly -- reckless
19 disregard for the truth. So whether or not they
20 couched it in terms -- and I understand Ed Clements'
21 argument. We're not here arguing probable cause.
22 This is not a hearing on probable cause. It is a
23 hearing on this limited portion of the affidavit as to
24 whether or not any of that was false -- deliberately
25 false or either reckless disregard for the truth; if

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1 it was, you know, then of course is, whether or not
2 you exclude that information, whether probable cause
3 still exists.

4 Thank you, Your Honor.

5 MR. CLEMENTS: I think there is a lot stated
6 wrong. Number one, I thought I understood Mr. Brooker
7 to say Mr. Williams was already arrested so they knew
8 who they were looking for, and that is absolutely
9 false. This search warrant was executed on 2/22 of
10 '16. Mr. Williams didn't get arrested until
11 March 2nd, 2016 after some other things happened
12 that are not a part of this.

13 At this point in time, LaRon Whitten was a
14 potential suspect along with everyone else. They were
15 trying to narrow it down. They had his address and
16 name, and they executed a search warrant. He said,
17 Yeah, that's Royal Williams' bag, when they asked him
18 about the bag, and he said, He left it here. He left
19 it there, and I think he went off to jail and prison
20 right after that. I would say he abandoned it there,
21 so he didn't have any expectation of privacy leaving
22 it there in a house that wasn't his where he didn't
23 live.

24 But, nevertheless, there was a suspect that had
25 been picked up. There was a suspect that was dropped

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1 off. One of the potential identifiers that was
2 circumstantial was that he had a black bag. They were
3 not looking for anyone in particular. They were
4 looking for the bag and the person that the
5 circumstances would lead them to, and later on down
6 the road, that person was Mr. Williams. But this was
7 not focused on Mr. Williams, it was only focused on
8 the suspect that the taxicab driver gave a ride to.

9 THE COURT: At this point, when this search
10 warrant is sought, you just knew that a person was
11 picked up at the victim's residence shortly before --
12 shortly after she was killed?

13 MR. CLEMENTS: Yes, sir.

14 THE COURT: And that that person was carrying a
15 black bag that matched this description?

16 MR. CLEMENTS: Yes, sir.

17 THE COURT: In this search warrant they are not
18 even claiming it is Mr. Williams' bag, it was just
19 that the person that was picked up at that address was
20 carrying a black bag that matched this description.

21 MR. BROOKER: I know this is not all in the
22 evidence, but it should be contained in the search
23 warrant. The reason why they suspected that that bag
24 belonged to Royal Williams, they already had his name.
25 Actually, Mr. Whitten, the person who was a resident

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1 at 225 Plum Street, at that time -- and I'll just say
2 it so you'll know. It is not contained within -- at
3 that time, they already went into
4 Ms. Joseph's -- the victim's cell phone. They already
5 got Mr. --

6 THE COURT: Let me stop you. If I'm
7 understanding this right, and if I'm not, correct me.
8 When they are seeking this search warrant, they don't
9 know if it is your black bag or if it is my black bag.
10 They don't know who owns the black bag, they just know
11 that the taxicab driver told them that the person she
12 picked up was carrying a black bag that matched that
13 description, and they wanted to search. Because at
14 that point -- I'm guessing, and I may be wrong -- but
15 at that point they don't know who that person was, but
16 they know it is the person that the taxicab driver
17 took away from the scene of the murder.

18 MR. BROOKER: Can I explain why they suspected
19 the bag belonged --

20 THE COURT: Well, let's stay with this.

21 MR. BROOKER: I understand, Your Honor, is that
22 -- is that just in response to what Mr. Clements
23 says -- and of course it is not contained within the
24 search warrant, not contained within the search
25 warrant, but, of course is, that Mr. Whitten had told

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1 them, and it is in the affidavit -- in the reports of
2 the officers -- Mr. Whitten had told them, That is
3 Royal Williams' bag. They already suspected Royal
4 Williams because of other information that they didn't
5 explain in the warrant, they didn't explain in the
6 search warrant. When you evaluate this, you obviously
7 will just look at the four corners of the affidavit,
8 but the reason why I'm telling you that they suspected
9 it or believed that to be Royal Williams' bag is
10 because Mr. Whitten told them.

11 THE COURT: And I have no reason to doubt what
12 you just said, but if this is presented to the Court,
13 and the Court is of the understanding that I have a
14 murder that occurred at 3618, Apartment A. I have a
15 taxicab driver that said shortly before the discovery
16 of the body they picked up a person who is a suspect
17 who is carrying this black bag. As we continue to
18 investigate, we find at this other address, Plum
19 Street, a black bag that matches that description and
20 we want to look at that.

21 MR. BROOKER: I understand, Your Honor, but the
22 only question I would pose, and of course when I sit
23 down -- I don't want to belabor it, but the thing is,
24 the question is that the taxicab driver said they
25 dropped off the suspect. They dropped the suspect

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1 off, you know, at a street corner, no specific
2 address. Somehow -- and in that specific area where
3 the suspect was dropped off, I'm sure there is dozens
4 of homes. The question then is how did they get the
5 225 Plum Street? Of course they get to 225 Plum
6 Street because -- and of course it is not contained in
7 the affidavit and that is why I'm going to sit down --
8 is that -- and obviously Your Honor wouldn't know the
9 other things that they developed at that time which
10 led them to believe it was Royal Williams, and of
11 course that is why they went to 225 Plum Street. When
12 the taxicab driver said I dropped him off on the
13 street corner, and you have dozens of houses in the
14 area, of the dozens of houses, how do they pick out
15 225?

16 THE COURT: Because it appeared to be in her
17 phone, in the victim's phone.

18 MR. BROOKER: Along with other information that
19 led them to believe it was Royal Williams. They
20 actually -- I'll stop, Your Honor. I'll leave it to
21 your discretion. I don't want to get too much into
22 things out of the scope, but that is our argument on
23 that motion, Your Honor. We just make that argument,
24 and, of course is, we'll leave it to your conclusion.

25 Thank you, Your Honor.

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1 THE COURT: All right. What is the next motion
2 that we need to deal with?

3 MR. BROOKER: The next motion, this will be
4 quicker than the other one.

5 MR. CLEMENTS: I don't know of any other motions;
6 they were not served on me.

7 THE COURT: They are filed.

8 MR. BROOKER: Sorry. You didn't get a copy of
9 it?

10 MR. CLEMENTS: No, I did not.

11 Your Honor, I'm not prepared to proceed. I have
12 no idea what they are.

13 MR. BROOKER: Let me make the motion and he can
14 make a determination if he is prepared. We have
15 talked about this for months now, so I'm surprised if
16 he is not prepared. Of course is, that we're not
17 required to put it in writing. I mean, normally, this
18 would be done orally without writing, but I did that
19 for the benefit of the Court.

20 The next motion, Your Honor, would be for the
21 exclusion of any information -- it says: Motion to
22 exclude from trial any and all evidence of material
23 retrieved from any and all cell phones, computers,
24 tablets or other electronic devices taken from the
25 victim's home. Of course is, me and Mr. Clements have

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1 been discussing this, Your Honor. And, of course is,
2 he'll explain, but basically they took a couple of the
3 electronic devices. I think they took an iPhone 6, I
4 think they may have taken a Samsung Galaxy phone, they
5 took an HP tablet, if my memory serves me correctly.
6 These were electronic devices they took from the
7 victim's home. And of course is, they had a forensic
8 expert I think, which was Hester, who is no longer
9 with the sheriff's department, I believe, who
10 forensically extracted information from those phones,
11 extracted files and data from those phones.

12 Of course is, prior to my representing
13 Mr. Williams, Mr. Williams was represented by
14 Mr. Ammons with -- represented by Mr. Ammons.
15 Mr. Ammons filed a Rule 5 Request for Disclosure, I
16 think this was two years ago, and a motion for Brady
17 material. Of course is, I don't know whether or not
18 -- I don't believe that the State is alleging that the
19 extracted information from those electronic devices,
20 you know, are not covered under the Rule 5. I think
21 they are covered under Rule 5. Of course I think
22 Rule 5 -- and I did not bring it with me and, of
23 course is, I can look it up on my phone if I need to,
24 but I think Rule 5, if my memory serves me, it may be
25 contained in Rule 5(a)(1)(3).

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1 THE COURT: Rule --

2 MR. BROOKER: Rule 5(a)(1)(c). It says: Upon
3 compliance of such request by the prosecution, the
4 defendant, on request of the prosecution, shall permit
5 the prosecution to inspect any copies of books,
6 papers, documents, photographs, tangible objects,
7 buildings or places thereof, which are in the
8 possession, custody or control of the prosecution.

9 Of course is, Your Honor, that that includes
10 electronic data. Simply because a file or document is
11 electronically stored and not physically stored, does
12 not mean that they are not required to produce it
13 under Rule 5. Because, today, a lot of discoverable
14 data today is in electronic form. And of course the
15 data in which they are referring to, the data we have
16 been referring, a lot of the information of names,
17 telephone numbers, GPS locations, all of that
18 information that they obtained from these electronic
19 devices that were taken from Ms. Joseph's home or
20 Ms. Joseph's property, of course is, that they did say
21 that that information that they intend to use at trial
22 was extracted from the phone. Of course they use that
23 information as part of the investigation, but we've
24 been asking for months that that information can be
25 turned over.

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1 THE COURT: Do they not have that information,
2 Solicitor?

3 MR. CLEMENTS: Your Honor, no, they don't.
4 We have some information he's talking about, because
5 Investigator McFaddin went through and got
6 information, but as far as what Hester was supposed to
7 do -- the phone backed up and locked itself up. It is
8 encrypted. I've got Ben Price who is here. He has
9 worked and worked and worked trying to open that. He
10 talked with Hester, and I think he has three different
11 stories. I have my doubts whether Hester did anything
12 to it. The phone locked up and encrypted, but the
13 information that we had, we could use -- some of it
14 was exculpatory, and every bit of that was disclosed
15 through Investigator McFaddin's report that was given.
16 Because he got in the phone and started looking at it
17 and saw addresses and phone numbers and pictures of
18 people she knew, and those were the pictures they
19 showed the witnesses to see if they could identify any
20 of them.

21 As far as the remaining stuff on the phone, we
22 couldn't get to it. We tried every way we could
23 without paying a company -- you pay like \$15,000 to
24 de-encrypt stuff. But we don't know that there is
25 anything exculpatory at all. It is clearly

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1 speculation. What we have had been turned over early
2 on. I have Investigator Price here to answer any
3 questions. He wrote up a scenario of everything that
4 he's done to that phone and presented that to
5 Mr. Brooker, and they were copying what they had to
6 give to him, and he'll have the same thing we have,
7 stuff you can't break into and actually view. If you
8 are interested, Your Honor, he did a supplemental
9 report for me to explain what he did and made every
10 good faith effort.

11 MR. BROOKER: I don't mind making that a part of
12 the record if Mr. Clements wants to. I don't have any
13 doubt they tried to obtain the information. I don't
14 have any doubt about it. Apparently, what it appears
15 to be, obviously when the phones were taken from
16 Ms. Lynn's (sic) property shortly after her murder, it
17 was presented to I think investigator -- or Detective
18 Hester. I think he was their forensics guy or
19 electronic guy within the sheriff's department. He
20 was supposed to abstract this information from the
21 devices and, of course is, that -- because they were
22 evidence.

23 And of course I think in the report of Ben Price,
24 I think Ben Price indicated in that report,
25 Investigator Price, that Hester said he did. I think

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1 in also one of the initial police reports there is a
2 section in that where Hester said he was able to
3 abstract that information, and Hester basically said
4 he downloaded that information, put it on some disk,
5 and of course had it entered into evidence at the
6 sheriff's department. He says in his report that he
7 was able to abstract it, downloaded it and preserved
8 it, and then he entered the disk containing that
9 information in evidence. He does say that he did
10 that. Of course is, my understanding is they can't
11 find the disk, you know, of the information that he
12 took off these cell phones that he preserved. And of
13 course I think that is why Mr. Clements said they are
14 not quite sure whether he did it at all, because they
15 are not able to locate it. I think Investigator Price
16 made an attempt to try to at least obtain the devices
17 to see whether or not he could go back into the
18 devices to abstract this information again, and I
19 think that --

20 THE COURT: But they are locked up?

21 MR. BROOKER: Yeah, locked up and not able to do
22 it.

23 But the problem is -- and of course this
24 information is underneath Rule 5, so it is admissible
25 evidence under Rule 5. And I note Mr. Clements

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1 basically says, well, some of this information has
2 been turned over to us, but, of course is, the problem
3 is the physical information has not been turned over
4 to us. But, of course is, in the reports, in some of
5 the reports from Investigator McFaddin, they make
6 reference that we got this from it, we got that from
7 the phone. The problem is we would then be relying on
8 Investigator McFaddin to accurately describe
9 everything that he got from the phone without actually
10 seeing it. And, of course is, the problem at trial
11 would be that if he is referring to something that the
12 jury can't see, then of course it would be hearsay, so
13 it couldn't come under the hearsay exception, too.

14 The other problem would be is that we are
15 entitled under Rule 5 to examine that evidence. So if
16 someone gets up and testified, you know, to the
17 evidence they took from the phone, and testified about
18 it, then we have to have that evidence so we can -- so
19 we can review it for purposes of impeachment and say,
20 you know, we've looked at the same document that you
21 are referring to, and you are leaving out this portion
22 of the document, leaving out that portion and not
23 accurately describing this.

24 And, of course is, that another problem is that
25 this information doesn't have to be exculpatory. If

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1 we're getting it -- if it is required to be from
2 Brady, the Brady basically says you have to induce
3 exculpatory impeaching evidence. But under Rule 5,
4 that does not require exculpatory impeaching evidence.
5 It has to be produced whether it is exculpatory or
6 impeachment, or not.

7 Another problem is even if you were looking at it
8 under Brady, then we would not even be able to make a
9 determination as to whether or not it is exculpatory,
10 because no one can see it. We can ask Investigator
11 McFaddin, hey, in your opinion, do you think it is
12 exculpatory? But, of course is, I don't think my
13 client needs to defer to the -- not to say he's not
14 honest; I know him and he is a good guy. But, of
15 course is, ethically and legally we couldn't defer to
16 his opinion as to what is exculpatory and what is not.
17 We have to be able to see ourselves.

18 A lot of this information that we've been talking
19 about today was information they got from the phone.
20 They got Mr. Williams' name, the addresses we've been
21 referring to and photographs.

22 THE COURT: I thought those things were
23 recovered?

24 MR. BROOKER: I think they were not recovered.
25 My understanding is that they were viewed, and I think

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1 Mr. Hester was supposed to recover them and download
2 and preserve those files. Investigator McFaddin --
3 and they can correct me if I'm wrong -- but he
4 reviewed this from the phone and, of course is, didn't
5 review them from Hester after Hester abstracted it
6 from the phone, downloaded it and printed it out and
7 did all of that. So none of the photographs -- my
8 understanding was that the information that McFaddin
9 took from the phone, but none of it was ever put in in
10 print form. So it was just a downloaded electronic
11 form and preserved that way, and not in print form.
12 Now that they don't have the original disk, which
13 might be lost, then they don't have anything in print
14 form that they have, you know, printed out from that
15 disk. I think it was only preserved electronically,
16 my understanding is.

17 MR. CLEMENTS: Your Honor, to speed things up,
18 rather than me and Mr. Brooker guessing what happened,
19 Investigator McFaddin tells me that what he got, he
20 didn't get it from Hester. I suggest that we put --
21 for clarity's sake, put Investigator McFaddin under
22 oath and tell us what he did and how he retrieved the
23 information and what he did with it.

24 THE COURT: Certainly.

25 MR. BROOKER: I have no problem with that,

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1 whatsoever.

2 MR. CLEMENTS: You want to question him, or do
3 you want me to?

4 THE COURT: You'll both get a chance.

5 Investigator McFaddin, if you will come around
6 and be sworn, please.

7 MR. CLEMENTS: While he's coming up, exactly what
8 portion of Rule 5 is Mr. Brooker citing, depending on?

9 MR. BROOKER: I believe it is (a)(1)(c).

10 THE COURT: Let's ask something. I have these
11 motions here, and I'm going to ask about it because it
12 may be that either of you are going to withdraw it, or
13 there is more to it than right here. You have a
14 motion to quash the indictment based on the fact that
15 it hasn't been true billed by the Grand Jury. The
16 indictment I have was true billed by the Grand Jury.

17 MR. BROOKER: You are right, Your Honor. The
18 only reason why we filed that is as a precautionary
19 measure. Usually the copy we get is not true billed,
20 so there is no stamp, nothing on it. I knew there was
21 a possibility that it was true billed.

22 THE COURT: It's true billed.

23 MR. BROOKER: Of course we withdraw that motion.

24 MR. CLEMENTS: That is another motion I didn't
25 have any notice of.

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THOMAS McFADDIN - DIRECT EXAMINATION

1 (THOMAS McFADDIN, having been duly sworn,
2 testified as follows:)

3 DIRECT-EXAMINATION

4 BY MR. CLEMENTS:

5 Q Investigator McFaddin, state your name for the
6 record and tell us where you work and in what capacity.

7 A Thomas McFaddin.

8 Q Who do you work for?

9 A Florence County Sheriff's Office.

10 Q Have you investigated the murder of Cherilyn
11 Joseph?

12 A I did.

13 Q When you got to the scene that night, don't tell
14 us in detail what all you did, because you'll have
15 another opportunity to do that, but what we're
16 interested in is just the phone that was Cherilyn
17 Joseph's phone. When did you see it, pick it up? What
18 did you do with it, and when did you do things with it?

19 A I saw it that night and I was telling them make
20 sure they put it in evidence, because it was sitting on
21 a counter. Someone probably already moved it at that
22 point. So I put it on the counter, and it didn't have
23 a lock on it, on the phone. So I told them to make
24 sure they put it in evidence, I need to look at it
25 later.

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THOMAS McFADDIN - DIRECT EXAMINATION

1 Q Did you look at it later?

2 A Yes, I did.

3 Q When?

4 A Probably the very next -- I can't remember the
5 exact day, but shortly that next day I got the phone
6 and started going through it and looking at the phone.

7 Q When you say you were going through it, how were
8 you going through it?

9 A Just going through the call log, looking at
10 pictures, going through e-mails. I don't have
11 Facebook, so I don't mess with the Facebook. That part
12 would come in with the download. I don't have
13 Facebook, so I'm not familiar with Facebook.

14 Q You didn't retrieve any text messages or anything
15 like that, did you?

16 A No, I didn't.

17 Q Is that because that is all hearsay?

18 A Yes.

19 Q Was there anything on there that you saw?

20 A I did see text messages and e-mails. What I told
21 Investigator Collins, he was attempting to go out to
22 check some other stuff. I said I'll keep messing with
23 this phone she has. At that time I said, Let me see
24 where she drives to. Everybody's got locations. I
25 said, Let me go to her location and see where she

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THOMAS McFADDIN - DIRECT EXAMINATION

1 drives to. That stuff I wrote down in my files, I saw
2 the addresses that she had in her phone, so I wrote
3 them in my case file. That is probably why you saw it
4 in my case notes.

5 Once I gave the phone back, that is when Hester
6 had it. I told him to maybe look at another device, a
7 tablet or something at the house. I told him once he
8 got that, make sure they download everything on that
9 phone. Because usually forensic downloads the stuff
10 on the phone. I'll take pictures if I have to if they
11 can't get into it and give me everything out of the
12 phone.

13 Q You said pictures, like a screen shot?

14 A Screen shot.

15 Q What did you do with names and addresses and
16 numbers that you extracted yourself off the phone?

17 A I went to it.

18 Q You went to the people?

19 A Yeah, went to the location.

20 Q What did you do with the people?

21 A Talked to them, interview.

22 Q Any of them suspects?

23 A At that time, on 225 Plum Street, at first we did
24 think that LaRon Whitten was a suspect, so we showed
25 his picture, and they eliminated him.

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THOMAS McFADDIN - DIRECT EXAMINATION

1 Q Any other people that you thought were suspects
2 on there?

3 A We went to the -- me and the city investigator
4 went to one on Orange Street, which ended up being his
5 brother. Someone else called and said they saw the
6 sketch, and I said that address is in her phone, and we
7 went to that location and it ended up being
8 Mr. Williams' brother. I took a picture. Matter of
9 fact, he had a black Chrysler, so we took a picture of
10 that car, and it came back to his brother, Antonio.

11 Q Did you find any other males on there?

12 A I went to Junior Hixson. There was another
13 individual that we had -- not in her -- that part, but
14 on the call log. I spoke with them. I got them to
15 give me swabs, DNA samples at that time. So most of
16 the guys that were recent people that I talked to --
17 now, some of them I eliminated because her phone was
18 still, like, working. So some people were actually
19 still calling her, and when they called, I asked them
20 where they were. Obviously, if you are still calling
21 her, you know, you think she's alive. So someone had
22 to let them know that she's deceased. But we got that
23 address.

24 Finally, I decided -- I didn't even go to the
25 address in Bennettsville at first; I sent the

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THOMAS McFADDIN - DIRECT EXAMINATION

1 investigator to that address. Then, I called an
2 investigator and said, You are from Bennettsville,
3 give me a contact with an investigator there, which he
4 did, and I sent him to the address in Bennettsville,
5 which he told me, Oh, it's just a little old lady who
6 stays there.

7 So a couple weeks later, I'm like, well, listen,
8 let's drive out here. Sometimes you have to do
9 something right, you got to do yourself. So me and
10 Investigator Collins rode to Bennettsville. That is
11 when I met the little old lady, which was his grandma,
12 and that is when the investigator kind of explained.

13 Q Did the people you talk with at the addresses
14 that you checked on, did you put those in your
15 investigative report?

16 A Yes, I did.

17 Q You said that you made those -- you wrote those
18 on your file folder, explain to me exactly what that is
19 and what you are doing.

20 A We have a case file where you keep all your
21 paperwork, we keep it all there. So I had names --
22 different names I was writing down on the back of the
23 file. I also was putting the Orange Street address on
24 there. I did Orange Street, Timmons ville. I was from
25 Timmons ville side, so I knew about that address. Then

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THOMAS McFADDIN - DIRECT EXAMINATION

1 they had Darlington Street address, the 225 Plum
2 Street. So when I pulled it up on her phone, looking
3 at that, when I pulled the GPS up, Investigator Collins
4 was telling me he found the taxicab and they dropped
5 him at Donrail (phonetic), but not at a certain
6 location. But when I looked at her GPS, pulled up
7 maps, you can look at Donrail and you can see Plum
8 Street, that is when I went ding, ding, ding. I told
9 him, We need to visit that guy.

10 Q You documented all of this in your notes?

11 A Correct.

12 Q And in your report?

13 A Yes.

14 Q Did you ever see or handle this phone after
15 Hester supposedly downloaded everything, or not?

16 A I was telling them you need to check the call
17 log. I had a couple more times. I think even after
18 you said go back and try to help them get information
19 to give to Thurmond that they couldn't find in the
20 phone.

21 Q As far as you know, everything was exhaustive to
22 get that information?

23 A Correct. Once you pull back up the location, I
24 told them they -- if they didn't take the pictures of
25 it then, they could take pictures of call logs or

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THOMAS McFADDIN - DIRECT EXAMINATION

1 whatever they could take now without even going in. I
2 think that is what Hester was doing, because the
3 employee said stuff was deleted. He said he could
4 reboot the phone and find deleted stuff, whether it was
5 pictures or contacts, text messages, whatever
6 information he could get. I didn't get any information
7 on that. I think the only information I got was stuff
8 he got from Badoo.

9 Q Did he ever give you any information from that
10 phone?

11 A No, I didn't get the information from Hester, but
12 I told him to make sure -- beside the download stuff,
13 make sure they took pictures of what I was reviewing in
14 the phone.

15 Q That didn't happen?

16 A No. I never had it. Even before this, he
17 thought he still had some disk or something he would
18 give to me before the trial. I still don't have any of
19 the information he claimed he was supposed to do.

20 Q He's no longer with the sheriff's office?

21 A No.

22 MR. CLEMENTS: Answer any questions that His
23 Honor may have or Mr. Brooker may have.
24
25

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THOMAS McFADDIN - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MR. BROOKER:

3 Q I want to be absolutely certain that I understand
4 all the devices that were taken. I looked at a note in
5 the supplemental incident report, the supplemental
6 incident report I think of Deputy Brian Crawford, and
7 of course Supplement No. 6 is from William Hester.
8 I'll be happy to show this to you if you want to see
9 it, but I think -- and I'll read it to you, and I'll
10 show it to you if you want. It says: On 1/25/2015, I
11 was advised of several electronic devices that needed
12 to be downloaded and evaluated. Once I was given the
13 search warrants of that -- that covered all of the
14 devices, I began extracting information out of the
15 devices. I started with the Samsung Galaxy 4. Once
16 all of the data was abstracted, I reviewed the data for
17 any information that would lead to a suspect. There
18 was no valuable information that was gathered at this
19 time. I then attempted to download the i-Phone, but
20 was unable to because of an encryption backup that was
21 placed on the iPhone on January 18, 2016. I then took
22 the hard drive out of an HP laptop and created a copy
23 of the device. I connected the hard drive to a write
24 blocker and used black light. I abstracted the
25 information from the hard drive onto a file on my

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THOMAS McFADDIN - CROSS-EXAMINATION

1 computer. During evaluation of the data, I located a
2 few names and numbers that were deleted from the
3 computer. I turned those over to investigators. I
4 then was able to revolve a backup of the victim's cell
5 phone, which was made on the morning of her death,
6 placing the backup underneath the black light.

7 So, basically, my understanding is that the
8 information you reviewed from the cell phone -- is
9 that the iPhone 6?

10 A Yes, pink. I believe it is iPhone.

11 Q The reason I'm confused is I know you
12 testified -- I think in your report you testified on
13 the next day -- on the next day -- and indulge me a
14 moment. Let me flip through your report.

15 You said the next day, the day after the -- I'm
16 sorry, hold up for just a minute. Let me make sure of
17 that, I mean what the next day means.

18 (A brief pause in the proceedings.)

19 MR. BROOKER: You say: The next day a search
20 warrant was being obtained to go through the victim's
21 phones and laptop. I was then able to call
22 individuals in the phone to set up interviews and
23 gather information.

24 I'm assuming that when Investigator Hester said
25 he was able to revolve the back door into that cell

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THOMAS McFADDIN - CROSS-EXAMINATION

1 phone, that iPhone 6, and then, of course is -- so
2 they could look at information using the black light,
3 that that would have been the time in which you would
4 have gotten ahold of that information, because prior
5 to him doing that, you would not have been able to get
6 ahold of that information because the phone was
7 encrypted?

8 A No. No, I wasn't looking at what he was looking
9 at. I could see some of the calls on there. Her phone
10 wasn't locked, so I looked at that. I don't know -- I
11 never looked at whatever he downloaded. I kept her
12 phone with me, so even when we rode to Laurinburg, I
13 had her cell phone. I was just going through what I
14 had on her phone. I don't know what Hester actually
15 downloaded, but I was just using her cell phone. I was
16 like, Chad, we got this in the GPS, ride here. Let's
17 be her today, go to Century Drive, go to Orange Street,
18 let's go to Plum Street, let's go -- the stuff Hester
19 said he was supposed to extract and give me, I don't
20 know what that was; I didn't see it.

21 Q So my understanding is -- what you're saying is
22 that the phone was unlocked at that time, and you were
23 able to go through and flip through and look at
24 everything because it wasn't locked at that time?

25 A Right. It wasn't locked. She didn't keep it

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THOMAS McFADDIN - CROSS-EXAMINATION

1 locked.

2 Q And, of course is, that electronic information --
3 you then used that electronic information to follow
4 leads, names, addresses, phone numbers, pictures and
5 that sort of stuff?

6 A Correct.

7 Q Okay. Now, I'm assuming when you had the phone
8 before you turned it over to Hester, did you print out
9 any of the stuff?

10 A No, I didn't print nothing out.

11 Q You didn't print out any of that stuff?

12 A No.

13 Q And, of course is, when the phone was turned over
14 to Hester, of course is, I'm assuming that Hester was
15 supposed to --

16 A He would always say -- I would be like, Can I get
17 the phone? He would be like, Yeah, just when you
18 finished with it, make sure you bring it back. I'd
19 have it most of the day. So every time I took it from
20 him while he was in forensics, I would make sure I
21 bring it back so he could do whatever he was attempting
22 to do with it.

23 Q Sure. And all of the information that you are
24 referring to that you got out of the phone, all of that
25 information was evidence that you used in connection

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THOMAS McFADDIN - CROSS-EXAMINATION

1 with the case?

2 A Correct.

3 Q Names, addresses, numbers and that sort of stuff?

4 A Correct.

5 Q Okay. So that is evidence related to the case?

6 A Yes.

7 Q And, of course is, you didn't preserve -- you
8 didn't preserve it, and I know it is not your
9 responsibility, but you didn't preserve that evidence
10 in that phone, but I'm assuming is that evidence like
11 that is normally preserved so that if it is going to be
12 mentioned in connection with a case, of course is, that
13 that can be turned over to the defense and of course it
14 can be printed out and of course presented to the jury;
15 is that correct?

16 A Correct. Now, I think if you go back to the
17 phone, you could probably pull back up the call log,
18 the stuff that I was looking at. The only thing
19 forensics could take pictures of the GPS that was
20 current that day, as you look in the phone and go,
21 Recent address, well, it was on the phone. I was
22 saying just make sure you take pictures of this and
23 turn it over, but while -- now you rebooting, it
24 started wiping off some of the current locations from
25 the phone. So you could still look at the stuff I was
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THOMAS McFADDIN - CROSS-EXAMINATION

1 looking at in the phone, but I don't know what you are
2 talking about that Hester actually downloaded. That
3 stuff was then encrypted. I don't know exactly what
4 that was.

5 Q Let me ask you that. Is it the stuff you could
6 look up, the call log and stuff like that? Did anyone
7 print that out and turn it over to the defense?

8 A They were supposed to be taking pictures of that.

9 Q Because we haven't -- we haven't received
10 anything from the phone.

11 A Okay. Yeah, you can look at that now. You can
12 get the phone and go through the whole phone, the stuff
13 that I saw. The encrypted stuff they talking about, I
14 didn't go in any of that. I just basically looked, let
15 me see who she is calling, let me see who she's
16 texting, let me see what her location is like. The
17 only thing that has happened in -- your phone will say
18 recent locations, and it is 2019. It was on there.
19 When I turned it on, he would go and say I'm going to
20 get the camera and take pictures, and that recent stuff
21 went through to our location, not to nothing that she
22 had in 2016. But all the call logs with the names,
23 anyone she called, missed calls, all the calls that
24 happened after she was deceased, all that stuff I was
25 looking at. The stuff Hester had to be downloaded,

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THOMAS McFADDIN - CROSS-EXAMINATION

1 only thing I got that I still had, that I think he got
2 it, was a copy of the Badoo stuff where she had
3 conversations with individuals in there. I think that
4 probably came from the lab -- maybe came from the lab,
5 I'm not sure exactly which one it came from.

6 Q And I'll ask you this simple question, and I'm
7 almost finished. So when Mr. Williams' defense
8 attorney, I think about two years ago, submitted a
9 Rule 5 request for disclosure -- asking for disclosure
10 of that information, do you know why it was not -- if
11 it was available, obviously the rule says you have to
12 turn it in within about 30 days; do you know why that
13 information was not -- if it was printable or
14 downloaded, the information you saw, why that
15 information was not printed, downloaded and put it
16 on -- turned over to the defense for their use?

17 A What I did in that part is called forensics.
18 They should have everything from that phone. I gave it
19 to them. They should have had it downloaded or
20 whatever he was doing. If he took the photos or
21 whatever he was doing should have been with him.

22 Now, recently, when you had it, they stopped --
23 they could not find his disk and we were around there
24 trying to call and look and he said he made a file, he
25 made notes that it was done and he had it. Of course

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THOMAS McFADDIN - CROSS-EXAMINATION

1 I talked to him and he said he had it on another
2 back-up disk of his own, and I don't have that either.

3 Q Okay. And of course I know you and, of course
4 is, I don't question your creditability, but I'm
5 assuming you understand why, and simply we take your
6 word for what is contained in the disk, for one thing,
7 it's hearsay, and another thing we have to be able to
8 have it and see for ourselves. So I know you said you
9 took down notes, and when you saw an address you took
10 down the address, or when you saw a phone number, you
11 took down the phone number, but of course you
12 understand why we have to actually see it from the
13 device itself instead of relying exclusively on you; do
14 you understand that?

15 A Yeah, I understand why you want to see it.

16 Q Okay. Okay. So at this point, do you have any
17 reason to argue that we have not received that
18 information, the information you saw, or any other
19 information that was downloaded from the iPhone 6, any
20 of the information I think or data that Hester
21 indicated that he downloaded from the laptop, any other
22 information -- HP laptop and also from the Galaxy
23 Tablet 4. Hester said he downloaded information from
24 that and preserved it. But you have no reason to
25 conclude when they say we have not received that

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THOMAS McFADDIN - CROSS-EXAMINATION

1 information, you know, that that is false?

2 A No, I can't -- whatever Hester -- the stuff he
3 did, I can't say. No. The only stuff I can account
4 for is what I wrote down and presented to you.

5 Q Yes, sir.

6 MR. BROOKER: No further questions, Your Honor.

7 THE COURT: You may step down.

8 MR. BROOKER: If I could say briefly in
9 conclusion, Your Honor?

10 THE COURT: Yes, sir.

11 MR. BROOKER: I don't think there is any question
12 that that information is admissible. I think it is
13 admissible under Rule 5. I think we have a right to
14 have it. Obviously, I think Mr. Clements and
15 Investigator McFaddin said that he wrote down notes
16 and stuff like that, but of course the obvious reason
17 is that that is not evidence, that is not preserved in
18 any of the evidence, and of course we can't rely on
19 his veracity with respect to what he saw.

20 From the phone, they have to turn over that. I
21 don't know -- I believe they still have the device. I
22 think Investigator McFaddin said that at least some of
23 the information that he looked at, that they may still
24 be able to abstract that from the device, but of
25 course none of that has been turned over. Nothing has

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THOMAS McFADDIN - CROSS-EXAMINATION

1 been turned over to us. What he saw, what he didn't
2 saw, nothing was turned over to us from that phone at
3 this particular point in time. Of course is, and I
4 don't think there is any question we are entitled to
5 it.

6 So I think underneath the rule, Rule 5, if you go
7 down I think further under Rule 5 it basically says
8 that there is information that is discoverable under
9 Rule 5, and of course if that information is not
10 produced, of course is, the Court -- that that
11 information -- if it is not produced at trial, then,
12 of course is, it has to be excluded from the trial.
13 So unless they produce that information to us prior to
14 trial, I think the rule says that that information has
15 to be excluded, which means even his reference to it
16 in his testimony has to be excluded, because it is
17 hearsay.

18 Thank you, Your Honor.

19 MR. CLEMENTS: Your Honor, I don't think any of
20 it is hearsay. There were no statements. He has not
21 presented --

22 THE COURT: Let me try to short cut this thing.
23 From what I understand from Investigator McFaddin's
24 testimony is you still have the phone, you can still
25 access all of that stuff, it can still be turned over

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THOMAS McFADDIN - CROSS-EXAMINATION

1 to the defense. It needs to be.

2 MR. CLEMENTS: I just told Ben Price that exact
3 thing, if he can do it. He is not sure, but he's
4 going to try to do that.

5 THE COURT: Well, there's nothing unsure. I
6 mean, if it can be opened up and seen, it can be
7 provided.

8 MR. CLEMENTS: My understanding is when it was
9 encrypted, you couldn't do that, but they told me --

10 THE COURT: Well, there may be -- and God knows
11 I'm not an expert, by any stretch, but I know there is
12 some areas in a phone that you can't get to because it
13 is encrypted, but it sounds like what Investigator
14 McFaddin relied on is stuff that is just on your call
15 log and on the phone.

16 MR. CLEMENTS: Yes. And, Your Honor, I'm sure
17 Investigator Price is going to get that to me as
18 quickly as possible so we can get it to Mr. Brooker.

19 The only thing I have as far as Rule 5, none of
20 this is intended for use as evidence in chief at the
21 trial, and none of it was obtained from or belonged to
22 the defendant. I'm sure what Mr. Brooker is going to
23 say is that it is going to be material for the
24 preparation of his defense, but it would be material
25 for preparation of his defense if there is something

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THOMAS McFADDIN - CROSS-EXAMINATION

1 there that is exculpatory. We have no idea. We can't
2 show there is and can't show that there isn't.

3 THE COURT: Well, I mean, you are saying it is
4 not stuff -- I can't remember what your very first
5 comment was, but it is not stuff that you are going to
6 use in the trial? Like, you are not going to use
7 that -- show to the jury that stuff that is in the
8 phone, but clearly Investigator McFaddin was lead and
9 directed by the information in that phone.

10 MR. CLEMENTS: Your Honor, I agree. And I didn't
11 speak clearly, but what I'm talking about is all of
12 the stuff that is frozen, encrypted --

13 THE COURT: But no one knows what that is anyway,
14 right?

15 MR. CLEMENTS: No one knows what that is. The
16 stuff he said that he was able to see, they are going
17 to take pictures of that and get that to me
18 immediately.

19 THE COURT: And of course the stuff that is
20 encrypted and that no one has been able to access
21 doesn't come into play in this trial at all anyway.

22 MR. CLEMENTS: Yes, sir. And just for the
23 record, Your Honor --

24 THE COURT: Well, you know, unless -- I don't
25 know, Mr. Brooker, I guess you can make an argument

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THOMAS McFADDIN - CROSS-EXAMINATION

1 that you want to pay an expert \$15,000 to un-encrypt
2 it.

3 MR. BROOKER: But, see, that's the thing, Your
4 Honor, we're not -- when they collect and preserve
5 evidence at the scene, they have to turn it over.
6 Under Rule 5 they have to turn it over to us whether
7 it is exculpatory or not. Now, under Brady, Brady
8 says it has to be exculpatory or impeachable. Of
9 course is, evidence collected at the scene, there is
10 no requirement of evidence --

11 THE COURT: What are you saying they should turn
12 over to you?

13 MR. BROOKER: That's the thing, Your Honor,
14 Hester clearly says in his report that he was able to
15 get this information, created a backup, and he clearly
16 said in his report that he put it on a disk.

17 THE COURT: Was the disk lost?

18 MR. CLEMENTS: They can't find it. There is no
19 log, which those things are logged in. There is no
20 paperwork.

21 THE COURT: Is Hester deceased?

22 MR. CLEMENTS: No. He is in Lee County.

23 THE COURT: Lee County is just right down the
24 road. Listen --

25 MR. CLEMENTS: Can I make this a Court's exhibit

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THOMAS McFADDIN - CROSS-EXAMINATION

1 to explain? They called him at least three times, and
2 I feel like that they have gotten like three different
3 stories from him.

4 THE COURT: Well, you can make it a Court's
5 exhibit; that is fine. But here is the thing, and
6 this is where -- this gentleman is on trial for his
7 life, so that is as serious as it gets. It doesn't
8 get more serious than that. So someone better get
9 Hester to step up to the plate and decide what he did,
10 and what he did with what he did. That doesn't seem
11 to be asking too much.

12 MR. CLEMENTS: Yes, sir. For the record, I would
13 like to have Mr. Price's efforts on here.

14 THE COURT: Absolutely. Let me mention this --
15 go ahead and have Natalie mark that.

16 (Court's Exhibit 1 marked.)

17 THE COURT: The stuff that Investigator McFaddin
18 relied on is available and you can get that. The
19 other stuff -- and correct me if I'm wrong, because I
20 don't necessarily follow everything that I probably
21 should -- but an officer, Hester, did a report. I
22 haven't seen it, you've seen it. It said that he
23 downloaded stuff off this phone and preserved it on a
24 disk, put the disk into evidence, but no one can seem
25 to put their hands on the disk. I got that.

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THOMAS McFADDIN - CROSS-EXAMINATION

1 Is there any testimony, is there any evidence in
2 this record that that stuff that Hester pulled off the
3 phone was relied upon in this investigation? Because
4 if it is a matter that Hester pulled stuff off and put
5 it on a disk -- claims he put it on a disk and put the
6 disk in evidence, the remedy would be to exclude
7 anything -- any reference to that or any information
8 gathered from that and used by law enforcement, that
9 would all be excluded.

10 MR. BROOKER: I understand, Your Honor. Do you
11 want me to tell you what the dilemma is? Unless we
12 can see what is taken off the phone, we can't verify
13 whether or not it was the encrypted stuff that Hester
14 downloaded -- we would have to rely on the
15 creditability of Investigator McFaddin, and, see,
16 that's the thing --

17 THE COURT: But you don't. Because whatever he
18 did should be supported by what is provided to you.

19 MR. BROOKER: I'm assuming what will be provided
20 to me. I guess our motion would be is that his
21 testimony on the stand would be limited to whatever
22 they provided to us.

23 THE COURT: Correct.

24 MR. BROOKER: So if it is outside of whatever
25 they provide to us, then of course we would assume it

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THOMAS McFADDIN - CROSS-EXAMINATION

1 is part of that lost evidence, that they lost, and of
2 course it wouldn't be admissible. So I guess we can
3 evaluate it once we get the information. I guess we
4 can take a look and see. And I would ask they get it
5 to us as soon as possible, because tomorrow is Friday
6 and I have another court day Friday, which means I'll
7 be doing this over the weekend.

8 THE COURT: They should have that for you today.
9 If it is the stuff that I understood Investigator
10 McFaddin is talking about, if it is the stuff that I
11 am aware of, that can be done today, easy. Now, that
12 is an ignorant IT guy talking, but I can pull it up on
13 my phone and screen shot it. I mean, that's it. I
14 don't see any reason why he can't have it.

15 MR. BROOKER: One other motion, Judge, with
16 respect to that, Judge -- and I'll make it very
17 quickly -- and of course is -- I guess this issue is
18 about standing. I think Investigator McFaddin's
19 report -- and of course this is not a written one, not
20 one of the ones that is typed out, but in Investigator
21 McFaddin's report, Investigator McFaddin said, of
22 course if you want to follow me, I think this is --
23 third page of Investigator McFaddin's report -- I
24 think it is on the third page of the report. Yeah,
25 they are not numbered. In Investigator McFaddin's

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1 report he says the next day a search warrant was
2 obtained to go through the victim's cell phone and
3 laptop, and then of course he called the individuals
4 in the phone to interview and gather information.

5 The reason why I'm putting this on the record, I
6 know that this is going to present an issue of
7 standing, but I don't know the answer to this yet, so
8 I'll make the motion, so at least the motion is
9 preserved for the record just in case this turns into
10 an appellant issue. Of course is, it is my
11 understanding that search warrants -- there was search
12 warrants that were obtained for the -- obtained and
13 sent to AT&T for the location data and of course for
14 cell phone information that was obtained by the
15 carrier, but there was not a search warrant that was
16 ever obtained to search the physical phone itself.

17 Of course we know -- I think it is Riley versus
18 California says that when you search a physical phone
19 itself, you have to have a search warrant to search
20 the physical phone.

21 Now, there was never a search warrant that was
22 obtained as referenced in Investigator McFaddin's
23 report, at least one that has been turned over to us,
24 for the search of the physical phone. Also, I don't
25 know whether or not the cell phone that was -- and

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1 I'll combine the two to save time -- of course we
2 argued previously that they took a bag that they
3 believed to belong to Mr. Williams, and of course
4 there was a cell phone in that. And then later on,
5 they contacted Sprint, and Sprint says this phone is
6 registered to Mr. Williams, and of course is -- and I
7 don't know whether or not they physically searched
8 that cell phone itself. If they did physically search
9 that cell phone, of course if they also searched the
10 cell phones that belonged -- the cell phones, the
11 electronic devices that they took from the victim,
12 then of course is Riley versus California said they
13 have to have a search warrant for the physical
14 contents of the phone itself and not just carrier
15 data. Of course my understanding is that there was no
16 warrant that that was obtained to physically search
17 the cell phone believed to be Mr. Williams, and also
18 there was no cell phone -- no search warrant that was
19 obtained to physically search the devices itself that
20 were taken from the victim's phone.

21 I imagine what Ed Clements is going to say,
22 Solicitor Clements is going to say -- because I can't
23 get anything passed him, I know that -- he'll say,
24 Judge, with respect to the victim's phone, where is
25 the standing? Does Mr. Williams have standing to

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1 challenge on the search of the information that is
2 contained within Ms. Williams' phone, even if it was
3 done incorrectly. And of course the novel issue is
4 that I'm still searching right now, and it might be a
5 situation, Judge, where I would ask you to hold your
6 ruling into abeyance until I can finish my research,
7 and that is whether or not -- if on Ms. Williams'
8 (sic) phone, and of course Riley basically says there
9 is an expectation of privacy on the phone. We know
10 there is expectation of privacy for the owner of the
11 phone, but is there also an expectation of privacy for
12 someone who may not be the owner of the phone, but may
13 have information contained on the phone? Similar to
14 -- I forget the name of the case. I guess the
15 analysis would be similar to a standing for searching
16 an automobile. I think the supreme court basically
17 says that when an automobile is stopped, and of course
18 that automobile was searched, that previously it was
19 thought that only the driver had standing to challenge
20 the search of the automobile, and of course the
21 supreme court basically says because the passenger is
22 in the vehicle, may have stuff within the vehicle, the
23 passenger also has an expectation of privacy within
24 the vehicle, and the passenger now can also challenge,
25 you know, a search of that -- search of that

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1 automobile.

2 THE COURT: Under that theory, if I hear what you
3 are telling me is that anyone that I ever had a
4 communication with via telephone, I have an
5 expectation of privacy on their phone.

6 MR. BROOKER: Your Honor, I know -- as far as I
7 know, it's never been argued, and of course I haven't
8 completed my research on it, but out of an abundance
9 of caution I want to make the motion. The supreme
10 court or the court of appeals, if it gets that far,
11 might say, Well, Mr. Brooker, you are crazy. They
12 might say that, but, of course is, I need to preserve
13 it just in case it turns out that I'm not crazy and
14 there may be a limited expectation of privacy based
15 upon how much data is contained on that phone.

16 If I have on my phone your name, your home
17 address, your Social Security, even though it is my
18 phone, your date of birth and that sort of stuff, does
19 that generate some sort of an expectation of privacy
20 at least around that information itself within my
21 phone? I don't know the answer to that question. I
22 think it is a novel issue, but, of course is, I want
23 to preserve it for the record and, of course is, that
24 I ask the Court to make a ruling, and the Court may
25 deny it, but at least it is preserved for the record

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1 for appeal, so if it gets on appeal, someone smarter
2 than I am can answer that question. But I know it is
3 at least a novel issue, and of course I just need to
4 preserve it.

5 Now, with respect to his phone, that is not a
6 novel issue. The phone they took from his black bag
7 from --

8 MR. CLEMENTS: I'll make it quicker. I don't
9 think we examined that phone at all.

10 MR. BROOKER: Okay. Then that would be fine. I
11 imagine you all would not disagree or at least you all
12 would consent to the ruling basically saying if that
13 phone was searched and any information was taken from
14 that phone, because there was no --

15 THE COURT: Without a search warrant, that would
16 be invalid.

17 MR. BROOKER: It would be invalid.

18 MR. CLEMENTS: We didn't take anything from that
19 phone.

20 THE COURT: That is moot because they didn't do
21 it.

22 MR. BROOKER: If they tried to say something that
23 came from that phone.

24 Let me make sure that is everything. I think the
25 only other motion we filed -- and I'm sorry, I have it

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1 here and didn't give it to you. That is just a motion
2 about his background record based on a 404(b), which
3 says normally evidence of a person's criminal history
4 or bad character evidence is not admissible at trial
5 for the purposes of proving the crime that the person
6 is on trial for. We've been provided I think a copy
7 of his criminal background history. There are some
8 things of the background history and, of course is, we
9 want to make a motion asking the Court to exclude that
10 information, because that information is not
11 admissible on 404(b), would not be admissible in this
12 case and, of course is, because it has no value and,
13 of course is, that -- of course if Mr. Clements argues
14 it has probative value, we would argue that the
15 probative value is outweighed -- the prejudice is
16 outweighed by the probative value because the last
17 thing we want a jury to do is look at Mr. Williams and
18 say the evidence that Mr. Williams committed this
19 murder is weak, but we believe, you know, a serious
20 criminal history, so we're going to convict him
21 because he is a bad guy, not because the evidence of
22 this crime satisfies proof beyond a reasonable doubt.
23 And, of course is, I think everything contained within
24 his criminal background has no reference to the
25 current charge or no relationship to the current

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1 charge that is pending before the Court.

2 Thank you, Your Honor.

3 THE COURT: All right.

4 MR. CLEMENTS: In response to that motion, I
5 would just ask that you save ruling on that if the
6 issue actually comes up by testimony or something.

7 THE COURT: Sure. We'll do that.

8 MR. CLEMENTS: We have one thing we need to bring
9 to the attention of the Court. We have telephone
10 records and cell tower records from Sprint and AT&T,
11 and we have the certifications for them, including the
12 affidavit of the custodian of records. We would like
13 to go on the record that we'll seek to introduce those
14 records at the appropriate time and would have this
15 marked.

16 (Court's Exhibit 2 marked.)

17 MR. BROOKER: Your Honor, we would obviously
18 challenge the admissibility of those records based
19 purely on those affidavits alone and of course require
20 the custodian of records to be present to authenticate
21 those records. And, of course is, I think in the
22 AT&T, and also in Sprint communications, the
23 prosecutor's office -- they advised the prosecutor
24 that, of course is, that they were given two-weeks
25 notice, but they couldn't be present and would come

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1 and send someone. They have an authorization team to
2 come out and authenticate these records, if it is
3 requested.

4 And, of course is, another problem is going to be
5 with respect to the authenticating affidavit, you
6 know, that I can think of right now off the top of my
7 head just thinking of the motion, is that that
8 affidavit basically says, you know, that -- and of
9 course is, it is an electronic signature, a stamp
10 signature, and so -- which means we don't know whether
11 or not it is a signature of the person whose name is
12 identified, or whether or not it is an employee with a
13 stamp, you know. That stamp, I think it is actually
14 an electronically generated signature. So we don't
15 know --

16 THE COURT: Well, one of them is.

17 MR. BROOKER: Yeah. Yeah. Whether or not it is
18 a records custodian that generates that, or whether it
19 is a staff member that generated that for the records
20 custodian.

21 A second problem is that if you would take a look
22 at that affidavit, it says that this authenticates the
23 records, but doesn't identify what the records are.
24 Normally, whenever you have an affidavit, the best
25 course of practice would be to Bates stamp, you know,

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THOMAS McFADDIN - CROSS-EXAMINATION

1 the records and say this affidavit is verified, that
2 records Bates stamped 1 through 560, all of the
3 records produced by Sprint and, of course is, these
4 records are authenticated. Of course is, that
5 otherwise, if those records are not Bates stamped, you
6 don't know specifically what records is being referred
7 to, then, of course is, that someone like me or anyone
8 who might be disingenuous could slip a page out and
9 slip another page in because it is not Bates stamped.

10 So it doesn't define exactly what records the
11 affidavits are referring to. Is it referring to
12 records 1 through 5? 1 through 50? 1 through a
13 hundred? All of them? We don't know because the
14 records are not Bates stamped and of course it doesn't
15 make reference that this affidavit pertains to these
16 records. It doesn't make it clear. So we don't know
17 what records they are authenticating by the affidavit
18 alone.

19 MR. CLEMENTS: It authenticates all of the
20 records we gave Mr. Brooker.

21 THE COURT: The folks can't appear?

22 MR. CLEMENTS: They can, but it would cost the
23 State a thousand or \$1,500.

24 THE COURT: The talk of money rings hollow to me.

25 MR. CLEMENTS: Yeah. Well, what do you think is

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1 missing on there, and I can see if they can send me
2 something? I think they complied with the statute,
3 but.

4 THE COURT: It says the attached -- I assume
5 these came attached to the records submitted to your
6 office?

7 MR. CLEMENTS: Yes, sir. Yes, sir.

8 THE COURT: I think that is the problem.

9 MR. BROOKER: Yeah, because we don't know what
10 the attachments were. I know Mr. Clements is not, but
11 if Mr. Clements was scrupulous, if attachments -- if
12 the first hundred pages was wonderful and I liked it,
13 you know, then I would say, you know, the affidavit
14 would say to the records attached, and I would then
15 take the affidavit and put it on top of the first 300
16 pages. The second 50 I might not like, and I might
17 just take those and throw them in the trash, and no
18 one would know I took the remaining 50 pages and threw
19 them in the trash because it doesn't make reference to
20 what it is and how many pages.

21 THE COURT: For argument's sake, let's bring Lucy
22 Cox in here.

23 MR. BROOKER: Yes.

24 THE COURT: And I don't know how many records we
25 have. If it is 300 pages, do you think Lucy Cox is

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1 going to sit on the stand and go through 300 pages and
2 tell you, yeah, this is everything we did?

3 MR. BROOKER: What he would have to do I imagine
4 is if he can do that prior to. He could do that prior
5 to and say -- look at the records and say, well, I
6 looked at the records last night, 1 through all 300 of
7 them, and every 300 pages I looked through, these are
8 records that were provided by Sprint. He would not
9 have to count them on the stand. These are all the
10 originals and all what they purport to be. That is
11 normally done in connection with trials.

12 I think that is why they have the authentication
13 team if they need to authenticate them.

14 THE COURT: This certification from Lucy Cox was
15 submitted on March 12 of this year, so I'm assuming
16 that is when she did it.

17 What does the statute say, Solicitor?

18 MR. CLEMENTS: I'm looking at it. The original
19 or copy of the domestic record that meets the
20 requirements of 803-6 shall by certification of the
21 custodian or another qualified person that complies
22 with the State's statute or rule. Before the trial or
23 hearing, a proponent should give an adverse party
24 reasonable notice that they intend to offer the record
25 and shall make the record certification available for

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1 inspection so that the party has a fair opportunity to
2 challenge the record.

3 It goes on to talk about a civil case, Section B.

4 A record of an act, condition or event, shall,
5 insofar as relevant, be competent evidence if the
6 custodian or other qualified witness testifies to its
7 identity and the mode of its preparation, and if it
8 was made in the regular course of business, at or near
9 the time of the act, condition or event, and if, in
10 the opinion of the court, the sources of information,
11 method and time of preparation were such as to justify
12 its admission.

13 THE COURT: Does it provide that it can be done
14 via affidavit?

15 MR. CLEMENTS: I thought it did.

16 THE COURT: The concern I have is you can't
17 question an affidavit.

18 MR. CLEMENTS: If I may do a little more
19 research. I thought there was a specific statute
20 right on that, and I might have copied the wrong one.

21 THE COURT: We'll look at it and see. And if
22 not, you'll have to have those folks appear to
23 authenticate those records.

24 Anything else we need to deal with today?

25 MR. BROOKER: One other thing, and I'll go ahead

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1 and do this now and not surprise him on the date of
2 the trial. There is another issue with respect to the
3 March 2019 records. The March 2019 records that they
4 got from Sprint, those records right now would not be
5 admissible because those records are not obtained as a
6 result of a subpoena. And my understanding is that
7 when they got the original records back in February of
8 2019, and of course that was the original records I
9 think that Mr. Clements' office got, and of course
10 they did send off a subpoena for those records then.
11 And, of course is, my understanding is that sometimes
12 is -- three years later that they realize that there
13 was a problem with those records, and of course they
14 asked Sprint to -- to -- to send corrected records.
15 But the problem is that three years later, I have
16 those records that have not been obtained pursuant to
17 a search warrant, because the one they got back in
18 2016 -- search warrants expire after ten days and, of
19 course is -- so for the records that they have in
20 2019, three years later, they would have to get
21 another search warrant. When ten days have elapsed,
22 search warrants are dead.

23 THE COURT: You got me at a bit of a loss because
24 I don't know what you are talking about as far as when
25 these records were received and when they weren't.

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1 MR. CLEMENTS: What he is referring to is when I
2 think Sprint sent us the phone records, and then sent
3 us also towers, information on cell towers, for some
4 reason someone messed up and sent us information on
5 cell towers from Mooresville, West Virginia or
6 something. So we got to looking to prepare and we saw
7 that and said, oh, my goodness, so we called them up
8 and told them what they did, and they said, oh, we're
9 sorry, we'll correct that. I don't know if we sent
10 them a subpoena. I thought we did, but I'll have to
11 go check that and see. If we didn't, we'll have to
12 subpoena them now.

13 THE COURT: Okay. Well, look into that.

14 I want to make sure that Mr. Brooker gets the
15 information off of the phone today.

16 MR. CLEMENTS: I have one other brief thing
17 involving Rule 5. As you know, Rule 5 requires, under
18 Section (b)(1)(a)(b), reports, examination and tests,
19 if the defendant requests disclosure of the
20 subdivision --

21 THE COURT: Slow down. Slow down, the court
22 reporter --

23 MR. CLEMENTS: Oh, I'm sorry.

24 The defendant, on request of the prosecution,
25 shall permit the prosecution to inspect and copy any

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1 results or reports of physical or mental examinations
2 and of scientific tests or experiments made in
3 connection with the particular case or copies thereof
4 within the possession or control of the defendant,
5 which the defendant intends to introduce as evidence
6 in chief at the trial which were prepared by a witness
7 who the defendant intends to call at trial when the
8 results or reports relates to his testimony.

9 It has been the practice of many defense
10 attorneys that I don't think are as ethical as
11 Mr. Brooker, and I hope he is not intending to do
12 this, but I know he has potentially two expert
13 witnesses. And, Your Honor, we ask that whatever
14 their results are of their examinations and tests or
15 reports that they have, that we be entitled to see
16 those and look at those.

17 What happens a lot of times, a lot of defense
18 attorneys say don't give me a written report, just
19 talk to me about it, that way I don't have to disclose
20 it, which, to me, is egregiously violative of the
21 spirit of Rule 5, but that happens a lot of times. I
22 think he has a cell phone expert and possibly a guy
23 that claims to be a DNA expert, and I think that I
24 would be entitled to any reports or tests or
25 examinations or anything that they produced, whether

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1 it be written or verbal.

2 MR. BROOKER: Your Honor, obviously he is -- I
3 don't dispute that -- and, of course is, we will keep
4 in contact with Mr. Clements to let him know, but our
5 cell phone expert doesn't have a written report, and
6 the reason he doesn't have a written report is that
7 we -- of course we got the report from you. If you
8 remember at Mr. Williams' bond hearing, we also asked
9 for a court order for records from Sprint, and of
10 course we sent that court order to Sprint, Sprint sent
11 us back and said they don't have those records. So
12 right now he has had nothing to examine now. There is
13 no report that is being generated. So there is no
14 report that he has right now because Sprint told us
15 they don't have the records. They told us that after
16 four, five months, they no longer -- I don't think
17 they keep those records for, like, I think it was
18 somewhere between 14 to 18 months. They don't
19 maintain those records so they can't produce them.
20 Those are the records that we were hoping to obtain
21 and send to our cell phone expert so he could examine
22 them and, of course is, we have nothing for him to
23 examine right now.

24 MR. CLEMENTS: I can't speak to that because what
25 he had written down that they were requesting, I

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1 thought we already had that and gave that to him, and
2 that is a bunch of stuff that is over my head as far
3 as cell phone records.

4 But you do have all the cell phone tower records,
5 right?

6 MR. BROOKER: Yeah. It's over my head, too, I'll
7 admit. But the expert said this is what we need, and
8 of course we got the order for that, and then of
9 course we sent the court order -- they sent us back
10 just billing information. I contacted Sprint after
11 that and says, hey, my expert says this is not the
12 information. Another expert said -- I think another
13 representative from Sprint says those records that
14 your expert is requesting, those records are no longer
15 than 18 months, we don't have them. And I already
16 sent an e-mail to my expert saying that Sprint is
17 saying that the information that you are
18 referencing -- that you are saying you need, Sprint is
19 saying that they don't retain that information longer
20 than 18 months.

21 So we have not been able to turn over anything.
22 And the only thing that Sprint did send us I think was
23 the billing information, and of course I sent a copy
24 of that to Mr. Clements. Because when they initially
25 responded, they sent over this generic billing

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1 information, and I sent that to my expert and of
2 course to Mr. Clements. The e-mail, my expert says
3 that is not what I was requesting. I contacted them
4 again, and they said what you are requesting, we don't
5 have; this is it. So there is no report, nothing to
6 review because --

7 THE COURT: They don't have it. All right.

8 MR. CLEMENTS: How about the DNA guy?

9 MR. BROOKER: The only thing we sent to the DNA
10 guy -- and of course I also communicated this, the
11 forensic report from Richland County, the only thing
12 we sent over to him is that forensic report and asked
13 him to take a look at the forensic report and tell us
14 what it means; that's it. And, so far, I have not --
15 he has not told me what it means verbally or with a
16 report, but that is it. He was just simply used to
17 interpret the DNA evidence, to tell us what this
18 language means; that's it. But he is not doing any
19 independent analysis. He's not analyzing anything or
20 doing anything. I'll just say, What does that mean?

21 MR. CLEMENTS: Is he going to testify?

22 MR. BROOKER: Well, I hope to use him to testify.
23 I hope to use him to testify.

24 THE COURT: All right. And, you know, of course
25 I'll still be around here if anything comes up, okay.

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1 (Whereupon, the proceedings concluded.)

2 CERTIFICATE OF REPORTER

3
4 State of South Carolina)

5 County of Horry)

6
7 I, Natalie Dahl, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate Transcript of Record of
10 the proceedings and the evidence introduced in the
11 hearing of the above-captioned case, relative to
12 appeal, in the Court of General Sessions for Florence
13 County, South Carolina, on the 13th day of June, 2019.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16
17 March 19, 2021

18
19 _____
20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

)
) COURT OF GENERAL SESSIONS
) 2017-GS-21-00588
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)
)

State of South Carolina
vs.
Royal Daniel Williams, III

) TRANSCRIPT OF RECORD
)
)
)

DEFENDANT

) June 17-18, 2019
) Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

ED CLEMENTS, SOLICITOR
Attorney for the State

THURMOND BROOKER, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Loni Proffitt **In-Camera**

Mr. Clements	64			

Andrew Clendenin **In-Camera**

Mr. Clements	76			

Mr. Brooker		84		

Thomas McFadden **In-Camera**

Mr. Clements	103			

Mr. Brooker		115		

Certificate of Reporter 161

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
D-1	Composite Sketch		124
D-2	Photograph		124

1 THE COURT: All right. Ladies and gentlemen, we
2 are ready to proceed to the selection of our first case
3 and would recognize Solicitor Clements for the calling of
4 the first case.

5 MR. CLEMENTS: Thank you, Your Honor. Please
6 the Court. We would call the State of South Carolina vs.
7 Royal D. Williams, III. It's indictment number
8 2017-GS-21-588.

9 THE COURT: Thank you, sir. All right. Ladies
10 and gentlemen, you just heard the Solicitor call the first
11 case for trial, that being indictment 2017-GS-21-588 the
12 State of South Carolina vs. Royal Daniel Williams, III.
13 Now, ladies and gentlemen, an indictment is simply a
14 document or a piece of paper that contains the allegations
15 that have been made against an individual. It is not
16 evidence in this case and the allegations that are
17 contained in this document are not evidence in this case
18 nor can they be considered as evidence in this case. This
19 is simply the charging document. The document that brings
20 this case into this court. This indictment has charged
21 Mr. Williams with the offense of murder and to that charge
22 or to that offense he has pled not guilty. That plea of
23 not guilty places upon him the presumption of innocence
24 and it places upon the State the burden of proof. I'm
25 going to read the allegations that are contained in this

1 indictment against Mr. Williams so that you will be able
2 to answer any further questions that I'm going to be
3 asking you as it relates to whatever knowledge you may
4 have about this case if any. But the indictment charges
5 as I indicted charges Mr. Williams with the charge of
6 murder and the allegation is as follows: That Royal
7 Daniel Williams, III did in Florence County on or about
8 January the 23rd of 2016 feloniously, willfully and with
9 malice aforethought kill one Sherilyn Joseph by means of
10 shooting her in the head with a handgun and that said
11 Sherilyn Joseph did die as a proximate result thereof, in
12 violation of section 16-3-10, dash 20 and dash 60 excuse
13 me -- 16-1-60 of the South Carolina Code of Laws 1976 as
14 amended. As I indicated to this allegation, Mr. Williams
15 has pled not guilty. Is there any member of the jury
16 panel based on that information that I've just shared with
17 you, does any members of the jury panel know anything
18 about this case or has heard anything about this case, if
19 so please stand? Thank you. There are none.

20 Folks, I'm going to ask the attorneys to stand
21 and to introduce themselves and ask you to please listen
22 carefully and would recognize start with the Solicitor.

23 MR. CLEMENTS: Thank you, Your Honor. If it
24 please the Court.

25 THE COURT: Yes, sir.

1 MR. CLEMENTS: Good morning, ladies and
2 gentlemen. My name is Ed Clements. I'm the elected
3 Solicitor for the Twelfth Judicial Circuit, that's Marion
4 County and Florence County. I'll be trying this case.
5 This is my Deputy Solicitor Mr. John Jepertinger. He will
6 be assisting and will be in and out of the courtroom, but
7 that's who you'll see for the Solicitor's office in this
8 trial.

9 THE COURT: All right. Thank you, Mr. Clements.
10 Ladies and gentlemen, is there any member of the jury
11 panel who is related by blood, connected by marriage or
12 who has any close, business or personal relationship
13 either with Solicitor Clements or Deputy Solicitor John
14 Jepertinger, if so please stand? All right.

15 And, ma'am, could I have your name please?

16 PROSPECTIVE JUROR: Cindy Wiggins.

17 THE COURT: All right, Ms. Wiggins. And which
18 one of those gentlemen do you know or related to?

19 PROSPECTIVE JUROR: John Jepertinger.

20 THE COURT: All right. And this is juror number
21 165. The fact you know Mr. Jepertinger would that in any
22 way affect your ability to be give both the State of South
23 Carolina and the defendant at the bar a fair and impartial
24 trial?

25 PROSPECTIVE JUROR: Yeah.

1 THE COURT: All right. Well, that's fine. What
2 I'm going to do is I'm going to excuse you from
3 participation in this case. I'm going to ask you though
4 to have a seat because we have another case that we're
5 going to pull after we do this one, just if you would just
6 don't have any conversation with anyone about your
7 knowledge of Mr. Jepertinger or anything about the case,
8 okay. Thank you very much, ma'am.

9 Yes, sir, your name please.

10 PROSPECTIVE JUROR: Johnny Stoupenos.

11 THE COURT: All right, Mr. Stoupenos. This is
12 juror 139. Who do you know, sir?

13 PROSPECTIVE JUROR: Solicitor Clements.

14 THE COURT: All right. And the fact that you
15 know Solicitor Clements would that in any way affect your
16 ability to give both the State as well as the defense a
17 fair and impartial trial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you, sir. You may have a
20 seat.

21 Now, Mr. Brooker, if you would introduce
22 yourself as well as your client please.

23 MR. BROOKER: Thank you, Your Honor. My name is
24 Thurmond Brooker. I'm a practitioner. My office is
25 located here in Florence, South Carolina. This is Royal

1 Williams. Mr. Williams is from Bennettsville, South
2 Carolina.

3 THE COURT: Thank you, sir. Ladies and
4 gentlemen, is there any member of the jury panel who are
5 is related by blood, connected by marriage or who has any
6 close business or personal relationship with or who has
7 ever been represented by Mr. Thurmond Brooker, if so
8 please stand?

9 Sir, your name please?

10 PROSPECTIVE JUROR: Your Honor, I'm Pastor John
11 Brown.

12 THE COURT: All right, sir. This is juror
13 number 16. And, Pastor, how do you know Thurmond?

14 PROSPECTIVE JUROR: We are like brothers. Also
15 we have business investments transactions together, Your
16 Honor. Earlier I was trying to follow protocol being a
17 pastor, you know, my views and religious beliefs, you
18 know, may prohibit me from serving, but I want to be
19 respectful and want to wait my time to speak up.

20 THE COURT: All right. Well, and I'm going back
21 to focusing on this matter. The fact that you have this
22 relationship with Mr. Brooker would that affect your
23 ability to give both the State and the defense a fair
24 trial in your participation in this trial?

25 PROSPECTIVE JUROR: Yes, sir, it would.

1 THE COURT: All right. And I would certainly --
2 and I'll talk with you once we get to the end about what
3 you discussed, but I will certainly excuse you from
4 participation in this matter, okay. Anyone else?

5 All right. Folks, you met Mr. Williams. Is
6 there any member of the jury panel who is related by
7 blood, connected by marriage or who has any close business
8 or personal relationship with Mr. Royal Daniel Williams,
9 III, if so please stand? Thank you. There are none.

10 Now, folks, I have a list of names that I'm
11 going to call out. These are folks that are possible or
12 potential witnesses. They may or may not appear during
13 the course of this trial, but these are folks who have
14 been listed as possible witnesses. As I go through this
15 list that question that I just asked you are you related
16 by blood, connected by marriage or have any close business
17 or personal relationship, that's the question I'll be
18 asking as it relates to these folks names who I'm going to
19 call. As I go through these names, please listen
20 carefully. And if you hear a name and that question
21 applies to that person for you, go ahead and stand
22 continue to listen because I have several names I'm going
23 to be calling out and it maybe that you know more than one
24 individual on this list, okay. So the following are
25 possibly or potential witnesses that may appear during the

1 course of this trial Robert Bennett, Patricia Stewart,
2 Latisha Powell, Jackie Profitt, Leron Whitten, James
3 Swinton, Lakeya Bacote, Linda Jones, Chimyra Wright,
4 Deborah Goff, Chris Johnson, Doris Yarborough, John C.
5 Barron, Melody Galinski, Ashleigh Dixon, Michael Brumbles,
6 Andrew Clendenin, Chris Neal, Ben Price, Chad Collins,
7 Thomas McFadden, Matt Lee, Bo Myers, Dr. Angelina
8 Phillips, David Young. All right. I'm going to start
9 over here and work my way across.

10 Ma'am, can I have your name please?

11 PROSPECTIVE JUROR: Candace Freeman.

12 THE COURT: All right. This is juror 41. Ms.
13 Freeman, who on that list did you know, ma'am?

14 PROSPECTIVE JUROR: Michael Brumbles.

15 THE COURT: All right. Now, do you know
16 Mr. Brumbles or are you related to him?

17 PROSPECTIVE JUROR: I know him.

18 THE COURT: All right. The fact that you know
19 Mr. Brumbles and that he may appear as a witness during
20 the course of this trial, would that in any way affect
21 your ability to give both the State and the defense a fair
22 and impartial hearing?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Thank you, ma'am. You may have a
25 seat.

1 Ma'am, your name please.

2 PROSPECTIVE JUROR: Stephanie Walker-Boston
3 juror number 157.

4 THE COURT: All right. And who on list, ma'am,
5 did you know?

6 PROSPECTIVE JUROR: Chris Neal and Thomas
7 McFadden.

8 THE COURT: All right. And are -- you just know
9 those gentlemen or are you related?

10 PROSPECTIVE JUROR: Know them.

11 THE COURT: All right. And the fact that you
12 know those two gentlemen and that they may appear during
13 the course of this trial as witnesses, would that in any
14 way affect your ability to give both the State and defense
15 a fair and impartial hearing?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, very much, ma'am. You
18 may have a seat.

19 Ma'am, your name please?

20 PROSPECTIVE JUROR: Sadie Chisholm number 25.

21 THE COURT: All right. Ms. Chisholm, who on
22 that list did you know, ma'am?

23 PROSPECTIVE JUROR: Chris Neal.

24 THE COURT: All right. And are you related to
25 Mr. Neal?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: The fact that you know Chris Neal
3 would that in any way affect your ability to give both the
4 State and the defense a fair and impartial trial?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you very much, ma'am. You may
7 have a seat.

8 Ma'am, your name please?

9 PROSPECTIVE JUROR: Cassandra Simon number 130.

10 THE COURT: Okay. Juror 130. And, Ms. Simon,
11 who on that list did you know?

12 PROSPECTIVE JUROR: Thomas McFadden.

13 THE COURT: I'm sorry.

14 PROSPECTIVE JUROR: Thomas McFadden.

15 THE COURT: Okay. Are you related to him?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: How are you related?

18 PROSPECTIVE JUROR: We're cousins.

19 THE COURT: All right. The fact that
20 Investigator McFadden is related to you and may appear as
21 a witness, would that in any way affect your ability to
22 give both the State and the defense a fair and impartial
23 trial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you, ma'am. You may have a

1 seat. Anyone else?

2 All right. Ladies and gentlemen, I ask you this
3 briefly after I read the indictment to you, but I'm going
4 to ask again just to make sure. Is there any member of
5 the jury panel whether you have seen it on the news -- I
6 don't even know if it's been newsworthy here, but read it
7 on social media or have any information about this case
8 whatsoever? Is there any member of the panel that knows
9 of anything other than what I just shared with you, if so
10 please stand? Thank you. There are none.

11 Is there any member of the jury panel or member
12 of your immediate family who has ever been the victim of a
13 violent crime, if so please stand? All right.

14 Ma'am, your name please?

15 PROSPECTIVE JUROR: Janet Kale juror number 67.

16 THE COURT: Juror number 67. Give me one second
17 to find that. Juror 76. All right. Ms. Kale, yourself
18 or a member of your family?

19 PROSPECTIVE JUROR: A member of my family.

20 THE COURT: All right. Ma'am, the fact that
21 you've had that experience in your family would that in
22 any way affect your ability to hear and listen to the
23 testimony and the evidence in this case and give both the
24 State and the defense a fair and impartial trial?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: All right. Ms. Kale, I'm going to
2 excuse you from participation in this matter. You may
3 have a seat.

4 And then again your name for the record, ma'am?

5 PROSPECTIVE JUROR: Sadie Chisholm juror number
6 25.

7 THE COURT: Yes, Ms. Chisholm, yourself or a
8 member of your family?

9 PROSPECTIVE JUROR: A member of my family.

10 THE COURT: Would that experience prevent you
11 from giving both the State and the defense a fair and
12 impartial trial?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Thank you, ma'am. You may have a
15 seat.

16 Sir, your name please?

17 PROSPECTIVE JUROR: Brian Johanson 71.

18 THE COURT: All right. And, Mr. Johanson, was it
19 yourself or a member of your family?

20 PROSPECTIVE JUROR: Myself.

21 THE COURT: All right. Sir, the fact that
22 you've had that experience would that in any way affect
23 your ability to listen carefully to the evidence in this
24 case and judge this case based solely upon the evidence
25 presented here giving both the State and the defense a

1 fair trial, would that in any way prevent you from doing
2 that?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you, sir. You may have a
5 seat.

6 Ma'am, your name please.

7 PROSPECTIVE JUROR: Carol Gause juror 46.

8 THE COURT: All right. Ms. Gause, yourself or a
9 member of your family?

10 PROSPECTIVE JUROR: Myself.

11 THE COURT: Ma'am, would that experience in any
12 way affect your ability to be able to give the State as
13 well the defense a fair and impartial trial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you, ma'am. You may have a
16 seat.

17 Is there any member of the jury panel or a
18 member of close circle of friends or your family who are
19 law enforcement officers or who are employed by any law
20 enforcement agency, if so please stand?

21 All right. I'm going to start over this side
22 and work my way across.

23 Ma'am, your name please.

24 PROSPECTIVE JUROR: Traci Weaver 164.

25 THE COURT: Ms. Weaver, how that question apply

1 to you, ma'am?

2 PROSPECTIVE JUROR: I have a cousin with
3 Florence City.

4 THE COURT: Okay. All right.

5 PROSPECTIVE JUROR: And I have a cousin that's
6 the director of J. Reuben Long.

7 THE COURT: All right. And, ma'am, you have
8 those relationships in your family would that in any way
9 affect your ability to give both the State and the defense
10 a fair trial?

11 PROSPECTIVE JUROR: I think so.

12 THE COURT: All right. I'm going to excuse you
13 from participation in this matter, ma'am. And let me just
14 stop there. We're in criminal court. Do I need to
15 transfer your service to a term of civil court?

16 PROSPECTIVE JUROR: You can do that as well,
17 that's fine with me.

18 THE COURT: I don't want to speak for you, but
19 it sounds like having that relationship in your family
20 would affect your ability to maybe sit impartially in
21 criminal matters? Maybe I'm overreading it.

22 PROSPECTIVE JUROR: You are probably correct,
23 sir.

24 THE COURT: All right. Let me do that. I don't
25 want to waste your time all week having you come back and

1 forth. So if you don't mind, I'm going to excuse you from
2 any further service and have them set you up for a civil
3 term. All right. Thank you very much. You're free to
4 go, ma'am.

5 Ma'am, your name please.

6 PROSPECTIVE JUROR: Monica Moten number 104.

7 THE COURT: How does that question, Ms. Moten,
8 apply to you, ma'am?

9 PROSPECTIVE JUROR: I have a cousin that works
10 for Lexington Police Department and a cousin that's a
11 judge also.

12 THE COURT: All right. And, ma'am, the fact
13 that you have these relationships in your family would
14 that in any way affect your ability to be fair and
15 impartial?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, ma'am. You may have a
18 seat.

19 Sir, your name please?

20 PROSPECTIVE JUROR: Moses Brown juror number 17.

21 THE COURT: All right. Mr. Brown, how does that
22 relate to you?

23 PROSPECTIVE JUROR: I have a sister with the
24 Florence County Sheriff Department.

25 THE COURT: All right. The fact you have that

1 relationship in your family, Mr. Brown, would that in any
2 way affect your ability to give both the State and the
3 defense a fair trial?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Thank you, sir. You may have a
6 seat.

7 Yes, ma'am.

8 PROSPECTIVE JUROR: Staci Miller juror number 97
9 or 96 I'm sorry.

10 THE COURT: All right. Ms. Miller, how does
11 that question apply to you?

12 PROSPECTIVE JUROR: My ex-husband is an
13 investigator with the Florence County Sheriff's Office.

14 THE COURT: All right. And the fact that you
15 have that relationship would that in any way affect your
16 ability to give both the State and the defense a fair
17 trial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you, ma'am. You may have a
20 seat.

21 Yes, ma'am.

22 PROSPECTIVE JUROR: Magan Head juror 56.

23 THE COURT: All right. And, Ms. Head, how does
24 that apply to you, ma'am?

25 PROSPECTIVE JUROR: I know one of the deputies

1 that's here today.

2 THE COURT: All right. The fact that you know
3 that individual would and if that individual were to
4 appear as a witness would that affect your ability to be
5 fair and impartial?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. I'm going to excuse you
8 from participation in this matter, Ms. Head, but stay with
9 us. You might -- you could help us in the next case.

10 Ma'am, your name please.

11 PROSPECTIVE JUROR: Chris Revell number 120.

12 THE COURT: All right. And, Ms. Revell, how
13 does that apply to you, ma'am?

14 PROSPECTIVE JUROR: I have two nephews one with
15 Florence County.

16 THE COURT: All right. And the fact that you
17 have those relationships in your family would that in any
18 way affect your ability to be fair and impartial giving
19 both the State and defense a fair trial?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you very much, ma'am.

22 Ma'am, your name please.

23 PROSPECTIVE JUROR: Megan Floyd juror number 40.

24 THE COURT: All right. Ms. Floyd, how does that
25 apply to you, ma'am?

1 PROSPECTIVE JUROR: My brother-in-law works for
2 the Florence County Sheriff's Department.

3 THE COURT: The fact that you have that
4 relationship, Ms. Floyd, would that in any way affect your
5 ability to give both the State and the defense a fair
6 trial?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Thank you, ma'am. You may have a
9 seat.

10 Okay, ma'am, your name please.

11 PROSPECTIVE JUROR: Sarah Fullard.

12 THE COURT: And this is juror number 43. And,
13 ma'am, how is that related to you?

14 PROSPECTIVE JUROR: My son works with the
15 department.

16 THE COURT: And the fact that you have that
17 relationship would that in any way affect your ability to
18 give both the State and the defense fair and impartial
19 trial?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you very much, ma'am. You may
22 have a seat.

23 Yes, sir.

24 PROSPECTIVE JUROR: Johnny Stoupenos number 139.

25 THE COURT: All right, Mr. Stoupenos.

1 PROSPECTIVE JUROR: My son-in-law is a deputy
2 with Florence County Sheriff's Department.

3 THE COURT: And the fact that you have that
4 relationship, Mr. Stoupenos, would that in any way affect
5 your ability to be fair and impartial?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Thank you, sir. You may have a
8 seat.

9 Yes, sir.

10 PROSPECTIVE JUROR: Jamie Collins juror 27.

11 THE COURT: All right. And, Mr. Collins, how
12 does that question apply to you, sir?

13 PROSPECTIVE JUROR: I have a cousin that's with
14 the Marion County Sheriff's Department.

15 THE COURT: All right, sir. And the fact that
16 you have that relationship in your family, would that in
17 any way affect your ability to be fair and impartial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you, sir. You may have a
20 seat.

21 Yes, ma'am, your name please.

22 PROSPECTIVE JUROR: Joan Alexander.

23 THE COURT: This is juror number two. Ms.
24 Alexander, how does question apply, ma'am?

25 PROSPECTIVE JUROR: I have a cousin work with

1 Florence County.

2 THE COURT: Okay. And the fact that you have
3 that relationship in your family would that in any way
4 affect your ability to be fair and impartial?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you very much, ma'am. You may
7 have a seat.

8 Yes, sir.

9 PROSPECTIVE JUROR: David Spearman 136.

10 THE COURT: All right, yes, sir. And how does
11 that question apply, Mr. Spearman?

12 PROSPECTIVE JUROR: My uncle is a highway
13 patrolman.

14 THE COURT: All right. The fact that you have
15 that relationship would that in any way affect your
16 ability to be fair and impartial to both the State and the
17 defense?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you, sir. You may have a
20 seat.

21 Yes, sir.

22 PROSPECTIVE JUROR: Tony Sizemore number 132.

23 THE COURT: All right. Yes, sir, Mr. Sizemore.

24 PROSPECTIVE JUROR: I think it's more from a
25 friend in my position through my work we deal with SLED

1 and with the Florence and Darlington County, Darlington
2 City.

3 THE COURT: Sure. The fact that you have those
4 relationships through your work with those various
5 agencies and those folks would that in any way affect your
6 ability to give both the State and the defense a fair
7 trial?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Thank you, sir. You may have a
10 seat.

11 Is there any member of the jury panel or member
12 of your immediate family who has ever been prosecuted by
13 the Twelfth Circuit Solicitor's office whether it be here
14 Marion excuse me -- here in Florence County or over in
15 Marion County, if so please stand? Thank you. There are
16 none.

17 Is there any member of the jury panel who may
18 have a negative view of government agencies or law
19 enforcement agencies and that negative view would
20 adversely affect your ability to give both the State and
21 the defense a fair and impartial trial, if so please
22 stand? Thank you. There are none.

23 Is there any member of the jury panel or member
24 of your immediate family who has ever filed a complaint or
25 lawsuit against any branch of law enforcement, if so

1 please stand? Thank you. There are none.

2 Is there any member of the jury panel or member
3 of your immediate family who has been a member of or
4 contributor to any organization that advocates against
5 domestic violence or any other form of violence such as
6 CAVE Citizens Against Violence or any types of
7 organizations like that? And when I say that you're a
8 contributor, it could either be by way of financial means
9 or it could be by way of volunteering? Is there any
10 member of the panel or member of your immediate family
11 who's a member of any type organization such as that, if
12 so please stand? Thank you. There are none.

13 Is there any member of the jury panel or member
14 of your immediate family who is a member of or a
15 contributor to any organization that counsels, supports,
16 provide aide to victims of crimes or families who are
17 victims of crimes, if so please stand? Thank you. There
18 are none.

19 Is there any member of the jury panel or member
20 of your immediate family, who obviously it would not be a
21 member of the panel, but any member of the panel whose
22 immediate family or close circle of friends has ever been
23 the victim of a murder, if so please stand? All right.

24 And your name again for the record, ma'am?

25 PROSPECTIVE JUROR: Sadie Chisholm.

1 THE COURT: Ms. Chisholm, was it a member of the
2 family or close circle of friends?

3 PROSPECTIVE JUROR: My family. My mother's
4 brother.

5 THE COURT: All right. And the fact that you've
6 had that experience, ma'am, would that in any way affect
7 your ability to sit in this case, hear the testimony and
8 the evidence, giving the both State and the defense a fair
9 and impartial trial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you, ma'am. You may have a
12 seat.

13 Ladies and gentlemen, obviously, you're aware
14 from our discussions in the indictment and the charge that
15 Mr. Williams is charge with murder. Obviously, that is an
16 indication that someone has loss their life and is there
17 -- and listen to this question. You may have a general or
18 specific sympathy or empathy for the victim or the
19 victim's family, but is there any member of the panel who
20 if you have that specific or general sympathy or empathy
21 for the victim's family, is there any member of the family
22 that would have that to the degree that it would affect
23 your ability to give both the State the defense a fair and
24 impartial trial hearing, if so please stand? Thank you.
25 There are none.

1 In this case, the defendant in this case
2 Mr. Williams and the victim in this case Ms. Joseph are
3 both African Americans. Is there any member of this panel
4 that holds any racial bias or animus that would prevent
5 you from giving both the State and the defense a fair and
6 impartial trial in this case regardless of the fact that
7 Mr. Williams as well as Ms. Joseph are of the African
8 American decent, if so please stand? Thank you. There
9 are none.

10 Folks, I've asked you a lot of questions. And
11 if you notice as people have responded to my questions, my
12 follow-up question has always been the same would that in
13 any way affect your ability to give both the State and the
14 defense a fair and impartial trial. That is the goal that
15 we have every time we select a jury in this courtroom
16 whether it be a civil case or a criminal case. Our goal
17 is to impanel a group of folks that can take whatever
18 experiences that have occurred outside this courtroom and
19 set that aside and focus solely upon the evidence that is
20 presented during the course of this trial and decide this
21 case based solely upon that evidence that has been
22 presented, giving both the State and the defense a fair
23 and impartial hearing on that evidence and to render a
24 verdict base solely upon that evidence. That is what we
25 strive to achieve every single time we impanel a jury. So

1 maybe the easiest thing to do is simply to ask that this
2 whether I've asked the question or not is there any person
3 or any member of this jury panel who knows of any reason
4 why you would be able to give both the State and the
5 defendant a fair and impartial hearing, if so please
6 stand? Thank you. There are none.

7 Are there any additional questions of voir dire
8 from the State?

9 MR. CLEMENTS: Nothing from the State, Your
10 Honor.

11 THE COURT: Any additional voir dire or
12 questions from the defense?

13 MR. BROOKER: If we can approach, Your Honor.

14 THE COURT: Yes, come on up.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury panel, but out of the hearing of
17 the jury panel.)

18 THE COURT: Okay. All right. Ladies and
19 gentlemen, let me tell you how we go about selecting
20 juries here in general sessions court. Madam clerk has a
21 computer program over here and what it's going to do is
22 it's going to take this list which is the jury list and
23 it's your names pretty much in alphabetical order. And
24 it's going to take this list and it's going to completely
25 and randomly reorder it. It's going -- for example, I may

1 be Tommy Russo juror number 134 on this list. I may show
2 up on this new list as Tommy Russo juror number 14.
3 There's no rime or reason to it. It's just going to
4 scramble your names and pop them up on a new list and so
5 she'll do that.

6 And then when she gets that new list, she will
7 start at the very top of that list and call out the first
8 name. If your name is called, I would ask that you stand
9 and just stand where you are at. The attorneys will turn
10 around and they'll look to see who's standing. And then
11 what madam clerk will do is she'll look first to the State
12 and ask a question to this effect what say you for the
13 State or words to that effect. The State has two options.
14 They can excuse you. And if they excuse you, you'll have
15 a seat or they can present you. If they present you,
16 you'll just remain standing. And then she'll look to the
17 defense. And she'll ask of the defense words to that
18 effect what say you for the defense or words to that
19 effect. And the defense has two options. They can excuse
20 you. If they excuse you, you'll have a seat or they can
21 seat you. And if they seat you, you'll come around and
22 have a seat in the jury box, all right. So that's how we
23 go about selecting juries in general sessions court. We
24 will go through that process. And once we've selected our
25 panel, we'll then -- I'll have additional information for

1 those of you that remain in the jury pool, okay.

2 So is the State ready to proceed to jury
3 selection?

4 MR. CLEMENTS: We are, Your Honor.

5 THE COURT: Is the defense ready?

6 MR. BROOKER: Yes, sir.

7 THE COURT: Madam clerk, are you all ready?

8 THE CLERK: Yes, sir.

9 THE COURT: Go ahead, ma'am, we're ready to
10 start.

11 THE CLERK: Juror 110 Sherrie Owens.

12 (WHEREUPON, a white female, comes forward.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please present the juror.

15 THE CLERK: What say the defendant?

16 MR. BROOKER: Indulge me for just a second, sir.

17 THE COURT: Yes, sir.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. BROOKER: We strike this juror for the
20 purpose of this trial only.

21 THE COURT: You excuse from this trial only.

22 THE CLERK: Number 128 David Saverance.

23 (WHEREUPON, a white male, comes forward.)

24 THE CLERK: What say the State?

25 MR. CLEMENTS: Please present the juror.

1 THE CLERK: What say the defendant?

2 MR. BROOKER: You can indulge me for just a
3 second.

4 THE COURT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. BROOKER: Please present the juror.

7 THE COURT: Come have a seat in the jury box.

8 THE CLERK: Number 131 Jamar Singletary.

9 (WHEREUPON, a black male, comes forward.)

10 THE CLERK: What say the State?

11 MR. CLEMENTS: Please excuse Mr. Singletary from
12 the trial of this case only.

13 THE CLERK: You excuse from this case only.

14 Juror number 46 Carol Gause.

15 (WHEREUPON, a white female, comes forward.)

16 THE CLERK: What say the State?

17 MR. CLEMENTS: Please present Ms. Gause.

18 THE CLERK: What say the defendant?

19 MR. BROOKER: Indulge me for just a second.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. BROOKER: Excuse this juror for purpose of
22 this trial.

23 THE CLERK: You excuse from this case only.

24 Number eight Brian Barnwell.

25 (WHEREUPON, a white male, comes forward.)

1 THE CLERK: What say the State?

2 MR. CLEMENTS: Please present Mr. Barnwell.

3 THE CLERK: What say the defendant?

4 MR. BROOKER: Please present the juror.

5 THE CLERK: Sir, please take a seat in the jury
6 box.

7 Number 43 Sara Fullard.

8 (WHEREUPON, a black female, comes forward.)

9 THE CLERK: What say the State?

10 MR. CLEMENTS: Please present the juror
11 Ms. Fullard.

12 THE CLERK: What say the defendant?

13 MR. BROOKER: You indulge me for just a second.

14 (WHEREUPON, a pause in the proceedings.)

15 MR. BROOKER: We make an objection of this
16 witness for cause -- to seek to strike this witness for
17 cause.

18 THE COURT: All right. I'm going to deny that
19 request. Ms. Fullard, if you please come around and have
20 a seat in the jury box please.

21 MR. CLEMENTS: I think he still use his strike.

22 THE COURT: I apologize.

23 MR. BROOKER: We're still going to decide
24 whether or not we're going to strike her and I haven't
25 decided yet whether to choose her.

1 THE COURT: Ms. Fullard, hang on. I jumped the
2 gun.

3 (WHEREUPON, a pause in the proceedings.)

4 MR. BROOKER: Your Honor, we decline to use a
5 pre-emptive strike.

6 THE COURT: All right. Come on and have a seat
7 in the jury box.

8 THE CLERK: Eighty-one Edwin Legall.

9 (WHEREUPON, a white male, comes forward.)

10 THE CLERK: What say the State?

11 MR. CLEMENTS: Please present Mr. Legall.

12 THE CLERK: What say the defendant?

13 MR. BROOKER: Please present juror.

14 THE CLERK: Please take a seat in the jury box.
15 Number 105 Shekayla Nesmith.

16 (WHEREUPON, a black female, comes forward.)

17 THE CLERK: What say the State?

18 MR. CLEMENTS: Please excuse Ms. Nesmith from
19 the trial of this case.

20 THE CLERK: You excused from this trial only.
21 Number 157 Stephanie Walker-Boston.

22 (WHEREUPON, a black female, comes forward.)

23 THE CLERK: What say the State?

24 MR. CLEMENTS: Please present the juror.

25 THE CLERK: What say the defendant?

1 MR. BROOKER: We move to strike for cause.

2 THE COURT: Is that the cause we discussed up
3 here?

4 MR. BROOKER: Yes, Your Honor.

5 THE COURT: All right. I'm going to deny that
6 motion.

7 MR. BROOKER: Your Honor, we strike this juror
8 from this case.

9 THE CLERK: You excuse from this trial only.
10 Number 124 Joni Rogers.

11 (WHEREUPON, a white female, comes forward.)

12 THE CLERK: What say the State?

13 MR. CLEMENTS: Please present Ms. Rogers.

14 THE CLERK: What say the defendant?

15 MR. BROOKER: We excuse this juror for this
16 trial.

17 THE CLERK: You excuse from this case only.
18 Number 60 Allie Howell.

19 (WHEREUPON, a white female, comes forward.)

20 THE CLERK: What say the State?

21 MR. CLEMENTS: Number 60, Madam Clerk?

22 THE CLERK: Yes, sir.

23 MR. CLEMENTS: Please present Ms. Howell.

24 THE CLERK: What say the defendant?

25 MR. BROOKER: Please present the juror.

1 THE CLERK: Please take a seat in the jury box.

2 Number 7 Larianne Barnette.

3 (WHEREUPON, a white female, comes forward.)

4 THE CLERK: What say the State?

5 MR. CLEMENTS: Please present Ms. Barnette.

6 THE CLERK: What say the defendant?

7 MR. BROOKER: Please present the juror.

8 THE CLERK: Please take a seat in the jury box.

9 Number 120 Chris Revell.

10 (WHEREUPON, a white female, comes forward.)

11 THE CLERK: What say the State?

12 MR. CLEMENTS: Please present the witness. I

13 mean, the juror.

14 MR. BROOKER: I apologize. What number is the
15 juror?

16 THE CLERK: This is 120. What say the
17 defendant?

18 MR. BROOKER: Indulge me just a second please.

19 (WHEREUPON, a pause in the proceedings.)

20 MR. BROOKER: We move to strike for cause, Your
21 Honor, and for the reason that we discussed at the bench,
22 Your Honor.

23 THE COURT: All right. I'm going to
24 respectfully deny that request.

25 (WHEREUPON, a pause in the proceedings.)

1 MR. BROOKER: We excuse this juror for this
2 trial.

3 THE CLERK: You excuse from this case only.
4 Number 44 Mary Fulton.

5 (WHEREUPON, a black female, comes forward.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Fulton.

8 THE CLERK: What say the defendant?

9 MR. BROOKER: Please seat the juror.

10 THE CLERK: Please take a seat in the jury box.
11 Number 107 Diane O'Connor.

12 (WHEREUPON, a white female, comes forward.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please present Ms. O'Connor.

15 THE CLERK: What say the defendant?

16 MR. BROOKER: Please seat the juror.

17 THE CLERK: Please take a seat in the jury box.
18 Number 104 Monica Moten.

19 (WHEREUPON, a black female, comes forward.)

20 THE CLERK: What say the State?

21 MR. CLEMENTS: Please present Ms. Moten.

22 THE CLERK: What say the defendant?

23 MR. BROOKER: Please excuse this juror.

24 THE CLERK: You excuse from this case only.
25 Number 118 Travis Prosser.

1 (WHEREUPON, a white male, comes forward.)

2 THE CLERK: What say the State?

3 MR. CLEMENTS: Please present Mr. Prosser.

4 THE CLERK: What say the defendant?

5 MR. BROOKER: Please present the juror.

6 THE CLERK: Please take a seat in the jury box.

7 Number 115 Marion Poston.

8 (WHEREUPON, a white male, comes forward.)

9 THE CLERK: What say the State?

10 MR. CLEMENTS: Please present Mr. Poston.

11 THE CLERK: What say the defendant?

12 MR. BROOKER: Please present the juror.

13 THE CLERK: Please take a seat in the jury box.

14 Number 99 Bernice Mitchell.

15 (WHEREUPON, a black female, comes forward.)

16 THE CLERK: What say the State?

17 MR. CLEMENTS: Please excuse Ms. Mithcell from
18 the trial of this case only.

19 THE CLERK: You excuse from this case only.

20 Number 125 Larry Rouse.

21 (WHEREUPON, a black male, comes forward.)

22 THE CLERK: What say the State?

23 MR. CLEMENTS: Please present Mr. Rouse.

24 THE CLERK: What say the defendant?

25 MR. BROOKER: Please present the juror.

1 THE CLERK: Please take a seat in the jury box.
2 Number 116 Rebecca Poston.
3 (WHEREUPON, a white female, comes forward.)
4 THE CLERK: What say the State?
5 MR. CLEMENTS: Please present Ms. Poston.
6 THE CLERK: What say the defendant?
7 MR. BROOKER: Please excuse this juror.
8 THE CLERK: You excuse from this case only.
9 Number 148 Taylor Thompson.
10 (WHEREUPON, a white female, comes forward.)
11 THE CLERK: What say the State?
12 MR. CLEMENTS: Please present Ms. Thompson.
13 THE CLERK: What say the defendant?
14 MR. BROOKER: Please present the juror.
15 THE CLERK: Please take a seat in the jury box.
16 How many alternates, Judge?
17 THE COURT: Two.
18 THE CLERK: Number 47 Megan Gioldasis.
19 (WHEREUPON, a white female, comes forward.)
20 THE CLERK: What say the State?
21 MR. CLEMENTS: Please present Ms. Gioldasis.
22 THE CLERK: What say the defendant?
23 MR. BROOKER: Please give me the juror's number
24 again? The number is 47?
25 THE CLERK: Yes.

1 MR. BROOKER: Thank you. Please excuse this
2 juror.

3 THE CLERK: You excuse from this case only.
4 Number 10 Suzanne Bateman.

5 (WHEREUPON, a white female, comes forward.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Bateman.

8 THE CLERK: What say the defendant?

9 MR. BROOKER: Present the juror.

10 THE CLERK: Please take a seat in the jury box.
11 Number 42 Fallon Frierson.

12 (WHEREUPON, a black female, comes forward.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please excuse Ms. Frierson from
15 the trial of this case only.

16 THE CLERK: You excuse from this trial only.
17 Number 137 Destiny Springs.

18 (WHEREUPON, a white female, comes forward.)

19 THE CLERK: Does the State wish to challenge
20 this juror for cause?

21 MR. CLEMENTS: Beg the Court's indulgence for
22 just one minute.

23 (WHEREUPON, a pause in the proceedings.)

24 MR. CLEMENTS: No, we do not wish to excuse her
25 for cause.

1 THE CLERK: What say the defendant?

2 MR. BROOKER: Please present the juror.

3 THE CLERK: Please take a seat in the jury box.

4 THE COURT: All right. Are there any motions
5 regarding jury selection from the State?

6 MR. CLEMENTS: Not on behalf of the State, Your
7 Honor.

8 THE COURT: Anything from the defense?

9 MR. BROOKER: Give me just a second, Your Honor.

10 THE COURT: Yes, sir, sure.

11 (WHEREUPON, a pause in the proceedings.)

12 MR. BROOKER: No motions from the defense, Your
13 Honor.

14 THE COURT: All right. Thank you. Before we go
15 any further, let me speak with Mr. Jepertinger real quick.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury.)

19 THE COURT: All right. Folks, I needed to get
20 with Mr. Jepertinger about information for the -- those of
21 you that remain on the panel. In your summons for your
22 jury duty you received, there's a phone number on there.
23 It's a call back number. If you don't have that, make
24 sure you get it before you leave. Everybody should have
25 it. I'm going to ask you if you would to call that number

1 tomorrow night after six o'clock, okay. Tomorrow night
2 after six o'clock. And then they'll be instructions as to
3 when you need to come back or if you need to come back at
4 all. I don't know at this point. It may be that you may
5 not have to come back, but you might. So let me ask you
6 to do that for me call back tomorrow night after six
7 o'clock.

8 THE CLERK: The number they need to call is on
9 the little slip of paper we gave them today, not on the
10 jury summons. I just want to clarify that.

11 THE COURT: I apologize about that. Thank you.
12 You were given a slip of paper, I apologize. That's the
13 number you need to call. And listen folks if you do -- I
14 was going to say do me a favor, but really it's do
15 yourself a favor put that number somewhere where you want
16 lose it or forget it because recently we've had some folks
17 that we called or we put on the message that you need to
18 come back the next day and they didn't come back. And I
19 don't know if they were just trying to play the odds
20 thinking, well, they won't miss me. There's plenty of
21 folks out there, but what they didn't bank on was if we
22 tell you you need to be back a certain time and you don't
23 come back, we're going to send the sheriff's deputy out to
24 pick you up. And it's a little embarrassing to go to work
25 and have the sheriff's deputy come to your boss and go I

1 need Mister or Miss so and so to come with me. Don't get
2 yourself in that situation, just call the number and it's
3 a recording. It will be there all night. So any time
4 after six o'clock tomorrow night call that number and just
5 follow whatever instructions that you get on that
6 recording, okay. So, ladies and gentlemen, those of you
7 remain in the panel you're excused for the balance of the
8 day and call that tomorrow night after six.

9 (WHEREUPON, the remaining jury panel is
10 excused.)

11 THE COURT: And folks while they're filing out
12 for my good friends here on the panel, I am going to
13 excuse you now to take a lunch break. I'm going to give
14 you a little bit of an extended break because I have to
15 take up a couple of pretrial matters before we get started
16 after lunch. And, of course, I need to give all of the
17 folks here an opportunity to go get -- grab some lunch.
18 So I'm going to ask you if you would you're going to file
19 out here in just a minute and you're going to follow the
20 bailiff over here. And Ms. Frances will show you where
21 your jury room is, okay. And then you can go to lunch and
22 I'm going to ask you if you would to be back and have your
23 yellow tag and they'll know you're a juror and they'll
24 escort you right on up here. And ask you if you would to
25 please to be back in the jury room by 3:30, okay. Please

1 be back in your jury room by 3:30 and we'll get started
2 once everyone's reconvened. So everyone else please
3 remain seated while the members of the jury are excused.

4 (WHEREUPON, the jury is excused for a lunch
5 break.)

6 THE COURT: All right. I gave them an extended
7 lunch break. I know we have motions and some things that
8 we need to take up. So may I suggest that we break for
9 lunch and that we come back at 2:30 or do you think we
10 need more time than that? I don't know what the motions
11 are, so I don't know how to judge it.

12 MR. CLEMENTS: I have no idea. I was just going
13 to suggest might we go ahead take up the objection for
14 cause, strike for cause issue. I think that'll be quick.

15 THE COURT: Yeah, we can do that, but let me go
16 ahead and -- Mr. Brooker, let me go ahead and let you put
17 on the record your -- the basis for your moving to strike
18 those individuals for cause.

19 MR. BROOKER: Thank you, Your Honor. Your
20 Honor, we move to strike I believe three of the jurors for
21 cause and I believe that was juror number 47. I believe,
22 157. And if my memory serves me correctly, 120. And, of
23 course, is I'll take each one individually and I'll
24 obviously be brief.

25 Juror number 120, I think, that is the juror

1 that basically says that she had two nephews that was with
2 the Florence County Sheriff Department. And, of course,
3 is the reason why we were moving to strike and I believe
4 that we should be allowed to strike that juror for cause
5 Your Honor is that although that witness says that I
6 believe I can be fair and impartial in connection with
7 this case and, of course, because there is such a close
8 relationship between -- and, obviously, this is a Florence
9 County Sheriff Department case with the Florence County
10 Sheriff Department is the investigating agency and so
11 there's going to be a lot of discussion about Florence
12 County Sheriff Department. A lot of discussion about
13 their role in connection with the case. A lot of
14 discussions in reference to the appropriateness or
15 inappropriateness of the investigation or either the
16 efficiencies within their investigation. And because
17 there's such a close relationship with two family members
18 of the part of the Florence County Sheriff Department,
19 even though that juror might subconsciously think that,
20 hey, I believe that I can be fair and impartial. It is
21 that in my experience is is that subconsciously is that
22 sometimes people can't always be fair. And what, of
23 course, is is that when an institution in which a close
24 relative is a member of is being attacked, of course, in
25 essence is that that attack on the sheriff department, at

1 least in the mind of that juror, that juror may see that
2 as being an attack, you know, on her nephews because they
3 are apart of the agency, apart of the sheriff department,
4 and, of course, is that they're apart of that team. And,
5 of course, is they're responsible for product that comes
6 out of the sheriff department. Because of that close
7 relationship and that's when I was concerned with her,
8 it's a distant relationship. And, of course, the
9 probability of that is going to be less, but because
10 there's such a significant close relationship, we thought,
11 you know, that, you know, that there would be bias or
12 whether conscious or either subconscious that might be
13 present in that juror's mind. In the presence serious of
14 this case, is is that we believe it was appropriate to
15 strike that juror for cause.

16 THE COURT: All right.

17 MR. BROOKER: With respect to -- and I don't
18 know whether or not you want to make your ruling on that
19 one, Your Honor, I'll move on to the next one however you
20 like to do it or I can just do them all together.

21 THE COURT: Yeah, you can go ahead and do them
22 all and then I'll address them individually.

23 MR. BROOKER: Sure. On 43, Your Honor, I think
24 the next one was juror number 43 and.

25 THE COURT: Yeah, that was Ms. Fullard.

1 MR. BROOKER: Yeah. And, of course, is is that
2 she has a son with the Florence County Sheriff Department,
3 which is a closer relationship, even closer than juror
4 number 120 who had two nephews with the Florence County
5 Sheriff Department. And, of course, for the same reasons
6 is that because her son, you know, is apart of the sheriff
7 department part of the team. Son product that's going to
8 be coming out. Sheriff department is going to be under
9 scrutiny in connection with this case. And, of course, is
10 is that as I think that there is a true concern, you know,
11 of the attack on the sheriff department and product that's
12 put out by the sheriff department is that that juror may
13 interpret that as that being an attack on her son since
14 her son is apart of the team and is responsible for the
15 product that comes out of the sheriff department.

16 With respect to, I think, juror 157, Your Honor,
17 I think that that juror says that that she was a former
18 employee of both the Florence County Sheriff Department
19 and also a former employee of Florence County City Police
20 Department. And, of course, is is that suggest that she
21 has significant connection with two law enforcement
22 agencies and specifically one law enforcement agency, you
23 know, that is at question in this particular case. And,
24 of course, we believe because of that relationship, that
25 significant relationship she has a direct relationship.

1 It's not that it was through a cousin or friend or someone
2 else who work there, she directly work there herself. She
3 no longer works there now, but directly worked at the
4 sheriff department and Florence City Police Department.
5 We believe that creates a significant concern that she may
6 have bias and, of course, we believe that was the
7 appropriate reason to strike her for cause. Thank you,
8 Your Honor.

9 THE COURT: All right. Well, of course, and I'm
10 going to deal with the first two which had relationships
11 with family members juror number 43 Ms. Fullard and 120
12 Ms. Revell. First of all, there's no -- it was
13 discussion, no evidence of any -- of the closeness of the
14 relationship that you mentioned whether or not Ms. Revell
15 or is close with her nephews or whether there's animosity
16 between them, same with the mother and the son situation.
17 Also, there's no evidence that was presented -- you know,
18 we have to dive in deeper as it maybe that it could work
19 the other way is what I'm saying is that maybe that these
20 family members work for the sheriff's department and had
21 not been not treated well and that they don't like the
22 sheriff's department. And they have no respect or no
23 regard for the sheriff's department based on those
24 relationships. I don't know. I'm not saying one way or
25 the other, which is why the law ask us to ask the juror

1 based on that relationship, understanding you have two
2 nephews that work there, understanding you have a son that
3 works there, would that relationship in any way affect
4 your ability to be fair and impartial.

5 And I understand your position is that that they
6 may truly believe that it would not, but there may be some
7 inherent bias in there that they are unaware of, but that
8 wouldn't be any different than the witnesses or the jurors
9 that stood up and said that they been a victim of a
10 violent crime or they had a family member who was a victim
11 of a violent crime and that they would set that aside and
12 be fair and impartial. I don't think there's any
13 difference there.

14 So it's the reason we ask them understanding
15 that you've had that experience, would that that in any
16 way affect your ability to give the State and the defense
17 fair and impartial trial. And we take them at their word.
18 They tell us it would or it wouldn't. We had several that
19 indicated that they would not be able to be fair and
20 impartial and, of course, we excuse them. So that was the
21 reason that I denied your request to strike them for cause
22 because I didn't feel that any cause had been shown.
23 Simply the relationship is not -- in my opinion, do not
24 rise to the level of cause if we don't know what that
25 relationship is. We know we have a mother has a son. We

1 don't know where he works with the sheriff department. We
2 don't know if he's an actual law enforcement deputy or if
3 he's a custodian or what his role is, but that is his
4 employer, same with nephews, but there was no relationship
5 or no showing of any relationship that would cause that
6 bias to rise to the level of not being able to be fair and
7 impartial. And as a matter of fact on direct questioning
8 as to whether or not it would affect that ability all both
9 of those answered that it would not.

10 As to juror 157 Ms. Walker-Boston, she did
11 indicated that at one point she had worked with the
12 sheriff's department and work with the police department.
13 She did not indicate the capacity whether it was actually
14 as a licensed law enforcement officer or whether it was
15 in another nonofficial capacity with the department, but
16 she did reveal that those were two areas that she work
17 with.

18 Again, no evidence as to whether she left those
19 departments on good terms or whether she left them on bad
20 terms. So we leave it up to the juror themselves to tell
21 us is there something in that relationship, is there
22 something in that situation that would cause you to not be
23 able to give both the State and the defense a fair trial
24 and that's the reason we ask the question. She answered
25 that it would not have any affect on her ability to do

1 that. And so therefore I do not feel that cause had been
2 shown. So that's the basis of the Court's ruling on those
3 three that we had discussed up here at the bench earlier.
4 And so -- anyway, I wanted you to put on the record what
5 your cause was and, of course, my ruling was based upon
6 the feeling that there was no cause shown that these folks
7 could not be fair and impartial. And I didn't think the
8 relationships just because they existed rose to the level
9 of them not being able to serve. All right.

10 Your other motions that you mentioned I don't
11 know what they are at this point. And so I don't know,
12 Thurmond, roughly can you give me ballpark to how long you
13 think it would to take those up?

14 MR. BROOKER: Certainly, Your Honor. These
15 motions will not take nearly as long as the motions that
16 we took on -- we had Thursday of last week, but, of
17 course, is is that these motions that we have are going to
18 be motions as it relates to three of the search warrants
19 involved in this case. Of course, these motions are based
20 upon different grounds. I think on Thursday of last week
21 we filed a motion asking to have, I think, two of those
22 dismissed based upon Frank vs. Delaware and that is is
23 that false statements or statements contained within the
24 affidavits that was, you know, at least a reckless
25 disregard for the truth. And, of course, is is that these

1 statements are based upon Gates -- Illinois vs. Gates and
2 also is is that it's a state case where one state case
3 would be State vs. Smith. And, of course, is that these
4 cases deal with whether -- deals with, I think, whether or
5 not statements or the affidavit portion of the statement
6 are suppose to contain facts in which the judge could have
7 him or herself make a determination as to whether or not
8 those facts satisfies probable cause. And, of course,
9 State vs. Smith and also Illinois vs. Gates basically says
10 that if the affidavits contains conclusory statements
11 which means that ---

12 THE COURT: Is that not the same thing we dealt
13 with on Thursday?

14 MR. BROOKER: We dealt with ---

15 THE COURT: We dealt with the way the Frank's
16 case addresses it, but you're going to argue the same
17 thing, aren't you?

18 MR. BROOKER: We're going to argue conclusory
19 statements.

20 THE COURT: Well, that's what you're going to
21 argue. You're going to argue that where the affiant
22 stated that the investigation revealed that Mr. Williams
23 was the one who got in the taxi. You're going to argue
24 that that's a conclusory statement and that it's
25 insufficient.

1 MR. BROOKER: Yeah, but, of course, is the
2 reason why we have to put it on the record, Your Honor, is
3 is that last week we argued based upon Frank's excuse me
4 -- Frank vs. Delaware is that Illinois vs. Gates even
5 though it's attacking the search different, it's for
6 different reasons. And, of course, is is that cases that
7 we looked at the Court -- where the Court looked at, you
8 know, both whether or not there was justification to
9 disqualify a search warrant based upon Franks. And then,
10 of course, an independent determination as to whether or
11 not they would be the -- the search warrant would be
12 invalidated based upon Gates vs. Illinois. They're
13 actually two different standards. And, of course, is that
14 even though that -- and obviously sometimes they
15 intercept, but, of course, is is that there are two
16 different standards that you have to look at to determine
17 whether or not a search warrant can be invalidated.

18 And so for our protection because we didn't
19 specifically argue, you know, on State vs. Smith a South
20 Carolina case and Illinois vs. Gates is that I think even
21 if we put it briefly, it has to be put on the record
22 because the last thing I want to do is is that if this
23 goes to the Court of Appeals and the Court of appeals says
24 you made a Frank's argument. You didn't make a Gates
25 argument and therefore is that -- and the judge didn't

1 make a determination based upon at least considering the
2 facts in Gates, but the judge basically say is that we
3 don't believe that the statements were false.

4 THE COURT: And those are the two motions you
5 got?

6 MR. BROOKER: Those -- yeah. They are the
7 motions based upon the three search warrants. And, of
8 course, the last one, of course, I talked to Mr. Clements
9 in reference to this. And, of course, is that this is
10 going to be a relatively simple one. Obviously, is is
11 that, I think, they got a cell tower location information.
12 And we may have mentioned this and I don't think you made
13 a ruling on it cell tower information location. I think
14 they got the search warrant back in 2016, receive some
15 information from Sprint, receive cell phone information,
16 location information from the cell phone. It also
17 received cell phone tower location information. Of
18 course, it wasn't until March of this year that they
19 realized that they gave the wrong cell phone tower
20 location information. And, of course, is they sent
21 additional information. And, of course, is is that --
22 and, of course, that was without a warrant. I think Mr.
23 Clements is going to argue, you know, well -- is going to
24 argue that that there was not a requirement for a new
25 warrant for the cell phone location information in March

1 of 2000 -- of this year when they got it. We're going to
2 argue because the original warrant expired after ten days
3 and they got this new information after three years that
4 they needed to obtain another warrant to get that
5 information.

6 THE COURT: All right. And so that's what we
7 got after lunch?

8 MR. BROOKER: That's what we got after lunch. I
9 don't imagine it's going to take very long. We can get it
10 in.

11 MR. CLEMENTS: It sounds like to me, Your Honor,
12 he's argued it now.

13 THE COURT: Well, he hasn't, so I think we can
14 do that in an hour. So how about we start back at 2:30.

15 MR. CLEMENTS: Yes, sir. I got one other thing,
16 Your Honor. I ask that we approach the bench.

17 THE COURT: Yeah, sure, come on up.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Anything else then?

20 MR. BROOKER: Nothing else, Your Honor.

21 MR. CLEMENTS: Nothing from the State.

22 THE COURT: We will then be in recess until
23 2:30.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Yes, sir.

1 MR. CLEMENTS: Your Honor, we been discussing a
2 lot of legal issues back and forth and it looks like
3 there's some issues we have that we need to deal with
4 possibly clean up evidentiary wise. So at this point in
5 time, Your Honor, we would move for a continuance, but we
6 don't want to go beyond the September term if possible and
7 certainly not October. We want to give Mr. Williams a
8 trial as quickly as we can. It's his right and we want to
9 give it to him as quickly as we can, but today we ask for
10 a continuance beyond this term of court.

11 Let me state for the record since we do have
12 court coming up next week, we have a few people that are
13 critical witnesses that cannot be here, some on vacation,
14 some that came from out of town that couldn't be here next
15 week, that's why I scheduled it this week not realizing it
16 would take as long as it would because my son is graduates
17 from the nuclear school with the Navy on Friday in
18 Charleston and I don't want to miss that, but we would go
19 well beyond that and go into next week which would be
20 problematic with our witnesses that are on vacation. So
21 that's part and parcel of our motion to continue as well.

22 THE COURT: Okay. And obviously we had talked
23 about your son's situation and that we certainly would
24 have given you the time to go take care of that had we --
25 if we were to try it, we would give you that opportunity

1 to do that.

2 Mr. Brooker.

3 MR. BROOKER: Your Honor, we would deny the
4 motion, Your Honor.

5 THE COURT: Well, object. I'll either deny it
6 or approve it, but you object to it.

7 MR. BROOKER: I'm forgetting my role, Your
8 Honor.

9 THE COURT: It's okay.

10 MR. BROOKER: Thank you for putting me in my
11 place. Your Honor, we would object to the continuance.
12 And, of course, is is that this case has been pending for
13 well over three years. And, of course, is is that we have
14 prepared diligently to have all of our witnesses ready and
15 everything prepared for this case, of course, ready to try
16 it today. And, of course, is is that simply because there
17 was an evidentiary issue that came up on the side of the
18 State, it would not be a reasonable basis or either a
19 factual basis to continue the case. It's three years old.
20 And, then, of course, is any evidentiary issues they would
21 have had plenty of enough time to view them and, of
22 course, is is to address them. The fact that they did
23 not -- and, of course, is is that recently discovered that
24 we had an evidentiary issue I don't think is a legitimate
25 basis to grant a motion. I've also asked the Court is is

1 that I think it's the Langford case I believe. It is is
2 that the Langford case may -- State vs. Langford may also
3 have some sort of -- I don't know whether or not it does
4 or not.

5 THE COURT: I don't think that it has any.

6 MR. BROOKER: The State vs. Langford case deals
7 with is that the Solicitor ---

8 THE COURT: It's still going to be the Court's
9 decision.

10 MR. BROOKER: Yeah, control the docket. That's
11 why I say it may not have any application.

12 THE COURT: If we didn't have Langford, the
13 Solicitor could just announce they're not going forward.

14 MR. BROOKER: Absolutely. And that's why I say
15 is is that I don't think they have any applicability
16 because you are going to be making a decision and not the
17 Solicitor's office. Of course, an evidentiary issue on
18 their part I still don't think that's a justification to
19 continue it just because they have a problem with the
20 evidence at the last minute. Thank you, Your Honor.

21 THE COURT: Let me ask has there been a -- has
22 the defense filed any type of a speedy trial motion or
23 anything like that.

24 MR. BROOKER: There has not been a speedy trial
25 motion filed?

1 THE COURT: And that would have certainly been a
2 factor.

3 MR. CLEMENTS: Your Honor, one additional thing
4 Mr. Brooker might have forgot he had spoken to me about
5 his expert regarding cell phones and cell towers might
6 need some extra time. So this continuos might work to Mr.
7 Brooker's benefit as well.

8 MR. BROOKER: It may have, but, of course, we
9 talked to the expert this morning. The expert can have
10 the stuff done this week, that's why we didn't ask for a
11 continuance because he can be ready to go and he is ready
12 to go.

13 THE COURT: Listen, this -- I just had this come
14 up a couple weeks ago when I had a term of court, but it
15 was the defense making the motion versus the State. It
16 was about evidentiary matters what reminded me was you
17 talked about your expert, your phone expert. And I'll use
18 that as an example if you were to have told me that your
19 phone expert could not be prepared for that time, I would
20 certainly grant that motion.

21 My thing is this I want the State to have a fair
22 and impartial trial. I want the defense to have a fair
23 and impartial trial. And I understand that the case has
24 three years age on it. Of course, it's three years from
25 the date of the offense not three years pending here. I'm

1 not aware of any prejudice to either side by granting
2 this motion. So I'm going to grant the motion. If you --
3 and I'm not telling you to do it at all, Mr. Brooker. If
4 you want me to set date a certain, if you want to make a
5 motion for a speedy trial, I certainly would consider it.
6 You know, if Mister -- whatever rights I want to protect
7 Mr. Williams' rights. I'm not trying to push anybody to
8 do something that they don't want. I think the State
9 wants to resolve it in September which is the next
10 available term. August is Marion, is that correct, that's
11 Marion County?

12 MR. CLEMENTS: That's correct, Your Honor.

13 THE COURT: Okay. So September -- end of August
14 early September is our first term beyond this one. And so
15 I can either set it as a date certain or we can proceed
16 with the understanding we're going to try it during that
17 term.

18 MR. BROOKER: And we may have to, I think, Your
19 Honor is to play it by ear.

20 THE COURT: You think about it.

21 MR. BROOKER: And the reason why Your Honor is
22 is that normally I would say let's have it as soon as we
23 can. I have a -- what is scheduled to be a month long
24 federal trial in federal court that starts in August.

25 THE COURT: Okay.

1 MR. BROOKER: And, of course, is is and I think
2 it's going to be somewhere around the first of August that
3 we're going to have pretrial conference and jury
4 selection. And usually it's at that pretrial conference
5 and jury selection where the judge is going to tell us
6 what day we're going to start. And, of course, we start
7 the first of August. I'll be ready by September. So if
8 the judge said we're going to start this thing on August,
9 you know, 20th, then we're going to run straight into
10 September because it's scheduled to last about a month.

11 THE COURT: Well, certainly we would -- I mean,
12 obviously, deferring to the federal court case.

13 MR. BROOKER: Yeah, but I just want to make the
14 Court aware of that that that is a potential that might
15 create a problem for October, but I don't know right now.
16 We may start the first of October and get it out of the
17 way and we'll be good for September. So we can
18 tentatively set it for September with the understanding
19 that federal court may supplant us here.

20 THE COURT: John just passed me the schedule.
21 It looks like September the 9th is the latest term we have
22 in September.

23 MR. CLEMENTS: Yes, sir.

24 THE COURT: And we could tentatively set it for
25 that week.

1 MR. CLEMENTS: Yes, sir. And we can tentatively
2 set it for that week and what I like to do, Your Honor, is
3 ask that we get together and discuss this tomorrow after
4 Mr. Brooker is able to check on some things and I'm able
5 to check on some things because in the morning or whenever
6 you wish to be heard, Your Honor, on it or wish for us to
7 be heard on it, I would like to go ahead and have a
8 Schmerber hearing to get a Schmerber swab.

9 THE COURT: Well, and also I would to the extent
10 we can I'd like to get any other motions with the other.
11 I guess, you said there was possibly additional motions
12 regarding additional search warrants?

13 MR. BROOKER: Yes, Your Honor.

14 THE COURT: Would you be prepared to argue those
15 this week?

16 MR. BROOKER: Certainly I would, Your Honor.

17 THE COURT: I'd rather put all that at the same
18 time.

19 MR. BROOKER: We can do that. I have no problem
20 with that.

21 MR. CLEMENTS: We can do it tomorrow. I think
22 Mr. Brooks said that these are shorter motions maybe
23 tomorrow afternoon if possible.

24 MR. BROOKER: That's fine with me. I'll be up
25 here any time y'all tell me too.

1 THE COURT: Well, I'm at your disposal. So if
2 you want to schedule it for tomorrow afternoon?

3 MR. CLEMENTS: Well, we know that the next thing
4 we can do with you will be Wednesday. So that will seem
5 to be the most efficacious use of time.

6 THE COURT: Well, what about tomorrow morning?

7 MR. CLEMENTS: We start with Schmerber tomorrow
8 morning and then maybe go on with the search warrants
9 after that. I don't think Schmerber will take long.

10 THE COURT: I mean, I'm just suggesting that
11 we -- because Judge Nettles is still available to handle
12 pleas.

13 MR. JEPTERTINGER: We got Judge Nettles doing
14 pleas tomorrow and we have him scheduled to do
15 Battenfield's trial on Wednesday.

16 THE COURT: Okay.

17 MR. JEPTERTINGER: So just based on our little
18 thing this afternoon, I think it would probably be better
19 to start in the morning in case it goes over.

20 THE COURT: Why don't we do that. Why don't we
21 just start in the morning and intend -- with the intention
22 of handling all of these motions.

23 MR. BROOKER: And that's fine, Your Honor, and,
24 of course, it's probably before we wrapped up, Your Honor,
25 is I'm going to make a motion or reconsider the

1 continuance and the reason why I'm going to make a motion
2 to do that is -- I know you've already made your decision.

3 THE COURT: Well, but here's the problem --
4 never mind you're right. The jury hasn't been sworn.
5 They can be put back in the pool.

6 MR. BROOKER: I was going to do it right now.
7 It's going to take less than a couple minutes after we
8 finish discussing this. So at least on the record because
9 is that I know so that we address the issue as to whether
10 or not he's prejudice by this continuance. Because I know
11 your argument is is that you're going to grant it because
12 you believe there's no prejudice to them and also is is
13 that Mr. Williams also asked me if there is a continuance
14 to the case and because he is sitting in jail. I think,
15 we had a bond hearing, I think, end of April first of May,
16 somewhere around the first of May. And, of course, it was
17 denied. We're having this trial in July.

18 Of course, I think we have everybody here
19 necessary in order to address the bond issue again. I
20 think, the victim's family is present is is that I'll be
21 asking the Court to reconsider letting him off on bail
22 with whatever conditions the Court think is appropriate
23 whether electronic monitor, whether it be house arrest
24 until this thing is tried because we actually believed
25 that we were going forward today and was going to be a

1 resolution to this thing this week.

2 THE COURT: I don't know if you're prepared to
3 deal with that this afternoon or tomorrow.

4 MR. CLEMENTS: Let's deal with that one
5 tomorrow. What I would like to do now, Your Honor, is I
6 like to put a witness up who we have that came that is not
7 in the firmest of health and I like to put their testimony
8 up to preserve that, Your Honor, for the next time it's
9 tried.

10 MR. BROOKER: I don't have any objections to
11 preserving. I think this is just a witness that's going
12 to authenticate some video. I have no objection to her
13 testimony.

14 THE COURT: All right. Go ahead then,
15 Solicitor.

16 MR. CLEMENTS: We like to call Mrs. Profitt up.

17 THE CLERK: Ma'am, please place your left hand
18 on the Bible and raise your right hand. Do you swear that
19 the testimony you would give in this case to be the truth,
20 the whole truth, and nothing but the truth so help you
21 God?

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: You may be seated in the witness box
24 and please state your name for the record.

25 THE WITNESS: Jackie Profitt.

1 WHEREUPON,

2 Jackie Profitt,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION IN-CAMERA

5 BY MR. CLEMENTS:

6 Q If you please state your name, ma'am?

7 A Loni Profitt.

8 Q And, Mrs. Profitt, is your husband Jackie Profitt?

9 A Yes, it is.

10 Q Y'all live at 3720 Springfield Road in Florence?

11 A Yes, I do.

12 Q Is your property back up to Southborough Road?

13 A Yes, it is.

14 Q Do y'all have a video security system on your home?

15 A Yes, I do.

16 Q And is it have multiple cameras?

17 A Yes, it do.

18 Q One of the cameras look back across Southborough Road
19 back towards Century Drive?

20 A Yes, it do.

21 Q Do you remember back shortly after January 23rd 2016
22 an Investigator Chad Collins come to your home?

23 A Yes, I do.

24 Q You see him in the courtroom?

25 A I think I do.

1 Q Does that look like him?

2 A Yes, it do.

3 Q Did he speak with your husband?

4 A Yes, he did.

5 Q Did y'all show him your DVR that was a video security
6 system?

7 A It was available. He picked it up.

8 Q And y'all let him take it back to the law enforcement
9 center in Effingham to download it?

10 A Yes, he did.

11 Q And after he did that, did he return it back to your
12 home?

13 A Yes, he did.

14 MR. CLEMENTS: And I know you been waiting a
15 long time today. Thank you for your patience and
16 appreciate you coming. Will you please answer any
17 questions Mr. Brooker may have.

18 THE COURT: All right, Mr. Brooker.

19 MR. BROOKER: No questions for Mrs. Profitt,
20 Your Honor.

21 MR. CLEMENTS: Thank you, Your Honor.

22 THE COURT: Thank you for being here today,
23 ma'am.

24 MR. CLEMENTS: We would like for her to be
25 excused from her subpoena.

1 MR. BROOKER: No objection.

2 THE COURT: You're free to go, ma'am. Thank
3 you.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: All right. So then my understanding
7 then is we will reconvene at 9:30. Be prepared to deal
8 with any motions that you currently have the other search
9 warrants or anything else. Now, I know we've dealt with
10 some of the other search warrants, but I think you have
11 additional argument separate from what you made Thursday.
12 Is that my understanding?

13 MR. BROOKER: That is, Your Honor. But, of
14 course, is is that I was just thinking, Your Honor, is if
15 you are going to grant the continuance, then, of course,
16 is is that that it might be premature to make the
17 arguments now because if you're granting the continuance,
18 then, of course, by the time that this case is rescheduled
19 presumably September 9th, those same issues may not exist
20 then. I guess, it would only be beneficial to make these
21 arguments at least with respect to the search warrants,
22 the defectiveness of the search warrants if we were going
23 forward with the trial, but because if we're not going
24 forward with the trial this term of court, then, of
25 course, is is that there is no -- I don't know whether or

1 not these same deficiencies would exist, you know, in
2 September. Law enforcement might issue new search
3 warrants. And then, of course, is is that new search
4 warrants, you know, to correct anything that they believe
5 is a problem. And, of course, we would then be making our
6 motions based upon those search warrants, but I would --
7 well, come to think of it, Your Honor, let's do it
8 tomorrow. Let's put it on the record for purposes of
9 appeal. I agree with Your Honor. You know, I'm thinking
10 on the fly here.

11 THE COURT: Listen, and I'm not going to hold
12 anybody to anything because we are doing that. I guess,
13 what I was just trying to set forth is what we can
14 possibly look forward to. If things change, they change,
15 but the Schmerber hearing, the possible search warrants
16 that we discussed. The bond issue that you discussed is
17 that pretty much ---

18 MR. BROOKER: The motion to reconsider a
19 continuance you also want to do that tomorrow morning,
20 Your Honor.

21 THE COURT: Well, I mean, I'm ready to hear that
22 right now. Here's what I'm going to do and I'll hear you
23 on it, but my intention would be is these folks right here
24 would -- for example, if I continue the case, I'm going to
25 instruct these folks that the matter's been continued and

1 that they are going to be placed back into the jury pool
2 for the case that they have for Wednesday. If I were to
3 do that and then hear you tomorrow and then reconsider and
4 decide to go forward, now we've tainted that jury panel.
5 I mean, we could still pull a jury on Wednesday, but then,
6 I think, these folks would have to be eliminated see what
7 I'm saying.

8 MR. BROOKER: I see what you're saying, Your
9 Honor. I see what you're saying.

10 THE COURT: And so I would be open to hearing
11 any basis for your motion to reconsider.

12 MR. BROOKER: Okay, Your Honor. I'm trying and
13 at least to address the issue of prejudice, obviously,
14 understanding that, you know, I can anticipate this
15 motion. And, of course, that be a continuance, of course,
16 I do think that by granting a continuance he is prejudice.
17 And the reason why I think he's prejudice Your Honor is
18 one, of course, is is that that prejudicial remedy may be
19 addressed tomorrow I don't know is is that he is sitting
20 in prison right now excuse me -- sitting in detention
21 right now. And, of course, is is that by continuing this
22 case, of course, it prolongs his detention.

23 The second reason why I believe that it is
24 prejudicial, Your Honor, is that once we scheduled this
25 case, once we scheduled this case for trial this term of

1 court, then, of course, what normally happens is is that
2 just prior to the trial, you know, defense attorney then
3 reveals his strategy, reveals what he intends to attack.
4 And then, of course, is is that once the defense attorney
5 or at least -- defense reveals their strategy, identify
6 weaknesses to the State's case. And, of course, is is
7 that the State then has the advantage of basically looking
8 at the play book and saying, ah, hah, I see where we're
9 deficient, well, let's grant a continuous so we can go
10 back. And then, of course, is is that now we can then,
11 you know, address any deficiencies, you know, that the
12 defense identified. Basically, what it does is that it
13 gives them an advantage because now to use a football
14 analogy they have the play book. And then, of course, is
15 is that now they can strategize for it. Normally, you
16 don't give that. Normally, is is that, I think, in South
17 Carolina -- it's different in some other jurisdictions.

18 In South Carolina, it is that we don't have to
19 reveal, you know, our strategy up until the day of the
20 trial and either during trial. Some say that, you know,
21 maybe it's a trial by ambush. Some say, you know, because
22 some other jurisdictions have required that, you know,
23 greater disclosure is presented prior to trial, but not in
24 South Carolina. In South Carolina, we can maintain our
25 defenses up until the day of trial. And then, of course,

1 is is that reveal those defenses and reveal those
2 strategies at trial. And, of course, if every defense --
3 if every prosecutor was able to say let's go up to trial.
4 Let's go up to the date of the trial, pull the jury, hear
5 their play book, and then, of course, consider their
6 strategy. And then, of course, is is that if we see
7 something that's problematic to us, grant a continuance,
8 go back, and then, of course, is is that fix our case to
9 address the strategy that they've raised. And, then, of
10 course, is that he is lost -- he has been prejudice
11 because is that he has lost that advantage that most of
12 the defendants receives in the State of South Carolina
13 when they go forth -- when they go to trial. Of course,
14 if every defense attorney, you know, or every prosecutor
15 would do this, you know, would say, well, you know, we'll
16 pull the jury. You know, we'll hear their defenses. And
17 then, of course, is is that if we think they're strong and
18 then we'll get a continuance and go back and fix our case
19 to adjustment.

20 Then, of course, is is that we create tremendous
21 problems, you know, with the judicial system because you
22 would -- it would basically set a dangerous precedent.
23 And I think the prosecutor to say, well, okay, we don't
24 like what we're looking at. You know, and I'll use
25 another football strategy, you know. It would be

1 differences is that if -- you know, if the Patriots and
2 the Bills were playing. And, of course, the Patriots
3 takes the field. The Bills take the field. The Bills
4 reveals all of their strategies. And the Patriots then go
5 to the coach and says coach, hey, coach, we like to
6 reschedule this game until next week because we saw their
7 strategy and their strategy is superior to ours. And so
8 we need time to go back and readjust for their strategy.
9 And it would then create an unfair advantage to the State.
10 And, of course, it was disadvantage in this particular
11 case the defendant. And the fact that they had
12 deficiencies in their case is that that is not a
13 sufficient basis for granting a motion for a continuance
14 and in every case there are deficiencies.

15 You know, there deficiencies in every case
16 whether it be on the state side or whether it be on the
17 defense side. And, of course, is is that unless there's
18 some legitimate reason, you know, as to based upon
19 surprise, you know, some legitimate reason where that
20 deficiency could not have been discovered earlier, some
21 legitimate reason, you know, to justify the continuance.
22 You know, then it's okay, you know.

23 I guess, another example I would use is is that
24 when the State has a critical witness or either the
25 defense has a critical witness and the defense or the

1 State didn't send a subpoena of that critical witness and,
2 of course, even though that witness might be absolutely
3 critical to the case is is that previously, you know,
4 courts and there's juris prudence out there basically says
5 that if you fail to do your due diligence and fail to send
6 a subpoena to that witness, then the fact that that
7 witness is critical to your case, you know, is not
8 justification for granting a continuance basically is is
9 that some mistake that you've made in your case by, you
10 know, not subpoenaing a key witness that that wouldn't be
11 justification to say, well, Judge, you know, we made a
12 mistake. We screwed up. We didn't subpoena, you know,
13 the star witness, Judge, save us by granting a continuance
14 says that's not a good reason for a continuance. It's not
15 a good reason for a continuance at all. Unless, you have
16 submitted a subpoena to that star witness and that
17 subpoena has denied that star witness and denied that
18 subpoena, virtually denying a court order, then, of
19 course, it's no fault of your own. Then that would be a
20 good basis for granting a continuance.

21 In this particular situation, these deficiencies
22 were there. They were obvious. They were open. Royal
23 Williams was arrested back in, I think, if my memory
24 serves me correctly -- the warrant was obtained March 2nd
25 of 2016. And, of course, is that, I think, if my memory

1 serves me correctly is March 2nd 2016 when the warrant was
2 obtained. And, of course, is is that they were served on
3 him shortly thereafter while he was in SCDC. So this
4 thing has been pending. The case has been pending since
5 he's been served for, you know, three years excuse me --
6 three years and three months. And everything that we've
7 discovered -- the deficiency that we've discovered they
8 have not been hidden deficiencies. They have been
9 deficiencies out in the open. And the fact that no one
10 has taken care of them up to this particular point is not
11 justification to say why. You know, we made some really
12 bad mistakes. Judge, save us and grant us a continuous so
13 that we can clean it up. I don't think it's fair to Royal
14 Williams and I think it sets a bad precedent. Thank you,
15 Your Honor.

16 THE COURT: Thank you, sir.

17 Solicitor.

18 MR. CLEMENTS: Well, Your Honor, sufficit to say
19 that we subpoenaed everybody that we needed to subpoena.
20 And I, of course, disagree with how a lot of that was
21 characterized by Mr. Brooker, but that's okay we're here
22 to disagree. The issues that are pending before us today
23 I'm not quite sure how they were going to come down one
24 way or another, but out of an abundance of precaution, we
25 feel like we needed to ask for a continuance bearing in

1 mind that we were ready to go to trial last term of court
2 and Mr. Brooker wanted a continuance because he wanted to
3 hire some experts or actually hire an expert. Now, I
4 think, he's hired two which we've asked for curriculum
5 vitae on and if he received any reports, which he says he
6 has not, that's usually the defenses practice, but he got
7 the benefit of getting a continuance and we just ask to be
8 treated the same way.

9 THE COURT: How is that different, Mr. Brooker?

10 MR. BROOKER: The only thing I would say, Your
11 Honor, is is that how's that different -- and I been on
12 this case for four months. They been on it for three
13 years and that's how it's different is that I was just
14 asking for enough time be adequately prepared because I
15 did not have enough time to do everything, that's the
16 difference. And had I been on this case for three years
17 and I had not been in my job in three years, I would not
18 expect the Court to grant me a continuance. But I was --
19 I got on this case, I think, in February and it's June. I
20 been on it for four months, that's the difference, Your
21 Honor.

22 THE COURT: All right. I'm going to deny the
23 motion for reconsideration and we'll reconvene in the
24 morning and deal with the issues that we discussed
25 earlier.

1 MR. BROOKER: Thank you, Your Honor.

2 (WHEREUPON, the proceedings were concluded for
3 the day to be reconvened on June 18, 2019.)

4 MR. CLEMENTS: Your Honor.

5 THE COURT: Yes, sir.

6 MR. CLEMENTS: I have the original copy of the
7 affidavit of probable cause, proposed order and petition.
8 Your Honor, why I have a copy for myself, what I like to
9 do, Your Honor, is put this in and let the clerk stamp it,
10 and then I get a copy from them to stamp to give to
11 Mr. Brooker.

12 THE COURT: What is it?

13 MR. CLEMENTS: It's an affidavit of probable
14 cause, a petition for a Schmerber hearing and a proposed
15 order.

16 THE COURT: Okay. You're filing that, okay.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: Are you ready to proceed?

19 MR. CLEMENTS: Your Honor, as soon as she comes
20 back with it.

21 THE COURT: Oh, she's still gone, I'm sorry.

22 (WHEREUPON, a pause in the proceedings.)

23 MR. CLEMENTS: Your Honor, may I approach the
24 bench?

25 THE COURT: Yes, sir.

1 MR. CLEMENTS: Your Honor, I'm passing up to you
2 we just had it clocked in by the clerk the affidavit of
3 probable cause, attached arrest warrant, a petition for a
4 Schmerber order and a proposed order Your Honor. The
5 affidavit we will take testimony and ask that he sign it
6 in the presence of Your Honor at the appropriate time.

7 THE COURT: All right.

8 MR. CLEMENTS: Your Honor, I like to call Andrew
9 Clendenin to the stand.

10 THE COURT: All right. Sir, please come around
11 to be sworn.

12 THE CLERK: Sir, please place your left hand on
13 the Bible and raise your right hand. Do you swear that
14 the testimony that you would give in this case to be the
15 truth, the whole truth, and nothing but the truth so help
16 you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated in the witness box
19 and state your name for the record.

20 THE WITNESS: Andrew Robert Clendenin.

21 WHEREUPON,

22 Andrew R. Clendenin,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION IN-CAMERA

25

1 BY MR. CLEMENTS:

2 Q Mr. Clendenin, where do you work and in what
3 capacity?

4 A I work at the Florence County Sheriff's Office as
5 sergeant of the crime scene unit.

6 Q Okay. I'm going to present to you items of an
7 affidavit of probable cause and I believe you are the
8 affiant on, but it's not been signed yet because it's
9 required to be signed in front of a judge?

10 A That's correct.

11 Q So we take this item one by one with you is that,
12 okay?

13 A That's okay.

14 Q Personally appeared before me, Andrew R. Clendenin,
15 after being duly sworn now deposes. It says number one,
16 I'm a law enforcement officer certified in the State of
17 South Carolina with the South Carolina Criminal Justice
18 Academy; is that true?

19 A That is true.

20 Q Number two, I'm currently employed by Florence County
21 Sheriff's Office as a sergeant. In that capacity, I'm
22 responsible among other things for forensic evidence of
23 crimes that occur within the said county, is that correct?

24 A That is correct.

25 Q Number three, one such offense occurred as follows in

1 the evening hours of January 23rd 2016 at the address of
2 3618 Century Drive apartment A in Florence County South
3 Carolina individual was found deceased with a gunshot
4 wound, is that correct?

5 A That is correct.

6 Q Number four, the above named defendant, Mr. Royal D.
7 Williams, III, was arrested on March 3rd, 2016, is that
8 correct?

9 A That is correct.

10 Q Number five, a condom and partially smoked cigar,
11 coffee cup, vehicle seat rest, and vehicle door handle was
12 recovered from the investigation that the State believes
13 to be involved in the above-named acts. The gathering of
14 the DNA sample from the defendant is needed to compare
15 with other evidence collected in this case, is that
16 correct?

17 A That is correct.

18 Q Number six, the method that will be used to secure
19 the DNA from the defendant is by buckle swab of the mouth,
20 is that correct?

21 A That is correct.

22 Q Affiant believes -- number seven, affiant believes
23 the intrusion into the defendant's body for a DNA sample
24 is necessary and further believes the above mention means
25 to obtain the sample are safe and reliable, is that

1 correct?

2 A That is correct.

3 Q Further affiant relies on -- this is number eight.
4 Further affiant relies on section 17-13-140 of the South
5 Carolina Code of Laws 1976 as amended, Schmerber vs.
6 California 384 U.S. 757 86 Supreme Court 1826 a 1966 case,
7 in re Snyder 308 South Carolina 192 417 Southeastern 2nd
8 572 a 1992 case is State vs. Register 308 South Carolina
9 534 419 Southeastern 2nd 771, 1992 that's precedent and
10 guidance for lawful intrusion into the human body by the
11 State, is that correct?

12 A That is correct.

13 Q Number nine, the above-named defendant is further
14 described as a follows: Full name Royal D. Williams, III,
15 social security number 249-75-9363, date of birth
16 11-11-1988, race black, sex male, height 6-foot, weight
17 230, hair black, eyes brown, last known address 200 Powell
18 Street Bennettsville, South Carolina 29512, driver's
19 license number South Carolina 101400000, is that correct?

20 A Yes, it is.

21 Q Wherefore the affiant respectfully praise that this
22 honorable court enter an order permitting the State of
23 South Carolina by and through the offices of the Florence
24 County Sheriff's Office swab from the defendant under
25 proper medical conditions a buckle swab for purposes of a

1 DNA standard for comparison against DNA samples taken from
2 the alleged crime scene and for HIV-AIDS testing and for
3 any further action this honorable court may deem necessary
4 or appropriate. Further, the affiant say if not. Is that
5 what you're swearing to here today?

6 A Yes, it is.

7 MR. CLEMENTS: Your Honor, if I may have the
8 original. Thank you.

9 BY MR. CLEMENTS:

10 Q Sergeant Clendenin, I'm handing you the original
11 affidavit of probable cause on this that we just went
12 over. And there's a signature sheet here for you to sign
13 as the officer and the affiant. If you would please, I'm
14 asking you to initial and put page number one and initial
15 and put page number two on page one and two.

16 A Initial here?

17 Q That's fine, yes. And put page one of three pages
18 please, one of three and then two of three on that one.
19 And this is the third if you would sign this where it says
20 sworn with the officer and the affiant and then at the
21 bottom put page three of three. In addition to what's
22 contained in this affidavit, do you have a sheet with
23 further information that you would like to swear to?

24 A I do.

25 Q Is this additional information for probable cause?

1 A Yes, it is.

2 Q All right. If you would, would you sign this page
3 right here. And if you would this is your sworn statement
4 read this into the record?

5 A Okay. This states on 1-23-2016 in the Florence
6 County Sheriff's Office FCSO responded 3618 Century Drive
7 apartment A in Florence County to investigate the homicide
8 of Sherilyn Joseph who had been shot in the head. The
9 investigation reveal that Royal Daniel Williams, III was
10 in proximity of the victim's residence in the hours
11 leading up to discovery of the body in the home based upon
12 cellular records. Investigation further revealed that the
13 subject was picked up from the victim's residence by taxi
14 before the body was discovered by the mother that matches
15 the description of Williams based upon the sketch done by
16 SLED forensic artist whom was given information about the
17 subject from the taxicab driver and passenger. The
18 investigation of the crime scene revealed the presence of
19 a condom from which DNA profile of an unknown male was
20 extracted. The DNA profile of Williams obtained from the
21 buckle swab of the inner cheeks slash mouth will be
22 compared to the DNA profile of the unknown male developed
23 from the condom found at the scene.

24 Q Thank you. Now, was there -- try and paraphrase
25 this, so there was a sketch done by a forensic artist

1 based on information given to people who rode in a cab?
2 You had reason to believe rode in a cab with Mr. Williams,
3 is that correct?

4 A That is correct.

5 Q And the cell phone records were checked and they
6 placed him in the proximity of that -- where the crime
7 scene was during the time period that the crime occurred?

8 A That is correct.

9 MR. BROOKER: I'm just going to object to
10 leading Your Honor. Is this Mr. Clements affidavit or
11 either is it Mr. Clendenin's affidavit?

12 THE COURT: Sustain as to the leading.

13 BY MR. CLEMENTS:

14 Q Now, do you have an arrest warrant connected with
15 this paperwork?

16 A That is correct.

17 Q And who was the arresting party on that and what was
18 the charge?

19 A The arresting party was Royal Daniel Williams, III
20 and the charge was murder.

21 Q And can you tell who the affiant was on the arrest
22 warrant?

23 A Thomas McFadden.

24 Q Okay. All right. Can you tell who the magistrate
25 that signed this?

1 A Belinda Timmons.

2 Q Okay. Are you prepared today to take a buckle swab
3 from Mr. Royal D. Williams?

4 A Yes, I am.

5 Q And once you take that buckle swab what's the intent
6 of use of that buckle swab?

7 A It be transferred to the Richland County Sheriff's
8 Office forensic lab where it will be tested.

9 Q What will it be tested against?

10 A The said items we got a cigar butt, swabs from a
11 headrest, swabs from a door handle, swabs from a coffee
12 cup and a condom.

13 MR. CLEMENTS: Okay. All right. Please answer
14 any questions that Mr. Brooker may have or his Honor may
15 have. And, Your Honor, if I may, can I get the court
16 reporter to subscribe to this on this corner here where he
17 signed his affidavit?

18 THE COURT: Would the court reporter do that?

19 MR. CLEMENTS: I don't know if the court
20 reporter is also a notary or not, but they are someone who
21 can take an oath.

22 THE COURT: Just get the clerk to do it.

23 MR. CLEMENTS: Okay. All right. I ask Your
24 Honor then that the clerk do that.

25

1 BY MR. CLEMENTS:

2 Q One last item to question you about, Sergeant. Did
3 you have any knowledge of any information that was out
4 there that could have possibly been exculpatory?

5 A Yes, the driver of the cab listed the subject as
6 possibly with a ponytail.

7 Q Okay. Did you have any other evidence or information
8 that substantiated that statement?

9 A No, I did not.

10 MR. CLEMENTS: Okay. Please answer any
11 questions that is Mr. Brooker may have. Your Honor, after
12 that questioning, we would ask the order be issued for a
13 Schmerber for a drawing of his DNA by a swab.

14 THE COURT: Mr. Brooker.

15 MR. BROOKER: Just one question.

16 CROSS-EXAMINATION IN-CAMERA

17 BY MR. BROOKER:

18 Q I think you said that there was exculpatory evidence
19 and that was is that the driver of the taxicab gave a
20 description of an individual that didn't fit Mr. Williams,
21 is that correct?

22 A Correct, the hair didn't fit.

23 Q Yeah, Mr. Williams is bald and, of course, the driver
24 indicated that the person that she picked up from the
25 victim's apartment and I'll quote had good hair pulled

1 back in a ponytail suggesting that the person she picked
2 up had long hair pulled back in a ponytail, is that
3 correct?

4 A That's correct.

5 Q Okay. And that is inconsistent with the description
6 of Mr. Williams, is that correct?

7 A That's correct.

8 Q Okay. And also is it that it's my understanding is
9 that you showed the passenger and also the taxicab driver
10 a photograph of Mr. Williams, is that correct?

11 MR. CLEMENTS: I object. I don't think Sergeant
12 Clendenin showed photographs to anybody.

13 THE COURT: Well, I mean, he's asking did
14 someone.

15 MR. BROOKER: I'll ask him about his knowledge.

16 BY MR. BROOKER:

17 Q You were involved in the investigation, is that
18 correct?

19 A I was involved in the investigation, yes.

20 Q And I'm assuming that because you were involved in
21 the investigation assuming that you had knowledge to
22 things that was done into the investigation?

23 A It was shared to me by Investigator Thomas McFadden.

24 Q That -- and what was shared to you was that a
25 photograph was shown to the taxicab driver and also to the

1 passenger of that taxicab and both said that they could
2 not positively identify Mr. Williams as the person they
3 picked up that day.

4 MR. CLEMENTS: Your Honor, I object to that
5 being hearsay. If Mr. Brooker wants to call to the
6 witness stand in person that's making that statement he's
7 asking about, they're here in the court.

8 THE COURT: He can ask the question. The
9 officer can either deny it or it affirm it.

10 MR. CLEMENTS: But it's hearsay information,
11 Your Honor, that's why I'm objecting to it.

12 THE COURT: That's not a problem.

13 MR. BROOKER: It's admitted in the Schmerber. I
14 think it's relevant.

15 THE COURT: I'm allowing it. Go ahead,
16 overrule.

17 A I'm understanding of the SLED artist sketch, but as
18 far as the photographs and other information, I was not
19 privy to such.

20 Q Are you aware of that? Are you -- and if you're not
21 aware of it say no?

22 A I was not aware of that until I understood it the
23 other day.

24 Q I'm sorry.

25 A I found out the other day that photographs was given.

1 Q And what did you found out the other day is what I'm
2 asking?

3 A That they could not positively fully identify or
4 other similar in nature but not fully.

5 Q They could not identify Mr. Williams as the person
6 that they saw?

7 A Fully identify, no.

8 MR. BROOKER: Okay. No further questions, Your
9 Honor.

10 THE COURT: I don't see this being any different
11 from the problem earlier. This witness is testifying that
12 investigations revealed that Joseph had been in the
13 company of Mr. Williams in the hours leading up to the
14 discovery of her body, okay. What revealed that that was
15 Mr. Williams?

16 MR. CLEMENTS: Your Honor, he testified to and
17 it's contained somewhere on there that it was by the cell
18 phone records placed him in that vicinity.

19 THE COURT: The investigation revealed that
20 Joseph had been in the company of Williams. You have cell
21 phone records that puts him in that vicinity?

22 MR. CLEMENTS: Yes, sir, that's what he
23 testified to.

24 THE COURT: Do you intend to put Investigator
25 McFadden on the stand?

1 MR. CLEMENTS: Not on the Schmerber, but I
2 certainly intend to put him on the stand anything the
3 Court would deem necessary, but we could have put him in
4 there the entire investigation, but we felt like we need
5 answer why he was thought to be in the vicinity is because
6 cell phone records revealed that. And I don't believe we
7 have to present anything with absolute certainty just a
8 reasonable belief. Your Honor, I don't even know that it
9 goes all the way to probable cause if you got a reason to
10 believe that something is going to show some evidence.
11 And the problem with putting Investigator McFadden up for
12 the cell records, I'd probably put Investigator Collins up
13 for it.

14 THE COURT: Well, what was the testimony that
15 you got -- the investigation further reveal that Williams
16 had taken a taxi from Joseph's home. The testimony I just
17 heard is that nobody in the taxicab could identify
18 Mr. Williams as being the person that was picked up, but
19 that there was someone that had a similar look.

20 MR. CLEMENTS: Your Honor, you didn't hear the
21 full explanation because first off it's hearsay.
22 Secondly, what the full explanation was they showed
23 several pictures and they said, no, very vigorously no.
24 And then they show one that they said we don't really want
25 to say it's him because the hood, the hoodie and the hood,

1 but we not saying it's not him.

2 THE COURT: That wasn't the testimony. That's
3 your ---

4 MR. CLEMENTS: That's because he's not the one
5 really should be testifying about that because it's
6 hearsay. He doesn't know all the details of that
7 particular aspect of the investigation what he shared.

8 THE COURT: Who does?

9 MR. CLEMENTS: Well, like I said, this is a --
10 we don't need to try the entire case to show that we got
11 probable cause here, but we almost have to that we got to
12 put up Collins. We got to put up McFadden. And I'm not
13 sure who else possibly. But I can put up these witnesses
14 Your Honor and they can explain what led them to that, but
15 I think it's already misstated the answer why has been
16 explained. Your Honor, I think you need facts and
17 rationale inferences from those facts. I think we've
18 established that.

19 THE COURT: I'm just going to tell you cell
20 phone records that he was in the vicinity, you put up the
21 same affidavit that I've already found was insufficient.
22 You put the same -- I don't even know if it has been
23 changed at all. It's a conclusion. The investigation
24 revealed that Joseph has been in the company of Williams
25 in the hours leading up to discovery and that's a

1 conclusion. Now, I was -- I'm looking for testimony from
2 somebody that tells me why you think it was Williams who
3 was in the company of Ms. Joseph and cell phone records
4 that he was in that area or that vicinity does not do
5 that. That's a piece of evidence and I agree with you.
6 You don't have to prove beyond a reasonable doubt that
7 there was this defendant. And I agree with you on that,
8 but I'm being passed -- and this isn't what you submitted,
9 but when he was reading along this is the same affidavit
10 that was in the original search warrant.

11 MR. CLEMENTS: But there's another piece of
12 paper that goes with that affidavit a fourth page.

13 THE COURT: Now, I don't have what you just
14 submitted. You took it back from me.

15 MR. CLEMENTS: I'm sorry. I'm sorry.

16 THE COURT: Here we go again, investigation
17 reveal that Royal Daniel Williams, III was in the
18 proximity of the victim's residence in the hours leading
19 up to discovery based upon cell phone records. Evidence
20 -- investigation further revealed -- Officer Clendenin,
21 the taxicab driver and the passengers were shown a sketch
22 that was done by SLED forensic artist, is that correct?

23 OFFICER CLENDENIN: Yes, sir.

24 THE COURT: Okay.

25 MR. CLEMENTS: Your Honor, not just shown, but

1 Linda Jones, the passenger, worked with the forensic
2 artist and that's how -- they made a composite sketch
3 based on Linda Jones' information she gave them.

4 THE COURT: So through interviewing and
5 questioning of the passengers, they gave the description
6 of the person that they said got into the taxi. And based
7 upon that conversation and that description, the SLED
8 forensic artist produced the sketch -- is it a he or she?

9 MR. CLEMENTS: It's a she Deborah Goff.

10 THE COURT: That she produced?

11 OFFICER CLENDENIN: Show it to them does that
12 look like what you described.

13 THE COURT: And then he show back to the
14 witnesses and say is this who you ---

15 OFFICER CLENDENIN: Does this look like the
16 gentleman you're sitting with and they described, yes,
17 that was pretty close to what...

18 THE COURT: Okay. All right. Thank you. I
19 didn't have this.

20 MR. CLEMENTS: I'm sorry, Your Honor.

21 THE COURT: That's okay. Any further questions
22 for Officer Clendenin?

23 MR. BROOKER: Very quickly.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION IN-CAMERA

1 BY MR. BROOKER:

2 Q Investigatory Clendenin, were you present to speak
3 with the passenger who gave -- I think who gave
4 information that was used to draw a composite sketch?

5 A No, I was not. I was not present during that time.

6 Q Okay. The composite sketch, I think, you've already
7 testified that you learned that the taxicab driver and
8 passenger said that they could not identify Royal Williams
9 as being the person when they were shown this photograph,
10 is that correct?

11 A My understanding that's what happened.

12 Q Okay. And after seeing that they could not identify
13 Royal Williams is the passenger was set up with a -- I
14 guess, a composite sketch artist with SLED to compare a
15 composite sketch, is that correct?

16 A What I understand from Investigator Thomas McFadden
17 that's what happened.

18 Q And that composite sketch is not an identification of
19 the suspect or either the composite sketch that they gave.
20 Let me show you this and ask you whether or not this is a
21 composite sketch, okay? Have you seen the composite
22 sketch ---

23 A No, I have not.

24 Q --- course of your investigation?

25 A No, I have not in my investigation.

1 Q Okay. Now, I'm a little bit confused because you
2 said you didn't see -- you haven't seen the composite
3 sketch as of today?

4 A That be correct.

5 Q Okay.

6 A I'm going by the testimony given to me by
7 Investigator Thomas McFadden.

8 Q So if you haven't seen the composite sketch, you're
9 not in a position to be able to tell the judge that the
10 composite sketch in any way fits the description of
11 Williams?

12 A I've never seen that, but I understand the basis of
13 the composite sketch.

14 Q You've never looked at it?

15 A No, I have not.

16 Q So you can't say to this judge, Judge, this composite
17 sketch fits the description of Williams and that's why we
18 want Williams' DNA?

19 A The first time I met Williams is when I actually went
20 to -- here in 2019 was the first time I met Williams.

21 Q Okay. So you didn't know what he looked like in
22 2016?

23 A No, I did not.

24 Q Okay. You didn't know what he looks like in 2016
25 and, of course, is is that you don't know what the

1 composite sketch looks like?

2 A Not of the one done in the taxicab. I'm familiar
3 with the composite sketch though.

4 MR. BROOKER: No further questions, Your Honor.

5 THE COURT: Anything further of this witness?

6 MR. CLEMENTS: No, Your Honor. I would just in
7 summary say that they take the information from the other
8 parts of the investigation and they go and they present it
9 and in good faith on information they believe what they
10 been shown in the investigation that doesn't mean they
11 have to ---

12 THE COURT: This is a new hearing. This is a --
13 this has nothing to do with anything before. This is a
14 brand new hearing.

15 MR. CLEMENTS: Yes, sir.

16 THE COURT: And you've put up a witness who is
17 telling me a bunch of stuff that was told to him by the
18 man sitting right next to you. Why would you not put the
19 man who can answer these questions, who's sitting right
20 next to you on the stand?

21 MR. CLEMENTS: I can Your Honor if it's
22 necessary.

23 THE COURT: It's necessary. It's necessary.

24 MR. CLEMENTS: But he's the one going and
25 drawing the blood or taking the swab.

1 THE COURT: It doesn't matter who does it. A
2 nurse can do it. I mean, it doesn't matter who does it,
3 but if you're going to ask me to order that it be taken,
4 then you need to put up the people that -- I mean, and he
5 can testify to hearsay. There's no problem with hearsay
6 being used for the purposes of, you know, an affidavit for
7 a search warrant, but there's questions that for example
8 that were just asked regarding whether or not he has any
9 knowledge at all that the composite sketch that was shown
10 to the folks even remotely looks like Mr. Williams. He
11 can't answer that.

12 MR. CLEMENTS: Well, what he could answer Your
13 Honor ---

14 THE COURT: But the person that can answer is
15 sitting right next to you.

16 MR. CLEMENTS: I'm going to call him Your Honor.

17 THE COURT: Well, then we need to move on and do
18 it.

19 MR. CLEMENTS: All right. I don't have any
20 further questions.

21 THE COURT: Thank you, sir. You may step down.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 MR. CLEMENTS: I'm going to call Investigator
25 Thomas McFadden, Your Honor.

1 THE CLERK: Sir, please place your left hand on
2 the Bible and raise your right hand. Do you swear that
3 the testimony you will give in this case to be the truth,
4 the whole truth, and nothing but the truth so help you
5 God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated in the witness box
8 and state your name for the record.

9 MR. BROOKER: Before we take the testimony, Your
10 Honor, may I also at least address the issue that maybe
11 relevant in connection with this is that when we did our
12 motions last week -- when we did your motions last week,
13 there was evidence from the electronic devices that was
14 taken from the victim that was lost, I think from my
15 understanding was is is that we reached the conclusion
16 that because that evidence was lost and then, of course,
17 is they no longer have the benefit of using that
18 information ---

19 MR. CLEMENTS: It's not my understanding at all.

20 MR. BROOKER: Well, basically is if -- it's not
21 your understanding?

22 MR. CLEMENTS: Not for one iota. Your Honor,
23 what he's talking about is he talking about the weight of
24 the evidence. Investigator McFadden can testify to what
25 he saw, what he looked at.

1 MR. BROOKER: Well, you might want to let me
2 explain what I'm talking about. What I'm talking about is
3 is that whether or not Investigator McFadden can testify
4 to evidence that was not turned over to us in violation of
5 Brady. If you can remember on Thursday of last week --
6 and I think you told -- I think if a trial had went forth
7 and I think the ruling was is is that anything that they
8 turned over to us they could testify to. Anything that
9 they did not turn over to us is not admissible because
10 it's a violation of Rule 5 and Brady. And, of course, I
11 would submit that's also relevant in connection with this
12 hearing as well too. They did turn over some things to
13 us. I think you advised them, Judge, to turn over what
14 they able to. They turn over a cell phone log and I think
15 they turn over some pictures. Other than that, I'm
16 assuming that Investigator McFadden is not going to be
17 testifying to anything from cell the phones other than
18 what they turned over to us out of their cell phones,
19 that's the only thing that was able to be preserved.
20 Anything else was unpreserved and lost and that was my
21 understanding is is on Thursday when we left. And the ---

22 THE COURT: Are we going into things that -- you
23 know, I'm at a disadvantage at it. I don't know where you
24 intend to go.

25 MR. CLEMENTS: Well, Your Honor, the jury's not

1 here so...

2 THE COURT: I understand that.

3 MR. CLEMENTS: I can proffer what I wish to
4 proffer, but I don't understand at all what Mr. Brooker
5 has said.

6 THE COURT: Well, I do. I know exactly what he
7 said.

8 MR. CLEMENTS: I know he objected to that, but I
9 didn't think that was a ruling on anything or an
10 explanation on the record as to what was lost and what it
11 was. And I think he's got a burden -- he can't just say,
12 well, it might be something exculpatory. There wasn't
13 nothing exculpatory that Investigator McFadden saw. And
14 he testified what he saw that was lost and then that goes
15 to the weight.

16 THE COURT: I was going to say let's not confuse
17 this hearing with a trial. We're not in a trial right
18 now, okay.

19 MR. BROOKER: I'm not Your Honor, but I think it
20 has applications for this hearing because if he testified
21 to things that have not been turned over to us, we have no
22 way to cross-examine him at this hearing, Your Honor.

23 THE COURT: How would that be any different --
24 you don't cross-examine an affidavit that is submitted to
25 a court when a search warrant is sought. If he testified

1 in an affidavit or to the judge as to what their basis is
2 for seeking a search warrant, you don't have the
3 opportunity to cross-examine any of that or to challenge
4 any of that until you challenge the search warrant, right?

5 MR. BROOKER: Yeah, if it's an ex-parte. If
6 they went about the normal way to obtain a search warrant
7 which is normally an ex-parte hearing. Normally, like
8 when they obtain the original search warrant in this case,
9 we was not present. It was ex-parte. They retained it,
10 but, of course, because this is not an ex-parte
11 application for a search warrant, this is a Schmerber
12 hearing. Then, of course, we have a right to be present.
13 And, of course, we have a right to challenge evidence and
14 present evidence. And so it's quite different from an
15 ex-parte proceeding where we're not present and we don't
16 have that opportunity. And, of course, is they're not
17 doing this by a traditional search warrant route, you
18 know, under the statutes. But whatever you decide Your
19 Honor ---

20 THE COURT: I agree with what you said earlier
21 as to your assessment of our conversation last week. And
22 there was the information that -- and I don't remember the
23 gentleman's name who's no longer with the sheriff's
24 department, but apparently ---

25 MR. BROOKER: Hester.

1 THE COURT: Who?

2 MR. BROOKER: Hester was suppose to have
3 extracted something and put it on a CD and then he left
4 the sheriff's department not on good terms. He's not been
5 cooperative or at least that's the impression I got and so
6 no one has that CD. No one knows what happened or whether
7 he even extracted that information. And my ruling was
8 that the things that have been turned over to the defense
9 can be -- are fair game, but the stuff that allegedly
10 Hester was suppose to have pulled off some phone and made
11 a copy of or preserved which is now gone and no one knows
12 where it is or what it is, that's not appropriate and
13 that's what he's referring to. And you're just saying
14 that goes to weight not to admissibility?

15 MR. CLEMENTS: It goes weight on some things,
16 Your Honor, he was suppose to back up the cell phone. He
17 didn't do it.

18 THE COURT: Correct.

19 MR. CLEMENTS: Before it ever went to Hester and
20 turn it over to Hester, they had the cell phone and they
21 looked at it and they went to addresses -- a few addresses
22 that were in the phone and they saw a number in the phone
23 and some things that were still in the phone that we could
24 go and copy and give to Thurmond. What we're about to
25 elicit in testimony and attempt to was submitted to early

1 on to the defense because it was all contained in
2 Investigator McFadden's report talked about a few
3 addresses they went to. And when he went to those
4 addresses, he had the phone. Chad Collins was driving.
5 He had the phone in his hand and got the addresses ---

6 THE COURT: And he's telling him go here, go
7 there.

8 MR. CLEMENTS: And he put all of that in his
9 report. All of those addresses, those handful of
10 addresses all had some connection a common denominator
11 between all of them was Royal Williams. One was his
12 brother's address. One was his grandmother's address and
13 one was his -- guy been his co-worker, Leron Whitten's
14 address.

15 THE COURT: And all of this was turned over to
16 the defense?

17 MR. CLEMENTS: Yes, sir, it was all put in
18 Thomas McFadden's report and turned over to him. And so
19 that's why I submit that's what he's talking about now is
20 just to the weight. He can attack Thomas on what he did
21 or didn't do, but when Thomas went back to Effingham and
22 got the phone, it had not been put on airplane mode or
23 probably had not been downloaded even though Hester said
24 it had. When he opened it up and he was out there at
25 Effingham, opening it up and it reset itself right there

1 in front of his eyes to the GPS location right at
2 Effingham if I'm not mistaken. I think that's what his
3 testimony will be.

4 THE COURT: Right. Well, let me reiterate again
5 so we don't lose focus is we're looking for the probable
6 cause to seek a buckle swab.

7 MR. CLEMENTS: Yes, sir.

8 THE COURT: So what I'm looking for as the
9 individual who has to decide whether or not to issue it is
10 -- and I already know through all of the testimony and all
11 of the conversations that have gone on that there was a
12 condom found for which an unknown male DNA was extracted
13 and that's the reason for the seeking of this. So what
14 I'm looking for if it's there is why the State feels that
15 Mr. Williams -- that his DNA is likely going to be
16 involved in that?

17 MR. CLEMENTS: Your Honor, may I summarize and
18 then I can put testimony up?

19 THE COURT: Well, let's just put the testimony
20 up.

21 MR. CLEMENTS: Okay.

22 THE COURT: And I'll let Mr. Brooker
23 cross-examine -- and let's do that.

24 MR. CLEMENTS: All right.

25 WHEREUPON,

1 Thomas McFadden,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION IN-CAMERA

4 BY MR. CLEMENTS:

5 Q State your name for the record and where you work?

6 A Thomas McFadden Florence County Sheriff's Office.

7 Q All right. Thomas, when did you get involved in the
8 investigation of Sherilyn Joseph's death?

9 A I was on call and I got a call from the shift
10 supervisor that we had a homicide on Century Drive on the
11 23rd.

12 Q And about what time did you respond there?

13 A A little after ten, ten o'clock.

14 Q Now, when you got there, can you tell us what you saw
15 or what you know about a cell phone being there present at
16 the crime scene?

17 A She had a case on her side when she was laying in the
18 hallway. There was a cell phone as I walked in sitting on
19 a pad -- not a pad maybe a crime scene note. And one of
20 the deputies said that was the victim's phone. It was
21 laying on top of her, that was her phone.

22 Q And what kind of case or cover did it have?

23 A A pink case.

24 Q A pink case?

25 A Yeah, and it was unlocked.

1 Q Okay. At that point in time it being identified as
2 her phone, did her family also identify it as her phone?

3 A Correct. Her mother and step dad and another female
4 was out there in a vehicle waiting for us to talk to them.

5 Q Now, being that she was expired, there was -- was
6 there anyone left with a reasonable expectation of privacy
7 in that phone?

8 A No, not to my knowledge, no.

9 Q So there was no need to get a search warrant?

10 A No, correct.

11 Q Did you pick up that phone?

12 A Yes, I did.

13 Q When you picked up that phone, what did you want to
14 do?

15 A I started going through it. The last calls and
16 messages to see if anybody contacted her, who the last
17 person she was contacted by.

18 Q Why was it necessary to do that?

19 A I always do it. I been working homicides, so a lot
20 of times the cell phones usually lead to the last contact.
21 So I try to find out who the last person she was making
22 any contact with.

23 Q Okay. Did you see any addresses on her GPS?

24 A Yes, later I did.

25 Q Later?

1 A Yeah.

2 Q All right. You didn't fully look through everything
3 there at the scene that night?

4 A No, I just told them make sure they put it in
5 evidence and I'll come get it the following work day.

6 Q But you saw the names, numbers and addresses?

7 A Correct.

8 Q Okay. Did you find any other names in that phone
9 that you developed a suspect?

10 A Yes, that's correct several calls was from Royal
11 Williams.

12 Q All right. And how about other people?

13 A Yeah, there were several calls. Some people was
14 actually still calling the phone, so I interviewed the
15 last few people that called. I interviewed them and also
16 we got buckle swabs from them as well. They volunteer and
17 gave buckle swabs.

18 Q What did that do to make them a suspect or not?

19 A The swab was submitted and it eliminated those other
20 individuals that cooperated and gave their swab.

21 Q Okay. Now, when you went back and got the phone the
22 next day, you said what did you do and who were you with?

23 A Well, I was actually at my desk by myself at that
24 time. Investigator Collins said they got a call about
25 being a camera because they put it on the news and someone

1 called and said we got a video of a taxicab leaving the
2 location. So I told him while he dealt with that, I'll
3 mess with this phone a little bit. Let me see what's all
4 in the phone because I went to her place of employment and
5 they was saying that she was afraid of someone at the
6 house and said the person had gone through her phone. And
7 she never locks it which was true because it wasn't a lock
8 on the phone said she discovered them going through the
9 phone and saw some stuff and started to deleting
10 everything from her phone -- of them from her phone.

11 Q Tell the Court what you did with the addresses that
12 you saw on that phone?

13 A Once I saw the addresses, Investigator Collins he
14 finally track down the actual taxicab company that was in
15 Darlington. And then when I was going through the phone,
16 I said, oh, let me see where she drives at. Let me look
17 at her locations. And when I looked in there, there were
18 several locations in the Darlington area. So one address
19 being if you'll see a screen shot that I gave you the
20 other day was he said the taxicab driver said he dropped
21 off the person off on Donald Rail, but if you looked on
22 the maps on Donald Rail, you can see Plum Street. And
23 that was one of the addresses she had in her phone 225
24 Plum Street in Darlington. And then she also had address
25 off of Orange Street in Darlington. Also another one said

1 Orange Street in Timmons ville, but she then she also had a
2 Bennettsville address. So I contacted Bennettsville P.D.,
3 I called one of our investigators use to work with
4 Bennettsville. He contacted another investigator I sent
5 him to that address in Bennettsville to check at that
6 location.

7 Q Did you and Chad follow up on that address in
8 Bennettsville?

9 A Correct, we did. I said why don't we just take the
10 phone and just drive wherever she go, usually most victims
11 solve their own crime. So let's just drive every location
12 she went to especially the ones the taxicab said they
13 dropped her off.

14 Q When you got to the Bennettsville address, did you
15 find out who live there?

16 A Yes, that was -- we went to Bennettsville after Plum
17 Street, but, yes, that was Royal's grandmother.

18 Q Did you show her the composite?

19 A Yeah, I had the sketch.

20 Q She identified him?

21 A Correct.

22 Q Okay. Now, what did she say when you showed her the
23 composite?

24 A I asked her a few questions and asked if she was the
25 only one lived here, you know. She said, no, she had a

1 grandson. And then when I was showing her the sketches
2 she was like, yeah, that's my grandson what did he do now.

3 Q Okay. Did you'll have any other contact, any further
4 contact there in Bennettsville?

5 A No, I called the investigator that I sent there
6 earlier. Then he explain to me who Royal was and what he
7 was dealing with him at.

8 Q Now, you said first you went to Plum Street?

9 A Correct, went to Plum Street.

10 Q And when you went to Plum Street, who did you find to
11 be living at that address?

12 A Leron Whitten.

13 Q What connection, if any, did Leron Whitten have with
14 Royal Williams?

15 A Later we found out they were coworkers. On that
16 particular day, we did -- we got a swab from him as well,
17 interviewed him, got a swab because the girl said the guy
18 look like he was built like he was kind of fit. You could
19 tell he worked out.

20 Q Okay. Was he included or excluded after that?

21 A After DNA swab, he was excluded.

22 Q Okay. All right. But you said you went to a
23 Darlington address what was that?

24 A That was Plum Street also Orange Street.

25 Q Orange Street.

1 A That's where I took a photo of the brother's vehicle.
2 I think it was a black Chrysler. I took a picture of
3 that.

4 Q And you said the brother's vehicle who did you find
5 living at that Orange Street address?

6 A Antonio Williams.

7 Q And that's the brother ---

8 A Of Royal Williams. She also had that address.

9 Q So those addresses were in the phone. Those had been
10 recent addresses. Did you see any others?

11 A That was one. I think she had a favorite or
12 something else that she might have had in that there. I
13 don't know if that was a restaurant. They had a
14 Laurinburg address.

15 Q And y'all go to Laurinburg?

16 A Investigator Collins -- yeah, we did and he had to go
17 in there and get a video from the Wal-Mart.

18 Q What did you find out in that video?

19 A That Sherilyn was inside making a purchase of a
20 Straight Talk phone.

21 Q Okay. All right. Did you ever find out anything or
22 follow up on that Straight Talk phone to find anything?

23 A We did. I guess, Investigator Collins could testify
24 more to that.

25 Q Okay, okay.

1 A We also got a call from Darlington City again which
2 was a baby mother of Mr. Williams Chimyra Wright.

3 Q Y'all go talk to her?

4 A Yes, we did.

5 Q And where does she live in the same area?

6 A Yeah, she stayed in Darlington as well.

7 Q Okay. In that particular area of Darlington or
8 across town?

9 A On the other side of town, it's small blocks away
10 from each other though. I guess, she saw it on the media
11 news coverage. And when you ask her how she met him and
12 she explain. And she told the addresses that he lived at
13 which were the same exact addresses that were in her phone
14 the Plum Street address.

15 Q That were in Sherilyn's phone?

16 A Yes, she gave the Plum Street address. She confirmed
17 the Orange Street address which was confirmed that was his
18 brother and also his grandmother was the one that was in
19 Bennettsville.

20 Q All right. Did you include all those addresses and
21 that information in your report?

22 A Correct.

23 Q Was that report turned over in discovery?

24 A Correct, that was my closing. My final closing.

25 Q Now, you say that you talk to some males that were --

1 had their name or number had called and you excluded them
2 through DNA swabs and interviews, is that correct?

3 A Correct. They explain their involvement with her and
4 they voluntarily gave DNA swabs.

5 Q Did those names get included in your report and
6 disclosed in discovery to the defense?

7 A Correct.

8 Q Okay. You talk with several of her coworkers?

9 A Correct, I did.

10 Q And was the information they all gave hearsay?

11 A Yes.

12 Q Did you include their names in your report and
13 disclose that to the defense?

14 A Correct, I did.

15 Q Okay.

16 MR. CLEMENTS: Beg the Court's indulgence one
17 minute.

18 (WHEREUPON, a pause in the proceedings.)

19 BY MR. CLEMENTS:

20 Q Is there any other addresses or anything y'all looked
21 up?

22 A Not that I know. We did -- once we did that, we
23 found out where Royal was located. Once I talked back to
24 Bennettsville, the officer said he had just pled to a
25 charge he was facing there. They gave him a charge -- he

1 pled to a manslaughter and arson. So me and Investigator
2 Collins went to talk to him as we did everybody else to
3 talk to him and try to get a swab from him as well, but he
4 refused. He walked away after we told him what we did,
5 what led to him. He got up and walked out. He never said
6 a thing.

7 Q Now, did you go with Investigator Collins and talk to
8 Linda Bacote excuse me -- Linda Jones and Takeya Bacote?

9 A Yeah, several times.

10 Q Who is Tekeya Bacote?

11 A She was the actual taxicab driver.

12 Q And who was Linda Jones?

13 A She was the passenger in the back -- in the backseat.

14 Q Did y'all show them some pictures?

15 A Correct.

16 Q Okay. And what did they do with those pictures?

17 A They said no. Matter of fact, we was happy when we
18 saw Leron Whitten, but she was saying he was too fat. He
19 too heavy. He don't work out, but I saw a weight bench in
20 his room in the house so I figure that had to be the
21 person address, but they said no that wasn't him.

22 Q Okay. Did you show them a picture of Royal Williams?

23 A Yeah, later after we showed several other pictures.
24 We went back and showed them Royal Williams once we
25 developed him.

1 Q And what did they say?

2 A She said she want to say it look like him, but she
3 didn't want to say. She didn't want to confirm to say it
4 was him.

5 Q Why?

6 A She said I guess to be on safe side. She said it
7 look like him, but she said I don't want to say. I don't
8 want to confirm.

9 Q But she never said no?

10 A No, she never said no.

11 Q Okay. All right. And did you determine from talking
12 with them who was the person that had the best view of
13 him?

14 A It was Ms. Jones because she was sitting in the back
15 Lakeya said she know because he had a broad chest and she
16 usually take pictures of the individuals that get in the
17 taxi just in case, but she said they was eating a fish box
18 at the time.

19 Q So she didn't take a picture?

20 A She didn't take a picture. She actually made a joke
21 telling him when he got in that the fish smell like that
22 not us, but she said he had a ball cap on and a hoodie on
23 his head.

24 Q Now ---

25 MR. CLEMENTS: Beg the Court's indulgence one

1 moment.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: Can I maybe shortcut this thing?

4 MR. CLEMENTS: Yes, sir, you may.

5 THE COURT: May I ask him something?

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: Investigator McFadden, the lady in
8 the taxicab ---

9 INVESTIGATOR MCFADDEN: Correct.

10 THE COURT: Was that Ms. Jones that spoke to the
11 forensic artist?

12 INVESTIGATOR MCFADDEN: Correct.

13 THE COURT: All right. The forensic artist
14 through that conversation compiled a composite?

15 INVESTIGATOR MCFADDEN: Correct.

16 THE COURT: Was that the composite that you
17 showed to Mr. Williams' grandmother?

18 INVESTIGATOR MCFADDEN: Correct.

19 THE COURT: And she said that's my grandson?

20 INVESTIGATOR MCFADDEN: Yeah, what did he do
21 now.

22 THE COURT: That's fine.

23 MR. CLEMENTS: We done?

24 THE COURT: Yes. Well, for the purposes of what
25 you're asking for I think you are.

1 MR. CLEMENTS: Yes, sir. All right. Well, if
2 it becomes necessary Your Honor, Investigator Collins is
3 here to talk about the cell phone records and how they
4 point to him as a potential suspect.

5 THE COURT: All right.

6 MR. BROOKER: You indulge me for just a second,
7 Your Honor.

8 (WHEREUPON, a pause in the proceedings.)

9 MR. BROOKER: I apologize Your Honor I'm just
10 trying to get out the composite sketch.

11 CROSS-EXAMINATION IN-CAMERA

12 BY MR. BROOKER:

13 Q Investigator McFadden, the first thing I'm going to
14 ask you about at least is is that the witnesses that you
15 interviewed.

16 A Okay.

17 Q It's my understanding is you correct me if I'm wrong
18 is is that -- well, let me ask it this way. During the
19 course of your investigation, did you learn that the
20 victim was apart of this hookup web site called Badu?

21 A Correct.

22 Q And, of course, is is that she had been on that web
23 site for a long time?

24 A Yeah, correct.

25 Q And that she had met many many many many men on that

1 web site?

2 A Correct.

3 Q Okay. And, of course, is that although we don't have
4 the contents of her phone is is that were there a lot of
5 numbers in her phone other than Royal Williams number in
6 her phone?

7 A Correct.

8 Q Okay. And, of course, is is that could have
9 potentially been dozens of numbers in the phone, is that
10 correct?

11 A Correct.

12 Q Okay. So Royal's number was just one of many people
13 that she know at least from the phone records, is that
14 correct?

15 A Correct.

16 Q All right. So the important thing I'm assuming that
17 during the course of your investigation, what my
18 understanding was is is that you learned from the
19 coworkers I think the day after her murder, you went and
20 interviewed her coworkers, is that correct?

21 A Yeah, correct.

22 Q And, of course, on the day of her murder she had
23 worked up until 12 o'clock at Starbucks, is that correct?

24 A Two.

25 Q I'm sorry up until two o'clock at Starbucks, is that

1 correct?

2 A Correct.

3 Q And, of course, is those coworkers told you that she
4 had talked about a guy that she had at her place that she
5 had met on Badu or she had met, and then, of course, is is
6 that he was at the house and that they were going to have
7 a conversation when she get off of work?

8 A Correct.

9 Q Okay. And, of course, is you ask all of them whether
10 or not they could identify who this person was. And all
11 of them said that they could not identify the person?

12 A Correct. They was trying to think -- she mention a
13 name, but they couldn't think of her saying a name.

14 Q And none of them can think of a name or either a name
15 of who this person was that she talked about?

16 A Correct.

17 Q Okay. And, of course, is is that you also understand
18 as part of your investigation talk with her mother to try
19 to figure out whether or not her mother knew of any name
20 or anyone that might want to harm her. And, of course,
21 she did not know, is that correct?

22 A Yeah, she didn't know anybody she could have been
23 dating at the time.

24 Q You also talked with the sister and ask the sister
25 whether or not, whether or not Ms. Joseph had ever

1 identified a name of someone that she was dating?

2 A She knew she was dating a person and described him
3 and said he was aggressive, but she could never think of
4 the name. She said she would try and think of a name and
5 she thought about it she would get back to me.

6 Q Okay. So from all of those people that you
7 interviewed, you could not identify who this unknown
8 person who was at her apartment -- allegedly at her
9 apartment she got off from work, is that correct?

10 A Correct not by name.

11 Q Okay. Then, of course, is is that y'all learn that
12 this unknown person was picked up from Ms. Joseph's
13 apartment somewhere around -- somewhere between 3:30 and
14 four o'clock on the day of her murder?

15 A Yeah, correct.

16 Q Between that period of time, okay. Is that correct?

17 A Yes, correct.

18 Q And, of course, is you talked to the taxicab driver?

19 A Correct.

20 Q And also the passenger of the taxicab?

21 A Correct.

22 Q And, of course, is is that you showed the taxicab
23 driver and the taxicab driver passengers assuming of ---

24 MR. BROOKER: If you can indulge me for just a
25 second, Your Honor. I picked up the wrong thing here.

1 BY MR. BROOKER:

2 Q You showed them photographs of men that she had in
3 her cell phone, is that correct?

4 A Correct.

5 Q Okay. Do you know how many men you showed
6 photographs of?

7 A There was several. I couldn't tell you the number.
8 It was several different men. I would come show something
9 that was download from Badu. I would show different
10 pictures of several different guys. Even showed -- pretty
11 sure her -- she had a two-year-old son. Showed Gary
12 Floyd, that was her baby's father. So they eliminated him
13 and plus he was at work. So he had his alibi at that
14 time, but they eliminated him as well.

15 Q All these men that you saw the pictures of were you
16 able to identify who they were?

17 A Correct. They had contact -- some of them actually
18 -- the recent calls some of them actually were still
19 calling after she was deceased trying to check on her. So
20 I answered the phone, so I knew some of them got
21 eliminated by still thinking she was alive, but I called
22 them and they were willing to come in. But some of them
23 had alibies, but I showed pictures and too big or too
24 small. They were like not this guy.

25 Q Of course, you showed pictures of these guys to the

1 taxicab driver and the taxicab passenger, is that correct?

2 A Yeah, Linda worked at the hotel on 52, went up there
3 about every other day with a picture to show her.

4 Q Okay. When you showed the picture -- pictures of all
5 these guys, and I'll just read what you put in your
6 report. We attempted to show them pictures, show them
7 photos from the phone of different guys, but they said no
8 on all of them, but they all had similar features to the
9 guys?

10 A Correct.

11 Q So basically what they're saying is that they had
12 similar features to these guys, but, of course, is is that
13 they didn't believe it was the guy?

14 A No, they didn't believe that.

15 Q You also showed them a picture of Royal Williams at
16 some point in time?

17 A Correct.

18 Q And, of course, your description is is that -- and
19 I'm talking about pictures to the taxicab driver and also
20 the passenger that Royal's pictures -- and this is what
21 you have in your report and I'll read it verbatim.

22 Royal's picture of him was shown to the cab driver and
23 riders. And so you show it to the cab driver and also
24 both riders that was in the taxicab?

25 A Correct. I can't remember the front passenger name

1 at this time.

2 Q Okay. And they said -- and they said that looks more
3 like him, but don't want to say for a fact that it was
4 because of the hoodie and the hat that he wore that day.
5 So they said it looks more like them, but they can't say
6 that it's him because of the hoodie?

7 A Correct.

8 Q Looks more like him?

9 A Correct.

10 Q Can't say that it's him. Okay. So they could not
11 positively identify Royal Williams as the person?

12 A Correct, they didn't want to say yeah.

13 Q And you set up at least one of the drivers with a
14 composite sketch, is that correct?

15 A Correct.

16 Q Okay. And is this -- and, of course, is is that the
17 forensic artist did a composite sketch, is that correct?

18 A Correct.

19 Q Okay. And that composite sketch would be based upon
20 the limited view of the person that they had, is that
21 correct?

22 A Correct.

23 Q And so because the composite sketch is based upon the
24 limited view of the person that they had, that composite
25 sketch probably is not going to be an identical --

1 probably is not going to be the identity of Royal Williams
2 because they had the actual picture of Royal Williams and
3 could not identify him?

4 A Correct. And plus when they did the sketch, I was
5 thinking they would have put a hoodie and a hat on him and
6 it probably be more sufficient to show it. So she had to
7 guess what his hair would look like because he had a hat
8 and a hoodie on.

9 Q Okay. So are you saying that she was guessing about
10 what the description of the person was?

11 A Of the hair, yeah.

12 Q She was guessing?

13 A Yeah, the artist asked did you see his hair. She
14 said all you could see is whatever. I couldn't see he had
15 a hat and a hoodie on.

16 Q Okay. The taxicab driver told you that also is is
17 that the taxicab driver told you that he had good hair
18 pulled back in a ponytail?

19 A And I asked how could she see a ponytail and got a
20 hoodie and a hat on.

21 Q Okay. All right. But that's the description that
22 she gave?

23 A That's why we use the person in the backseat.

24 Q Unsolicited, is that correct?

25 A Correct.

1 Q Also that that -- and what I mean by unsolicited is
2 that no one tampered with her testimony to try and
3 influence her one way or the other, is that correct?

4 A No, no.

5 Q Now, is this the composite sketch that was prepared?

6 A Yeah, by Ms. Linda Jones, the backseat passenger, who
7 sat beside him.

8 Q Okay. Now, you seen Royal Williams in 2015?

9 A '16.

10 Q 2016. Did you meet Royal Williams?

11 A Yeah, when we went to Kirkland.

12 Q Okay. Does Royal Williams look similar to the way
13 that he looks right now? I'm talking about his facial
14 features and his hair and that sort of stuff?

15 A He was a little smaller then.

16 Q Yeah, not his size or anything. Well, you say he's a
17 little bit smaller in size?

18 A Yeah, he bigger in size now. He was trim.

19 Q Oh, I'm sorry. I'm sorry.

20 A He was in shape then.

21 Q He's gained weight?

22 A Yeah.

23 Q So he was a little bit smaller in stature in 2016?

24 A Correct.

25 Q Okay. Now, I'm going to show you at least a picture

1 that's dated January 2nd 2016. This would have been
2 roughly 20, 21 days before. Is that looks like Royal
3 Williams? That's what you saw back in 2016?

4 A Correct.

5 Q Okay. All right. And so ---

6 MR. BROOKER: Can I enter these into evidence as
7 exhibits?

8 THE COURT: And I want to remind you we are not
9 beyond a reasonable doubt here, we're probable cause.

10 MR. BROOKER: I know we're probable cause, but
11 also is I think you have to put in also exculpatory
12 evidence.

13 THE COURT: I understand that. I understand
14 that.

15 MR. BROOKER: And that's what we're trying to do
16 is put in exculpatory evidence.

17 THE COURT: Put it in.

18 MR. BROOKER: Okay. Mark these.

19 (WHEREUPON, Defendant's Exhibits Nos. 1 and 2
20 was admitted into evidence.)

21 BY MR. BROOKER:

22 Q I want you to take a look at least what's been
23 Defense 1. And on Defense 1 is am I correct in showing it
24 has a full set of hair?

25 A Yeah, but he had a hoodie on, that's what I'm saying.

1 They couldn't predict -- she told her to make a
2 guesstimate of what kind of hair they would had. He had a
3 hoodie on and a hat.

4 THE COURT: I told you that that was ---

5 MR. BROOKER: I know, Your Honor, but I'm just
6 asking a question.

7 THE COURT: Ask relevant questions then. All
8 right. Because he told you that whatever you see on that
9 picture was made up by the artist because they couldn't
10 see his head.

11 BY MR. BROOKER:

12 Q Let me ask you this question, then so what you're
13 saying is is this picture is no good?

14 THE COURT: No, sir. Mr. Brooker, go -- you can
15 do your examination, but do it to the -- then listen to
16 his responses. He told you that the hair on that picture
17 was made up by the artist because she didn't have a
18 description because the person was wearing a hat. At no
19 point did anybody say that's not any good.

20 MR. BROOKER: Also, Your Honor, is is that even
21 though the driver said the person was wearing a hoodie and
22 was wearing a hat, the driver ---

23 THE COURT: You put that in.

24 MR. BROOKER: In his initial description said
25 that they could see long hair pull back in a ponytail.

1 THE COURT: You put that in, that's in.

2 MR. BROOKER: And that's why I'm asking these
3 questions and that's why -- I'll move on, Your Honor.
4 I'll move on.

5 BY MR. BROOKER:

6 Q Okay. Now, so none of the witnesses that you talk
7 with could give you a positive identification that Royal
8 Williams was the person that was there that night, is that
9 correct?

10 A Correct.

11 Q Okay. And so my understanding the only thing that
12 you have right now is is that you have evidence that Royal
13 Williams address with -- I think you testified that his
14 address -- a couple of addresses was in the -- in her
15 phone, is that correct?

16 A Correct.

17 Q And, of course, is is that -- but that would not have
18 been unusual because she dated a lot of men. So would not
19 have been unusual for her to know Royal Williams?

20 A Correct.

21 Q Okay. And so because she knew Royal Williams and I
22 understand that you've established that she knew Royal
23 Williams. And, of course, is is that -- let me ask you
24 one more question. Now, you also got the cab log records
25 from the cab driver on the dates on which the cab driver

1 picked up the -- pick up this unknown person, is that
2 correct?

3 A Correct.

4 MR. BROOKER: You can indulge me for just a
5 second, Your Honor.

6 THE COURT: Yes, sir.

7 (WHEREUPON, a pause in the proceedings.)

8 BY MR. BROOKER:

9 Q The cab driver also told you that the person called
10 for a taxicab ride -- the person called for a taxicab ride
11 this unknown person from the victim's house when she could
12 not find the house, that there were an exchange of calls
13 between the two from when the taxicab driver could not
14 initially find the house?

15 A I would have to look at the notes and see.

16 Q Okay. Didn't the taxicab driver said that she took a
17 number from the person who called?

18 A Correct.

19 Q Okay. And she listed that number on the call log?

20 A Yes.

21 Q Okay. And, of course, is this is the call log that
22 y'all got from the taxicab company and or taxicab driver?

23 A Yes, correct.

24 Q And, of course, she listed the number that the
25 unknown person called to pick up a ride right next to the

1 address of where she picked them up at and that's the
2 victim's address on Century Drive?

3 A Correct.

4 Q Okay. And that number -- and I don't know if you can
5 read it? I can read it.

6 A Yes. Look like 706-526-6079, that what it look like.

7 Q Okay. Okay. I think it's 704-526-6079. Is that
8 more close to a four, 704? It doesn't matter whether it's
9 704 or 706.

10 A Either it look like it cut off.

11 Q It can be a 704 or 706?

12 A Yeah.

13 Q Okay. Now, you got the victim's number, right?

14 A Correct.

15 Q What is the victim's number?

16 A Off the top of my head I couldn't tell you up here.
17 I don't have it in front of me. The numbers you showing
18 though are returned to apps. I do it when I call people.

19 Q Is that the number that was receive?

20 A That was the number received. We confirmed that to
21 be an app.

22 Q Do you have anyway to know whether or not this number
23 is connected -- there's no evidence showing that this
24 number is connected to Mr. Williams, is it?

25 A They use the app, we couldn't tell you.

1 Q There's no evidence showing that this number is
2 connected to Mr. Williams?

3 A No, he use the app.

4 Q Thank you.

5 A I do it.

6 Q Okay. All right. Now, just about to wrap it up.
7 Okay. So we have evidence at least you've testified to
8 evidence that could lead someone to know, lead someone to
9 believe that Mr. Williams knew the victim, is that
10 correct?

11 A Correct.

12 Q By the information that was in her phone?

13 A Correct.

14 Q But, of course, is is that what information that you
15 have other than what you've already testified to that says
16 that that person who is at Mr. Joseph's house, the
17 victim's house, eight hours before her body was discovered
18 by her mother? What evidence do you have that that person
19 was Mr. Williams?

20 A Once we was able to do that, her records because his
21 number was there. So once we did the search for the phone
22 records, it showed them pingging off the same towers in
23 Florence. Her phone and his phone was pingging off the
24 same towers in Florence near her apartment area also look
25 like they went uptown. It was pingging off somewhere near

1 Harris Teeter in Florence both of their numbers. So we
2 knew that was confirming that he was with her. They were
3 together from the phone records. So other than that what
4 I'm saying leading back to my probable cause saying I told
5 the judge that he was dropped off here and her GPS said
6 this. And we went to these locations. The phone records
7 that when he got -- when Chad received them back, we sat
8 down he was like look at these two numbers. And they
9 called each other up to that point in time. He called her
10 about every day or they text every day up to that point in
11 time. Then even up to Laurinburg and whenever they got
12 back.

13 Q All right. I'm going to sum this up and then, of
14 course, I'm going to sit down. You tell me if I'm right.
15 So my understanding is -- you correct me if I'm wrong. So
16 the probable cause evidence you got is is that Ms. Joseph
17 knew Mr. Williams?

18 A Correct.

19 Q Okay. And you determine that because his number was
20 in her phone?

21 A Correct.

22 Q And that you could see where they had talked back and
23 forth?

24 A Correct.

25 Q Okay. And then also is is that some addresses that

1 were associated with Mr. Williams -- you believe
2 associated with Mr. Williams was also in her phone?

3 A Correct.

4 Q Okay.

5 A Taxicab directly after the incident took that person
6 to the area of the address in her phone.

7 Q Okay.

8 A Which eliminated Whitten he cooperated. Royal
9 Williams never did.

10 Q All right. And then also is the -- made me lose my
11 train of thought when you interrupted me. Okay. And also
12 is is that you had information that his cell phone is what
13 you've testified to was in the vicinity of the area where
14 she lived at?

15 A They phone hitting off the same towers, same towers.
16 When we watch the car on the video, when they left, they
17 went uptown near Harris Teeter both of them cell phone hit
18 off the same tower.

19 Q Okay. And the towers -- the circumference the tower
20 cover can be two miles, three miles, four miles?

21 A I let the experts tell you that.

22 Q Well, I only say that because you brought up the cell
23 phone. I don't want to mislead the judge, but you're
24 saying that ---

25 A However, the towers work.

1 Q He was in the vicinity?

2 A Yeah.

3 Q But you can't tell whether or not -- you can't tell
4 whether or not it was two miles, three miles or four
5 miles?

6 A No, I couldn't tell you the miles.

7 Q All right. Okay. And, of course, based upon that,
8 your conclusion is is that is probable cause to believe
9 that he was the guy that was in the -- her apartment hours
10 before she was found dead and that he was the guy somehow
11 connected to her murder?

12 A Correct.

13 Q That's what your probable cause is?

14 A Correct. They could have eliminated him or confirmed
15 it, but we already had, you know, more way before the DNA.

16 MR. BROOKER: No further questions, Your Honor.

17 THE COURT: Anything further?

18 MR. CLEMENTS: None, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 MR. CLEMENTS: Your Honor, you think it's
23 necessary we have Investigator Collins.

24 THE COURT: I'm ready to rule. All right.

25 Based on the testimony and what I've heard again keeping

1 in mind that the issue here is probable cause to issue an
2 order not proof beyond a reasonable doubt. I believe that
3 there has been probable cause shown to grant the petition.
4 And I am going to order that a buckle swab be taken for
5 purposes of comparing to the unknown male DNA pulled from
6 the condom earlier. All right, what's next?

7 MR. BROOKER: Your Honor, the next motion is
8 going to be a motion to dismiss based upon ---

9 THE COURT: I'm sorry, Mr. Brooker, I didn't
10 hear you I apologize. I was giving Elaine something.

11 MR. BROOKER: A motion to dismiss based upon a
12 violation of speedy rights.

13 THE COURT: Excuse me -- a what now?

14 MR. BROOKER: A motion to dismiss based on
15 speedy rights violations.

16 THE COURT: A motion based on speedy trial?

17 MR. BROOKER: Yeah, violation of speedy ---

18 THE COURT: I asked you yesterday if there had
19 been any motion filed for speedy trial and you told me
20 there had not been.

21 MR. BROOKER: It had not been, Your Honor. I'm
22 making one today.

23 THE COURT: Okay. All right. I'm sorry. I
24 thought you were saying that based a prior motion for a
25 speedy trial you were asking that this matter be dismissed

1 because of violation of that order -- of that earlier
2 motion.

3 MR. BROOKER: No, sir, there is no prior motion.

4 THE COURT: You're making it now.

5 MR. BROOKER: Yes, sir.

6 THE COURT: I got you, okay.

7 MR. BROOKER: Thank you, sir.

8 THE COURT: Yes, sir.

9 MR. BROOKER: Just a second, Your Honor. Let me
10 grab my case. Your Honor, we make a motion to dismiss
11 based upon a violation of the speedy trial rights. And,
12 of course, is that I think Your Honor probably knows as
13 well as I do the factors that had been set out that the
14 Court must consider in determining whether or not there
15 was a speedy trial right violation. I think those factors
16 were set out in Baker vs. Wingo 407 USC 514. And those
17 factors are one will lengthen the delay. Two, the reason
18 for the delay. Three, the defendant's assertion of the
19 rights and, four, prejudice to the defendant. And, of
20 course, is is that we are asserting that at least three if
21 not all four of those factors weigh in favor of the
22 defendant. The first one that lengthen the delay. And,
23 of course, is is that the case that I'm citing from Your
24 Honor is State vs. Reeves. And this is a South Carolina
25 Supreme Court case, see if I got the citation. The copy

1 that I have Your Honor doesn't have the citation, but
2 State vs. Reaves. And, of course, it just goes through
3 those four factors and, of course, is is that State vs.
4 Reeves basically following from Baker basically says is
5 the first thing that that Court must do is determine
6 whether or not the first factor is present. If the first
7 factor is present, then, of course, that then triggers the
8 Court then to review the remaining three factors. And the
9 first factor is the length of the delay and, of course, is
10 is that the Court basically says is is that in State vs.
11 Pitman, which is a South Carolina Supreme Court case 373
12 at South Carolina 527. In that case, it is is that there
13 was a two year and two -- I think two year and three month
14 delay from the time in which the defendant was arrested
15 and to the time in which he went for the trial.

16 The Court says in that that two years and three
17 months was sufficient enough length in a delay from the
18 time proceedings were initiated until the time that he was
19 tried in order to trigger, you know, a speedy trial
20 violation. And so basically it says two years and three
21 months. Now, it's not a per se rule. Two years and three
22 months basically triggered -- that is something the Court
23 says that length amount of time triggers the analysis,
24 that's good enough to satisfy number one triggers the
25 analysis and the Court to go through the other three

1 things.

2 Next one says is, and, of course, this case,
3 Your Honor, I think at this particular point in time is
4 three years and three months, I believe, three years and
5 three months. And, of course, is is that it was
6 originally scheduled to be heard I think in March of this
7 year. March of 2019 is when it was originally scheduled
8 to be heard, but a month before in February I was assigned
9 to this case. And, of course, as a result of that, it was
10 temporarily removed.

11 THE COURT: How did you get assign to the case?

12 MR. BROOKER: I'm sorry, I didn't mean assigned.
13 I apologize, Your Honor. I was hired.

14 THE COURT: He retained you?

15 MR. BROOKER: Yes, I apologize. I was hired to
16 represent him in substitution of his previous counsel and
17 so it was delayed four months. But by the time in which I
18 was hired, you know, the case was already close to three
19 years old. I think, it was one month short of three years
20 old when I was hired and so that is more than enough to
21 trigger. And then, of course, is is that it was then
22 scheduled June of 2017, which is for a day certain. And,
23 of course, is which gave us four months to prepare. We
24 prepared our case in four months and then, of course,
25 trial started yesterday. We had jury selection. We pull

1 the jury. We had motions. We went right up to the point
2 had pretrial motions and, of course, was scheduled to
3 start the trial on that day. But, of course, is is that
4 the trial was continued upon motion of the State on the
5 grounds that brought us here today and that is is that
6 there was some concern by the State as to whether or not
7 the affidavits in which they obtained to collect the
8 defendant's DNA was insufficient and that there was a
9 significant probability, not saying it was because the
10 judge never made a ruling on the bench, but there was a
11 significant probability, you know, that the DNA would be
12 excluded and the warrant invalid. And so in order to cure
13 that defect, then, of course, is that they asked for a
14 continuous so that we can have the Schmerber hearing
15 today. And I would submit Your Honor is is that the first
16 prong has been satisfied. And it was facts satisfied, I
17 think, prior to me being hired or even after I was hired
18 and only ask for a short delay which to prepare myself
19 four months and we were set for a date certain. The
20 defense was ready. The State was ready. Of course, the
21 State then asked for ---

22 THE COURT: Let's not repeat all that. You've
23 gone through that.

24 MR. BROOKER: --- asked for a continuance. So
25 the first factor has been satisfied. The second factor is

1 is that our close related to the length -- it's closely
2 related to the length of the day. And, of course, that
3 factor is the reason for the delay.

4 So why did it take three years and three months.
5 Well, at least when it's heard in February, it'll be three
6 years and six months. So why did it take three years and
7 six months. Well, even long before I was involved in
8 connection with the case is is that I don't know what
9 justification as to why it was not tried before I even
10 came on three years later because there was no reason for
11 the delay. My understanding is that everything that was
12 collected in connection with this case was collected. And
13 the only reason there was a brief delay at that time it
14 was scheduled for March was because of my appointment. So
15 if there's a significant justifiable reason as to why it
16 was delayed that long, I don't know of one and haven't
17 seen one.

18 THE COURT: You weren't appointed to
19 Mr. Williams. He decided to hire a different counsel.

20 MR. BROOKER: Yes, sir. The four month delay
21 from March -- I think from -- actually three month delay
22 from March until June that is our -- that because we
23 requested that. They're not responsible for that three
24 months.

25 THE COURT: No, I understand.

1 MR. BROOKER: Three months between March and
2 June. So let's move from March until June. They're not
3 responsible for that, but for the other length of time,
4 they are responsible for. So roughly that would mean if
5 this thing is going to be tried in September, and
6 September would be three months -- three years and six
7 months, three of those months we were responsible for
8 asking for a delay, they would be responsible for three
9 years and three months and we be responsible for three
10 months. So what's the justification for delay for three
11 years and three months, I don't know of one. This case is
12 not extremely -- at least to my understanding was is is
13 that from what was explain this case is no more
14 complicated than any other homicide case that most of the
15 evidence in this case was collected, most of the evidence
16 in this case was collected within months. I think within
17 two months -- I think a month of the victim's death and
18 that less than a month after she had -- well, a little
19 more than a month a month and a half after she had died,
20 they had already reached the conclusion that the defendant
21 was their guy and already obtained a warrant in March 2nd
22 2016, and, of course, file charges, okay.

23 So it's not like a situation where this was a
24 long investigation. They could not figure out who the guy
25 was. And, of course, it took six months or a year or two

1 years for them to figure it out. They figured out in less
2 than a month and a half who they wanted to go after. And
3 why did it take three years and three months to then get
4 to trial. There is no reason for justification.

5 THE COURT: Now, in all fairness, you understand
6 the State system doesn't operate the way the federal
7 system does. When they indict a case, they've completed
8 their investigation and they indict it and they're ready
9 to go. That's there's signal that they've completed their
10 investigation. It's the opposite in the State. The fact
11 that Mr. Williams was arrested doesn't mean that's the end
12 of the investigation. And I don't know how long it took.
13 I'm just saying it would not be appropriate to couch it as
14 within a month after the murder, they completed their
15 investigation.

16 MR. BROOKER: And I understand Your Honor that
17 is fair point, but it's the same in the federal system. I
18 do quite a bit of federal cases is that even after the
19 federal case been indicted, we get discovery. And the one
20 I was telling you about that we have a trial in August,
21 that's been going on for years. And I am still getting
22 tons of documents from the DEA all the time. And I
23 imagine we'll be getting it right up to trial, but, of
24 course, is is that I imagine is is that because of the
25 discretion of when to charge is left to the State, the

1 State makes a determination about that. And, of course,
2 if the State believes that this investigation, you know,
3 is in its infant stages, then, of course, the State then
4 has to make a determination as to whether or not it wants
5 to charge right now or either whether or not it wants to
6 wait and complete their investigation, but once they
7 file -- once they serve -- once they ask for it in an
8 arrest warrant and they serve that arrest warrant
9 underneath South Carolina Rules of Criminal Procedure,
10 that then triggers the process. And I think Rule 3 says
11 within 90 days thereafter, they have to get an indictment.
12 They can ask for an extension, but the rules basically
13 says, you know, once you do that, you got to roll.

14 Now, if you don't believe you're ready to roll,
15 you know, then you complete your investigation or either
16 get it almost done before you bring charges. But once you
17 bring charges, Rule 3 says within 90 days -- Rule 3 of
18 South Carolina Rules of Criminal Procedures says within 90
19 days you got to get that thing indicted and the process
20 starts to rolling. So I don't know of any, you know,
21 great reason as to why this would have taken three years
22 and three months. And, of course, is is that I would also
23 argue -- and I don't want to belay the point because I
24 don't want aggravate you Your Honor. I would also argue
25 is is that this additional three month delay from this

1 term to next term. And I won't argue the reasons because
2 I already done that, but I'll just make the statement is I
3 don't believe that that continuous is justified and, of
4 course, is that's not a unreasonable delay based upon the
5 fact that the State made a mistake and they're just trying
6 to correct their mistake for purposes of trial.

7 The third factor, I believe, Your Honor, is
8 asserting the right to recognizing that while a criminal
9 defendant has no responsibility bring himself to trial,
10 the extent to which the exercise of the rights of a speedy
11 trial is relevant. And, of course, is that I've always
12 had trouble with that one Your Honor because there's
13 countless of cases out there that basically says is is
14 that speedy trial is not a right that a defendant has to
15 assert. The defendant is entitled to it and it's once he
16 is charged, but, of course, South Carolina -- I think, the
17 Court says is is that Baker says that it is relevant
18 evidence as to whether or not the person has asserted it,
19 but I would argue is is that whether or not the defendant
20 assert that right carries less weight than the other
21 factors and because legally constitutional rights doesn't
22 have to be -- doesn't have to be asserted. Constitutional
23 right belongs to us. I don't have to assert my right
24 underneath the Fourth Amendment. It is my right and it's
25 given to me. And, of course, is my right of privacy needs

1 to be violated, then, of course, is is that, you know, the
2 defendant or at least the State who seeks to search my
3 property or search me, you know, it has to take the
4 appropriate steps to make sure that it doesn't run a foul
5 my rights under the Fourth Amendment, but they're there.
6 I don't have to say to a law enforcement officer when he
7 comes up to search me, I'm asserting my Fourth Amendment
8 Rights and then the officer can't assert me -- can't
9 search me. If I don't say that, then the officer can
10 search me without a warrant because I haven't assert my
11 rights, but the Court says it is a factor to consider.
12 But I would argue that that factor carries less weight
13 because legally constitutional rights as is speedy trial
14 rights does not have to be asserted, but it's relevant as
15 to whether or not the Court says it's relevant as to
16 whether or not the defendant did assert it.

17 And, of course, the fourth one is is that deals
18 with prejudice to the defendant whether or not the
19 defendant has been prejudice, you know, by the undue
20 delay. And, of course, is is that in Reaves the Court
21 says that there are three types of prejudices, you know,
22 that's relevant to this analysis. And the first one is is
23 that oppressive pretrial incarceration is irrelevant -- is
24 a type of prejudice as relevant anxiety and concern of the
25 accused which means is is that the Court recognizes that

1 when a defendant is facing criminal charges, charges that
2 could potentially put him in jail for the rest of his life
3 is is that every day that he is waiting to find out what
4 his faith is creates significant anxiety in concerned and
5 stress for the accused.

6 Of course, the fourth one and, of course, the
7 Court says the most egregious one would be the possibility
8 the defense will be impaired, which means is that whether
9 or not there is some sort of detrimental effect to the
10 defendant's defense as a result to the delay. I think all
11 of these apply. Number one pretrial incarceration of
12 obviously is that he's incarcerated. And, of course, is
13 that I would submit without even having to explain it is
14 is that incarceration is indeed unpleasant experience for
15 anyone. And I don't think that is it's necessary to
16 experience -- and experience it in order to say that it's
17 a given that it's an unpleasant experience.

18 Number two, the anxiety and concern of the
19 accused. I think that is an obvious prejudice is because
20 Mr. Williams for the last three and a half excuse me --
21 three years and three months at this particular point in
22 time has been sitting back wondering what his faith would
23 be as to whether or not he's going to spend the rest of
24 his life behind bars or whether or not he'll get out and
25 be able to see his family and spend time with his

1 children. I can attest to the Court that I have talk with
2 him and also talk with his family members in reference to
3 that and that it represents constant stress and angst for
4 him.

5 THE COURT: Mr. Brooker, I mean, I don't mean to
6 interrupt, but you been going on and I'm going to let you
7 make your argument. But then explain to me why there's
8 been no motion for a speedy trial. I know what you're
9 saying does it have to be asserted, but it certainly can
10 be asserted. And if it is there's remedies for if it's
11 asserted and there's certain things that aren't done to
12 get the trial heard. And so to, you know, you're sitting
13 here making your argument, but at no time in three years
14 and three months has there ever been any request by the
15 defense to move this case to trial until today.

16 MR. BROOKER: And that's a relevant factor. I
17 think the Court will take into consideration in number
18 three. Number three says the Court can weigh the factor
19 that he has not requested one up until this point. And,
20 of course, is is that is a relevant factor for you to
21 consider. You might well say well then that is -- that
22 factor weighs against the defendant more against the
23 defendant than for. So I'm not trying to tell the Court
24 how to weigh it. I'm just simply trying to tell the Court
25 of its existence and so you may weigh that against it.

1 You know, I don't know, is is that obviously like I said I
2 been on it for four months, but, of course, he's had an
3 attorney so, you know, prior to me. Of course, is once I
4 got on it for four months Your Honor I diligently worked
5 hard for four months trying to get this thing ready
6 because we agreed on a date certain in June. And, of
7 course, is that I understand that he wanted to have a
8 resolution to this thing and more time was always
9 preferrable, but, of course, is I get a request more than
10 the four months that I got is because I know it's a
11 pressing concern. It's been pending for over three years.
12 And so the reason why I had not asserted one once I ---

13 THE COURT: Well, because you had a trial date
14 set.

15 MR. BROOKER: Yeah, because we had a trial date
16 set and ---

17 THE COURT: In no way am I trying to even
18 remotely infer that you've sat on this thing. You been
19 very diligent. You've done an outstanding job.

20 MR. BROOKER: Thank you, Your Honor.

21 THE COURT: But, again, it's a right that's
22 being asserted on behalf of Mr. Williams.

23 MR. BROOKER: Yes, sir.

24 THE COURT: And so I do look at the whole thing.

25 MR. BROOKER: Yes, sir, and I agree you. You

1 have to weigh that factor. And, of course, the
2 possibility of impairment of the defense and like I said I
3 won't go into that in great detail Your Honor. I think I
4 made that yesterday when we made a motion to reconsider
5 asking the Court to deny the continuance and, of course,
6 is -- and if you can remember, I made a lot of football
7 analogies.

8 THE COURT: Which is near and dear to my heart.
9 I got all of that.

10 MR. BROOKER: Just put it briefly, is that we
11 were prepared and ready to go, that normally the way the
12 South Carolina system is set up you don't have to show
13 your cards and I'm going to make a Kenny Rogers reference
14 now. You don't have to show cards, you know, put them on
15 the table until the actual trial. And, of course, that's
16 what we did yesterday. And, of course, is that when we
17 did put the cards on the table. And, of course, is is
18 that our hand was read and our play book was perceived or
19 received. Then, of course, it was determined that there
20 was some inadequacies in the State's case and they sought
21 a continuance to correct those inadequacies and what that
22 simply means is that when we go to trial -- go back to
23 trial in September of this year, I'm going to have to
24 reconstruct my entire defense to adjust, you know, the
25 modifications that the State will make to their case after

1 having the advantage of seeing what our playbook, if you
2 will, will be. It's I have to change all of that. I have
3 to go back and modify everything that I prepared up until
4 this point to adjust to changes that they're going to make
5 based upon what they've saw from us. And, I think, that
6 creates a prejudice to him in connection with this case.
7 Thank you very much, Your Honor.

8 THE COURT: Yes, sir.

9 MR. CLEMENTS: Your Honor, I think it's
10 important to realize that it has been a speedy trial
11 motion made with prior counsel of Mr. Williams talk with
12 him several times and got every indication he was not
13 ready to go to trial yet and then Mr. Brooker comes in and
14 gets hired. And we continued it last time we were looking
15 at trying it because he needed to hire an expert.

16 Now, I think he's been able to hire a couple
17 experts, which is good. We were ready to go yesterday.
18 We had about ten people here, which was probably a
19 fantastical view of what we were going to be able to
20 accomplish, but we also tried to get all our pretrial
21 motions done on Thursday. And the length of that and then
22 compared with the length of what we had yesterday of
23 knowing now that there's still other pretrial motions and
24 I don't know what they are still to be heard. And the
25 length that I think they're going to be involved in time

1 to get those stated, we knew -- it was crystal clear to me
2 yesterday afternoon there wasn't any way that this case
3 would be finished before I would lose some witnesses to
4 vacation and that's part and parcel of what -- I might go
5 ahead and ask for a motion for a continuance. I didn't
6 know what you would do or how you were gone rule on the
7 other issues that have been referred to by Mr. Brooker,
8 but it became clear to me that we're not gone try this
9 case in a week. But would give us the opportunity to get
10 these pretrial motions heard and give him time to think of
11 more motions. And I don't think he really been prejudice
12 if we tried this in September. It's been a slight delay,
13 but I don't think it's an egregious delay. And he's got a
14 motion now that he's filed, so he's protected on that
15 right, but we can't delay it unless due cause in the
16 future, it's got to roll. So I would submit, Your Honor,
17 that we if go ahead and try this case in September and I
18 don't think that he's been sufficiently prejudice that it
19 would require dismissal.

20 THE COURT: I'm going to deny the motion to
21 dismiss based upon the delayed trial date. I think there
22 are several factors that have been taken into
23 consideration. I am concerned about the length. I'm
24 concerned about a lot of the cases that are on the docket
25 and length of delay. I know personally as the chief

1 administrative judge that almost every term we've been --
2 and I have been pushing on the Solicitor's office there
3 are numerous cases that are -- folks that are incarcerated
4 whose cases -- and we been trying those. We have limited
5 courts, so we can only do so many trials, but I know that
6 we been chipping away and trying to get those matters
7 resolved and moved.

8 MR. CLEMENTS: May I add one other thing for the
9 record?

10 THE COURT: Yes, sir.

11 MR. CLEMENTS: I think one of the issues that
12 has led to the age of this case is that Mr. Williams was
13 serving a sentence for involuntary manslaughter and arson
14 of a church. And then when that got completed, he moved
15 here which has been fairly recently to Effingham, so his
16 lawyer has better access because I know one time Mr.
17 Ammons was having a very hard time because Mr. Williams,
18 I think, he was incarcerated at McCormick, which is
19 clearly across the State which made it difficult for them
20 to prepare and be ready, but now he is here and he's just
21 down the road a little bit from Mr. Brooker. So the
22 access is there now.

23 THE COURT: And we're going to move the case in
24 September and so I'm going to respectfully deny the motion
25 to dismiss at this point. What's next?

1 MR. BROOKER: Your Honor, if you would like, we
2 would just go ahead and do the bond hearing.

3 THE COURT: Everybody ready to go on that?

4 MR. CLEMENTS: Yes, Your Honor.

5 THE COURT: All right. Okay.

6 MR. CLEMENTS: Your Honor, I guess, it's
7 Mr. Brooker's motion, so I suppose he needs to go first
8 and then I will.

9 THE COURT: It is the defense motion.

10 MR. BROOKER: Sure, Your Honor. Your Honor,
11 we're asking that bond -- a reasonable bond be issued for
12 Mr. Williams in light of the fact this case has been
13 continued in no fault of his own. And, of course, is I
14 think we had a bond hearing, I think, before Your Honor a
15 few months ago, about a month and a half, two months ago.
16 Of course, is is that just to give you a little bit
17 background information just in case Your Honor doesn't
18 remember is is that Mr. Williams is 30 years of age. He
19 has significant ties to the community. He's a life long
20 residence of Bennettsville, South Carolina. His mother
21 currently lives in Bennettsville, South Carolina. My
22 understanding is is that from Bennettsville, South
23 Carolina is a life long member. His father's from
24 Bennettsville, South Carolina. I believe born and raised
25 there. He's currently there. His sister's in

1 Bennetttsville, South Carolina. He has one brother in
2 Georgia another one that lives in Florence. He has three
3 children. Of course, is he has three children and, of
4 course, all of his children is from South Carolina except
5 one of the children who is with her mother in Virginia. I
6 think prior to him being arrested, Your Honor, he was
7 gainfully employed near a mill in Darlington, South
8 Carolina. And I would ask the Court to grant the motion
9 based upon State vs. Hill. I think State vs. Hill, I
10 think, is probably only bond issue that's ever been heard,
11 I think, by the South Carolina Supreme Court. And, of
12 course, is is that, I think, the South Carolina Supreme
13 Court or State vs. Hill. And, of course, is is that one
14 of the things that the Court established in State vs. Hill
15 was is is that the burden of proof of showing that the
16 defendant is not available is on the State. And, of
17 course, they have to prove that by a preponderance of the
18 evidence.

19 And, of course, I think also the Court
20 established is, you know -- establish is is that from my
21 reading of State vs. Hill is that generally pretrial
22 incarceration is what you might call the nuclear option is
23 that I'm going to need South Carolina statute South
24 Carolina provides for a number of remedies that is
25 available to the Court to -- if the Court believes that

1 the person presents a risk of flight or danger to the
2 community. And I think the statute in 17-15-10 et. al.
3 basically says that if the Court finds that there's a risk
4 of flight or danger to the community then, of course, is a
5 number of measures that are available to the Court, you
6 know, including a surety bond, including electronic
7 monitoring, including, you know, restraining or
8 restraining the defendant's travel. Of course, is that
9 here in South Carolina all of those options are available
10 and plus more. And, of course, is is that if the Court
11 finds it necessary in order to -- necessary and, of
12 course, is is that this the Court can apply GPS
13 monitoring. The Court can apply house arrest. The Court
14 can apply a surety bond. There was a number of measures
15 short of using the nuclear option. And, of course, is is
16 that is outright incarceration prior to trial. And the
17 Court says, again, I would also say to the Court is is
18 that the presumption of innocence which is with the
19 defendant from the inception of the charges until a jury
20 adjudicates him guilty and that that presumption of
21 innocence is also with him during the bond hearing. Of
22 course, is applicable. And, of course, is I know there is
23 a balancing test that the judge has to apply, but we
24 believe given these factors that it is is that a
25 reasonable bail can be set. Then, of course, there are

1 reasonable remedies available to the Court short of
2 outright incarceration that could alleviate any concerns
3 that the Court might have. And, of course, is is that he
4 has previously advised me is is that he is obviously
5 willing to comply, you know, with any restrictions that
6 the Court might put on him. Thank you very much, Your
7 Honor.

8 THE COURT: Thank you, sir.
9 Solicitor.

10 MR. CLEMENTS: Your Honor, we believe that
11 Mr. Williams is a danger to the community. He has an
12 extensive criminal record, Your Honor. He's got in
13 voluntary manslaughter, arson of a church, several
14 burglaries and robberies on his NCIC. We have people here
15 who are afraid, Your Honor. And they're afraid
16 specifically of this defendant and be one Ms. Chimyra.
17 She's here and she is afraid. She has been threatened by
18 Mr. Williams. And you've seen the threat one was on
19 Facebook and one was a text message at our last bond
20 hearing. And also, Your Honor, in the review of the jail
21 phone calls made by Mr. Williams who all recorded. He was
22 talking with his mother and he admitted to her he said
23 that his bond was denied because of the e-mail messages --
24 text messages that she gave us that he sent her. And we
25 have a recording of that statement said he made that

1 admission to her. I guess, he didn't care that he was
2 being recorded and it was being monitored, but that was
3 there. He made those threats. And I can show you that
4 paperwork again, Your Honor, you need them. And also we
5 just got a threat -- a general threat from Mr. Winston
6 Stewart this morning and Ben Price tried to run it down
7 and it was sent on an app, Your Honor, and I like to walk
8 up and show it to you because of the language on it I
9 don't want to state it open in court, but it's a pretty
10 severe threat.

11 THE COURT: What is this thing you all have
12 mentioned it several times sent on app? What is that? I
13 don't know.

14 MR. CLEMENTS: It's some computer app that you
15 can grab a number and use it and then let it go is best I
16 know how to describe it, but I defer to Investigator
17 Collins he knows about those things. And Investigator
18 McFadden referred to it when he talked about one of the
19 phone calls that's a 604 number that was made to the
20 taxicab company was an app. And I'm not exactly sure how
21 that works, that's one of the things I was trying to
22 figure out.

23 THE COURT: I was just curious. I have heard it
24 referenced a couple times. I don't know what it is.

25 MR. CLEMENTS: But, Your Honor, just to give you

1 a little more detail and criminal history of Mr. Royal
2 Williams, on 10-3-2010 he had a burglary second degree.
3 On 10-14-2010, he had a violation of probation. On
4 11-20-2009, he had unlawful carrying of a weapon. On
5 11-8-2010, he had a common law robbery. On 1-10-2012, he
6 had a common law robbery. On 1-10-2012, he had a burglary
7 third degree. On 12-22-2014, he had a common law robbery.
8 On 2-24-2016, he had an involuntary manslaughter. And on
9 2-24-2016 he had an arson second degree, which was
10 involving a church. Your Honor, if I can if I can ask --
11 I know Mr. Stewart and Mrs. Stewart may want to speak to
12 the bond issue if I can ask them to come up and identify
13 themselves at the microphone. State your name please.

14 WINSTON STEWART: My name is Winston Stewart.

15 THE COURT: Yes, sir, Mr. Stewart.

16 WINSTON STEWART: I'm speaking on behalf of my
17 wife Patricia Stewart and my family.

18 THE COURT: Yes, sir.

19 WINSTON STEWART: So we are the family of the
20 victim Sherilyn Joseph. She's our daughter. Our
21 granddaughter -- we are asking the Court to deny the
22 request for bond for the accused on the basis for our
23 request. The evidence that was made aware to us our own
24 view of Mister -- the defendant's history which clearly
25 suggest a consistent disregard for the law, consistent

1 disregard for life. The Solicitor just cited some of the
2 history, but even more recent history while he was
3 incarcerated clear indication of disregard for law where
4 he violated the requirements of his incarceration several
5 times consistent. There is a consistent disregard for
6 law, disregard for life demonstrated by the defendant and
7 there is strong evidence that was made aware to us that he
8 is the perpetrator of the murder of our daughter. There
9 was references by the attorney of the defendant
10 deficiencies in the case against him and I respect that.
11 I'm offended by the inferences to a game and inferences to
12 play books. The loss of life is a serious matter to us.
13 Threats are a serious matter to us. And I ask the Court
14 to also consider those serious serious matters, that's all
15 we have.

16 THE COURT: Thank you, sir.

17 MR. CLEMENTS: Your Honor, I spoken with the
18 three witnesses in the trial. One is here and she's
19 really scared to come in here, but she told me she did not
20 want him out. She was scared of him. She's already
21 received threats. And Linda Jones and Ms. Lakeya Bacote
22 were here today, came this morning to check on everything
23 and see if they needed to come later when they had their
24 appointed time because they heard the case got continued
25 and they told me unequivocally, Mr. Clements, please don't

1 let that man out. We're scared of him. He knows where
2 we are and where we work. And I said I would relay that
3 to the Court.

4 THE COURT: All right. I'm going to deny the
5 motion for bond. The case was continued. It's clear we
6 would not have gotten the case in this week and there were
7 witnesses not available next week, but I -- and I stress
8 this as emphatically as I can. Our next term of court the
9 case needs to be resolved. We know when that is, so
10 witnesses need to be given far in advance notice so that
11 we don't have any witness coming up with some vacation or
12 some can't get off work situation. There needs to be no
13 witness issue short of someone becoming extremely ill or
14 family -- some emergency beyond their control, same thing
15 with the case being tried in September. Unless, it's
16 something extreme that is complete out of control if the
17 case doesn't get tried September, then I'm gong to
18 entertain your motion to dismiss based on the speedy trial
19 motion.

20 I don't take lightly Mr. Williams being
21 incarcerated during this time frame. I don't take that
22 lightly, but I do based upon everything in front of me
23 have concerns about risk of flight as well as community
24 concerns. So I am going to deny the motion and we will
25 try the case the next term of court. All right. What

1 else? Is there anything else?

2 MR. BROOKER: Nothing else from us, Your Honor.

3 THE COURT: Anything further, Solicitor?

4 MR. CLEMENTS: Your Honor, he told me something
5 about he had more motions on affidavits. And as much as I
6 would hate to have to hear another thing about it, I think
7 that it would be most appropriate in helping us try the
8 case on the ninth in a weeks time if we can deal with the
9 pretrial issues now.

10 THE COURT: Well, we can deal with pretrial
11 issues before the week of the ninth.

12 MR. CLEMENTS: Well, that was the next thing I
13 was going to ask for even if we did these motions he says
14 he got because I'm not sure what kind of motions they are,
15 but I don't think there's anything about any kind of play
16 book or strategy that's lost on me that is suddenly going
17 to turn the lightbulb on in my head. I know he's going to
18 contest all law enforcement activities.

19 THE COURT: He be inappropriate if he didn't.

20 MR. CLEMENTS: Certainly.

21 THE COURT: Mr. Brooker is an outstanding
22 attorney and he is going to vehemently defend his clients
23 rights.

24 MR. CLEMENTS: Absolutely.

25 THE COURT: So I got no problem with that.

1 MR. BROOKER: Thank you, Your Honor. I don't
2 have anything at this moment, Your Honor.

3 THE COURT: Okay. All right.

4 MR. CLEMENTS: Your Honor, I would ask that he
5 go ahead and submit to the swabbing and that would be
6 done. Sergeant Clendenin is here.

7 THE COURT: They can do that back there. Okay.
8 All right.

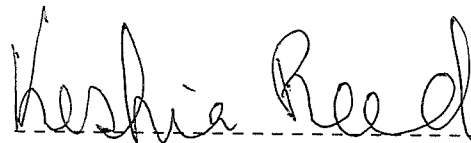
9 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 161, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 17th and 18th day of June, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 23rd day of March 2020.



Keshia Reed, Court Reporter

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-GS-21-00588
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(Days 1 through 4 of 6)
	)	
Royal Daniel Williams III,	)	
	)	
Defendant.	)	
	)	

September 9-12, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge; and a jury

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

Edgar Clements, Esquire
Frederick Hoefer II, Esquire
Attorneys for the Plaintiff

Thurmond Brooker, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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21		or change in thought		
22	ellipses . . .	trailing off		
23	[ph]	phonetically written		
24	[sic]	written as said		
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1 SEPTEMBER 9, 2019

2 (WHEREUPON, the proceedings began at 11:32 a.m.)

3 THE COURT: All right. Ladies and gentlemen, thank you
4 for accommodating us and coming up here. We are going to
5 pull our first jury and I would recognize Solicitor Clements
6 for the call of the case.

7 MR. CLEMENTS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 MR. CLEMENTS: I beg your pardon, Your Honor. I've got
11 everything here but the indictment.

12 Okay. Your Honor, this is Indictment 2017-GS-21-588,
13 the State of South Carolina versus Royal Daniel Williams III.
14 This is a one-count indictment, Your Honor, for murder.

15 THE COURT: Okay. Thank you, sir.

16 All right. Ladies and gentlemen, you heard the
17 solicitor call the case of the State of South Carolina versus
18 Royal Daniel Williams III. Mr. Williams is charged under
19 this indictment.

20 And, ladies and gentlemen, just for your information, an
21 indictment is simply a -- it's a document. It's a piece of
22 paper. It has contained on it the allegations that the State
23 has made against a defendant. It is not in any sense
24 evidence in this case, nor is it evidence in support of the
25 allegations that it contains. It's just the document that

1 brings the case into this court and it has on it the charge
2 against Mr. Williams.

3 The indictment charges Mr. Williams with the crime of
4 murder, and I'm going to -- to this indictment, to this
5 charge, Mr. Williams has pled not guilty and that plea of not
6 guilty places upon the State the burden of proving each
7 element of this charge beyond a reasonable doubt, and it also
8 places upon Mr. Williams the presumption of innocence. Now,
9 I'm going to read to you the allegations that are contained
10 in this indictment so that you'll understand what this case
11 is about.

12 The indictment alleges that Mr. -- that Royal Daniel
13 Williams III did in Florence County on or about January the
14 23rd of 2016, feloniously, willfully, and with malice
15 aforethought kill one Sherilyn Joseph by means of shooting
16 her in the head with a handgun and that the said Sherilyn
17 Joseph did die as a proximate result thereof, in violation of
18 Sections 16-3-10, 20, and 16-1-60 of the South Carolina Code
19 of Laws, 1976, as amended.

20 Ladies and gentlemen, based on that little bit of
21 information that I've shared with you, is there any member of
22 the jury panel who knows anything about this case or who has
23 heard anything about this case? If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: Thank you, there are none.

1 I'm going to ask the attorneys to stand and introduce
2 themselves, if you'd please listen carefully, and I'll begin
3 with the State.
4 Solicitor?
5 MR. CLEMENTS: Thank you, Your Honor.
6 Good morning, ladies and gentlemen. I'm Ed Clements,
7 the solicitor of the 12th Circuit, and I'll be trying this
8 case with the help of Mr. Rick Hoefer, assistant solicitor in
9 our office.
10 THE COURT: All right. Thank you, sir. Ladies and
11 gentlemen, is there any member of the jury panel who is
12 related by blood, connected by marriage or who has any close
13 business or personal relationship with or who has ever been
14 either prosecuted by or represented by either Mr. Clements or
15 Mr. Hoefer? If so, please stand.
16 (WHEREUPON, one person stood.)
17 THE COURT: Thank you. There are none.
18 THE BAILIFF: Your Honor.
19 THE COURT: Oh, I'm sorry. Sir, your name, please?
20 JUROR NUMBER 99: David Hayes.
21 THE COURT: All right. Mr. Hayes, give me one second.
22 This is Juror Number 99. Mr. Hayes, who do you know there?
23 JUROR NUMBER 99: Mr. Clements.
24 THE COURT: Mr. Clements? All right. The fact that you
25 know Mr. Clements, would that in any way affect your ability

1 to give both the State and the defense a fair and impartial
2 trial?

3 JUROR NUMBER 99: No, it wouldn't.

4 THE COURT: All right. Thank you very much, sir. You
5 may have a seat.

6 All right. Mr. Brooker, I'll have you introduce
7 yourself and then if you'd also introduce Mr. Williams.

8 MR. BROOKER: Thank you, Your Honor.

9 Ladies and gentlemen, my name is Thurmond Brooker. I'm
10 an attorney here from -- in Florence, South Carolina, and
11 seated right next to me -- please stand up -- is Royal
12 Williams.

13 THE COURT: All right. Thank you, gentlemen.

14 Ladies and gentlemen, is there any member of the jury
15 panel who is related by blood, connected by marriage, or who
16 has any close business or personal relationship with or who
17 has ever been represented by Mr. Brooker? If so, please
18 stand.

19 (WHEREUPON, one person stood.)

20 THE COURT: Ma'am, your name, please?

21 JUROR NUMBER 88: Diane Green.

22 THE COURT: All right. This is Juror Number 88. Ms.
23 Green, how do you know Mr. Brooker?

24 JUROR NUMBER 88: He represented me.

25 THE COURT: All right. Does he currently represent you

1 or has in the past?

2 JUROR NUMBER 88: Currently.

3 THE COURT: All right. The fact that Mr. Brooker
4 represents you, ma'am, would that in any way affect your
5 ability to give both the State and the defense a fair and
6 impartial trial?

7 JUROR NUMBER 88: No.

8 THE COURT: Thank you, ma'am. You may have a seat.
9 Anyone else?

10 (WHEREUPON, there was no response.)

11 THE COURT: Ladies and gentlemen, you've met Mr.
12 Williams. Is there any member of the jury panel who is
13 related by blood, connected by marriage or who has any close
14 business or personal relationship with Mr. Royal Williams?
15 If so, please stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Thank you. There are none.

18 Now, I'm going to call out a list of names. These names
19 that I call out are possible or potential witnesses. These
20 are folks that may or may not appear during the course of
21 this trial, but that question, are you related by blood,
22 connected by marriage or have any close business or personal
23 relationship, that's the question I'll be asking as it
24 relates to these names.

25 So if I call out a name and that question applies to

1 you, I would ask that you go ahead and stand. Now, I'm going
2 to be calling out several names. So if you do stand, I need
3 you to continue to listen because it may be that you know
4 more than one individual on this list. As I said, these are
5 folks that may appear during the course of this case as
6 witnesses.

7 And y'all please correct me if I mispronounce anyone's
8 name.

9 Patricia Stewart.

10 Latisha Powell.

11 Jackie Profitt.

12 Leron Whitten.

13 James Swinton.

14 Lakeya Bacote.

15 Linda Jones.

16 Chimyra Wright.

17 Deborah Goff.

18 Chris Johnson.

19 Doris Yarborough.

20 John Barron.

21 Melody Galinski.

22 Ashleigh Dixon.

23 Michael Brumbles.

24 Andrew Clendenin.

25 Chris Neal.

1 Ben Price.
2 Chad Collins.
3 Thomas McFadden.
4 Matt Lee.
5 Bo Myers.
6 Dr. Angelina Phillips.
7 David Young.
8 Ryan Keep.
9 All right.
10 MR. CLEMENTS: I've got one more.
11 THE COURT: I'm sorry?
12 MR. CLEMENTS: If I might approach, we found out who the
13 person was.
14 THE COURT: All right. Who works for AT&T. His name is
15 Mr. David Walker.
16 THE COURT: All right. And David Walker.
17 (WHEREUPON, two people stood.)
18 THE COURT: All right. Ma'am, your name, please?
19 JUROR NUMBER 51: Coreen Dalrymple.
20 THE COURT: All right. This is Juror Number 51.
21 Ms. Dalrymple, who is that you knew on this list?
22 JUROR NUMBER 51: Michael Brumbles.
23 THE COURT: All right. And are you related to Mr.
24 Brumbles or know him?
25 JUROR NUMBER 51: Know him.

1 THE COURT: The fact that you know Mr. Brumbles, would
2 that in any way affect your ability to be fair and impartial
3 both to the State and to the defense?

4 JUROR NUMBER 51: No, sir.

5 THE COURT: Thank you very much, ma'am. You may have a
6 seat.

7 THE BAILIFF: 75.

8 THE COURT: All right. Mr. Gaster?

9 JUROR NUMBER 75: Yes, sir.

10 THE COURT: Who on that list, sir?

11 JUROR NUMBER 75: Bo Myers, deputy coroner.

12 THE COURT: All right, sir. And the fact -- are you
13 related to Mr. Myers or just know him?

14 JUROR NUMBER 75: I know him professionally.

15 THE COURT: All right. And the fact that you know Mr.
16 Myers that way, would that in any way affect your ability to
17 give both the State and the defense a fair trial?

18 JUROR NUMBER 75: No, sir.

19 THE COURT: Thank you very much, sir. You may have a
20 seat.

21 All right. Let's see. Is there any member of the jury
22 panel who is a contributor, either by way of financial means
23 or by way of volunteering of your time, a member of any
24 organization that has as its main purpose the support of
25 either law enforcement or victims?

1 Some examples would be MADD, Mothers Against Drunk
2 Drivers, SADD, Students Against Drunk Drivers, CAV, Citizens
3 Against Violence, the Fraternal Order of Police, the South
4 Carolina Troopers Association, South Carolina Sheriffs'
5 Association, any type -- any of those types of organizations.

6 Is there any member of the panel who is a contributor
7 either by way of volunteering of your time or financially?
8 If so, please stand.

9 (WHEREUPON, one person stood.)

10 THE COURT: All right. Sir, your name, please?

11 JUROR NUMBER 36: Chris Cawthon.

12 THE COURT: All right. All right. That's Juror Number
13 36.

14 Mr. Cawthon, the fact that you are a contributor to one
15 or more of those organizations, would that in any way affect
16 your ability to give both the State and the defense a fair
17 and impartial trial?

18 JUROR NUMBER 36: It would not. No, sir.

19 THE COURT: Thank you very much, sir. You may have a
20 seat.

21 Yes, sir, Mr. Brooker?

22 MR. BROOKER: Your Honor, I think previously when you
23 were identifying potential witnesses, we have three that we
24 need too.

25 THE COURT: I apologize. Do you want to bring those up?

1 Let me --

2 MR. BROOKER: Certainly, Your Honor.

3 (WHEREUPON, a bench conference was held in the presence
4 of the jury pool but out of the hearing of the jury pool
5 off the record, after which the proceedings resumed as
6 follows.)

7 THE COURT: Ladies and gentlemen, referring back now to
8 the list of potential witnesses, keeping that question in
9 mind whether you're related by blood, connected by marriage
10 or have any close business or personal relationship, three
11 other additional witnesses that may appear during the course
12 of this trial are Robert Bennett, Tom Slavinsky, and Kendrell
13 Davis. Any member of the panel related by blood, connected
14 by marriage or any close business or personal relationship to
15 those folks?

16 (WHEREUPON, there was no response.)

17 THE COURT: All right. Thank you. There are none.

18 Is there any member of the jury panel or member of your
19 immediate family who has ever been the victim of a crime
20 involving physical violence? If so, please stand.

21 (WHEREUPON, several people stood.)

22 THE COURT: Your name, ma'am?

23 THE BAILIFF: Number 2, Judge.

24 JUROR NUMBER 2: Latazia Allen.

25 THE COURT: All right. Ms. Allen, yourself of a member

1 of your family?

2 JUROR NUMBER 2: Myself.

3 THE COURT: All right. And, ma'am, the fact that you
4 have had that experience, would that in any way affect your
5 ability to give both the State and the defense a fair and
6 impartial trial?

7 JUROR NUMBER 2: No.

8 THE COURT: I'm sorry?

9 JUROR NUMBER 2: No.

10 THE COURT: All right. Thank you, ma'am. You may have
11 a seat.

12 THE BAILIFF: 173, Judge.

13 THE COURT: All right. All right. Mr. Pickett?

14 JUROR NUMBER 173: Yes.

15 THE COURT: Mr. Pickett, yourself or a member of your
16 family?

17 JUROR NUMBER 173: Member of my family.

18 THE COURT: All right. All right, sir. Mr. Pickett,
19 the fact that you've had that experience in your family,
20 would that in any way affect your ability to give both the
21 State and the defense a fair and impartial trial?

22 JUROR NUMBER 173: No, sir.

23 THE COURT: Thank you, sir. You may have a seat.

24 THE BAILIFF: One more, Judge.

25 THE COURT: All right.

1 JUROR NUMBER 99: Number 99.

2 THE COURT: Mr. Hayes?

3 JUROR NUMBER 99: Yes.

4 THE COURT: Mr. Hayes, yourself or a member of your
5 family, sir?

6 JUROR NUMBER 99: Member of my family.

7 THE COURT: All right. The fact that you have had that
8 experience in your family, would that in any way affect your
9 ability to give both the State and the defense a fair trial?

10 JUROR NUMBER 99: No, it wouldn't.

11 THE COURT: Thank you, sir. You may have a seat.

12 Is there any member of the jury who has either had a
13 family member or a close friend who has ever been the victim
14 of a murder? If so, please stand.

15 (WHEREUPON, one person stood.)

16 THE BAILIFF: I have one, Judge.

17 THE COURT: All right. Ma'am, your name, please?

18 JUROR NUMBER 239: Theresa Williams.

19 THE COURT: I'm sorry?

20 JUROR NUMBER 239: Theresa Williams.

21 THE COURT: Ms. Williams?

22 THE BAILIFF: 39, Judge.

23 JUROR NUMBER 239: 239.

24 THE BAILIFF: 239.

25 THE COURT: All right. Ms. Williams, the fact that you

1 have had -- was it a family member or a friend?

2 JUROR NUMBER 239: Family member.

3 THE COURT: The fact that you've had that experience in
4 your family, would that in any way affect your ability to
5 give both the State and the defense a fair and impartial
6 trial?

7 JUROR NUMBER 239: No, sir.

8 THE COURT: Thank you very much, ma'am. You may have a
9 seat.

10 Is there any member of the jury panel who has any
11 religious belief, political belief or general ideology that
12 would prevent you from being fair and impartial in a case
13 where one -- a human being is charged with killing another
14 human being? If so, please stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: Thank you. There are none.

17 Is there any member of the panel who believes that a law
18 enforcement officer, if called to be a witness in a case, has
19 either more credibility or less credibility simply because
20 that person is a law enforcement officer? In other words,
21 would you treat the testimony of a law enforcement officer
22 any different than you would treat any witness' testimony?
23 If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. Thank you. There are none.

1 Is there any member of the jury panel who would hold any
2 type of racial bias or animus that would prevent you from
3 being fair and impartial in a case in which the defendant is
4 an African-American? If so, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Thank you. There are none.

7 Ladies and gentlemen, I've asked several questions and
8 if you'll recall when someone has stood to respond, my
9 follow-up question has always been the same. Would that in
10 any way affect your ability to give both the State of South
11 Carolina and the defendant at the bar a fair and impartial
12 trial?

13 Anytime we pull a jury in this court, whether it's for a
14 criminal case or a civil case, that is our goal, to impanel a
15 group of folks that can put the things outside this courtroom
16 aside, listen carefully to the evidence, and base your
17 consideration solely upon the evidence that is presented
18 during the course of this trial in arriving at your verdict.

19 Now, I could probably ask questions all morning that
20 would see -- try to elicit if there is anyone that has an
21 issue with regards to that, but maybe the easiest way is to
22 simply ask.

23 Is there any member of the jury panel who knows of any
24 reason -- whether I've asked the question or not, who knows
25 of any reason why you would not be able to give both the

1 State and the defense a fair and impartial trial? If so,
2 please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There are none.

5 (WHEREUPON, one person stood.)

6 JUROR NUMBER 89: 89.

7 THE BAILIFF: 89.

8 THE COURT: All right. All right. Mr. Green?

9 JUROR NUMBER 89: Yes, sir.

10 THE COURT: I'm going to get you to step around here and
11 come on up, Mr. Green.

12 (WHEREUPON, a bench conference was held with Juror
13 Number 89 in the presence of the jury pool but out of
14 the hearing of the jury pool as follows.)

15 THE COURT: Okay. I'm going to let the lawyers step up
16 here real quick.

17 JUROR NUMBER 89: Uh-huh.

18 THE COURT: Okay. I'll be happy to hear from you.

19 JUROR NUMBER 89: I don't believe in the death penalty.

20 THE COURT: Okay. This is not a death penalty case.

21 JUROR NUMBER 89: Okay.

22 THE COURT: Okay?

23 JUROR NUMBER 89: That's fine.

24 THE COURT: Yeah. That doesn't involve this case.

25 JUROR NUMBER 89: Okay.

1 THE COURT: Okay. All right.

2 (WHEREUPON, the bench conference ended and the

3 proceedings resumed as follows.)

4 THE COURT: Thank you, sir. You may have a seat.

5 All right. Are there any additional questions or voir

6 dire from the State?

7 MR. CLEMENTS: I beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. CLEMENTS: No, sir, Your Honor. Thank you.

10 THE COURT: Anything further from the defense?

11 MR. BROOKER: No, sir.

12 THE COURT: All right. Ladies and gentlemen, let me

13 explain to you how we go about drawing juries here in General

14 Sessions court. Madam Clerk has on her computer a program

15 and what it will do is it will take this list of names --

16 this is all the jury list and your names appear on this list

17 in alphabetical order.

18 What her program does is it takes this list and it

19 completely and randomly reorders the list. And so if I'm in

20 the jury pool and I'm Tommy Russo, Juror Number 134, I may

21 appear on this new list as Tommy Russo, Juror Number 14. In

22 other words, it's completely random. There's no rhyme or

23 reason to it. It just reorders the names. She will produce

24 that list and then she'll start at the top of that new list

25 and she'll call out the first name.

1 If your name is called, I would ask that you stand and
2 just stand where you -- where you're seated currently and
3 just stand and then she'll first inquire of the State words
4 to this effect, what say you for the State. The State has
5 two options. They can either excuse you and if they excuse
6 you, you'll have a seat, or they can present you and if they
7 present you, you'll just remain standing.

8 And then she'll ask of the defense the same question,
9 what say you for the defense or words to that effect. The
10 defense has two options. They can either excuse you and, if
11 they do, you'll have a seat, or they can seat you and, if
12 they seat you, you'll then come around and have a seat in the
13 jury box. Now, we'll go through that process until -- until
14 we've gotten our jury selected.

15 So is the State ready to proceed to jury selection?

16 MR. CLEMENTS: We are, Your Honor.

17 THE COURT: Is the defense ready?

18 MR. BROOKER: Yes, sir, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, please
20 listen carefully to see if your name is called.

21 (WHEREUPON, there was a pause in the proceedings, after
22 which the proceedings resumed as follows.)

23 THE COURT: Folks, before the computer age and all this
24 stuff, we used to have this -- as a matter of fact, it's in
25 my office now. We've got this big drum. It's wooden and,

1 just like bingo, you stick all the balls in there and you
2 spin it around and you reach in and grab them out. That's
3 the way we used to pull juries. We used to put everybody's
4 names in that thing, spin it around, people would reach in
5 and pull out a name.

6 That system never failed. We never had to worry about
7 it. It worked every single time. I can't necessarily say
8 that for the computer age. I think we're good and I think
9 that it's going to print out that list. But I'm a big fan of
10 the computer age and all the things that it can do, but
11 sometimes you just can't beat the old ways. Sometimes the
12 old ways are just the best.

13 (WHEREUPON, there was a pause in the proceedings, after
14 which the proceedings resumed as follows.)

15 THE COURT: All right. Are you ready? All right. Yes,
16 ma'am.

17 THE CLERK: Number 145, Christopher Matthews.

18 (WHEREUPON, a white male stood.)

19 THE COURT: What say the State?

20 MR. CLEMENTS: Please present Mr. Matthews.

21 THE CLERK: What say the defendant?

22 MR. BROOKER: This is 145, Mr. Matthews?

23 THE CLERK: Yes.

24 MR. BROOKER: Please present the juror.

25 THE CLERK: Mr. Matthews, please bring your belongings

1 and have a seat in the jury box.

2 Number 12, Thomas Bellon.

3 (WHEREUPON, a white male stood.)

4 THE CLERK: What say the State?

5 MR. CLEMENTS: Please present Mr. Bellon.

6 THE CLERK: What say the defendant?

7 MR. BROOKER: Please excuse this juror.

8 THE CLERK: You're excused from this trial only.

9 THE CLERK: Judge?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held with the clerk

12 off the record, after which the proceedings resumed as

13 follows.)

14 MR. CLEMENTS: May we approach, Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was held in the presence

17 of the jury pool but out of the hearing of the jury pool

18 off the record, after which the proceedings resumed as

19 follows.)

20 THE COURT: All right. Folks, a little bit of a change

21 here. When your name is called, I'm going to ask if you

22 would is to step out and come down to the court to the area

23 here. If you'd just step up to this podium and then just

24 face the back of the courtroom like I'm facing. So if your

25 name is called, come out, come down and have a -- stand here

1 and face the back of the courtroom and then Madam Clerk will
2 ask the lawyers their questions. Okay?

3 Go ahead.

4 THE CLERK: And, jurors, please bring all your
5 belongings with you.

6 Number 3, Sheila Buxton. I'm sorry. Number 28.

7 (WHEREUPON, a white female came forward.)

8 THE CLERK: What say the State?

9 MR. CLEMENTS: Please present Ms. Buxton.

10 THE CLERK: What say the defendant?

11 MR. BROOKER: If you can indulge me for just a second?

12 THE COURT: Yes, sir.

13 MR. BROOKER: I apologize.

14 THE COURT: It's okay.

15 MR. BROOKER: Excuse this juror for the purposes of this
16 trial.

17 THE CLERK: You're excused from this trial only.

18 Number 6, Stephen Altman.

19 (WHEREUPON, a white male came forward.)

20 THE CLERK: What say the State?

21 MR. CLEMENTS: Please present Mr. Altman.

22 THE CLERK: What say the defendant?

23 MR. BROOKER: Please present the juror.

24 THE CLERK: Please take a seat in the jury box.

25 Number 251, Akeede Pickett.

1 (WHEREUPON, a black male came forward.)
2 THE CLERK: What say the State? Juror 173.
3 MR. CLEMENTS: I beg the Court's indulgence a moment.
4 173?
5 THE CLERK: 173.
6 MR. CLEMENTS: Please excuse Mr. Pickett from this trial
7 only.
8 THE CLERK: What say the defendant?
9 MR. BROOKER: I guess --
10 THE COURT: He excused him.
11 MR. BROOKER: -- he excused him.
12 THE COURT: He can have a seat.
13 THE CLERK: Oh, I'm sorry. You're excused from this
14 trial only.
15 Number 239, Theresa Williams.
16 (WHEREUPON, a black female came forward.)
17 THE CLERK: What say the State?
18 MR. CLEMENTS: Please present Ms. Williams.
19 THE CLERK: What say the defendant?
20 MR. BROOKER: Please excuse this juror just for the
21 purposes of this trial.
22 THE CLERK: You're excused from this trial only.
23 Number 228, Dane Watford.
24 (WHEREUPON, a white male came forward.)
25 THE CLERK: What say the State?

1 MR. CLEMENTS: Please present Mr. Watford.
2 THE CLERK: What say the defendant?
3 MR. BROOKER: Please present the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Number 200, Derek Seeber.
6 (WHEREUPON, a white male came forward.)
7 THE CLERK: What say the State?
8 MR. CLEMENTS: Please present Mr. Seeber.
9 THE CLERK: What say the defendant?
10 MR. BROOKER: Please give me just a second. If you can
11 indulge me for just a second? Excuse this witness for the
12 purpose of this trial.
13 THE CLERK: You're excused from this case only.
14 Number 44, Meyell Cooper.
15 (WHEREUPON, a black female came forward.)
16 THE CLERK: What say the State?
17 MR. CLEMENTS: Please present Ms. Cooper.
18 THE CLERK: What say the defendant?
19 MR. BROOKER: Please present the juror.
20 THE CLERK: Please take a seat in the jury box.
21 Number 35, Elizabeth Cato.
22 (WHEREUPON, a black female came forward.)
23 THE CLERK: What say the State?
24 MR. CLEMENTS: You said 135, Madam Clerk?
25 THE CLERK: Number 35.

1 MR. CLEMENTS: Number 35. I'm sorry. Please excuse Ms.
2 Cato from this trial only.

3 THE CLERK: You're excused from this trial only.
4 Number 87, Yolanda Pinckney.

5 (WHEREUPON, a black female came forward.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Pinckney.

8 THE CLERK: What say the defendant?

9 MR. BROOKER: Please excuse this juror.

10 THE CLERK: You're excused from this trial only.
11 Number 69, Erin Eaddy.

12 (WHEREUPON, a white female came forward.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please present Ms. Eaddy.

15 THE CLERK: What say the defendant?

16 MR. BROOKER: If you would indulge me for just a second?
17 I apologize.

18 THE COURT: That's okay. Take your time.

19 MR. BROOKER: Please present the juror.

20 THE CLERK: Please take a seat in the jury box.
21 Number 163, Elaine Nero.

22 (WHEREUPON, a black female came forward.)

23 THE CLERK: What say the State?

24 MR. CLEMENTS: Please present Ms. Nero.

25 THE CLERK: What say the defendant?

1 MR. BROOKER: May we approach, Your Honor?

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was held in the presence
4 of the jury pool but out of the hearing of the jury pool
5 off the record, after which the proceedings resumed as
6 follows.)

7 THE COURT: Ms. Nero, can I ask you, earlier when we
8 went through the qualification and did you in the roll call
9 indicate that you worked at Pee Dee Coalition?

10 JUROR NUMBER 163: (Nodded.)

11 THE COURT: What do you do with the Pee Dee Coalition?

12 JUROR NUMBER 163: Victim advocate.

13 THE COURT: All right. You're an advocate for the
14 victims there?

15 JUROR NUMBER 163: Yes, sir.

16 THE COURT: All right. Would that in any way affect
17 your ability to be fair and impartial to both the State and
18 the defense?

19 JUROR NUMBER 163: No, it wouldn't.

20 THE COURT: Okay. Thank you. Just you can remain
21 standing.

22 MR. BROOKER: Your Honor, we'd excuse her just for the
23 purposes of this trial.

24 THE COURT: All right. You may have a seat, ma'am.

25 THE CLERK: Number 96, Kimberly Harvey.

1 (WHEREUPON, a white female came forward.)
2 THE CLERK: What say the State?
3 MR. CLEMENTS: Please present Ms. Harvey.
4 THE CLERK: What say the defendant?
5 MR. BROOKER: Present the juror.
6 THE CLERK: Please take a seat in the jury box.
7 Number 149, Terry McAllister-Timmons.
8 (WHEREUPON, a black female came forward.)
9 THE CLERK: What say the State?
10 MR. CLEMENTS: Please present Ms. McAllister-Timmons.
11 THE CLERK: What say the defendant?
12 MR. BROOKER: If you would indulge me for just a second?
13 I apologize.
14 THE COURT: Yes, sir.
15 MR. BROOKER: I apologize. If you can indulge me?
16 Please present the juror.
17 THE CLERK: Please take a seat in the jury box.
18 Number 99, David Hayes.
19 (WHEREUPON, a black male came forward.)
20 THE CLERK: What say the State?
21 MR. CLEMENTS: Please excuse Mr. Hayes from the trial of
22 this case.
23 THE CLERK: You're excused from this case only.
24 Number 147, Julie Matthews.
25 (WHEREUPON, a white female came forward.)

1 MR. BROOKER: I apologize. Is that 147?
2 THE CLERK: 147.
3 THE COURT: Yes.
4 MR. BROOKER: Thank you, Your Honor.
5 THE CLERK: What say the State?
6 MR. CLEMENTS: Please present Ms. Matthews.
7 THE CLERK: What say the defendant?
8 MR. BROOKER: If you can indulge me for just a second?
9 THE COURT: Yes, sir.
10 MR. BROOKER: Excuse the juror for the purpose of this
11 trial only.
12 THE CLERK: You're excused from this case only.
13 Number 158, Keith Milliner.
14 (WHEREUPON, a black male came forward.)
15 THE CLERK: What say the State?
16 MR. CLEMENTS: Please excuse Mr. Milliner for the trial
17 of this case only.
18 THE CLERK: You're excused from this trial only.
19 Number 13, Deloris Bethea.
20 (WHEREUPON, a black female came forward.)
21 THE CLERK: What say the State?
22 MR. CLEMENTS: Please present Ms. Bethea.
23 THE CLERK: What say the defendant?
24 MR. BROOKER: Please excuse this juror for the purpose
25 of this trial.

1 THE CLERK: You're excused from this trial only.
2 Number 16, Melissa Black.
3 (WHEREUPON, a white female came forward.)
4 MR. BROOKER: I apologize. What that number is again?
5 THE CLERK: 16.
6 MR. BROOKER: Thank you.
7 THE CLERK: What say the State?
8 MR. CLEMENTS: Please present Ms. Black.
9 THE CLERK: What say the defendant?
10 MR. BROOKER: Please present the juror.
11 THE CLERK: Please take a seat in the jury box.
12 Number 33, Joseph Carraway.
13 (WHEREUPON, a white male came forward.)
14 THE CLERK: What say the State?
15 MR. CLEMENTS: Please present Mr. Carraway.
16 THE CLERK: What say the defendant?
17 MR. BROOKER: Present the juror.
18 THE CLERK: Please take a seat in the jury box.
19 Number 166, James Newman.
20 (WHEREUPON, a white male came forward.)
21 THE CLERK: What say the State?
22 MR. CLEMENTS: Please present Mr. Newman.
23 THE CLERK: What say the defendant?
24 MR. BROOKER: Present the juror.
25 THE CLERK: Please take a seat in the jury box.

1 Number 199, Londa Sanocoy.

2 (WHEREUPON, a Native American female came forward.)

3 THE CLERK: What say the State?

4 MR. CLEMENTS: I hope I don't butcher the juror's name,

5 but please present Ms. Sanocoy.

6 JUROR NUMBER 199: Sanocoy.

7 THE CLERK: What say the defendant?

8 MR. BROOKER: Please excuse this juror.

9 THE CLERK: You're excused from this trial only.

10 Number 39, Aaron Chapman.

11 (WHEREUPON, a black male came forward.)

12 THE CLERK: What say the State?

13 MR. CLEMENTS: Please present Mr. Chapman.

14 THE CLERK: What say the defendant?

15 MR. BROOKER: Please present the juror.

16 THE CLERK: Please take a seat in the jury box.

17 Number 101, William Hayes.

18 (WHEREUPON, a white male came forward.)

19 THE CLERK: What say the State?

20 MR. CLEMENTS: Please present Mr. Hayes.

21 THE CLERK: What say the defendant?

22 MR. BROOKER: Present the juror.

23 THE CLERK: Please take a seat in the jury box.

24 THE COURT: All right. We're going to do two

25 alternates.

1 THE CLERK: Number 100, Mitchell Hayes.
2 (WHEREUPON, a white male came forward.)
3 THE CLERK: What say the State?
4 MR. CLEMENTS: Please present Mr. Hayes as well.
5 THE CLERK: What say the defendant?
6 MR. BROOKER: Present the juror.
7 THE CLERK: Please take a seat in the jury box.
8 Number 98, Alicia Hatfield.
9 (WHEREUPON, a white female came forward.)
10 THE CLERK: What say the State?
11 MR. CLEMENTS: Please present Ms. Hatfield.
12 THE CLERK: What say the defendant?
13 MR. BROOKER: Please present the juror.
14 THE CLERK: Please take a seat in the jury box.
15 THE COURT: All right. Any motions regarding jury
16 selection from the State?
17 MR. CLEMENTS: No, Your Honor.
18 THE COURT: Any motions regarding jury selection from
19 the defense?
20 MR. BROOKER: If I could just have a second, Your Honor,
21 to confer with my client?
22 THE COURT: Yes, sir.
23 MR. BROOKER: There is no motion from the defense,
24 Judge.
25 THE COURT: All right. Thank you, sir.

1 MR. BROOKER: Thank you.

2 THE COURT: All right. Ladies and gentlemen, those of
3 you that remain in the jury pool, I am going to excuse you at
4 this time.

5 And do they have the -- do they have the number?

6 THE CLERK: Yes, sir.

7 THE COURT: Okay. You've got a card or a sheet or
8 whatever on your jury summons that should have a phone
9 number. I'm going to need you, if you would, to call that
10 number after 6 o'clock this evening. Okay? So make sure
11 you've got that number and if you -- if you don't have it,
12 then make sure you don't leave until you get it. Okay? But
13 -- and I'll -- Mr. Herman can meet y'all as you leave and
14 we'll get those for you.

15 But please do yourself a favor. Don't forget to call
16 that number after 6 o'clock tonight. There'll be -- there'll
17 be a recording on there and it'll be instructions for you to
18 follow, whether or not we need you to come back tomorrow or
19 whether we need you to call back. I don't know. At this
20 time, I don't know what the message will be, but whatever the
21 message is, just please follow that.

22 Now, the reason I said to do yourself a favor and make
23 sure you don't forget is because here's what'll happen if you
24 forget to call. If, for example, the message is for you to
25 be back in the morning and if you're not here, then we're

1 going to send a sheriff's deputy out to find you and they're
2 going to come to your house or they're going to come to your
3 place of work. And I've had folks where that's happened to
4 them and they've tried to describe the embarrassment when the
5 police officer asked them to leave their job and come with
6 me.

7 So don't -- don't put yourself in that situation. Just
8 make sure to call the number. And here's the thing. I don't
9 know if you're like me. Like, for example, it's Monday night
10 and Monday Night Football starts back and it's a
11 doubleheader. More than likely, I'm going to fall asleep in
12 my chair watching football and if I wake up at three in the
13 morning and go, oh, my God, I forgot to call, pick up the
14 phone and call. It's a recording. It'll be there. Either
15 that or Elaine will be there answering the phone. No. You
16 won't get Elaine.

17 But please do that. Call that number after 6 o'clock
18 and follow whatever the instructions are on that recording.
19 Okay?

20 So if everyone else will please remain seated, ladies
21 and gentlemen, we're going to excuse you now to call that
22 number after six, please.

23 (WHEREUPON, the jury panel was released and exited the
24 courtroom at 12:48 p.m.)

25 THE COURT: Guys, can y'all step up real quick while

1 they're going out?

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury but out of the hearing of the jury off the
4 record, after which the proceedings resumed as follows.)

5 THE COURT: All right. Folks, I was just trying to get
6 a bead from Mr. Clements and Mr. Brooker about this case and
7 when we're going to actually get started.

8 I have some pretrial matters that I'm going to need to
9 take up with the lawyers, some legal matters that I have to
10 take up before we get started. These are matters that if we
11 can go ahead and get them resolved, it'll make the trial go
12 faster and more efficient. So I'm going to do that this
13 afternoon.

14 So what I'm going to do for you is I'm going to ask if
15 you would -- I'm going to excuse you for the day, but I will
16 need you. You don't need to call back because I can tell you
17 now I need you back in the morning. Okay?

18 And so what I'm going to do is ask, if you would, to be
19 back. And when you leave here in just a moment, I'm going to
20 get you to follow the bailiff. She's going to show you where
21 your jury room is and then, when you come back, you can come
22 straight back up here and come to the jury room and the
23 bailiffs will be there to escort you back into your room, but
24 I need to send you away with a little bit of instruction.

25 You've been selected to hear this case and so it's very

1 important that you do not have any conversation with anyone
2 about this case. Do not allow anyone to talk with you about
3 this. You are to do everything in your power to protect your
4 ability to remain fair and impartial. So it's important that
5 you not have any conversation about this case.

6 Now, when you go home, more than likely, your family,
7 friends or loved ones will be probably curious as to whether
8 or not you've been selected to be on a panel. You can tell
9 them that you were selected to be on a case and that you have
10 to be back in the morning.

11 Now, obviously, it won't end there. They're going to be
12 curious. What kind of case is it? What does it involve?
13 Who? What's it about? And those are the types of questions
14 that you are not to answer.

15 What you need to tell them is that the judge has given
16 us strict instructions that we have no conversation about the
17 case, but be patient because once the case is over, then you
18 can talk all -- talk about it all you want. And so you need
19 to just -- and I -- and I tell you this for this reason.
20 Saying something as innocent as it's -- it's about a young
21 man who is charged with murder or it's a case involving a
22 young man named Royal Williams, something as innocent as that
23 could possibly elicit a response that might compromise your
24 ability to be fair and impartial.

25 So what you need to just tell them is you have been

1 selected to be on a case, you will need to be back in the
2 morning and, other than that, you're not allowed to talk
3 about it at all. And you can assure them it's not that this
4 case is special or whatever. I give this instruction to
5 every jury, whether it's a murder trial or whether it's a DUI
6 trial or whether it's a spitting on the sidewalk trial.

7 This same instruction goes out to every jury. You're
8 not to have any -- any discussion about the case or talk with
9 anyone about it. That includes when you return and you're
10 back in the jury room where it's just y'all back there.
11 You're still not to have any conversation about the case. So
12 you're not allowed to discuss the case yourself.

13 Finally, and very importantly, we live in a day and age
14 where these things that we call cell phones are simply -- are
15 really pocket computers. We have the Internet. We have all
16 this information out there. So much of it is garbage. So
17 much of it is fake. So I tell you that to say this.

18 You are also not to try and do any independent
19 investigation into this case. You're not to go on the
20 computer and try to Google anything about it or Yahoo
21 anything about it or whatever it is that's out there.

22 You are going to take an oath to try this case and to
23 reach a fair and a just verdict based solely upon your
24 consideration of the evidence that appears in this courtroom.
25 So it is very important that you just restrict yourself to

1 this trial and to these attorneys. Okay?

2 All right. So having said that, I'm going to excuse you
3 now. I ask you to be back in the room at 9:30. Now, don't
4 be like my family. My family thinks if we have to be across
5 town at 7 o'clock, that we're on time if we leave the house
6 at 7 o'clock. Well, clearly, we're late if we leave the
7 house at 7 o'clock. Don't leave your house tomorrow morning
8 at 9:30 or you're going to be very late. I need you up here
9 at 9:30. Okay? And we'll -- we'll start when everyone gets
10 reconvened.

11 So if everyone else will please remain seated and,
12 ladies and gentlemen, they're going to show you where jury
13 room is and then you're free to go. See you back here in the
14 morning.

15 (WHEREUPON, the jury exited the courtroom at 12:57 p.m.)

16 THE COURT: All right. Well, if there's nothing we need
17 to take up right now, we'll -- how about we reconvene at
18 2:30? Does that sound good?

19 MR. CLEMENTS: Yes, sir.

20 THE COURT: All right. All right. Court will be in
21 recess then until 2:30.

22 (WHEREUPON, there was a break in the proceedings from
23 12:58 p.m. until 2:47 p.m., after which the proceedings
24 resumed as follows.)

25 THE COURT: All right. Y'all tell me what we need to

1 take up.

2 MR. BROOKER: Well, specifically, Your Honor, is is that
3 the motions that we have -- I think the ones that we talked
4 about I think just before we broke for lunch that I think
5 during the last term of court we made five motions and, of
6 course, is that I didn't know whether or not your ruling was
7 put on the record and, of course, is I think I indicated to
8 you before we're going to ask that you put those -- put those
9 rulings on the record just to be absolutely certain for the
10 purposes of appeal and, of course, I won't go into great
11 detail about those motions because they've already been
12 argued.

13 You know, I think last term of court, of course, is that
14 there was five motions and one of them I think was withdrawn,
15 but the two main motions were *Franks* motions and, of course,
16 they were *Franks* motions seeking to suppress the -- the DNA
17 search warrant that had been obtained by the government and,
18 of course, that search warrant was obtained, I think,
19 February 20th, 2019, and, of course, a copy of the warrant was
20 attached to the motion. And I have the motion, Your Honor,
21 if you want to briefly look at it.

22 THE COURT: Yeah. You can hand it to me.

23 MR. BROOKER: Sure.

24 THE COURT: Thank you.

25 MR. BROOKER: Yes, sir.

1 And, of course, that -- that motion was based upon the
2 *Franks v. Delaware* case in which basically the United States
3 Supreme Court says that a search warrant could be challenged
4 with respect to whether or not any false or even misleading
5 information had been provided in the affidavit portion of the
6 search warrant or if there was exculpatory evidence that was
7 omitted from the affidavit.

8 Of course, is in this particular motion, based upon the
9 DNA search warrant that was obtained for Mr. Williams' buccal
10 swab is that the investigators specifically stated -- the
11 relevant portion of the affidavit specifically stated that
12 the investigation revealed that Joseph had been in the
13 company of Williams in the hours leading up to the discovery
14 of her body in her home.

15 The investigation further revealed that Williams had
16 taken a taxi from Joseph's home just before her body was
17 discovered by her mother and that Joseph had expressed fear
18 of Williams and that he was attempting to recover text
19 messages and recordings of phone calls involving Williams
20 from her cell phone the morning of her murder. The
21 investigation of the crime scene revealed the presence of a
22 condom which contained semen.

23 Of course, is is that we contend that that information
24 was false or at best was misleading because at the time in
25 which the search warrant was obtained, I think that the

1 information that law enforcement was relying on is that the
2 taxicab company, the driver and also one or two passengers in
3 the taxicab said they picked up an individual from Ms.
4 Joseph's home around the time when she was believed to have
5 been murdered. And of course, is is that the taxicab driver
6 and also the passengers were shown a photograph of Mr.
7 Williams and, of course, said that they could not identify
8 Mr. Williams as being the person who they picked up.

9 So in essence is that there was no -- there was no
10 evidence that law enforcement had at that particular time
11 that identified Mr. Williams as the suspect who was picked up
12 from Ms. Joseph's, the victim's, home, but when they stated
13 in the affidavit that the investigation had identified Mr.
14 Williams as that person that was picked up from the victim's
15 home, that information was false. It is that Mr. Williams
16 never has been identified as either the person who was picked
17 up from Ms. Joseph's home. He never was identified by the
18 taxicab driver or either by other evidence throughout the
19 course of this investigation.

20 So that statement was misleading and then, of course, is
21 is that also where the affidavit says -- excuse me, Your
22 Honor. That -- that the investigation of the crime scene
23 revealed the presence of a condom which contained semen.
24 That information is also false. A condom was collected. It
25 was submitted to, I think, Richland County lab for analysis

1 and, of course, is is that the lab then submitted back its
2 report indicating that -- a report that the condom did not
3 contain semen. They did discover DNA on the condom, but no
4 semen.

5 So that information was false and -- false and
6 misleading and, of course, is is that I think there's
7 tremendous concern in this particular situation where the
8 judge who signed the search warrant was provided false and
9 misleading information and that judge relied on that false
10 and misleading information to reach the conclusion of
11 probable cause.

12 And of course, if the judge relied on false and
13 misleading information to reach the conclusion of probable
14 cause, then, of course, the question then becomes is is
15 whether or not that warrant, absent the false and misleading
16 information, could support a finding of probable cause. We
17 argue to the Court that it does not.

18 If you remove that false language that is highlighted in
19 our motion, that remaining language would be insufficient for
20 the judge to reach the conclusion of probable cause. So we
21 ask that the DNA search warrant that was used to obtain Mr.
22 Williams' saliva, specifically the first buccal swab that was
23 obtained from Mr. Williams to get his saliva, that that
24 warrant be suppressed and, of course, the -- the analytical
25 report that was later generated as a result of comparing Mr.

1 Williams' DNA or saliva, that that analytical report or at
2 least the portion that -- that pertained to the use of that
3 buccal swab be suppressed.

4 THE COURT: Solicitor?

5 MR. CLEMENTS: Your Honor, first, I don't believe we've
6 reached the standard yet for *Franks v. Delaware*. That --
7 that case further explains *State v. Gore*, a South Carolina
8 2014 case, which states then that first you have to mandate
9 an evidentiary hearing. There must be allegations of
10 deliberate falsehood or reckless disregard for proof.

11 As Mr. Brooker said, second, if a deliberate falsehood
12 or reckless disregard for the truth has been established, the
13 Court must exclude the false material and consider remaining
14 in the affidavit, but it also says to be entitled to an
15 evidentiary hearing from alleged omission in an affidavit for
16 a search warrant, the challenger must make a preliminary
17 showing that the information or question which was omitted or
18 was presented with the intent, it must be presented with the
19 intent to make or in reckless disregard of whether it was
20 made the affidavit misleading to the issuing judge. So
21 there's got to be a deliberate intentional act to mislead a
22 magistrate or, in this case, a Circuit Court judge. Circuit
23 Court Brown -- Circuit Court Judge Brown signed this actual
24 affidavit.

25 There's plenty -- in the process this was -- this

1 affidavit was sought well after Mr. Williams had been
2 arrested and had been identified. I think one thing that Mr.
3 Brooker is leaving out or doesn't understand is there's more
4 to identifying somebody than just naming a name.

5 Somebody could come up here and sit in this courtroom
6 and see you, Your Honor, on the bench and hear you and talk
7 to you and go out on the street and go in the grocery store
8 and go, there's that judge, I recognize him, I saw him on the
9 bench, and never know your name or never call your name, but
10 that's an identification.

11 And that's what happened when the taxi passenger went
12 with the forensic artist for SLED and did a drawing and it
13 was shown to Leron Whitten, it was shown to Mr. Williams'
14 grandmother, it was shown to many people long before this
15 affidavit was gotten and it was identified. So they did make
16 an identification of it. They made an identification by
17 telling how he looked. Later, his name was found to be who
18 we was, but he was identified.

19 The task of the issuing magistrate according to *State v.*
20 *Dill* is simply to make a practical, common sense decision
21 given all the circumstances. And it's got to be more than
22 conclusory statements that give no basis to make a judgment,
23 but here there's much more than conclusory statements.

24 They testified what the evidence had been developed by
25 the investigation, what was going on. They had all of that

1 and there wasn't -- there was no intentional attempt to
2 mislead. What I would say would be a mistake when the
3 affidavit was drafted it said there was semen present. It
4 wasn't semen. It was biological material, but nevertheless,
5 it's the same thing. It's the ultimate test is done to both
6 the same to determine whether it was DNA, whether it was
7 semen or whether it was biological material, but there was
8 not an intention to mislead there because there's nothing to
9 be gained by that.

10 If they'd have just called it biological material, the
11 test would've been the same, whether they call it semen. So
12 I submit that's a mistake. That is no intentional act with
13 intention and designed to mislead an issuing member of the
14 judiciary that is issuing this warrant. So I just think
15 there that it fails the very basis of the argument because he
16 has not proven that there was an intentional plan, an
17 intentional attempt to mislead and deceive the judge.

18 THE COURT: Okay. And I think -- and I think the record
19 will reflect, but back when we -- when I first heard this
20 that I did rule and I -- and I did deny the motion to
21 suppress based on the totality of the circumstances here and
22 -- and the information that was at hand, and I think the
23 record will reflect that ruling back then.

24 MR. BROOKER: And you may have, Your Honor, is is that I
25 just want to be absolutely certain.

1 THE COURT: Sure.

2 MR. BROOKER: Because, obviously, if it's not on the
3 record, then, of course, is is that if this turns into a
4 situation where he needs to appeal --

5 THE COURT: Yeah.

6 MR. BROOKER: Then, of course, is is that I will, you
7 know, then --

8 THE COURT: Preserve the record.

9 MR. BROOKER: Yeah.

10 THE COURT: Yeah.

11 MR. BROOKER: I certainly need to make sure I do that.
12 So -- and that's perfectly fine, Your Honor.

13 And, of course, is is that, Your Honor, you may also --
14 for the next motion, you may -- you know, we don't have to go
15 over it. That's the motion to suppress the -- to suppress
16 the search warrant dated February 22nd, 2016, for the backpack
17 that was found at the 225 Plum Street address.

18 Obviously, that motion is contained within -- the
19 argument is contained within the motion that we filed and, of
20 course, it's also based upon *Franks*, alleging false
21 information, either if not intentional, of course, certainly
22 with a reckless disregard for the truth where again it says,
23 you know, that -- you know, that Mr. Williams was identified,
24 you know, as the assailant in connection with the case.

25 Of course, during the course of the investigation, there

1 is no witness that was ever able to identify Mr. Williams.
2 Out of all of the witnesses that were interviewed by the --
3 by law enforcement, no witness was able to identify Mr.
4 Williams and, of course, is is that no other evidence
5 identified Mr. Williams. And so when they said that Mr.
6 Williams was identified, that information would be false.

7 But other than that, I rest on the argument that's made
8 within the motion, Your Honor.

9 THE COURT: All right. Solicitor, do you want to --

10 MR. CLEMENTS: Your Honor, they went to Leron Whitten's
11 house and he gave them the name, and they also talked to
12 Chimyra Wright around that same time. When they followed up
13 on the phone -- on the phone GPS, what addresses were in the
14 phone, and that common denominator in all those addresses was
15 Royal Williams, the last one being, most importantly, they
16 went to his grandmother's house because they went and checked
17 it out. They didn't know it was his grandmother's. They
18 knocked on the door. She told them who she was, saw the
19 sketch and said that's my grandson, what's he done now. So I
20 think they had plenty of identification.

21 THE COURT: Okay. And I think I've -- again, I think I
22 ruled denying that motion at the -- at our last hearing.

23 MR. BROOKER: Certainly. Thank you, Your Honor.

24 Your Honor, the next motion is is that -- and I have a
25 copy of that. This was a motion to exclude from trial any

1 and all evidence or material retrieved from any and all cell
2 phones, computers, tablets or other electronic devices taken
3 from the victim's home.

4 I think if you can remember during the last term of
5 court, I think Investigator Hester with the -- formerly with
6 the Florence County Sheriff's Department was the investigator
7 that actually was the -- I guess the forensics expert that
8 they had that basically took those devices and was charged
9 with the responsibility of -- of acquiring the information
10 from those devices, but, of course, is is that Investigator
11 Hester had left the Sheriff's Department and, of course, is
12 is that the devices -- I think the Sheriff's Department was
13 confused with respect to whether or not he had actually been
14 able to break into those devices and, of course, copy the
15 information from the hard drive.

16 And of course, I think later on Mr. Clements did
17 provided [sic] us with a disk that -- that apparently
18 Investigator Hester had created, but unfortunately, that disk
19 was encrypted and, of course, is is that we can't review the
20 information and neither can they review the information
21 because I think whatever Investigator Hester did, I think the
22 Sheriff's Department don't know how to get into that device
23 and also they don't know how to, I guess, unlock the
24 information that's contained on the disk that Investigator
25 Hester downloaded.

1 So we don't have access to that information, which we're
2 required to pursuant to Rule 5 and, of course, we're asking
3 that any information or any testimony regarding information
4 that was taken from those devices, that that information be
5 stricken or limited from being presented to the jury because
6 Rule 5 has not been complied with.

7 There is no way that we can examine, you know, what was
8 contained on those devices. They have an obligation to
9 present that to us. They have not presented that to us. So
10 if there's any testimony in reference to data that was
11 contained on those devices, we would be at a disadvantage
12 because we have no way to cross-examine them on that
13 information because that information has never been presented
14 to us. Thank you, Your Honor.

15 THE COURT: Solicitor?

16 MR. CLEMENTS: Your Honor, first, I think that Mr.
17 Brooker has no standing on this being seized. It was -- the
18 information was from the items that were taken from the
19 victim's house. To our understanding, they were turned over
20 to Hester. He later left the Sheriff's Department and it
21 turns out it went to TJ Christmas's paperwork in his office.
22 He left the Sheriff's Office and went somewhere else and they
23 found it fairly recently and we looked at it and there was
24 nothing of any evidentiary value.

25 I immediately contacted Mr. Brooker to let him know what

1 we had and gave it to him. There's something encrypted that
2 we don't know if Hester went into it or not, and we can't
3 decrypt it and I think Thurmond can't decrypt it either. So
4 we don't know what that is. So we plan on putting no
5 testimony up about any of that because it has no evidentiary
6 value.

7 THE COURT: Okay. All right.

8 MR. BROOKER: And that's the only thing we want, Your
9 Honor, is a ruling that -- that any information that was
10 obtained from those devices that was not turned over to us,
11 as we're entitled to have pursuant to Rule 5, that they not
12 be allowed to testify to information on those devices that
13 they have not turned over to us.

14 THE COURT: All right. And that -- and that is the
15 ruling. If there's items that they have not turned over
16 pursuant to discovery, then they would not be allowed to go
17 into that.

18 MR. CLEMENTS: Your Honor, just to make the record
19 clear, I know of nothing connected to what he's talking
20 about, but from the sounds of things, it sounds like he might
21 have something in mind that he thinks is connected to that
22 and I don't want to just carte blanche agree without knowing
23 specifically what we're talking about.

24 THE COURT: And I'm not -- all I'm saying is that
25 there's been reciprocal discovery exchanged and if it's been

1 complied with, then we'll deal with ruling on those items
2 that there was -- that -- where it was complied with, but if
3 things have not been turned over, obviously then those things
4 would not be allowed in.

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: So I think I know -- I think y'all are on
7 the same page. What you don't want to do is just punt on
8 something that Mr. Brooker may have in mind that he thinks is
9 related, but it's not related.

10 MR. CLEMENTS: In my mind. Yes, sir.

11 THE COURT: Exactly. And we'll deal with those if they
12 come up.

13 MR. CLEMENTS: Yes, sir.

14 THE COURT: But certainly, if you have not received
15 information -- and in this particular case, we're talking
16 about these cell phone records. Then if that's not been
17 turned over, then the State will not be able to go into that.

18 MR. BROOKER: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. BROOKER: I think the other motion we filed, Your
21 Honor, was a notice of motion to suppress disclosure of
22 criminal history to the jury, and if you don't have a copy of
23 that, I can provide you with a copy of that.

24 THE COURT: I don't -- I don't have anything --

25 MR. BROOKER: All right.

1 THE COURT: -- with me right now.

2 MR. BROOKER: I'll give you that. I'll let you look at
3 my copy. I don't think I need it.

4 THE COURT: All right. Thank you.

5 MR. BROOKER: Basically, is is that for the criminal
6 history that's contained on that -- on those motions, we are
7 arguing to the Court that that criminal information be
8 suppressed primarily pursuant to -- some of it is pursuant to
9 Rule 609. It's obviously information that does not goes
10 [sic] to dishonesty and deceit and, of course, is is that
11 it's beyond ten years and, of course, is is that I don't
12 think that they would have enough basis for requesting that
13 that information or at least that criminal history be used to
14 impeach the defendant, should the defendant makes [sic] a
15 determination to testify.

16 That decision has not been made yet, but, of course, we
17 have to make these motions in anticipation of that because if
18 later on at the conclusion of their case if the defendant
19 says, I want to testify, then I don't have any control of
20 that and the Court doesn't have any control of that. He can
21 do that, but we have to protect his interest just in case.

22 But of course, is is that also there is some other
23 charges on there that are within the ten-year period, but, of
24 course, that does not goes [sic] to dishonesty and deceit
25 and, of course, is that we would argue that those charges, if

1 presented to the jury, would be highly prejudicial and that
2 the -- that the prejudicial value of presenting that
3 information to the jury would outweigh -- would outweigh any
4 probative value that the jury would find in that information
5 because one of the things that we don't want -- want to occur
6 is is a situation that the jury is looking at his prior
7 criminal record, the jury reaching a conclusion that we think
8 Mr. Williams is a bad man and that they are convicting Mr.
9 Williams based upon the fact they think that he's a bad man
10 and not based upon the specific evidence regarding this
11 particular offense.

12 And, of course, is is that some of those charges or at
13 least one of those charges is a similar charge that would --
14 that would certainly create a heightened concern to what I
15 just argued and, specifically, is is that he has a prior
16 conviction for involuntary manslaughter and, of course, is if
17 the jury hears that he has a prior conviction for involuntary
18 manslaughter, i.e. that he pled guilty to causing the death
19 of someone else before, then, of course, the jury could take
20 that information and use it improperly to conclude that, hey,
21 he probably committed this particular offense in which he's
22 charged with.

23 So we're asking the Court to exclude the criminal
24 history that's contained within that motion from presentation
25 to the jury. Thank you, Your Honor.

1 THE COURT: All right. Solicitor?

2 MR. CLEMENTS: Your Honor, we think that some of the
3 things on that list may be admissible if Mr. Williams takes
4 the stand, but we feel like we would cross that bridge if and
5 when we come to it.

6 THE COURT: Okay. All right. And I am going to
7 withhold any decision on that until we get to that -- to that
8 stage and we'll certainly deal with it at that time before
9 anything -- before any of this comes into play.

10 MR. BROOKER: Thank you, Your Honor.

11 Your Honor, the next motion that we want to do -- and,
12 of course, this is a motion that pertains again to the DNA
13 warrant that was obtained back in -- a DNA warrant dated
14 February 4th, 2019, in which law enforcement took a -- a DNA
15 sample from Mr. Williams by way of buccal swab.

16 Now, we -- we challenge that warrant based upon *Franks*,
17 but, of course, we're challenging that one now based upon a
18 different ground and, of course, is that we argued this in
19 Your Honor's chambers in the last term of court prior to a
20 continuance being granted. And that is is that we think that
21 that warrant violates -- violates *Illinois v. Gates*.

22 And of course, *Illinois v. Gates* is a United States
23 Supreme Court case and, of course, there's a line of state
24 court cases that says the same thing. It basically says that
25 a warrant is insufficient if that warrant simply presents

1 conclusory statements to the judge who is making the
2 determination as to whether or not probable cause exists.
3 That warrants have to provide factual information and also
4 have to provide to the judge the source of that factual
5 information so the judge can, one, understand what the facts
6 are and then also the judge can -- the judge can also judge
7 the reliability and the credibility of the information in
8 making a determination as to whether or not probable cause
9 exists.

10 And of course, with respect to that warrant that is
11 already in -- in -- in -- already in record and is filed as
12 an attachment to the *Franks* motion is is that -- that the
13 relevant parts of that DNA warrant says the investigation
14 revealed that Joseph had been in the company of Williams in
15 the hours leading up to the discovery of her body at her
16 home.

17 And again, that statement, the investigation reveals, is
18 a conclusory statement because it's not providing the judge
19 with the information, with the factual information that
20 supports that conclusion. It's simply saying to the judge
21 that this is what our investigation concluded without saying,
22 Judge, this is the evidence which we used to reach that
23 conclusion and, of course, so that the judge can then make a
24 determination as to whether or not that evidence, one,
25 supports the conclusion that is being reached and, two, is is

1 that whether or not that evidence is reliable. So that
2 statement is a conclusory statement in violation of *Illinois*
3 *v. Gates*.

4 The second sentence goes on to say the investigation
5 further reveals that Williams had taken a taxi from Joseph's
6 home just before her body was discovered by her mother and
7 that Joseph had expressed a fear of Williams and that he was
8 attempting to remove text messages and records of phone calls
9 involving Williams from her cell phone the morning of her
10 murder.

11 Again, that's -- that is a statement that's basically
12 telling the judge that this is what our investigation
13 concluded, but it's not telling the judge, you know, the
14 information that supports that conclusion so that the judge
15 can make a determination for his or herself, you know, as to
16 whether or not the information and evidence they're using
17 actually lends itself to that conclusion, nor can the judge
18 evaluate the reliability and the credibility of that
19 information that's being used to draw that conclusion because
20 the judge is not provided that information.

21 And in *Gates* and also there is a slew of South Carolina
22 cases that -- that basically says that conclusory statements
23 are insufficient, that you have to tell the judge the bare
24 facts and then, of course, the source of the information so
25 the judge can draw conclusions for himself and not simply

1 rubberstamp or support the conclusions that law enforcement
2 has reached.

3 The next sentence goes on to say the investigation of
4 the crime scene revealed the presence of a condom which
5 contained -- which contained semen and, of course, is is that
6 the same argument is is that it's not specifically providing
7 the judge with factual information in which the judge can
8 draw his or her own conclusions.

9 Obviously, the standard is is that when you're seeking a
10 search warrant is that you have to go before a neutral and
11 detached judge, present to that neutral and detached judge
12 the facts so that that judge -- and the sources of those
13 facts so that that judge can make that determination and
14 evaluation for his or herself. If the conclusions are simply
15 made by law enforcement, then what that does is is that it
16 eliminates -- it eliminates the duty of the judge to draw
17 those conclusions for himself, and that's exactly what this
18 warrant does.

19 My understanding is that this warrant was obtained --
20 was -- was -- was presented to Judge Brown. I don't think
21 that there was any testimony beyond what's contained within
22 the affidavit portion. I know that was an issue that came up
23 during the last term of court when we were in Your Honor's
24 chambers to try to make a determination as to whether or not
25 a law enforcement officer went before Judge Brown under oath

1 and provided Judge Brown with additional information. I
2 believe it was indicated by the State that they don't believe
3 so.

4 So these are conclusory statements. Those conclusory
5 statements are insufficient to satisfy the requirements,
6 insufficiently to satisfy the requirement of probable cause.
7 We are asking the judge to suppress that February 4, 2019,
8 search warrant that led to the taking of Mr. Williams' DNA by
9 a buccal swab by the government. Thank you, Your Honor.

10 THE COURT: All right. Solicitor?

11 MR. HOEFER: Thank you, Your Honor.

12 Your Honor, I think the key to this is this terminology
13 conclusory statements, and *Gates* -- *Illinois v. Gates* indeed
14 talks about defective warrants that merely make conclusory
15 statements. And to my mind, that's -- that's a statement
16 that says we think he did it or he did it and no other
17 information. That is a conclusory statement.

18 This particular affidavit does go into detail and it
19 outlines the -- the investigator's findings that Mr. Williams
20 had been with the victim hours prior to her death, that this
21 cab picked him up. Obviously, as the solicitor indicated
22 earlier, early on, they didn't know who "him" was. They just
23 knew that the cab picked someone up, but ultimately, using
24 the composite drawing from the -- from the passenger in the
25 cab, they were able to get a specific identification as to

1 his name.

2 And it's funny. If you read *Gates*, what it says is an
3 affidavit is defective if it does not set forth any facts as
4 to why the police believe the suspect committed the crime.
5 In this case, there are facts that are -- that are alleged in
6 this warrant.

7 Now, they may be circumstantial, but as you well know,
8 circumstantial evidence is sufficient for a -- for a
9 defendant to be found guilty beyond a reasonable doubt. If
10 that's the case, it doesn't stretch logic to believe or to
11 say that circumstantial evidence can also be used to
12 establish the probable cause for the issuance of this
13 warrant. I think that's exactly what Judge Brown did when he
14 found that probable cause existed to test Mr. Williams' DNA
15 against that found in the condom.

16 Again, I understand that they used the word semen. Most
17 people don't -- who aren't medically trained don't realize
18 that biological fluid may contain semen, but it doesn't
19 always. But it still has the DNA and that's all they needed.

20 THE COURT: Okay.

21 MR. BROOKER: For Your Honor's consideration, I would
22 also ask Your Honor to also look at *State v. Backus*, which I
23 think is an excellent case on this particular issue and, of
24 course, is is that on that case the Court says the affidavit
25 must set forth particular facts and circumstances underlying

1 the existence of probable cause to allow the magistrate to
2 make an independent evaluation of the matter.

3 So basically, it's saying is is that the law enforcement
4 can't draw the conclusions for the magistrate's judge. They
5 have to simply provide the magistrate's judge with that
6 information and, of course, allow the magistrate to draw his
7 conclusions.

8 The Court went on to say that we hold that the affidavit
9 was defective because it set forth no facts as to why police
10 believed Smith robbed the hotel inn. We further find mere
11 conclusory statements which give the magistrate no basis to
12 make a judgment regarding probable cause are insufficient.

13 So in that case, it -- it basically looks at the
14 warrant, the affidavit portion of a warrant in *State v.*
15 *Smith*, and in that case the affidavit says that on March 12th
16 at approximately 11:45 p.m., Reginald Jerome Smith went into
17 the Master Inn located at 1468 Savannah Highway, Charleston,
18 South Carolina, and he did rob the manager at knife point.
19 Smith has been staying at the Host of America, room 216,
20 since January 1st of 1988, and there is every reason to
21 believe the weapon and clothing used in the robbery will be
22 located in the room. This information was confirmed in
23 person by Sgt. Sherman on 5/13/88.

24 And even in that particular warrant is is that the Court
25 says that that warrant was insufficient because it did not

1 provided [sic] the sources of the information which it's
2 presenting to the judge. It simply states to the judge that
3 this is what occurred. That this is what we believe. It
4 says that you have to provide the underlying sources that
5 allow you to draw those conclusions so that the judge can
6 make a determination about the reliability and the veracity
7 of those statements and so he or she can draw those
8 statements alone.

9 And of course, is is that in *State v. Backus*, it reaches
10 the same conclusion on a warrant in that case and this was a
11 situation in which in *Backus* in which the victim was on the
12 phone with a -- with a girlfriend and while the victim was on
13 the phone with the girlfriend is is that the defendant
14 Backus, I believe, breaks into the home and, of course, while
15 the victim is on the phone with her girlfriend, the victim
16 identified the defendant saying that he's breaking into my
17 home and then, of course, is is that the girlfriend on the
18 other end of the line then heared [sic] gunshots.

19 That girlfriend then called law enforcement. Law
20 enforcement went over to the victim's home and found that she
21 had been shot and killed and, of course, is is that in that
22 particular situation the defendant was identified and, of
23 course, the girlfriend on the phone says that just as the
24 victim -- just as the defendant was breaking into the home
25 that she said that he is breaking into the home, provided his

1 name and, of course, gave that and then gave a statement to
2 law enforcement after they showed up at the victim's home and
3 discovered her body.

4 In that particular situation, law enforcement then went
5 to look for the victim -- excuse me -- the defendant and, of
6 course, is is that the law enforcement officer found the
7 defendant's home in Florence County, South Carolina, and
8 then, of course, is when they found the home, the officer
9 pulled up to the home, found that -- that there was clothing
10 in the front of the defendant's home that was smoldering,
11 clothing and shoes. The officer suspected that the murder
12 clothing -- the clothing that the defendant was wearing when
13 he committed the murder was burning.

14 But law enforcement also noticed that he passed a
15 vehicle on his way to the defendant's home that fit the
16 description of the vehicle that was -- was -- that belonged
17 to the defendant. That law enforcement officer went back to
18 that vehicle and, of course, found that there was red stains
19 on the inside and outside of the vehicle consistent with
20 blood and, of course, is is that that officer then went to a
21 judge to get a warrant and this is what that officer put in
22 the warrant to the judge.

23 He says at the time of the suspect arrest at 2616
24 Alligator Road in Florence County by Investigator --
25 Investigators Barry Prosser and Von Dean Turbeville with

1 Florence and Marion County Sheriff's Office, a pile of what
2 appeared to be clothing was lying on the ground beside the
3 residence smoldering in plain view and the vehicle the
4 suspect was apparently driving was located approximately a
5 half mile from this residence with blood stains on the inside
6 and outside of the vehicle.

7 And of course, the Court reached the conclusion that
8 that affidavit also was insufficient under *Illinois v. Gates*
9 because, again, in that particular affidavit is is that the
10 law enforcement officer was providing the judge with
11 conclusory statements.

12 Of course, the South Carolina Supreme Court says this
13 affidavit -- this affidavit fails to set forth any facts as
14 to why police believe appellant committed the crime. The
15 language in the affidavit lacks specificity and contains
16 conclusory statements. Given the totality of the
17 circumstances, we conclude that the issuing magistrate did
18 not have a substantial basis to find probable cause for a
19 search of appellant's residence and that the trial court
20 erred in admitting evidence seized pursuant to the search
21 warrant.

22 And of course, is is that basically time and time again
23 is is that the Supreme Court or Court of Appeals basically
24 says that you can just not simply say to the judge that
25 you're seeking a warrant from that this is what our

1 investigation revealed. This is -- this is what happened.
2 You have to provide the judge with underlying factual
3 information which draws that conclusion.

4 Now, I imagine if the State had said to Judge Brown that
5 when they said in their warrant that the investigation
6 revealed that -- revealed that hours leading up to the
7 discovery of the body that Williams left Ms. Joseph's home by
8 taxi, now imagine if they had told Judge Brown that they had
9 went to the taxi driver and, of course, went to the
10 passengers within the taxi and that -- and that they showed
11 that driver and passenger a picture of Mr. -- of Mr.
12 Williams, that they could not identify Mr. Williams as that
13 person, I imagine that it would cause Judge Brown some
14 concern. I imagine that if they also told the judge that the
15 driver of the taxi gave a description, you know, of the
16 person that they picked up that was completely inconsistent
17 with Mr. Williams's description, because Mr. Williams has
18 always been bald.

19 I think during last term of court doing the Schmerber
20 hearing, I think when -- when Investigator Clendenin was on
21 the stand, he testified that Mr. Williams has always been
22 bald and that the statement that -- that the taxicab driver
23 gave of the description of the person that they picked up,
24 she described it as a person with long good hair and, of
25 course, that was inconsistent with Mr. Williams' description

1 because Mr. Williams was bald, as he is right now.

2 I imagine if they had told the judge that, the judge
3 would then call -- called -- would have had some concern as
4 to whether or not the conclusions that they've reached as to
5 whether or not the evidence that they had was insufficient to
6 reach that conclusion, and I think that's why the Court is
7 saying is that you cannot give the judge these conclusory
8 statements. You have to provide the judge with all of the
9 information --

10 THE COURT: Okay. You've said --

11 MR. BROOKER: -- including the negative.

12 THE COURT: You've said that five times now.

13 MR. BROOKER: Yes, sir. I'm sorry, Your Honor. I'll
14 sit down and shut up, but I think that does not --

15 THE COURT: I've got your argument and you just -- you
16 keep repeating it and I got it.

17 MR. BROOKER: I'm sorry, Your Honor.

18 MR. HOEFER: Judge, I am very familiar with *State v.*
19 *Backus*, intimately familiar with *State v. Backus*. I defended
20 Mr. Backus and Mr. Clements prosecuted Mr. Backus. So I'll
21 tell you -- the reason I tell you that is context is
22 everything. That was -- that was a killing that took place
23 in Marion County. The defendant lived in the Florence County
24 and made it back to his residence here.

25 The -- the context of our argument was -- was this. Von

1 Dean Turbeville with the Marion County Sheriff's Office was
2 assigned to work that case over in Marion County. Because
3 the defendant was in Florence County, Barry Prosser, who was
4 who was an investigator with the Florence County Sheriff's
5 Office, assisted him when they went to Mr. Backus' residence.

6 They needed a search warrant. They needed it in
7 Florence County. So Mr. Prosser made a telephone call to
8 another investigator by the name of Amber Thompson. Ms.
9 Thompson had nothing to do with the case and knew nothing
10 about the case, but based on what Mr. Prosser told her over
11 the phone, she went to the magistrate and secured a warrant.

12 What Mr. Prosser told her over the phone was that the
13 victim was on the telephone with a friend and suddenly during
14 the conversation the friend heard her say, oh, God, John is
15 in the house or coming in the house and then she heard two
16 pops that were assumed to be gunshots.

17 That was the information that Mr. Turbeville had relayed
18 to Ms. Prosser. Mr. Prosser then relayed it over the phone
19 to Ms. Thompson for the purpose of seeking a warrant. What
20 he didn't do and what he admitted on the stand during --
21 during the suppression hearing was he didn't know the name of
22 this person supposedly on the phone with the victim. He
23 didn't know anything about her. So there was nothing. There
24 was nothing in that record to do with whether she was
25 credible. We didn't even have a name.

1 He did -- when he relayed the information to Ms.
2 Thompson, he didn't know who he was talking about. He just
3 got on the phone and said this is the guy. He -- the lady
4 was on the phone with a friend and she told the friend that
5 it was him coming in the house right before she was found
6 dead. That was the gist of the argument and I think that's
7 the gist of the ruling that the Court made. When the officer
8 acknowledges, no, I didn't tell the magistrate that because
9 Mr. Prosser never told me that, I didn't have that
10 information, then that pretty well seals it.

11 In this case, we've got the investigators who actually
12 talked to these witnesses, who identified these witnesses,
13 who were able to say Leron Williams --

14 MR. CLEMENTS: Whitten.

15 MR. HOEFER: Yeah. Leron Williams --

16 MR. CLEMENTS: Whitten.

17 MR. HOEFER: Whitten -- excuse me -- was able to look at
18 that composite and identify Royal Williams, and Leron told us
19 that it was Royal Williams who was at the house and left the
20 black bag and so forth and so on.

21 So they had these positive identifications, which --
22 which is distinctly different than the situation in John
23 Roosevelt Backus's case because they -- that officer getting
24 that warrant didn't have a clue who she was talking about to
25 the magistrate. So she could not have told the magistrate

1 anything about the credibility, the ability of this witness
2 to know, and that type of thing.

3 THE COURT: Okay.

4 MR. BROOKER: I would just simply say in rebuttal, Your
5 Honor, is is that that's not the gist of *Backus*. That is not
6 what the ruling says. If you read *Backus* is is that the
7 Court basically says is is that -- is is that a witness -- I
8 think a witness obtaining a search warrant doesn't have to
9 have firsthand knowledge of the information that they are
10 conveying to -- to the judge.

11 Is is that so if one officer has -- has the information,
12 that officer then transfers that information to another
13 officer. That other officer can go get the warrant. Of
14 course, when that other officer types up the warrant, that
15 officer has to tell the judge the facts and the source of the
16 facts so that the judge can draw conclusions with respect to
17 -- with respect to what conclusions to reach from the
18 information that he's being provided. You can't just give
19 conclusory statements. So I would just ask the Court is is
20 to take a look at *Backus* for your own and on your own and
21 draw your own conclusions.

22 THE COURT: Have you got a copy of that?

23 MR. BROOKER: Yes, sir.

24 THE COURT: Or at least the cite.

25 MR. BROOKER: I have a copy of *Backus*, Your Honor. I'll

1 give it to you right now.

2 THE COURT: Okay. Thank you.

3 MR. BROOKER: Yes, sir.

4 THE COURT: All right. Anything further, Mr. Brooker?

5 MR. BROOKER: Yes, Your Honor. The next motion is --

6 these are -- these are new motions. These -- obviously,

7 these are motions that were not made last term of court.

8 Is is that we're -- we're moving to suppress the search
9 warrant that's dated February 19th, 2016. That is the warrant
10 that was obtained from the magistrate's judge, Belinda
11 Thomas. And of course, that was a warrant for the -- that
12 was a warrant issued to Sprint for the cell phone and, of
13 course, the cell site location information for number 843 --
14 telephone number 843-468-5616. That's the number that is
15 believed to belong to Royal Williams.

16 And of course, I have a copy, Your Honor, of that. If
17 you don't have it, I have a copy of that affidavit if you
18 want to look at it and, of course, is I think I'll probably
19 have to enter it into evidence, but the copy that I intend to
20 enter into evidence, Your Honor, I can pass it up so you can
21 take a look at it as I make my argument --

22 THE COURT: Okay.

23 MR. BROOKER: -- about it.

24 THE COURT: All right. Thank you.

25 MR. BROOKER: Yes, sir. Your Honor, with this -- with

1 this search warrant and specifically the affidavit in the
2 search warrant is insufficient and, of course, is is that in
3 every case in which you obtained a search warrant from a
4 judge is is that you have to provide the judge with probable
5 cause to suggest to the -- probable cause that a crime has
6 been committed and that evidence of that crime might be at a
7 particular location and you need to search that location to
8 find evidence of that crime. So you have to provide the
9 judge probable cause of the existence of a crime and then, of
10 course, argue to the judge that there is probable cause to
11 believe that evidence of that crime might be found at this
12 particular location and we need to obtain it.

13 In this particular situation is is that the crime,
14 obviously, is is that the homicide of Ms. Joseph, the victim,
15 and, of course, is is that the place that they want to search
16 and they have to convince the judge that there is probable
17 cause to believe that there's evidence of that crime is the
18 cell phone records and also cell site location records for
19 Mr. Williams's phone.

20 So -- but if you take a look at the affidavit portion of
21 the warrant and, of course, is I'll read it very quickly.
22 It's not a long affidavit, Your Honor.

23 It says that on January 23, 2016, the Florence County
24 Sheriff's Office responded to 3618 Century Drive, Apartment
25 A, in Florence, South Carolina, for report of a deceased

1 female. Deputies and investigators located a deceased female
2 later identified as one Sherilyn Joseph. Per the coroner's
3 investigation, the death was ruled a homicide.

4 During the investigation, the victim's phone was located
5 within the crime scene. A check of the victim's phone
6 records indicates that the victim had contacted the number
7 843-468-6516. A comparison of the victim's phone records to
8 the victim's phone revealed that the number 843-468-6516 had
9 been deleted or removed from the phone. The phone
10 information is critical to possibly identifying the possible
11 suspects in this case. It would be -- it would also be
12 helpful in comparing -- excuse me -- in compiling a timeline
13 of events leading up to and including the time of the murder.

14 Now, what that phone -- what that affidavit basically
15 advises the judge that the victim, Ms. Joseph, had been found
16 dead at her apartment and they said that when they -- they
17 also located the victim's phone at her apartment and when
18 they look into the phone that they found numbers and
19 specifically this particular number, the number 843-468-6516,
20 had been deleted. So that's the -- that's the information
21 they provided. We have a murder. We found the victim's cell
22 phone and there was a number in the victim's cell phone that
23 was deleted. Okay?

24 And then, of course, they're saying, well, Judge, we
25 need to -- we need to obtain the search warrant. We need to

1 obtain the records for that number from Sprint because we
2 think that -- that the cell records and cell site records
3 might be important, you know, in helping us solve this crime.

4 The problem is, Your Honor, is is that when they said
5 that they found a deleted number, that that number, Mr.
6 Williams' number, deleted from the -- and I don't think that
7 they knew at that time -- I don't know whether or not they
8 knew at that time that that number belonged to Mr. Williams.
9 They just simply said that we found this number in that phone
10 and this number had been deleted.

11 But, of course, if you look at that standing alone, Your
12 Honor, is is that that alone does not suggest that there is
13 some sort of criminality here. If you were to look into my
14 phone, you would probably find hundreds of numbers that have
15 been deleted.

16 So I think what they did not explain to the judge was
17 the significance of this deleted number. They just simply
18 said we looked into her phone, we found this number, this
19 number had been deleted. We want to get the records for this
20 deleted phone.

21 Well, how does this deleted number fits [sic] into the
22 crime? What's criminal? What's criminal about this number
23 being deleted because you have to explain to the judge, one,
24 that there's a crime that's been committed. They did that.
25 They said Ms. Joseph was dead. We found Ms. Joseph's cell

1 phone and it had this deleted number. And then you have to
2 then explain to the judge why the instrument which you seek
3 to search -- why you believe -- why there is probable cause
4 to believe that there is incriminating information that's
5 found within that location.

6 So that part is missing. Where in the warrant in the
7 affidavit portion of the warrant do they explain to the
8 magistrate's judge this is the probable cause to believe that
9 if we search the cell phone records and the cell -- and the
10 cell site location information for this number that it would
11 lead to the discovery of evidence relative to this crime?

12 They don't explain that to the judge. They just says
13 [sic] we found her phone. There was a deleted number and we
14 want to get the records for this deleted number. Why? And
15 that's the answer that you have to explain to the judge. Why
16 do you want to get the records for this deleted number? How
17 -- why do you think that this deleted number is somehow --
18 the records for this deleted number somehow will obtain
19 evidence or obtain evidence that's related to this particular
20 crime.

21 They don't explain that. They just simply say she was
22 dead, we found her phone at the scene, there's a -- there's a
23 deleted number, and we just want to get the records from this
24 deleted number.

25 Now, I would imagine that if Ms. Joseph is like the rest

1 of us, she probably had more than one deleted number in her
2 phone. Why not the other deleted numbers? Why this one?

3 That explanation is not explained so the judge has no
4 reason to understand, no information to conclude that, hey,
5 this phone, the cell phone records for that number has a
6 connection to this murder and then, of course, is is that
7 they need to get the information related to that cell phone
8 because there's probable cause to believe that this number is
9 connected to the murder. They don't go that -- they don't go
10 that far.

11 I mean -- and I hate to criticize other people's work,
12 but I've been doing this for 20 years and the affidavits in
13 these search warrants are probably some of the poorest that
14 I've ever seen and is that it's not a criticism of law
15 enforcement. I think that law enforcement is certainly
16 capable of doing better.

17 I've seen that most law enforcement officers in just
18 about every case that I have is that you will get an
19 affidavit and, of course, nowadays when I get an affidavit
20 for a search warrant, most of the time that affidavit
21 sometimes is 15 or 20 pages. Sometimes it's five or six and
22 the reason why is that they want to make sure that they
23 present all of that information to the judge so the judge can
24 reach a conclusion as to why that number is important, why
25 they believe that this number has a connection to this murder

1 and why by getting the information --

2 THE COURT: Okay.

3 MR. BROOKER: -- related to this number --

4 THE COURT: You've made that clear now.

5 MR. BROOKER: Yeah. But it just -- it just does not,
6 Your Honor. It doesn't explain that to the judge.

7 THE COURT: All right.

8 MR. BROOKER: Thank you, Your Honor.

9 MR. CLEMENTS: Your Honor, with all due respect to my
10 opposition here, Mr. Brooker, I don't think I've ever seen a
11 search warrant he ever hated -- didn't hate. So the problem
12 here is that Mr. Brooker thinks that law enforcement is --
13 law enforcement is supposed to try their whole case when they
14 sit down and take an affidavit.

15 *State v. Davis* in 2003, a South Carolina case, 580
16 S.E.2d 778, says that a magistrate may issue a warrant only
17 upon finding of probable cause, but a probable cause
18 determination requires the magistrate to analyze the totality
19 of the circumstances, meaning he should make a practical
20 common-sense decision whether given all the circumstances set
21 forth in the affidavit before him there is fair probability
22 -- fair probability that contraband or evidence of a crime
23 will be found in a particular place, not the whole thing.
24 And then later on down, the case states that the officer's
25 knowledge of general criminal behavior is a relevant

1 consideration in determining probable cause.

2 And when they went to seek this -- when Chad Collins
3 went to seek this warrant from Judge Timmons, he knew he had
4 two things. He had the phone that had all the deleted
5 numbers in it and by that time he had Ms. Joseph's phone
6 records which showed there were about 300 contacts back and
7 forth or somewhere along that number back and forth and then
8 all of a sudden ones are starting to be deleted out of the
9 phone, but they're still in the records. So that raises a
10 suspicion right there. You've got -- you've got records and
11 the number keeps being deleted out. Why? And --

12 THE COURT: How does he have the records before he gets
13 the affidavit -- the search warrant?

14 MR. CLEMENTS: He got --

15 MR. HOEFER: Her records.

16 MR. CLEMENTS: He got her records, Your Honor.

17 THE COURT: Oh, I gotcha.

18 MR. CLEMENTS: Yeah.

19 THE COURT: And this is -- this is a search warrant --

20 MR. CLEMENTS: For his phone number.

21 THE COURT: -- for his -- for the records to --

22 MR. CLEMENTS: We didn't mention his name. Just his
23 phone number.

24 THE COURT: This records to the 6516 number. Okay. I
25 gotcha.

1 MR. CLEMENTS: Yes, sir. And so there's something that
2 raises a suspicion right there and the general tendency in
3 criminal behavior is they go back and backtrack behind
4 themselves and try to clear up stuff where they won't be
5 noticed, which he attempted to do, we believe.

6 And what it says here is that the phone information is
7 crucial to possibly identify a possible suspect in the case.
8 He's saying why do you determine whose number it is and that
9 might be a suspect or maybe not a suspect, but it could be
10 helpful in compiling a timeline of events leading up to and
11 including the time of the murder.

12 And what's on the phone -- if he was somebody who was
13 there, it could be critical and it's going to reveal --
14 there's a fair probability it's going to reveal some
15 information. It might reveal information of whose phone it
16 is who might ultimately be the suspect in the murder or it
17 might just reveal part of the timeline and be crucial in
18 investigating the case in determining what happened.

19 So I think that it's -- clearly, it was set forth in
20 such a way that the judge knew that there was a fair
21 probability that some type of evidence could have been found.

22 MR. BROOKER: I'll take less than two minutes, Your
23 Honor. If you believe that's impossible --

24 THE COURT: I believe all of your arguments could be
25 less than that if you didn't say them 15 times.

1 MR. BROOKER: I'm sorry, Your Honor.

2 THE COURT: It's okay.

3 MR. BROOKER: I just --

4 THE COURT: I'll -- I'll hear from you.

5 MR. BROOKER: Your Honor, I would say -- I would say one
6 thing that -- I want to say one thing about what Mr. Clements
7 just said is that Mr. Clements basically said they obtained
8 Ms. Joseph's cell records and that in Ms. Joseph's cell
9 records this number had been deleted a lot, which caused --
10 which raised suspicion.

11 What I would ask you is is to take a look at the
12 affidavit -- affidavit for Mr. Williams's records. Is that
13 information contained within there? That's the information
14 that the Court is basically saying to law enforcement
15 officers is is that you can't just keep this information for
16 yourself and says, hey, we think this information is
17 important, Judge. You have to present that information to
18 the judge.

19 It would've been different maybe if they -- if they had
20 said to Magistrate Timmons is that, Magistrate Timmons, we
21 found Ms. Joseph's body, we found Ms. Joseph's phone, we
22 obtained Ms. Joseph's phone records, and in Ms. Joseph's
23 phone records this number showed up 10 times, 15 times, 20
24 times. This number was one of the last numbers that she had
25 contact with. This number was deleted out of that phone.

1 That is why we have this suspicion, Judge. We think
2 that there is a -- that there may be a connection with this
3 number and Ms. Joseph's homicide. So, Judge, we want a
4 search warrant so we can obtain the information, the cell
5 site -- the cell records for this phone and also the cell
6 site location. None of that is contained within that
7 warrant.

8 I think Mr. -- Mr. Clements just explained what should
9 have been in that warrant when he's saying that, hey, you
10 know, the investigator had all of this underlying
11 information. Well, why don't you -- and that's what the
12 Court is basically saying. You can't just say we need this
13 information without explaining to the judge why you need it.

14 Now, had they explained that to the judge, what Mr.
15 Clements says, it probably would have satisfied the
16 requirements, you know, for probable cause, but it's all
17 absent and I think that's what's missing is is that law
18 enforcement believes that it can reach conclusions in its
19 mind.

20 And then, of course, is is that based upon all of this
21 underlying evidence and not share the underlying evidence
22 with the magistrate's judge so the magistrate judge can draw
23 the conclusion that they reach and, of course, the Court has
24 consistently said you can't draw the conclusion. You've got
25 to give it to the judge so the judge can do his or her role

1 and that is evaluate -- evaluate it and then draw the
2 conclusion for probable cause.

3 I agree with Mr. -- with Mr. Clements 100 percent. That
4 underlying information certainly would have probably made it
5 much, much, much more closer for the judge to draw that
6 conclusion, but it was not provided to the judge. And of
7 course, you have to evaluate probable cause based upon what
8 they told the judge and not based upon, you know, information
9 that they had that was not shared with the judge because the
10 judge couldn't use it to draw a conclusion. Thank you, Your
11 Honor.

12 THE COURT: All right. Solicitor?

13 MR. CLEMENTS: Do I need to respond, Your Honor?

14 THE COURT: You don't have to.

15 MR. CLEMENTS: Your Honor, I agree with much of what Mr.
16 Brooker said. You know, it's common sense determination and
17 it's common sense that you've got somebody that is dead and
18 their phone is there, their phone records are important.
19 It's common sense that you start checking their phone record
20 and you see some numbers have been deleted out of it and it's
21 not just deleted out of any old time. It's deleted out of it
22 when the person is dead and the search of their phone records
23 shows contact with that number. It didn't say how many in
24 the affidavit, but it showed contact.

25 It's common sense that it would be important as to why

1 that number was deleted or removed from the phone and it
2 could be crucial to possibly identifying a possible suspect.
3 It would be common sense to understand that it would also be
4 helpful in compiling a timeline of events, and a magistrate
5 would know that a timeline of events is an important thing in
6 a criminal investigation, and I think this was a common sense
7 determination by Judge Timmons and she granted -- rightfully
8 granted the search warrant based on this affidavit after she
9 did a totality of the circumstances, reasonable, common-sense
10 approach.

11 Somewhere in this case law -- I can't put my hands on it
12 right now -- that further talks about a search warrant is
13 written not for legal technicians but for common everyday
14 people in a common-sense environment. And I think that Mr.
15 Brooker would like for it to be more than that, but I think
16 that's all it is is common sense and this is common sense,
17 this affidavit.

18 THE COURT: All right. Mr. Brooker, I'm going to return
19 this to you because you said you needed this back.

20 MR. BROOKER: Well, I was going to enter that into the
21 record, Your Honor.

22 THE COURT: Oh, okay. You want me to just --

23 MR. BROOKER: Make that exhibit --

24 THE COURT: All right. We'll mark that as a defense
25 exhibit for purposes of this motion.

1 (WHEREUPON, the search warrant was entered into evidence
2 as Defendant's Exhibit Number 1 for the purposes of this
3 pretrial hearing only.)

4 THE COURT: All right. Anything further?

5 MR. BROOKER: Yes, Your Honor.

6 And then, of course, is is that this motion, Your Honor,
7 pertains to that same warrant, the one that I think it's --
8 is that Defense Exhibit 1?

9 THE COURT: Yes, sir.

10 MR. BROOKER: This -- this -- this motion pertains to
11 Defense Exhibit 1 and, of course, is is that, obviously, as
12 we just indicated, that -- that when law enforcement
13 requested the search warrant for the cell information, cell
14 phone information and also the cell site information, cell
15 site location information pertaining to 843-468-6516,
16 Magistrate Timmons granted that -- that warrant, granted
17 their request for that search warrant and, of course, is is
18 that that was issued obviously on February 12, 2016.

19 On February 23, 2016, a few days later, they executed
20 that warrant by sending a copy of that warrant to Sprint, who
21 is the cell phone provider for that number. And of course,
22 is I think the same day that they submitted that search
23 warrant to Sprint for the cell phone records and the cell
24 site location information for 843-468-6516, Sprint complied
25 and Sprint sent them the cell phone information, I think the

1 cell call information, and they also sent them the cell site
2 location information and, of course, they submitted it on the
3 same day.

4 Now, that was in February of 2016. I think in March of
5 2019, that would have been roughly, if I get my math correct,
6 three years later that I think law enforcement determined
7 that the cell site location information that Sprint had
8 produced was the wrong cell site location information for
9 that phone.

10 So they call up Sprint and says, hey, you gave us the
11 wrong cell site location information, and Sprint says we did.
12 We'll send you the correct cell site location information and
13 then, of course, is I think it was -- I think it was on March
14 8, 2019, Sprint sent, I think via electronic mail, the cell
15 -- the correct cell site location information for Mr.
16 Williams' phone and, of course, when Sprint sent the cell
17 site location information for that phone in March of 2019,
18 that information was being submitted without a warrant.

19 And the reason why is is that I think it goes without
20 saying is is that warrants have a life of ten days. Once the
21 judge issues you a warrant, that warrant is alive for ten
22 days. You have to serve that warrant within ten days.
23 Otherwise, if you don't serve that warrant within ten days,
24 then, of course, is is that it becomes void. So the original
25 warrant that was issued back in February of 2016, I think

1 February 19, 2016, became void February 29, 2016, ten days
2 later.

3 So -- so when they went back to Sprint three years later
4 and says you gave us the wrong cell site location
5 information, they did not submit a new warrant to Sprint, in
6 which they were required to because that old warrant was
7 dead. It was no longer alive.

8 And of course, is is that I won't go through *Carpenter*
9 and probably Your Honor knows *Carpenter* better than I do, but
10 in 2018, there had been this great debate as to whether or
11 not, you know, individuals had a privacy interest in cell
12 site location information.

13 Previously, up to -- you know, up to *Carpenter*, it was
14 the prevailing law, you know, that information that was
15 retained by a third party that an individual had no
16 expectation of privacy in that information and, therefore,
17 the third-party rule applied. That if it wasn't your
18 information, you didn't have an expectation of privacy, no
19 warrant had to be obtained.

20 *Carpenter* changed all of that and *Carpenter* says because
21 of the uniqueness of cell phones -- because of the uniqueness
22 of cell phones is is that -- that -- that individuals did
23 have an expectation of privacy because cell phones could be
24 used to track a person's every move, and it says that
25 individuals did have an expectation of privacy in the cell

1 site location information. It says you can only get that
2 stuff by warrant.

3 So when in March of 2019, when -- when law enforcement
4 picked up the phone and called Sprint and says, oh, you sent
5 us the wrong information three years ago, send us a -- you
6 know, the correct information and Sprint just sent it to them
7 and they did not obtain a new warrant. That information was
8 being submitted warrantless, which obviously *Carpenter* says
9 you can't do anymore.

10 So the cell site location information that was obtained
11 on March 8, 2019, without a warrant by the Florence County
12 Sheriff's Department should be suppressed pursuant to -- to
13 *Carpenter* and that any derivative product that has been
14 produced as a result of that warrantless cell site location
15 information should also be suppressed. Thank you, Your
16 Honor.

17 THE COURT: Thank you, sir.

18 MR. CLEMENTS: Your Honor, law enforcement got the
19 search warrant and they served it within ten days and there's
20 nothing violated there. They served the warrant. They got a
21 response and later they checked the response and saw that
22 they made a mistake. Pursuant to the same search warrant,
23 they got the right stuff sent to them, but my understanding
24 is there's no time frame on anything other than the search
25 warrant being served and it was served within ten days.

1 MR. BROOKER: Your Honor, I won't -- I won't argue this
2 because I don't think it needs to be argued is is that there
3 is no question under South Carolina law a warrant is dead
4 after ten days.

5 THE COURT: If it hasn't been served.

6 MR. BROOKER: Yeah. Ten days after. Yeah, it has to be
7 served.

8 THE COURT: If it hasn't been served.

9 MR. BROOKER: Yeah, yeah.

10 THE COURT: But once it's been served, is there any case
11 law that talks about how long the person served has to supply
12 the information?

13 MR. BROOKER: You're talking about as to whether or not
14 a search warrant is perpetual once it's been served?

15 THE COURT: No. I'm talking about -- the search warrant
16 asked for --

17 MR. BROOKER: Uh-huh.

18 THE COURT: -- certain information.

19 MR. BROOKER: Uh-huh.

20 THE COURT: It has to be served within ten days.

21 MR. BROOKER: Uh-huh.

22 THE COURT: It's served.

23 MR. BROOKER: That's correct.

24 THE COURT: People respond.

25 MR. BROOKER: Uh-huh.

1 THE COURT: It's later found out that we -- this very
2 issue, that we sent you the wrong paperwork.

3 MR. BROOKER: Uh-huh.

4 THE COURT: So here's the right paperwork pursuant to
5 that search warrant.

6 MR. BROOKER: And --

7 THE COURT: And your -- your point is that you need a
8 whole new search warrant if you're going to get any more
9 information based upon that warrant that was served.

10 MR. BROOKER: Yeah. And of course, is is that --

11 THE COURT: Have you got any case law to support that?

12 MR. BROOKER: Well -- and of course, is I haven't looked
13 yet, Your Honor, is is that because obviously is I didn't
14 anticipate that you were going to raise that issue.

15 THE COURT: Well, I mean the solicitor raised it and
16 it's a good point.

17 MR. BROOKER: Yeah.

18 THE COURT: It was served within ten days.

19 MR. BROOKER: It was. It was and there's no doubt about
20 that.

21 THE COURT: And that's the rule.

22 MR. BROOKER: But we -- yeah. And that is the rule, but
23 we take the position that search warrants are not perpetual.
24 Search warrants are limited and, of course, is is that --

25 THE COURT: I agree with you. In other words, if you're

1 looking for additional information --

2 MR. BROOKER: Yeah.

3 THE COURT: -- that's not covered in the original
4 warrant --

5 MR. BROOKER: Uh-huh.

6 THE COURT: -- then you better get another search
7 warrant. But this may very well be open-ended if it's
8 information that was improperly submitted. I'm asking you
9 for the records involving person A. You give me the records
10 that involve person B. I later found out you gave me the
11 wrong records. I still need the records for person A. Your
12 point is you're beyond ten days, you can't provide that
13 information anymore. You have to get another search warrant.

14 MR. BROOKER: Absolutely.

15 THE COURT: Even for purposes -- even though all I'm
16 asking for is what I've asked you for originally and you
17 didn't give it to me.

18 MR. BROOKER: Yes. Yes. Is is that because, Your
19 Honor, we take the position -- and obviously is, Your Honor,
20 is what I'll do is after we leave here today is that I'll do
21 the research and, like I say, is that I can't say for
22 certain, but I'm almost positive I can find information
23 referencing that because, otherwise, is I think what the --
24 the position that the solicitor is taking is is that -- is
25 that underneath the Fourth Amendment -- underneath the Fourth

1 Amendment is that once you obtain a search warrant -- once
2 you obtain a search warrant to -- to -- to search a
3 particular place, in essence it's the -- you know, it's the
4 cell phone records.

5 Once you obtain a search warrant to search a particular
6 device or a particular place, for instance -- let's say, for
7 instance, is if this were not to search the cell phone
8 storage records, but it was to search a house is that the
9 position that they're taking is is that if they went -- if
10 they served that search warrant to search that house within
11 ten days and, of course, is is that later it turns out is is
12 that they picked up the wrong stuff from the house, they went
13 to get a computer and the search warrant said that they could
14 go there and get this computer, but they picked up the wrong
15 computer and ten -- and three years later, without obtaining
16 a new search warrant, they can go back to that house --

17 THE COURT: It's not the same thing. That's not apples
18 to apples.

19 MR. BROOKER: -- and search it.

20 THE COURT: That's not apples to apples.

21 MR. BROOKER: Let me -- let me explain why I think it
22 is, Your Honor, is is that because -- because whether you're
23 searching someone's house or whether -- or whether you're
24 searching someone's files in an electronic database is is
25 that all of these are spaces in which a person has

1 expectation of privacy. You know, one of them, obviously --
2 and both of these are physical locations.

3 THE COURT: And I'm -- and on one, I'm relying on you to
4 provide me that information. In the other one, in your other
5 example, I'm the one who did the search and I just missed it.

6 MR. BROOKER: Yes. Yes. You're the one who did the
7 search and you just missed it. But regardless, is is that I
8 think that underneath the Fourth Amendment and, of course, is
9 the Fourth Amendment basically says people have an
10 expectation of privacy, you know, within -- you know, within,
11 you know, their homes and devices. Is that I don't think
12 that the Fourth Amendment basically says that once that --
13 once that warrant is served within ten days that, of course,
14 is is that -- that that warrant becomes perpetual and, of
15 course, three years later --

16 THE COURT: Well, I agree --

17 MR. BROOKER: And in a situation like this three years
18 later, and I'm just using this situation. I'm not going to
19 use a generic one.

20 THE COURT: Right.

21 MR. BROOKER: In this particular situation, you can go
22 back three years later and, of course, is is that do a second
23 search for that information.

24 THE COURT: And I agree with you about the information
25 you're seeking.

1 MR. BROOKER: Uh-huh.

2 THE COURT: Okay. And I'll use this information in this
3 situation. They were seeking the site records for this time
4 frame of February of 2016. Okay?

5 MR. BROOKER: Yes, sir.

6 THE COURT: For this time frame. If they are to go --
7 if they were to go back this year and say how about update
8 those records and give us everything from then until
9 currently, I agree with you.

10 But if I'm asking for the information for this
11 particular time frame and I find out three years later you
12 gave me the wrong information, you gave me -- in other words,
13 you didn't give me what we asked for in that record and they
14 -- and they go, oh, I'm sorry, you're right, we didn't.
15 Here's the information that pertains to what you asked for
16 and the time frame you asked for it. Then -- then I disagree
17 with you. I think that is covered under this search warrant.

18 I agree with you it's not perpetual and that you can't
19 keep going back to Sprint and say give us some more of the
20 records on this number right here. You can't do that. I
21 agree.

22 MR. BROOKER: And I -- and I understand exactly your
23 position, Your Honor, is that obviously I think this is a
24 novel situation. You're saying -- and what you're saying is
25 is that if you're seeking -- if you're simply seeking the --

1 the --

2 THE COURT: The correction.

3 MR. BROOKER: -- the records that were requested
4 underneath the original warrant, then you can go back after
5 three years if they were wrongly produced, but you can't go
6 back looking for new stuff.

7 THE COURT: Correct.

8 MR. BROOKER: And I understand that, but -- and I
9 understand -- I understand that argument completely and, of
10 course, is that I'm not lost on that, but I am taking the
11 position --

12 THE COURT: I understand.

13 MR. BROOKER: -- that -- you know, that -- that -- that
14 even if -- even if you're not going back looking for new
15 stuff and you're going back to get something that was not
16 originally produced underneath the search warrant that
17 should've been produced and it's three years later, I'm
18 saying is is that search warrant is dead and that you have to
19 go get a new one.

20 That is a novel issue, Your Honor, and, of course, is is
21 that I can do the research to see whether or not I can find a
22 case that basically talks about the duration of the search
23 warrant or the life of the search warrant and provide that to
24 you tonight.

25 THE COURT: Well --

1 MR. BROOKER: I can email you tonight.

2 THE COURT: But be clear on what you're looking for.
3 We're not talking just simply about the duration of a search
4 warrant. We're talking about a pretty specific situation
5 here --

6 MR. BROOKER: Uh-huh.

7 THE COURT: -- where -- and again, I don't think it can
8 be confused with a search warrant of somebody's house. I
9 know you -- you think the two are the same, but when you're
10 -- when law enforcement seeks records from either a
11 corporation, company or whatever, that the company has to
12 provide, if they provide the wrong information, it was an
13 error, then I think by pointing out that error and saying you
14 -- all right.

15 Like, for example, you send us -- you didn't send us the
16 records, the site records for this number. You were one
17 number off. You sent us the wrong records and they go, oh,
18 okay, we're sorry. Yeah, you're right, we did. Here are the
19 records for exactly what you asked for for the time frame
20 that you asked for them. Here are those records because we
21 never provided you those records. We never complied with
22 your search warrant. That's what we have here.

23 MR. BROOKER: Sure. And I understand, Your Honor, and
24 I'll do that research and I'll say one thing and then, of
25 course, I'll sit down. I think what makes this offensive is

1 is that if they -- if they had served that search warrant
2 within ten days --

3 THE COURT: They did.

4 MR. BROOKER: And they did. Then, of course, they had
5 received production immediately after -- and they did. And
6 they have looked at the production and say -- and said you
7 gave us what -- something or the wrong information and that
8 occurred five days, six days, seven days or even a week
9 later, then it wouldn't be offensive, but three years later.

10 THE COURT: So where do you arbitrarily set that line?

11 MR. BROOKER: Well, no, no. I'm not using the specific
12 time. I'm talking -- I'm using reasonable. Is it reasonable
13 that they discovered this error three years later, and I
14 don't think that that's reasonable. I don't think -- I'm
15 saying it would've been reasonable if it had been discovered,
16 if they had diligently looked at what they'd been produced.

17 Like, if I send a subpoena and someone sends me records,
18 then, of course, is it's incumbent upon me to look at those
19 records to make sure that they've given me what I've asked
20 for.

21 THE COURT: If --

22 MR. BROOKER: Of course, is if I don't look at those
23 records to see whether or not they're what I've asked for, I
24 stick them in my file and, three years later, I pull them out
25 and says, oh, they gave me the wrong stuff, well, I don't

1 have to get a new warrant, I just go back and get the right
2 stuff underneath the original warrant three years earlier, I
3 think that's offensive.

4 THE COURT: You would agree with me that in February the
5 16th -- February the 19th of 2016, the Court ruled that it was
6 appropriate to collect these documents?

7 MR. BROOKER: Yes. They did issue the -- issue the
8 warrant.

9 THE COURT: And it was served on the people and they
10 were to produce these documents?

11 MR. BROOKER: That's correct, Your Honor.

12 THE COURT: So just because five years have passed and
13 they have not yet produced those documents, why does that
14 invalidate that the Court has ruled that those documents are
15 discoverable?

16 MR. BROOKER: Well, because I think an estoppel or
17 waiver issue would come in because if -- if your warrant has
18 not been -- if your warrant has not been complied with, there
19 is a judicial remedy and that is to file a motion seeking to
20 compel, you know, the production of those records because
21 that -- that -- the entity that has to --

22 THE COURT: If they refuse to produce them, I agree.

23 MR. BROOKER: Yeah. The entity -- yeah. The entity
24 that was responsible for producing those records, you know,
25 obviously is is that would be in violation.

1 And I understand what you're talking about, but I want
2 to put this reasonable argument on the record because is is
3 that I think what makes this particularly egregious -- even
4 though I don't think that -- you know, that this warrant
5 survives for ten years, but I think what -- excuse me -- for
6 three years.

7 What makes it egregious is is that it's not a situation
8 where they exercised due diligence, you know, where they got
9 the records the same day that they submitted the records to
10 Sprint and Sprint provided them with the records. They
11 didn't look at them that same day and maybe that's not
12 reasonable. They didn't look at them two days later or five
13 days later or seven days later, a month, five months later,
14 six months later, three years.

15 And so, you know -- and of course, is that I think
16 that's offensive to the Fourth Amendment. I don't think the
17 Fourth Amendment gives them that long to acquire those
18 records, specifically in a situation where you have a party
19 that is willing to produce and comply with the warrants and
20 simply did attempt to comply with the warrant and provide you
21 what they thought you were requesting, but you did not act
22 diligently to make sure --

23 THE COURT: So would your --

24 MR. BROOKER: -- that you received it.

25 THE COURT: So would your position be that if they had

1 gone back this year -- that's when they received them; right?
2 2019? The amended -- when they -- the corrected documents?

3 MR. BROOKER: Yes. That's right.

4 THE COURT: All right. 2019.

5 MR. BROOKER: Yes, sir.

6 THE COURT: So then your position would be -- let's say
7 they went back to the magistrate, explained the situation,
8 got another warrant to provide the records that we originally
9 ordered you to provide, your argument is they can't do that
10 because they are estopped from doing it --

11 MR. BROOKER: What I'm saying --

12 THE COURT: -- because they're not reasonable and is
13 that -- I mean is that your argument?

14 MR. BROOKER: That's not my argument. My argument is
15 saying that that's what they should have done in March of
16 2019.

17 THE COURT: All right. And if they would have done
18 that, then we have no argument; correct?

19 MR. BROOKER: That have to go through the probable cause
20 process. They've still got to go through the steps.

21 THE COURT: All right. And the probable cause would be
22 we established probable cause and they provided the wrong
23 document.

24 MR. BROOKER: Well, we're challenging as to whether or
25 not that document established probable cause.

1 THE COURT: Well, I understand that.

2 MR. BROOKER: Yeah.

3 THE COURT: I understand that.

4 MR. BROOKER: Okay.

5 THE COURT: But let's for argument's sake that this

6 passes muster and so they're -- they're saying they gave us

7 the wrong papers.

8 MR. BROOKER: Uh-huh.

9 THE COURT: They messed up.

10 MR. BROOKER: Yes.

11 THE COURT: Then you're going to argue they're no longer

12 entitled to those papers, the right ones, the correct ones?

13 MR. BROOKER: No. What I'm arguing, Your Honor, they've

14 got to back through the procedure again. I don't think we --

15 I don't think --

16 THE COURT: So -- so what prejudice can you show then?

17 MR. BROOKER: I don't think we're disagreeing, but they

18 have to go through --

19 THE COURT: What prejudice can you show?

20 MR. BROOKER: What prejudice that we show?

21 THE COURT: Can you show that they didn't go back and go

22 through that procedure again?

23 MR. BROOKER: Your Honor, I think the prejudice -- the

24 prejudice would be is is that underneath the Fourth Amendment

25 is is that he has an expectation of privacy in these

1 documents and, of course, is is that --

2 THE COURT: Not -- go ahead.

3 MR. BROOKER: Like I said, if they went back -- if they
4 went back through that procedure, if they went back through
5 the probable cause procedure and, of course, is is that
6 obtained them correctly, I think it would be much tougher for
7 me to make this argument, but I'm making this argument
8 because they did not do that. That's why I have to make this
9 argument and put it on the record.

10 THE COURT: Okay. You've made your argument.

11 MR. BROOKER: Yes, sir. They did not do that.

12 THE COURT: All right.

13 MR. BROOKER: Thank you. And I'll do that research
14 tonight, Your Honor, is is that let you know what I find.

15 THE COURT: Okay.

16 MR. BROOKER: Because it is a novel issue, I believe.

17 THE COURT: Sure. Okay. All right. Is -- is there
18 another motion, Mr. Brooker?

19 MR. BROOKER: There is, but I think the other ones are
20 shorter, Your Honor.

21 THE COURT: Okay. That's fine.

22 MR. BROOKER: I promise you. I think me and Mr.
23 Clements --

24 THE COURT: No. That's why we -- we didn't bring the
25 jury back.

1 MR. BROOKER: Yes.

2 THE COURT: We're under no time crunch.

3 MR. BROOKER: Yeah. I think me and Mr. Clements agreed
4 on this and, of course, is is that I'm just going to put it
5 on the record just so -- so that we're protected and, of
6 course, that's a motion in limine to exclude any statement
7 that was made by the victim.

8 I think Mr. Clements -- I think part of Mr. McFadden's
9 investigation that the day after Ms. Joseph's murder, the --
10 Mr. McFadden went to, I think, her place of employment and
11 talked with her coworkers and then, of course, her coworkers
12 obviously saw her on the day that she -- she died. They saw
13 her that morning when she went to work and, of course, she
14 was found dead later that night.

15 And of course, is is that she provided information to
16 Mr. McFadden, statements that Ms. Joseph had made to them
17 during the course of -- of work that day and, of course, is
18 is that we're arguing is is that those statements are hearsay
19 exception -- hearsay statements and that they don't fit into
20 any of the exceptions, you know, under 803. And I think Mr.
21 Clements agreed with this, but we need to put it on the
22 record, you know, for purposes of appeal or just in case it
23 comes up during the course of the trial so there is no
24 confusion.

25 THE COURT: Okay.

1 MR. BROOKER: Thank you, Your Honor.

2 MR. CLEMENTS: That's correct, Your Honor. We don't
3 intend to issue or try to admit any evidence of anything her
4 coworkers said unless something comes in and opens the door,
5 which we doubt will happen.

6 THE COURT: Sure. Okay. All right.

7 MR. BROOKER: And I'm looking, Your Honor, and I think
8 that is all of our motions except this is one that you're
9 going to deny, but we have to do it. It's the last term of
10 court is that when there was a continuance that was granted
11 after we had drawn the jury, we made a motion to -- to
12 dismiss the indictment based upon a violation of speedy trial
13 rights. I'm not going to argue that again. We just simply
14 renew --

15 THE COURT: Renew it.

16 MR. BROOKER: -- that motion that we made to dismiss
17 based upon a speedy trial right violation.

18 THE COURT: Okay.

19 MR. BROOKER: Thank you, Your Honor.

20 THE COURT: And I'll certainly note your exception to
21 that ruling. Okay?

22 All right. Anything from the State this afternoon?

23 MR. CLEMENTS: We've got two motions in limine, Your
24 Honor.

25 THE COURT: Okay.

1 MR. CLEMENTS: One is in regard to a witness we have,
2 Chimyra Wright. She'll be testifying to a couple of things
3 regarding Mr. -- Mr. Williams and her conversations with him.
4 There's been -- to my knowledge, there's been some phone
5 calls that have been recorded between some of Mr. Williams'
6 supporters, I think a girlfriend and maybe mom talking to her
7 on the phone. It's clear that she was being set up to try to
8 get her to say certain things that would show a bias, which
9 we would admit she's got a bias. She's scared of him.

10 But there's text messages and recorded statements that I
11 believe that Mr. Brooker would attempt to introduce and I
12 don't think they have any relevance and I think that any
13 probative value is greatly outweighed by the prejudicial
14 effect. So I make a motion in limine as to those particular
15 statements.

16 MR. BROOKER: Thank you, Your Honor.

17 Your Honor, we think that obviously is is that
18 impeachment of a witness to show that that witness has bias
19 or prejudice is always relevant to any trial and, of course,
20 is is that any evidence that we could present to the jury to
21 show that the witness who is testifying may be testifying
22 based upon a bias or prejudice is is that we have a
23 constitutional right to be able to present that evidence to
24 the jury.

25 In this particular situation, what Mr. Williams is -- I

1 think what Mr. Clements is talking about is is that one of --
2 one of the witnesses, I think Ms. Chimyra, contacted Mr.
3 Williams' current girlfriend and, of course, is is that
4 during the telephone conversation, she said that she was
5 engaging in certain conduct that she knew would hurt Mr.
6 Williams and she was doing it because she hated Mr. Williams'
7 mother and that the only way that she could hurt Mr.
8 Williams' mother was to hurt Mr. Williams. That's what she
9 said during that conversation.

10 So the question then becomes is is it -- does that
11 information then suggest that she might have a bias or
12 prejudice against the defendant that might -- that might
13 taint her testimony or might influence her testimony. A jury
14 has the right to know that she said that I hate Mr. Williams'
15 mother and the only way I can hurt Mr. Williams' mother is to
16 hurt Mr. Williams and that's why I'm doing all of this. They
17 have a right to know that because that goes to the
18 credibility of her testimony.

19 And then also is is that she -- she produced a videotape
20 and in that videotape -- Mr. Williams and Chimyra have a
21 small child. I don't know how old he is. Three years old.
22 And in that videotape, she has videotaped the child basically
23 telling the child, repeat after me, child, your daddy is a
24 murderer, and the child says, my daddy is a murderer. I hate
25 my daddy. And the child says, I hate my daddy and I don't

1 want to have anything to do with my daddy I don't want to
2 have anything to do with my daddy because my daddy is a
3 murderer.

4 And of course, she feeds this crap to this child and had
5 this child to repeat this and send it to him in jail. Sent
6 this video recording to him in jail where she is coaching the
7 child to say that he's a murderer, that he hates him, and all
8 of this vicious information.

9 And of course, is is that I don't think Mr. Clements can
10 argue that that doesn't go to an issue, that that's not an
11 impeachment issue that goes to whether or not she has a bias
12 or prejudice that a jury should be able to hear so that they
13 can evaluate her testimony to determine whether or not she's
14 testifying based upon -- simply because -- testifying based
15 upon the truth as she finds it or she's testifying based upon
16 this vicious hate that she has for the defendant. They have
17 a right to know that. That is a valid --

18 THE COURT: Well, that doesn't make the statements
19 false.

20 MR. BROOKER: It does not make the statements false,
21 but, see, that is a -- that is a determination for the jury.

22 THE COURT: Correct.

23 MR. BROOKER: The jury might look at this impeaching
24 information and says, well, yeah, she says she hates him,
25 yeah, she says this, but we don't think it's -- we don't

1 think it changes our theory.

2 THE COURT: I understand what he's saying.

3 Solicitor, why is all that inadmissible?

4 MR. BROOKER: Well, Your Honor, it depends on what she
5 says on cross-examination. If she admits that she's biased
6 or whatever, I don't see where that would be just cumulative
7 playing all that. It's not very pleasant, I'll say that, and
8 they may --

9 THE COURT: Well, let me back up because maybe I don't
10 understand. You intend to put a video into evidence?

11 MR. BROOKER: We intend to impeach her that she is --
12 that she -- that she --

13 THE COURT: No.

14 MR. BROOKER: -- hates him and that --

15 THE COURT: Through testimony or you're going to put a
16 video into evidence?

17 MR. BROOKER: Through her. We're going to put the video
18 into evidence through her.

19 THE COURT: Okay.

20 MR. BROOKER: She's going to testify.

21 THE COURT: You understand you put the video into
22 evidence, you've put evidence into the case?

23 MR. BROOKER: Yes.

24 THE COURT: Okay.

25 MR. BROOKER: I understand that.

1 MR. CLEMENTS: Your Honor, my position is if she admits
2 to something, it's not impeachment any longer if she admits
3 to it.

4 THE COURT: Well, I mean -- and that -- you know, there
5 goes the question. If she admits all of that, then the video
6 is not necessary to impeach her. Now --

7 MR. CLEMENTS: Because it hadn't --

8 THE COURT: Now, we're going to where the argument is
9 that you're trying to destroy or appeal to the emotions of
10 the jury that someone would do this to their child.

11 MR. BROOKER: If I could say something else on that,
12 Your Honor?

13 THE COURT: Yeah.

14 MR. BROOKER: I think it's still admissible because that
15 would -- that would be akin to saying that if a defendant
16 gives a confession to law enforcement and then later on the
17 defendant gets on the stand and admits the confession, then
18 there's no need to put the confession in.

19 THE COURT: Well, that's not true.

20 MR. BROOKER: The confession is still admissible and the
21 prosecutor can still put the confession in, even if the
22 defendant gets on the stand and admits the confession. It is
23 still admissible so that the jury -- so that -- so that the
24 jury can judge exact language and, of course, the only thing
25 that admitting it does is it makes it easier to get it in.

1 It would be much harder for me to get it in if she denies it
2 and doesn't admit it. Admitting it doesn't make it
3 inadmissible. It just makes it easier to get it in.

4 THE COURT: So any arguments that anyone would have on
5 efforts to inflame or impassion the jury, those are all
6 invalid arguments?

7 MR. BROOKER: No. They're not invalid arguments, but,
8 of course, is is that -- but, of course, is is that whenever
9 you introduce -- whenever you introduce any sort of evidence
10 into a trial, Judge, there's always a probability that the
11 jury is going to misconstrue evidence, and that's one of the
12 reasons why we have charges in which the judge basically
13 instructs the jurors for the proper context in which they
14 would use this information. This is impeaching evidence.
15 It's not used for anything else and, of course, we're not
16 trying to use it to inflame the jury. We're trying to use it
17 to show that she has a hatred for him and that hatred affects
18 her credibility.

19 THE COURT: I mean I understand what your purpose is.

20 MR. BROOKER: And that's --

21 THE COURT: I understand what your purpose is.

22 MR BROOKER: Yes, sir.

23 THE COURT: And I think -- I think it's admissible for
24 you to go into those things. The question that I'm going to
25 have to deal with is whether or not if you question her on

1 those in an effort to impeach and she admits that she made
2 the video, she admits that the things that you asked about in
3 the video are present, whether or not the video would be
4 admissible under that scenario, and that's the -- so I agree
5 with you that this impeachment stuff is --

6 MR. BROOKER: Is relevant.

7 THE COURT: -- is relevant and it's certainly something
8 you're going to be allowed to go into. It's just to what
9 degree and what is allowed in as far as actual physical
10 evidence. Okay?

11 MR. BROOKER: Sure, Your Honor.

12 MR. CLEMENTS: Your Honor, even admissible evidence is
13 always subject to a 404 analysis, and we would suggest that
14 we do that analysis before any of that gets before the jury.

15 And just as a little more background, I'm not sure how
16 necessary it is, but it might be. She has terminated the
17 parental rights is my understanding. She's been to court to
18 terminate the parental rights of Mr. Williams and there's
19 been a lot of back and forth between she and Mr. Williams'
20 mother and a lot of threats made to her. We've been given
21 text messages and stuff, but we haven't done anything with it
22 because we wanted to get this taken care of first, but --

23 THE COURT: Well, I understand, but I agree with Mr.
24 Brooker that when you put up witnesses against the defendant,
25 they have the right to --

1 MR. CLEMENTS: Cross-examine.

2 THE COURT: -- cross-examine and if there's some bias or
3 motivation behind that testimony, they have the right to
4 disclose that or to --

5 MR. CLEMENTS: Right. I understand that, Your Honor,
6 and it's just what I'm concerned more so is with the
7 relevance of the video, and you hit the nail on the head when
8 you talked about inflaming the passions of the jury.

9 THE COURT: Sure.

10 MR. CLEMENTS: So that's my whole basis.

11 THE COURT: It would be the same -- I mean it goes the
12 same. That knife -- the old adage that knife cuts --

13 MR. CLEMENTS: Cuts both ways.

14 THE COURT: -- both ways. Certainly, if the State
15 attempted to put in inflammatory and highly offensive
16 evidence against the defendant, Mr. Brooker would make the
17 exact same argument that it's not admissible because of those
18 reasons, because of an attempt to inflame the passions of the
19 jury. That knife cuts both ways.

20 MR. BROOKER: Yeah. And fifteen seconds?

21 THE COURT: Yeah.

22 MR. BROOKER: For purposes of that argument, Your Honor,
23 the reason why it's not equivalent is is that -- is is that
24 Ms. Chimyra is not -- is not a defendant and, of course, is
25 is that regardless of how the jury feels, she gets to leave

1 today. There's -- there's not an equivalency.

2 THE COURT: There's still the effect on the jury.
3 That's the -- it's the effect on the jury and their -- their
4 ability to remain fair and impartial and to make a decision
5 that hasn't been unduly influenced.

6 MR. BROOKER: But it's not fair and impartial to Ms.
7 Chimyra or to the witness who is testifying. It's fair and
8 impartial to the defendant and to the State.

9 THE COURT: Correct.

10 MR. BROOKER: And then also is I don't think that
11 there's a 404 analysis in this particular situation is is
12 that because -- is is that because she's not a -- she's not a
13 defendant in this action. She's just a testifying witness.
14 So, you know, the prejudice against her -- I don't understand
15 why -- how a 404 --

16 THE COURT: It's not --

17 MR. BROOKER: -- analysis applies.

18 THE COURT: Well, the way I'm -- the way I'm -- I'll
19 tell you how I'm viewing it, at least -- and again, we'll
20 have to look and see when we get there, but my view is to
21 look at and to weigh the bias or the prejudice on the jury
22 being able to make their decision based upon proper
23 inferences, judging and viewing the evidence in a proper
24 fashion and not having the prejudice. I mean the prejudice
25 goes to the jury's ability to do their work, not to the

1 witness who made a bad video. Okay?

2 MR. BROOKER: Yes, sir.

3 THE COURT: But we'll look at it for sure.

4 MR. BROOKER: Thank you, Your Honor.

5 MR. CLEMENTS: 404 does apply, Your Honor, to character
6 evidence, which I think this would be, what they're
7 attempting to do saying she's of bad character. And Rule
8 608, we'd have to look at that evaluation of it as well at
9 the appropriate time.

10 THE COURT: Yeah.

11 MR. CLEMENTS: Your Honor, also just one more thing for
12 housekeeping purposes.

13 THE COURT: Yes, sir.

14 MR. CLEMENTS: Mr. Brooker's got a gentleman coming out
15 of Charleston that he portrays himself as an expert, and Mr.
16 Brooker -- at the appropriate time, we would like to do a
17 voir dire of this witness outside the presence of the jury if
18 he gets permitted to testify and gets admitted as an expert.
19 Before that ruling is made on his expertise, we would like
20 the chance to challenge it.

21 MR. BROOKER: Certainly. They have that right, Your
22 Honor. We don't challenge that.

23 THE COURT: Okay.

24 MR. CLEMENTS: Just letting you know ahead of time.

25 THE COURT: All right. All right. Anything further?

1 MR. BROOKER: Nothing I can think of, Your Honor.

2 MR. CLEMENTS: Not anything from the State, Your Honor.

3 Thank you, sir.

4 THE COURT: All right. And, Mr. Brooker, I'm going to

5 leave it open to receive anything you may find on that issue

6 we talked about with the search warrant.

7 MR. BROOKER: Yes, sir.

8 THE COURT: And so we'll -- how about we reconvene at

9 nine? I know the jury is not coming until 9:30.

10 MR. JEPERTINGER: We have a hearing at 9 o'clock, Judge.

11 THE COURT: Oh, we do. Okay. Well, we'll take care of

12 it.

13 MR. CLEMENTS: Your Honor, Mr. Brooker and I aren't

14 involved in that. So I'm sure it would be quick. So we can

15 probably reconvene at 9:05.

16 THE COURT: Do what?

17 MR. BROOKER: We'll be here at 9 o'clock.

18 MR. CLEMENTS: I said Mr. Brooker and I are not involved

19 in the thing at 9 o'clock. So I'm sure it would be real

20 quick. So we can reconvene at 9:05.

21 THE COURT: It would be faster than anything you and Mr.

22 Brooker are involved in. No. Listen, seriously, I do have

23 that matter at nine. I don't know how long it will take, but

24 what we'll do is we'll take that matter up at nine and then

25 we'll reconvene after that.

1 MR. CLEMENTS: Yes, sir.

2 THE COURT: Okay.

3 MR. JEPERTINGER: I'll be quick as mercury, Your Honor.

4 THE COURT: I hear you. All right. I'm going to hold
5 on to this search warrant.

6 (WHEREUPON, the proceedings adjourned for the day at
7 4:38 p.m.)

8 SEPTEMBER 10, 2019

9 (WHEREUPON, the proceedings resumed at 9:02 a.m.)

10 THE COURT: One of the jurors, a Melissa Black, Juror
11 Number 16, has come in this morning and is indicating that
12 she knows one of the witnesses, and that's all I know. So I
13 figured we probably need to bring her out and just kind of
14 explore that and see who is it she knows, what is it she
15 knows and --

16 MR. CLEMENTS: Yes, sir.

17 THE COURT: So okay. Well, Mr. Williams is here. We'll
18 -- we -- we will bring her out and we'll just simply ask
19 what's going on.

20 So if you would, ask -- ask Ms. Black to step out,
21 please.

22 (WHEREUPON, Juror Number 16 entered the courtroom at
23 9:03 a.m.)

24 THE COURT: Hey, Ms. Black. You -- you can stand right
25 there, ma'am.

1 JUROR NUMBER 16: Okay.

2 THE COURT: The -- Madam Clerk came to me this morning
3 and indicated that you had mentioned that you realized that
4 you know one of the witnesses or somebody.

5 JUROR NUMBER 16: Yes, sir. Wasn't there a Jennifer on
6 the list?

7 THE COURT: Let me look because I'll be honest with you.
8 I don't remember. I don't -- I don't see a Jennifer.

9 JUROR NUMBER 16: No?

10 THE COURT: No. Do you have a last name?

11 JUROR NUMBER 16: Carter?

12 THE COURT: No, ma'am.

13 JUROR NUMBER 16: Okay. There was a woman that came in
14 yesterday that sat over here. She looked like one of my
15 friends, but I don't know. I thought it might have been her.

16 THE COURT: Okay.

17 JUROR NUMBER 16: But I may have been mistaken.

18 THE COURT: Well, let me -- while you're here, let me
19 just kind of run through quickly the -- the folks that are
20 potential witnesses are -- excuse me -- Patricia Stewart,
21 Latisha Powell, Jackie Profitt, Leron Whitten, James Swinton,
22 Lakeya or Lakeya Bacote, Linda Jones, Chimyra Wright, Deborah
23 Goff, Chris Johnson, Doris Yarborough, John Barron, Melody
24 Galinski, Ashleigh Dixon, Michael Brumbles, Andrew Clendenin,
25 Chris Neal, Ben Price, Chad Collins, Thomas McFadden, Matt

1 Lee, Bo Myers, Angelina Phillips, David Young, Ryan Keep,
2 David Walker, Robert Bennett, Tom Slavinsky, and Kendrell
3 Davis.

4 JUROR NUMBER 16: Okay. No.

5 THE COURT: You don't know any of those folks?

6 JUROR NUMBER 16: No, sir.

7 THE COURT: Okay. Good.

8 JUROR NUMBER 16: Thank you.

9 THE COURT: Thank you very much, ma'am.

10 (WHEREUPON, Juror Number 16 exited the courtroom at 9:06
11 a.m.)

12 THE COURT: Okay. Well, I guess then that was just --
13 she indicated to the clerk, to Elaine, that she thought she
14 knew one of the witnesses and that's why I had her brought
15 out, but apparently, she doesn't. So we'll be -- we'll be at
16 ease then.

17 Guys, let me -- I need to take up this matter with John
18 and then we'll deal with anything that we need to deal with.
19 Okay?

20 MR. CLEMENTS: Your Honor, I do have one question.

21 THE COURT: Yeah.

22 MR. CLEMENTS: Are you going to indicate to us before we
23 make our opening statements --

24 THE COURT: Oh, yes. About my rulings?

25 MR. CLEMENTS: Yes.

1 THE COURT: Yes, sir.

2 MR. CLEMENTS: Okay.

3 THE COURT: Yeah.

4 MR. CLEMENTS: All right. Because I need to know if I'm
5 going to argue plan A, B, C, or D.

6 THE COURT: I understand. Yeah. I absolutely will do
7 that.

8 (WHEREUPON, there was a break in the proceedings from
9 9:07 a.m. until 9:46 a.m., after which the proceedings
10 resumed as follows.)

11 THE COURT: All right. Mr. Brooker, do you have
12 anything further on that one issue you were going to
13 research?

14 MR. BROOKER: I do, Your Honor, is is that, of course,
15 is I also instruct you about something else that came up
16 during my research on that one issue is I still think that --
17 that -- that the search warrant is dead after ten days. Of
18 course, is there's -- although I did not find a case that
19 deals with it, I think a reasonable eye could not find a case
20 that deals with it is that I think is is that is because this
21 is an issue that's never been raised because I think probably
22 jurisdictions believe that the statute is clear that the
23 warrant is dead after ten days.

24 Of course, is is there's two places that I looked that I
25 didn't look yesterday that I think proves that this evidence.

1 If you take a look at at least the search warrant itself, the
2 search warrant specifically has limiting [sic] language
3 within the search warrant. Of course, the search warrant
4 specifically states -- and I'm reading from the search
5 warrant that was issued by Ms. Timmons for that -- for two --
6 I think -- was it -- I'm looking at the wrong search warrant.

7 The search warrant that was issued by Judge Timmons for
8 that -- for the Sprint cell phone records for the number that
9 belonged to Mr. Williams or believed to belong to Mr.
10 Williams, that search warrant specifically states in its
11 language that this search warrant shall not be valid for more
12 than ten days from the date of issuance. So it has
13 limiting language that basically says that after ten days
14 that the warrant is invalidated.

15 THE COURT: That's from when the Court issues the
16 warrant.

17 MR. BROOKER: Yeah, it says -- yeah. It says that after
18 --

19 THE COURT: Okay.

20 MR. BROOKER: -- ten days the warrant is invalid.

21 THE COURT: Right. Correct.

22 MR. BROOKER: And of course, is is that I think that
23 language is consistent with the language that's contained
24 within the statute is is that in 17-13-140 -- and of course,
25 is is that where it talks about -- I think this is paragraph

1 -- let's see -- one, two three -- this is the fourth
2 paragraph that I'm looking at that starts with any warrant
3 issued.

4 It says any warrant issued hereunder shall be executed
5 and return made -- and return made only within ten days after
6 its date. So it's providing limitation language that
7 basically says that -- that the execution of that document
8 and, of course, the receipt, you know, of property from that
9 warrant, property that's requested on the inside of that
10 warrant, all has to be done within ten days, which is
11 consistent with the language that's contained with on the --
12 within the search warrant itself that says it is invalid.
13 The search warrant is invalid after ten days.

14 And of course, there's no limiting language that
15 basically says, you know, that the -- that the search warrant
16 is invalid if not executed within ten days. It says in plain
17 and simple English that it is invalid. The search warrant
18 itself is invalid after ten days, which I think is consistent
19 with what the statute requires. That the execution and the
20 return of documents that is sought underneath that search
21 warrant has to be accomplished within ten days.

22 THE COURT: So if you seek a search warrant for records
23 and the company -- and it takes the company 20 days to
24 compile those records and comply with the search warrant, you
25 can't get those records? You'd have to re-get another search

1 warrant once they have gotten the records all put together
2 and to say they're ready to ship them. Then you've got to go
3 get another search warrant to get those records legally?

4 MR. BROOKER: Underneath the -- underneath that statute,
5 Your Honor, is that there -- and I looked. Some states have
6 actually provided -- have actually provided for a longer
7 period of time. Some states has actually provided up to 60
8 days to allow someone to obtain a search warrant, to execute
9 to receive documents from that search warrant.

10 And every jurisdiction I guess decides and, of course,
11 is I think the Constitution requires reasonableness when it
12 comes to the execution and, of course, the validity or the
13 length of the validity for that search warrant. And of
14 course, is is that South Carolina has decided -- South
15 Carolina has decided ten days. Some jurisdictions have
16 decided longer.

17 THE COURT: Forget other jurisdictions right now. Let's
18 talk about South Carolina.

19 MR. BROOKER: Absolutely.

20 THE COURT: So in South Carolina if you're seeking
21 medical records --

22 MR. BROOKER: Uh-huh.

23 THE COURT: -- phone records --

24 MR. BROOKER: Yes.

25 THE COURT: -- all of these different types of corporate

1 records --

2 MR. BROOKER: Yes.

3 THE COURT: -- if the corporation or the entity cannot
4 provide those within ten days, then you can't get those
5 records?

6 MR. BROOKER: I think if they don't provide those within
7 ten days is is that that's what we were talking about before
8 is is that whether or not -- whether or not that search
9 warrant expires, but, of course, whether or not then do you
10 have a -- do you have a situation then where the company has
11 violated a court order and whether or not then is is that
12 that -- the -- the possessor of that search warrant can go
13 back before the judge and, of course, is is that seek
14 sanctions -- sanctions against that corporation for failing
15 to comply.

16 But the -- like I said, is that I have no control of
17 this, but that's what the statute says. That's what the
18 document says. Whether or not that -- whether or not that
19 is, you know, the -- you know, the brightest thing in the
20 world to do and whether or not the General Assembly in South
21 Carolina needs to extend that, you know, that's an issue for
22 the General Assembly, but they have provided it for ten days.

23 And of course, the language of the statute -- excuse me.
24 The language of the document itself says it's invalid after
25 ten days and, of course, is that I imagine that if they

1 thought that they were going to need longer than ten days
2 and, of course, if a judge has the authority to issue a
3 warrant for longer than ten days, I imagine that they would
4 go back to that judge and say, well, Judge, can you not issue
5 this for ten days, we need a 30-day search warrant. I don't
6 think the judge would issue a 30-day search warrant because I
7 think, pursuant to the statute, the judge's interpretation of
8 the statute, it cannot live greater than ten days and I think
9 that is the correct interpretation.

10 THE COURT: What's that statute you're referring to?

11 MR. BROOKER: Just the 17 -- 17-13-140, South Carolina's
12 search warrant statute, the statute for the issuance of a
13 search warrant.

14 And I would also just put on the record, Your Honor, is
15 is that even if -- let's say, for instance, even if the judge
16 had the power to issue a search warrant beyond 30 -- beyond
17 ten days, is is that they would still be limited to ten days
18 because basically when a judge issues a search warrant, the
19 judge is -- the judge is deciding the authority that's given
20 to the government and so the judge says I am giving you ten
21 days and that's the authority that the government is
22 transferring or giving to -- excuse me -- the judge is giving
23 to law enforcement is is that law enforcement is then limited
24 by -- it's limited by the limitations of that particular
25 warrant.

1 If the judge -- if -- for example, if the judge says in
2 a search warrant that, you know, I am -- you are hereby
3 authorized to search this house and when law enforcement gets
4 to the house they realize that there is a second little house
5 on the property that's on the same stake of land, they
6 couldn't simply say, well, okay, we can go and search that
7 property too.

8 It's that you are specifically limited by the language,
9 you know, of the warrant and if the language of the warrant
10 says that you can just search that particular house, you
11 know, even though if there's another structure on the land,
12 you cannot go search that other structure. You have to go
13 back and say, well, Judge, there is another structure on that
14 property. We'd like authority to search that other
15 structure.

16 You're limited by the language and the language in this
17 -- in this search warrant says it is only valid -- shall not
18 be valid for more than ten days from the date of issuance.
19 The search warrant shall not be valid for more than ten days,
20 not ten days from -- it doesn't put any limitation language
21 about the execution, saying that it's invalid if not executed
22 within ten days. It says it is invalid, period, in ten days.

23 Now, if they -- like I said -- and I'll say this and
24 shut up because I know you warned me yesterday about
25 repeating stuff. If they thought that the judge had the

1 authority to give a search warrant beyond ten days, then they
2 could have certainly asked the judge to see whether or not
3 the judge believes he or she had the authority, but my
4 suspicion is that the judge would -- would probably look at
5 17-13-140 and say I don't have the authority to give a
6 warrant beyond ten days. And of course, is is that I think,
7 at least from my understanding, is is that warrants can also
8 be reissued based upon the same probable cause.

9 So if they had a situation where if the warrant was not
10 complied within ten days, then, of course, is is that they
11 can go back to the judge seeking to enforce that order.
12 Obviously, the entity to whom that search warrant was
13 addressed to would be a violation of a court order and then,
14 of course, to force that person's compliance and then reissue
15 the warrant.

16 THE COURT: All right.

17 MR. BROOKER: I think there's a reason why the -- why
18 the -- why the South Carolina and also the Supreme Court
19 limits the time in which you can do the search because they
20 consider a search of someone's property -- you know, the
21 fathers when they -- when they issued the Constitution when
22 these amendments was created, they considered someone's
23 property interest and privacy interest in their property to
24 be so important that -- that the government can only search
25 and seize that person's property within a -- upon order from

1 a judge and that that order that the judge issued, you know,
2 is not a perpetual one. It is specifically limited based
3 upon the importance of the right, you know, that's being
4 basically breached when that warrant is given.

5 So they give you a limited amount of time to be able to
6 do your search, but it's not defeating. It doesn't defeat a
7 law enforcement agency, you know, from being able to obtain
8 property if someone doesn't comply within that warrant within
9 a period of time because that warrant is not just a request.
10 That warrant allows -- it allows a body to be able to seize
11 that property, which means to take it.

12 THE COURT: All right.

13 MR. BROOKER: So law enforcement doesn't have to go in
14 and says please, AT&T, can you give me this stuff. It is a
15 seizure warrant. It allows them to be able to go to AT&T
16 property and push their executives aside and push their --
17 their -- their custodians aside, sit at the computers, and
18 take the information if they want to. It is a seizure
19 warrant. It's not a request.

20 But it doesn't inhibit law enforcement. It may require
21 them to take some extra steps if they ask someone can you
22 please comply and they don't specifically step in and take
23 it, but it doesn't prevent them from being able to get the
24 property. They can still do it, even if they run across, you
25 know, a stubborn person or stubborn entity who says, well,

1 I'm not going to give it to you. Then, of course, is is that
2 it doesn't prevent them from securing it and they can't just
3 simply say, well, you know, that would be more difficult for
4 us.

5 So, you know, the easiest thing would be able to do
6 would be able to assume that it's extended, to interpret that
7 as extending beyond ten days. So it's a little bit more
8 difficult on them, but, of course, is I think the
9 Constitution demands it.

10 And after that, Your Honor, is I don't know whether or
11 not Ed wants me to address it. While I was doing this
12 research, we also came across another issue that would also
13 --

14 MR. CLEMENTS: I'd like to take one thing at a time.

15 MR. BROOKER: Okay. That's fine. Go ahead. Go ahead.

16 THE COURT: Go ahead.

17 MR. BROOKER: I'm finished, Your Honor.

18 MR. HOEFER: You know, Judge, what he's asking you to do
19 is to apply the exclusionary rule to this evidence, and I'd
20 ask the Court to consider the purpose of the exclusionary
21 rule -- which is a judicially-made rule, it's not a statutory
22 rule -- is to deter police misconduct. And if you look at
23 all of the case law, one thing -- one thing that Courts have
24 recognized is a good faith exception to the exclusionary
25 rule.

1 Now, Your Honor, we take the position that 17-13-140
2 does not have a provision that says this warrant is invalid.
3 It does say warrant issued hereunder shall be executed and
4 return made only within ten days after it is dated. That's
5 clearly in there, but it does not go further to say if it's
6 not returned in ten days, it's invalid.

7 The logical conclusion is that this thing needs to be
8 served within ten days simply because evidence, physical
9 evidence, tangible evidence can disappear. It can be moved.
10 So if I ask Your Honor for a -- for a warrant today based on
11 testimony that gives you probable cause to believe that
12 contraband is at a particular location today, the reality is
13 is that ten days from now that is not as likely. Twenty days
14 from now is not as likely. And so if we're talking about
15 fungible property, things that we can touch, that makes a lot
16 of sense.

17 What we're talking about here really is data. It's
18 stored data. This isn't going to change. It's kind of like
19 take my blood and get DNA from it. That isn't going to
20 change. Now, if you take my blood to get alcohol, that may
21 change. So we're talking about different kinds of evidence
22 here.

23 Judge, I understand that the statute says return is
24 supposed to be made within ten days, but I would call Your
25 Honor's attention to *State v. Wise* and *State v. Weaver* that

1 says the failure to comply with that ten-day ministerial
2 requirement invalidates the search warrant only if the
3 defendant can show that he has been prejudiced.

4 And if Mr. Brooker was making the argument my guy
5 could've gotten that stuff out of there and hidden it, you
6 know, if this thing had been served within ten days, y'all
7 would've never found it, that's prejudice, but the fact is
8 this information, this data that was recovered from Sprint,
9 it isn't going to change.

10 As a matter of fact, I would submit that after hearing
11 testimony under oath today, Your Honor could issue a search
12 warrant, directed to AT&T or Sprint. I think it was Sprint
13 we were talking about. It could be sent up there today and
14 returned tomorrow in time for court tomorrow because nothing
15 has changed. None of that data is going to change from last
16 week to this week to next week. There's no way that he can
17 establish that he's been prejudiced. So even if you find a
18 violation of the ten-day return rule applies, then he can't
19 establish prejudice.

20 And then one last thing, the case law of *State v.*
21 *Mollison* and *State v. Horne* deal with where a return was
22 incomplete. In other words, they had a return, there were
23 items listed, but something was left off, which is really
24 more akin to what -- what we're arguing about here. They got
25 a return. They did their return within ten days. They just

1 realized, wait a minute, this was the wrong stuff. We've got
2 -- now we've got the right stuff and we'll return that.

3 Without being able to show some type of police
4 misconduct, the good faith exception applies. There should
5 be no exclusion because that is intended as a penalty for
6 deliberate police misconduct.

7 THE COURT: All right.

8 MR. BROOKER: If I could take one minute in reply, Your
9 Honor?

10 THE COURT: No, sir. All right. Well, go ahead.

11 MR. BROOKER: Okay.

12 THE COURT: Don't repeat your argument.

13 MR. BROOKER: I'm not going to repeat. I'm going to
14 address his -- his return issue.

15 And of course, his return issue has absolutely nothing
16 to do with this particular issue is is that -- is is that the
17 statute said that you have to file a physical return, which
18 is this page right here, saying what you've collected and it
19 says you've got to do that within ten days.

20 And of course, is is that there's Courts that basically
21 says failure to file this paper here, this return paper, to
22 the -- to the issuing judge telling the issuing judge what
23 you've collected, there's Courts that basically says that if
24 you forget to file that, you know, within the ten days, then
25 that's not a problem.

1 But that's not what we're talking about here. We're not
2 talking about the return. We're talking about the collection
3 of documents from the warrant and, of course, the warrant
4 gives you ten days to collect whatever you're going to
5 collect from the documents. So this -- this has nothing to
6 do with the return and, of course, those cases in which they
7 cited that deals with the failure to -- to -- to do a return
8 has absolutely no application to the argument that we're
9 making.

10 THE COURT: All right.

11 MR. BROOKER: And that's on that and now -- and I know
12 Ed says he wanted take up one at a time. Do you want me to
13 go into the second part? I think we were going to argue
14 that, but Ed said he wanted to reply first.

15 THE COURT: No. Do you have something else on this
16 issue?

17 MR. BROOKER: Something else on this issue, which is a
18 completely separate argument, which is again -- and I'm
19 sorry. It's a novel one, but of course, is that it's a valid
20 one.

21 THE COURT: It's okay. Yeah.

22 MR. BROOKER: Is is that -- and that is, Your Honor,
23 when you asked me to do the research last night on the
24 validity of this warrant is that I ran across another issue
25 that I think that -- that says that the search warrant is --

1 is unconstitutional and invalid in and of itself, and I think
2 both search warrants, the search warrant for Ms. -- to AT&T
3 which pertains to the victim's phone records, but most
4 definitely the one to Sprint that pertains to the defendant's
5 cell phone, would be invalid under -- you know at least under
6 this argument.

7 Now, I think we may not have standing to argue. I don't
8 know actually whether or not we have standing that would
9 allow us to be able to argue the invalid -- the invalidation
10 of the AT&T records, but with respect to the Sprint records
11 underneath the Sprint warrant that was issued in 2016 is is
12 that -- and this is a simple issue and I don't know why I
13 didn't think about it before, but, of course, is is that --
14 and of course, the case that I gave them was the *Krueger* case
15 and, of course, the *Krueger* case is a federal case that deals
16 with the issuance of a federal search warrant underneath 41
17 -- South Carolina Rule of Criminal Procedure 41(b).

18 And basically what happened in that particular situation
19 you have a magistrate's judge. That a federal magistrate's
20 judge issued a search warrant to a federal agent and then, of
21 course, is is that that -- the federal magistrate's judges
22 have jurisdictions that are limited to them. Like, a federal
23 magistrate's judge in South Carolina is -- his or her
24 jurisdiction is South Carolina.

25 So if a federal magistrate's judge issues a search

1 warrant to an FBI agent, that FBI agent can't go over to
2 North Carolina and execute that search warrant because
3 *Krueger* says basically is is is that a federal magistrate's
4 judge can only issue a search warrant for the search of a
5 premises within that magistrate's jurisdiction. That's what
6 *Krueger* says.

7 Magistrates -- the federal magistrate's judge can only
8 issue a search warrant for the search of premises that's
9 within its jurisdiction. If it's premises that's outside of
10 its jurisdiction, the magistrate's judge don't have the
11 authority to issue the search warrant for the search of that
12 particular entity. And of course, is it says, you know, it
13 would be invalid.

14 And of course, we have a similar issue in this
15 particular situation where you have the -- the Sprint search
16 warrant that was issued back in 2016 was issued by Florence
17 County Magistrate's Judge Belinda Timmons, Ms. Timmons. And
18 of course, is is that I pulled up the statute and, of course,
19 is is to also find out what's the jurisdiction of Ms.
20 Timmons.

21 And of course, underneath South Carolina law, the South
22 Carolina Constitution basically says, you know, that the
23 General Assembly should decide the jurisdictional limits of a
24 -- of the magistrate's judge and, of course, is is that South
25 Carolina has done that. I think in -- I think -- I think

1 South Carolina basically said that magistrate's judges shall
2 have and exercise within their respective counties all the
3 power, authorities, and jurisdictions in criminal cases
4 herein set forth.

5 So South Carolina statutes limit magistrate's judges
6 only to be able to exercise their jurisdiction -- limited
7 their jurisdiction to the counties in which they are in --
8 counties in which they are in. So if I'm a magistrate's
9 judge in Florence County, I cannot issue a warrant for the
10 search of property in Darlington County if -- if --

11 THE COURT: I understand that.

12 MR. BROOKER: Yeah. So it would invalidate -- it would
13 invalidate the search warrant because the search warrant
14 would be beyond the authority of the judge who was issuing
15 it, which means --

16 THE COURT: So is your argument they don't have
17 authority to issue a search warrant for records that aren't
18 located in Florence County?

19 MR. BROOKER: Not even in Florence County, but not in
20 South Carolina. Yeah. Certainly not in Florence County, not
21 in South Carolina.

22 What they would have to do, Your Honor -- and this is
23 done all the time. They would have to -- have to -- I guess,
24 the correct term would be repatriate that warrant in the
25 jurisdiction in which they are seeking. You know, for

1 instance, is is that, of course, lawyers do this all the
2 time. If I get a -- if I get an order from South Carolina
3 that deals with someone who is out of state, I'd have to take
4 that South Carolina warrant to Maryland, file that South
5 Carolina warrant --

6 THE COURT: All right. I'm going to stop you right here
7 for a second. I issue warrants all the time --

8 MR. BROOKER: Uh-huh.

9 THE COURT: -- for phone records.

10 MR. BROOKER: Uh-huh.

11 THE COURT: And you're saying that all of those warrants
12 are invalid if those records are located outside of my
13 jurisdiction?

14 MR. BROOKER: That's what the federal court has said.

15 THE COURT: Okay.

16 MR. BROOKER: That's what the federal court has said.
17 Federal courts basically says is is that if your -- if your
18 authority is limited to South Carolina that you cannot issue
19 a search warrant for the search of an entity that is outside
20 of your jurisdiction.

21 THE COURT: So what if Sprint is located here in South
22 Carolina?

23 MR. BROOKER: If Sprint is located here in South
24 Carolina and if the records are retained here in South
25 Carolina --

1 THE COURT: The records are more than likely electronic
2 data.

3 MR. BROOKER: Well -- well -- and that argument has been
4 made in the case in which -- in the *Henderson* case because
5 the federal government made -- not the *Henderson* case. I
6 think it is the *Henderson* case.

7 The federal government made that argument in the
8 *Henderson* case where the federal government says, oh, this is
9 electronic data and, of course, is this electronic data
10 passes all over the country, you know. So therefore, you
11 know, it makes no difference. And of course, is is that the
12 -- that the Ninth Circuit says no. The Ninth Circuit says
13 no. There is still a way in which they can accomplish that,
14 and I'm going to give you these cites, Your Honor. I can
15 give it to you.

16 THE COURT: Okay.

17 MR. BROOKER: The Ninth Circuit -- the Ninth Circuit
18 says no. Is is that it says that the fact that you're
19 alleging that this data may -- may pass from Florida to New
20 York or anyplace in between, if it's zips across --

21 THE COURT: So where are those records kept, Mr.
22 Brooker? If they're all electronic data --

23 MR. BROOKER: Uh-huh.

24 THE COURT: -- what's to say -- and if the Sprint office
25 here in Florence can pull those records up on their computer,

1 if they can pull those records up, where -- where would you
2 argue those records are actually kept?

3 MR. BROOKER: Those records would be kept at a storage
4 database, you know, wherever -- wherever the cell phone
5 company store those records. They would be in a physical
6 location stored on a server in a particular state.

7 And of course, is is that they would not be able to
8 access those from -- from Sprint. You could not go down to
9 your local Sprint store and -- and -- and give them the
10 search warrant and they can pull these records up. They
11 can't.

12 It has to be served to the compliance office where the
13 warrants are served and they have to certify that the warrant
14 -- certify -- they have to be the ones that pull those
15 warrants. And that's the reason why is is that the records
16 custodian that the -- that the State has brought here are
17 from I think -- the one for AT&T is from Florida and, of
18 course, the other one I believe is from Kansas, but they're
19 outside the state of South Carolina because that's where
20 those records are stored.

21 Those people who works in those compliance offices are
22 the only ones that can access those records. It's not like
23 it's sitting in the cloud where anyone in the United States
24 can access them from any one of their places. And I imagine
25 if it was, it would be much simpler to them to go to the --

1 bring their warrant to the place in Florence and get those
2 records, but they sent those warrants to Florida and they
3 sent those warrants to -- to Kansas to where those war --
4 those documents was being stored.

5 So then the question then becomes is is that whether or
6 not a -- a warrant by a South Carolina magistrate's judge
7 with -- with limited jurisdictions for the county in which
8 he's in is that whether or not that warrant is offensive to
9 the Fourth Amendment.

10 And of course, is is that in *United States v. Henderson*
11 is is that Judge -- I think Judge Gorsuch I think did a -- in
12 which the first issue was brought up. The first time that
13 issue was brought up was in 2015 in the *Krueger* case and, of
14 course, it simply dealt with Federal Rule 41(b) and, of
15 course, the argument was limited to Federal Rule 41(b) and
16 the Court did mention does this go beyond just our federal
17 rule is is that if a magistrate -- if a -- if a judge issues
18 a search warrant for the search of property beyond his
19 jurisdiction, is it just -- was it just offensive to federal
20 Rule 41(b), and the Court declined to -- to argue whether or
21 not it was offensive to the Constitution, the Fourth
22 Amendment to the Constitution, in its majority opinion.

23 I think in the concurring opinion, Judge -- I guess now
24 federal judge, United States Supreme Court Judge Gorsuch
25 wrote a concurring opinion in which Gorsuch says that it goes

1 beyond just being offensive to Federal Rule 41 -- Federal
2 Rule 41(b), it is also offensive to the Fourth Amendment to
3 the United States Constitution, which then extended that
4 ruling not just to the federal government, but extended it to
5 all of the states because the Fourth Amendment applies to all
6 of us.

7 And Gorsuch, in his concurring opinion, says when a
8 judge issues a warrant, that the Fourth Amendment basically
9 allows for the issuance of a search warrant for the search of
10 property if there is probable cause, and Judge Gorsuch
11 basically says is is that the validity of that warrant is
12 based upon whether or not the judge who was issuing the
13 warrant has the power to do so. And if the judge does not
14 have the power to issue that warrant for the search of
15 property beyond his jurisdiction, it's not just limited to
16 being offensive to the -- to the --

17 THE COURT: Have you got the cite for that case?

18 MR. BROOKER: And I can -- I can hand it to you, Your
19 Honor, because I think this is a new case. I'm going to hand
20 you *Henderson* and *Krueger* has the citation and so -- and so
21 *Henderson* has a citation too. I'm sorry. It's a 2018 case,
22 *Henderson*.

23 But of course, is is that that was only a concurring
24 opinion, but then when *Henderson* -- this case came back up
25 and this issue came back up in 2018. The *Henderson* Court

1 says, well, we're going to address the Fourth Amendment issue
2 because in *Krueger* the -- the majority did not address the
3 Fourth Amendment issue. They said we don't need to address
4 the Fourth Amendment issue. We don't need to go that far.
5 We find that -- that -- that the judge's exercise of power
6 was offensive to Federal Rule 41(b) and we decline to
7 consider whether or not it's offensive to the Fourth
8 Amendment.

9 But in *Henderson*, they decided that issue and, of
10 course, they cited Judge -- now Chief Judge or Associate
11 Supreme Court Judge Gorsuch's concurring opinion where
12 Gorsuch says that it is offensive to the Fourth Amendment
13 and, of course, they reach the same conclusion, saying that
14 it is offensive to the Fourth Amendment if a judge issues a
15 search warrant beyond the -- the jurisdiction in which it has
16 authority to.

17 And of course, is that the argument that you just made,
18 Judge, is -- I think the federal government made that same
19 argument in *Henderson* that, hey, this is -- we're talking
20 about data and data is -- you know, can be transferred
21 wirelessly and, of course, is is that the Ninth Circuit
22 disagreed with that and says, no, we don't accept that
23 argument and which means is is that this data is stored in a
24 specific location.

25 And of course, is is that in this particular situation,

1 they issued warrants to Florida for AT&T and issued a warrant
2 for Kansas for Sprint. So when Judge Timmons issued those
3 warrants, it was beyond her jurisdiction. So according to
4 *Henderson*, that constitutionally invalidates the warrant
5 because it's offensive to the Fourth Amendment.

6 Now, in *Henderson* -- and I know this is what they argue
7 is is that *Henderson* considered the good faith exception and
8 says that, well, can you still get that information in? Does
9 it have to be suppressed even if the warrant was invalid?

10 And of course, the good faith exception basically says
11 is that if a judge executes an invalid warrant -- excuse me.
12 If a law enforcement officer executes an invalid warrant and,
13 of course, the law enforcement officer in good faith believed
14 that that warrant was valid at the time in which he or she
15 executed it, then, of course, is is that the exclusionary
16 rule may not apply because basically is is that it was an
17 accident. It was a good faith accident. Of course, applying
18 the exclusionary rule would not do -- would not do anything
19 to deter future misconduct by law enforcement officers
20 because it was a good faith accident.

21 Now, the good faith exception is based upon
22 reasonableness and whether or not -- and whether or not
23 whenever you get an invalid -- whether or not when you get an
24 invalid search warrant is that whether or not it is
25 reasonable for you to believe that that warrant is valid.

1 Now, if it's not reasonable for you to make the assumption
2 that a warrant is valid, then, of course, the good faith
3 exception does not apply.

4 THE COURT: All right. Where is it unreasonable here?

5 MR. BROOKER: It is unreasonable -- it is unreasonable
6 here, Your Honor, is is that because we have a magistrate's
7 judge from -- from South Carolina, which everyone knows has
8 limited jurisdiction to South Carolina, not even just to
9 South Carolina, but limited jurisdiction to Florence County
10 being asked to issue a judge -- issue a warrant for a -- a --
11 for records that are kept completely within a -- within a
12 separate county. All law enforcement officers know that and
13 they know this from the simple exercise --

14 THE COURT: You're saying all law enforcement officers
15 know that these warrants are issued illegally?

16 MR. BROOKER: No, no, no. All law enforcement -- what I
17 was going to say is that all law enforcement officers know
18 the concept of jurisdiction.

19 THE COURT: Correct.

20 MR. BROOKER: That you cannot -- you cannot exercise
21 outside of your jurisdiction. That's why a law enforcement
22 officer, like I said, is is that they do this every day. You
23 know, if they -- like I said, is if they -- if they have a
24 warrant that's for someone's arrest in Darlington County,
25 they don't drive over to Darlington County and get them.

1 They call the Darlington County Sheriff's Department.

2 THE COURT: What about a -- what about a magistrate who
3 issues a warrant in a General Sessions case?

4 MR. BROOKER: I think a magistrate --

5 THE COURT: That's out of their jurisdiction.

6 MR. BROOKER: You know -- and, Your Honor, I guess the
7 -- the -- I think the good faith exception, of course, is is
8 that -- and obviously, you know, I don't think there's any
9 case law with respect to that, Your Honor, but like I said, I
10 can give you my opinion as to whether or not the judge --
11 whether or not the judge -- whether or not the learned judge
12 who was taught that my jurisdiction is just South Carolina
13 should know that when he or she issues a warrant and, of
14 course, that warrant is going to be exercised in another
15 jurisdiction.

16 THE COURT: Well, the magistrate knows that they don't
17 have jurisdiction on General Sessions matters.

18 MR. BROOKER: Yeah, they -- they do.

19 THE COURT: They issue them all the time.

20 MR. BROOKER: I know, and they know that they don't have
21 jurisdiction outside of the county that they're issuing those
22 warrants for too, why they would issue it. I think a lot of
23 it comes to the situation where a lot of times magistrates, I
24 think, rubberstamp what goes before them without actually
25 considering them -- considering that.

1 THE COURT: All right. Well, we're not going to go off
2 down that road.

3 MR. BROOKER: Yeah, I -- yeah, I agree, Your Honor. I
4 agree, but -- but *Henderson* basically says is that it is a
5 constitutional violation offensive.

6 THE COURT: And you've argued what *Henderson* quotes.

7 MR. BROOKER: And I don't think the good faith exception
8 applies in this particular situation is because if that
9 warrant is invalid -- if that warrant is invalid and, of
10 course, Henderson says it is, no question about it.
11 *Henderson* said it is absolutely --

12 THE COURT: Go ahead.

13 MR. BROOKER: -- invalid. I think law enforcement knew
14 or should have known it was invalid because they know the
15 jurisdictional limits -- limits of the person who was issuing
16 the warrant and, of course, because they -- they do this
17 every day.

18 And then, of course, also is that let's assume that they
19 did not know and that they did issue that warrant back in
20 2016. They issued that warrant back in 2016 and they did get
21 some returns from that warrant back in 2016, February 2016.
22 Well, then that's fine.

23 And of course, is is that our argument would be is is
24 that whatever they got back in 2016 because -- because they
25 innocently issued an invalid warrant, you know, then maybe

1 that is admissible, but in -- but in 2019 --

2 THE COURT: You argued this yesterday. That you don't
3 think they can come back three years later and receive the
4 corrected documents.

5 MR. BROOKER: I don't think the good faith exception
6 would apply to them getting those documents and I think the
7 argument that -- that Mr. -- Mr. Hoefer made that, hey,
8 Judge, you know, that even if that 2016 search warrant would
9 be invalid that you could just simply issue one right now and
10 -- and send it over there is is that that would be a
11 violation of the good faith exception because now everybody
12 knows according to *Henderson*. It's a 2018 case. It's a
13 fresh case, but now everybody knows and, of course, this
14 Court knows, you know, that that warrant would be invalid
15 pursuant to *Henderson* because it would be beyond the
16 jurisdiction of that --

17 THE COURT: Well, now -- now you're arguing Mr. Hoefer's
18 hypothetical. We don't need to argue his hypothetical.
19 That's not the issue here. No one is issuing a warrant right
20 now to get those records --

21 MR. BROOKER: Certainly.

22 THE COURT: -- from 2016.

23 MR. BROOKER: So -- well, I'll end just simply by
24 saying, Your Honor, is is that according to *Henderson* that
25 that warrant is invalid. I would argue that it doesn't fit

1 in within the good faith exception and, even if it does fit
2 in the good faith exception, I think underneath *Krueger* if
3 you can show prejudice, then, of course, is is that --

4 THE COURT: You haven't shown any prejudice that I'm
5 aware of.

6 MR. BROOKER: I was about to say something in reference
7 to that.

8 THE COURT: Well, show the prejudice.

9 MR. BROOKER: And I think in *Henderson* basically is is
10 that it says is -- I think in *Henderson* when they issued the
11 -- not *Henderson*. I'm sorry.

12 THE COURT: *Kroger* [sic].

13 MR. BROOKER: Was it *Kroger*? In *Kroger* when they -- or
14 *Krueger* when they issued the invalid search warrant and they
15 got information on the -- on the assailant or the defendant,
16 once they got that information, they then I think went to the
17 defendant and says, okay, look at this information we got on
18 you and then, of course, that defendant then, based upon this
19 information that was received by the invalid warrant, was
20 then compelled to cooperate because he thought that they had
21 this validly -- they had this valid evidence, you know, that
22 was strong. So he then needed to -- to cooperate.

23 THE COURT: Okay.

24 MR. BROOKER: And of course, is is that they argued I
25 think in *Krueger* -- successfully argued in *Krueger*, you know,

1 that the fact that -- that -- that the defendant was
2 compelled -- that the government received some sort of an
3 advantage based upon that invalid evidence.

4 THE COURT: All right. Let's get to this case.

5 MR. BROOKER: Yeah, I'm getting to this case, Your
6 Honor. Received some sort of advantage based upon the -- the
7 -- the unlawfully obtained or the warrantless search that
8 created prejudice.

9 In this particular situation is that there was prejudice
10 created because, one, is that there was two search warrants
11 that was issued. Both of those search warrants would be
12 invalidated underneath *Kroger* -- excuse me -- underneath
13 *Krueger* and *Henderson*. Both of those search warrants, for
14 the AT&T records and for the Sprint records. And of course,
15 is I think you heard that Mr. Clements argued yesterday is
16 that once they got the AT&T records, the AT&T records was the
17 basis for them then receiving or asking the judge for a
18 search warrant for the Sprint records.

19 So the illegally gotten AT&T records, you know, gave
20 them justification which they included within the search
21 warrant for the Sprint records to -- to -- to try to satisfy
22 probable cause. So it gave them an advantage because I think
23 Ed Clements testified yesterday when they got the AT&T
24 records, they were able to look and see all of these deleted
25 numbers and, of course, they were able to compare it to the

1 phone, etc., etc., which then prompted them and I think it's
2 contained within the affidavit language then to go to the
3 judge and says we need to get the search warrant for this
4 number. And of course, is which means that it gave them some
5 advantage.

6 THE COURT: Okay.

7 MR. BROOKER: Thank you, Your Honor.

8 MR. HOEFER: Judge, quite honestly, I -- you know, all I
9 would be able to do at this point is argue the good faith
10 exception again.

11 THE COURT: Right.

12 MR. HOEFER: And I think that it's applicable. And
13 following that, I would argue that he has established no
14 prejudice, you know, and we would talking about the
15 exclusionary rule. The purpose of the exclusionary rule -- I
16 was mindful and I went back and looked.

17 Judge, I'm quoting from *U.S. v. Leon*, which is followed
18 by *U.S. v. McClam*, dealing with the issue of suppression of
19 evidence or the exclusion of evidence based on the
20 exclusionary rule, and the pertinent language is this.

21 The suppression of evidence is a judicially created
22 remedy designed to safeguard Fourth Amendment rights
23 generally through its deterrent effect rather than the
24 personal constitutional right of the party aggrieved.

25 So the exclusionary rule isn't to take care of Mr.

1 Williams' grievance about how this was handled. It's
2 designed -- if you exclude it, you have to find that the
3 deterrent effect is going to -- is going to somehow vindicate
4 the Fourth Amendment on a general basis, and I think that's
5 why the good faith exception is so -- is so important.

6 If -- if a magistrate issues a warrant, whether it's an
7 arrest warrant or a search warrant, and that warrant is
8 delivered to a law enforcement officer, by his oath he's
9 bound to serve that warrant, even if it's a bad warrant.
10 He's bound to serve it. He has no choice.

11 So in this case, we had a warrant issued by a judicial
12 officer. Rightly or wrongly, it was issued by the judicial
13 officer. These officers had no choice but to serve the
14 warrant, and that's exactly what they did. There is no --
15 there is no deterrent effect by excluding any evidence that
16 was received as a result of that. Quite frankly, I don't
17 agree that it was a defective warrant necessarily, but in
18 that -- in case you did, that would be our argument.

19 THE COURT: All right. Well, I haven't had a chance to
20 look deeply into any of these cases that you've submitted,
21 but it sounds like what you're saying is that all of these
22 telephone warrants that judges all over this state are
23 issuing are all invalid, and you may be right.

24 MR. BROOKER: They could be attacked under *Henderson*,
25 Your Honor.

1 THE COURT: Yeah.

2 MR. BROOKER: But they can -- they can -- they can issue
3 them. There's still a way in which you can comply --

4 THE COURT: Sure.

5 MR. BROOKER: -- to the Fourth Amendment by basically
6 taking and repatriating it in the State in which the place is
7 to be searched.

8 THE COURT: Right. And I -- you know -- and I don't
9 know this. Let's just assume. I mean I'm pretty confident
10 that's not happening, but -- and you very well may be right
11 on all that.

12 The -- regarding -- let me maybe take these a little out
13 of order. Let's see. No, we'll take --

14 I'm going to deny the motion to suppress the collection
15 of the buccal swabs and -- based upon the information and the
16 evidence presented during that search warrant. I think that
17 it does -- there is some conclusory-type language in that
18 warrant, but -- or in that affidavit, but it also sets forth,
19 I think, facts sufficient whereby the magistrate could have
20 issued that warrant or it was appropriate in issuing that
21 warrant.

22 As to the phone records, the Sprint, I'm going to deny
23 the motion to suppress. I -- the warrant was issued in 2016.
24 Obviously, in 2016, *Henderson* wasn't the law of the land, nor
25 was *Krueger*. So it was -- it was issued back then and I

1 don't think there's been any argument that at the time it was
2 issued that there was any -- any problem with it. The
3 records were received. It was later determined, sometime
4 later, that the wrong records were sent.

5 I don't know, at least in my view of the law and what
6 I've read, simply exchanging or swapping out the correct
7 records for the incorrect records pursuant to that initial
8 warrant would not require the issuance of an additional
9 search warrant. You're not looking for any additional
10 records. You're not looking for anything new. You're just
11 saying we need you to give us what you were obligated to give
12 us originally.

13 Now, as to the arguments regarding *Krueger* and
14 *Henderson*, I do believe that the good faith exception does
15 apply and, based on that, there's been no showing of
16 prejudice toward the defense. To my understanding, the
17 prejudice that was argued was if the AT&T warrant was
18 invalid, then the Sprint warrant would have been invalid and
19 they wouldn't have been able to get any of this stuff, which
20 therein lies the prejudice.

21 Well, I believe based on what I've read and what -- and
22 in applying the good faith rule, I think that the AT&T
23 warrant was valid. Therefore, the Sprint warrant was valid
24 and, therefore, there's been no prejudice shown.

25 So I'm going to deny those motions to suppress.

1 MR. BROOKER: And that's fine, Your Honor. Can I ask
2 you one thing, Your Honor?

3 THE COURT: Yeah.

4 MR. BROOKER: I think the -- the buccal swab motion I
5 think that was issued by Judge Brown, I think the one we
6 argued yesterday based upon the *Illinois v. Gates* conclusory
7 statements --

8 THE COURT: Right.

9 MR. BROOKER: Because then you said you're going to deny
10 that motion.

11 THE COURT: Correct.

12 MR. BROOKER: Then that also then deals with -- I think
13 last term of court you granted a continuance so that they
14 could re-swab him again for the Schmerber warrant and, of
15 course, is is that the question then becomes is is that if
16 the original warrant was valid, if the original buccal swab
17 warrant was valid, then, of course, is is that I think it
18 invalidates then the Schmerber order because is is that I
19 think underneath Schmerber is is that you can only get a
20 Schmerber DNA warrant in cases of necessity.

21 And I think basically what you're saying is is that
22 because you did not deny the -- the first warrant that
23 obtained his DNA -- DNA by buccal swab from Judge Brown,
24 then, of course, is is that there was no necessity then for
25 the Schmerber warrant that caused the case to be continued

1 last term of court so that the DNA could be redone all over
2 again, which means is is that I don't think you can have them
3 both. So if you're not going to invalidate -- if you're not
4 going to, I think, overturn the warrant that originally got
5 the -- obtained the DNA through Judge Brown --

6 THE COURT: Uh-huh.

7 MR. BROOKER: -- then it invalidates this Schmerber
8 warrant because there is no necessity for it.

9 But I think -- I thought that's the only reason why we
10 got a -- we granted -- there was a continuance last term of
11 court is because there was the belief that Judge Brown's
12 order for the buccal swab might be invalidated and they asked
13 for a continuance so they can then redo this all over again,
14 get another buccal swab and have a second examination. So we
15 would move then to suppress the examination that was done
16 pursuant to the Schmerber order because is is that it was
17 unnecessary.

18 THE COURT: All right.

19 MR. BROOKER: And also -- also, Your Honor, is is that
20 in addition to invalidating the Schmerber order based upon
21 that ground, we would also ask the judge -- of course, I will
22 make no argument about this. I'll just make a general
23 argument is that the Schmerber order was not supported by
24 probable cause and then also make a more specific argument is
25 -- and of course, if Your Honor wants to -- wants to -- if

1 it's un -- if it's undisputed, then, of course, we don't need
2 to take testimony from Mr. Williams, but I think the order
3 basically says -- the Schmerber order says the order to --
4 the order to provide the State and/or investigators with the
5 Florence County Sheriff's Department or their designee with
6 samples of his saliva and/or blood to be drawn by a qualified
7 medical technician so that said samples may be sent to SLED
8 for testing.

9 I think the Schmerber order required that his samples be
10 drawn by a qualified medical technician and, of course, is is
11 that the Schmerber swab was drawn by Investigator -- it was
12 taken by Investigator McClendon [sic] immediately after he
13 exited the courtroom and, of course, is is that, to my
14 knowledge, Investigator McClendon is not a qualified medical
15 technician to take the sample, as was required by the order.

16 So the buccal swab for the Schmerber order was also
17 taken in violation of the court order itself saying that it
18 had to be drawn by a qualified medical technician. So we
19 would ask the Court to suppress the DNA taken by buccal swab
20 pursuant to the Schmerber order on those grounds.

21 MR. CLEMENTS: Your Honor, the medical personnel is for
22 drawing blood, to draw blood by a medical person, somebody
23 trained to do that medically, or take a swab. Of course,
24 Clendenin is not a medical person, but he does not have to be
25 to take a swab. He does it all the time. So he wasn't going

1 to stick the man with a needle and try to draw his blood
2 because he didn't know -- he was not --

3 THE COURT: It was a less intrusive way.

4 MR. CLEMENTS: Sir?

5 THE COURT: It was a less intrusive way.

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: Taking the buccal swab.

8 MR. CLEMENTS: And, you know, we don't think that it
9 should be negated because, you know, we got -- we had the
10 case continued last time and we went ahead out of an
11 abundance of caution and got another set of swabs because we
12 were unsure at that time how the Court was going to rule, but
13 that was not the sole reason for continuing that case.

14 Your Honor, because -- if you recall, because of Mr.
15 Brooker's thorough and vociferous arguments on motions that
16 he made, legitimate -- legitimately made arguments, the case
17 had gotten to towards the end of the week and we would have
18 never finished it by the end of the week, and I had witnesses
19 that were going to be unavailable at the first of the next
20 week that had planned vacations. So there was no way we
21 could've completed the case and it was a multitude of
22 reasons, I think, why the -- why the Court continued that
23 case, not just for warrant --

24 THE COURT: Right.

25 MR. CLEMENTS: -- reasons.

1 THE COURT: Right.

2 MR. CLEMENTS: But we don't think that it should be
3 invalidated at all that he got a second set of swabs. They
4 were tested by the same gentleman. The difference is it
5 would be more beneficial for the economy of court time
6 because when the second set of swabs were taken by Andy
7 Clendenin, he went and took them directly and personally gave
8 them to John Barron, who is the DNA expert, and it cuts
9 people out of the chain that we would have to bring if we
10 choose to do that set of swabs instead of the first one.

11 THE COURT: All right. All right. I'm going to deny
12 the motion. Again, at the time, there was no ruling on the
13 initial argument and the case -- we did not have -- we would
14 not have had an opportunity to complete the case with the
15 witness schedule and the time that we were getting started.
16 The State made the motion. There was no ruling on the
17 initial, and so I don't see any issue or problem with that.

18 So -- all right. Anything else?

19 MR. CLEMENTS: Not from us, Your Honor.

20 THE COURT: Anything further from the defense?

21 MR. BROOKER: Nothing for us, Your Honor. Just -- just
22 for clarification. There's a -- there's a general denial of
23 all of our motions to suppress the -- the search warrants?

24 THE COURT: Well, I don't know if it's a general
25 denial. I've denied your motions.

1 MR. BROOKER: I'm sorry. I didn't mean a general
2 denial. I'm talking a denial on every last one of those
3 motions to suppress the search warrants?

4 THE COURT: Correct.

5 MR. BROOKER: On every last issue that we raised for
6 suppression of the search warrants?

7 THE COURT: Yes, sir.

8 MR. BROOKER: Thank you, Your Honor. Just -- just for
9 -- for the record.

10 THE COURT: All right.

11 MR. CLEMENTS: Your Honor, we do have one -- I'm sorry.
12 We do have one issue I'd like to take up at the bench right
13 now with Mr. Brooker, something that might need to be dealt
14 with.

15 THE COURT: Okay.

16 (WHEREUPON, a bench conference was held as follows.)

17 MR. CLEMENTS: Hold on. Let me get our case.

18 Your Honor, one of my witnesses has been threatened
19 several times by the defendant's mother on the phone talking
20 with her and text messaging back and forth, and she's here
21 from Virginia and she got this this morning.

22 THE COURT: Let's -- let's take this back there.

23 MR. CLEMENTS: Yes, Your Honor.

24 THE COURT: Because you -- you're kind of like me. You
25 whisper in a sawmill.

1 MR. CLEMENTS: You're right. Thank you, Your Honor.

2 (WHEREUPON, the bench conference ended and there was a

3 break in the proceedings from 10:46 a.m. until 11:06

4 a.m., after which the proceedings resumed as follows.)

5 THE COURT: All right. Anything before we get started

6 from the State?

7 MR. CLEMENTS: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. BROOKER: Nothing, Your Honor.

10 THE COURT: All right.

11 All right. Before we get started, I'm just going to say

12 some things generally. I'm not pointing out any one

13 individual, but I'm just going to tell you folks right now.

14 There may be bad blood, there may not be, I don't know,

15 but I'm hearing things and I'm not going to tolerate it from

16 anybody. Everybody's got opinions. Everybody's got issues

17 and things they deal with. You'd better not bring it into

18 this trial and into this court because I will lock you up if

19 you test me. I'm not going to tolerate it at all.

20 It better stop. That means this courtroom, these

21 hallways, this building, this property. I have no control

22 over you what you want to do out on the street, but I do have

23 authority over this property and I'm telling you now it

24 better stop on these premises.

25 I've got no control over you when you're in your

1 neighborhoods or in your communities, but I've got control
2 over this property and I'm going to tell you now. We're
3 going to lock people up if this -- this conduct that I'm
4 hearing going on, if it keeps going on, people are going to
5 jail. And if you don't believe me, if you think I'm just
6 blowing a lot of wind, test me on it. Now, I better not hear
7 any more about it.

8 All right. Let's bring the jury in.

9 This is a public forum. The public has the right to be
10 here. I have the authority to cancel that right. So if you
11 want to stay in this trial, if you want to be supportive of
12 the victims, defendant, if y'all want to show your support by
13 being here, then grow up and act like you're supposed to act
14 and you can be here, but that's not an unfettered right. So
15 I can have you removed and I will.

16 MR. BROOKER: Can I ask one question, Your Honor?

17 THE COURT: Yes, sir.

18 MR. BROOKER: Will witnesses -- will witnesses be
19 sequestered in this case?

20 THE COURT: Well, we haven't -- we haven't discussed
21 that. Is there a motion to do it or no?

22 MR. BROOKER: There's a motion to do it.

23 THE COURT: There is?

24 MR. BROOKER: Yeah. I don't want the witnesses in
25 listening to testimony or whatever.

1 THE COURT: All right. You can have your lead
2 investigator and --

3 MR. CLEMENTS: Your Honor, this was duly investigated at
4 the same time by Chad Collins and Thomas McFadden. So I
5 would need both of them because sometimes I need one of them
6 and sometimes I need another. So I need to be able to have
7 both of them, if that's okay.

8 THE COURT: I mean do you have any issue with that, with
9 those two?

10 MR. BROOKER: That's fine, Your Honor.

11 THE COURT: Everyone else though?

12 MR. BROOKER: Everyone else.

13 MR. CLEMENTS: That would include the defense witnesses
14 as well?

15 THE COURT: The defense witnesses as well, although I
16 don't think the defense --

17 MR. BROOKER: They're not going to be here until
18 Thursday.

19 THE COURT: Okay.

20 MR. CLEMENTS: Well, he had -- I think he had someone
21 else that was not an expert witness.

22 THE COURT: Kendrell Davis?

23 MR. CLEMENTS: Yes, sir.

24 THE COURT: But he said not until Thursday; right?

25 MR. BROOKER: Right.

1 THE COURT: Okay. Well --

2 MR. CLEMENTS: Is he here in the courtroom? She's here

3 in the courtroom. I would like to have her sequestered.

4 THE COURT: All right. If there's a motion for

5 sequestration, it goes both ways. So --

6 MR. BROOKER: Yeah.

7 THE COURT: Is there anyone else in here from the

8 State's witness list?

9 MR. CLEMENTS: Just our first witness, Your Honor.

10 THE COURT: Well --

11 MR. BROOKER: She's going to -- she's just the first

12 witness. If she's going to be the first, that's fine with

13 me. She can stay in the courtroom.

14 THE COURT: Yeah. Okay.

15 MR. BROOKER: Yeah.

16 THE COURT: All right. Well, Ms. Davis, out.

17 Thurmond, do you want to go arrange a place for Ms.

18 Davis to sit or . . .

19 (WHEREUPON, there was a pause in the proceedings, after

20 which the proceedings resumed as follows.)

21 THE COURT: All right. We're good? Okay. Bring them

22 in.

23 (WHEREUPON, the jury entered the courtroom at 11:10

24 a.m.)

25 THE COURT: Okay. Everyone, welcome back. I'm sorry to

1 keep you sitting back there for way longer than you needed to
2 be. I had a lot going on this morning, not just involving
3 this case but other matters, and I apologize for the delay in
4 getting started, but some of what we did this morning will --
5 will benefit us down the road. It'll make things go a little
6 quicker. So even though we took up some of your time this
7 morning, I'm sure we'll recoup it down the road as we proceed
8 with the trial.

9 A couple of things before we get started that I just
10 want to -- just kind of administrative type things. It's
11 very important throughout this trial that you are able to --
12 excuse me -- hear and see everyone and everything that is
13 being presented.

14 So if at any time during the course of the trial you
15 can't -- you can't hear a witness or one of the attorneys or
16 the Court or you can't see something that's being presented
17 if something is being presented, please don't hesitate to get
18 my attention and let me know. We can have that witness or
19 that attorney or the Court speak up louder. We can have --
20 we repeat what was said. It's important that you hear
21 everything. Okay?

22 So -- and the only way I know that that's happening is
23 if you communicate with me. So don't hesitate. If you need
24 to wave your hands or stand up or whatever, get my attention
25 if you need -- need to.

1 Also, I hope you're -- I hope you're comfortable. We
2 try to -- you know, when you've got a group of folks, you
3 can't make everybody happy when it comes to temperature. So
4 you try to set it at a temperature that -- that everybody can
5 be relatively comfortable at and I hope that's what we've
6 done, but if you are extremely uncomfortable, let me know and
7 we'll see if we can fix that.

8 At any time during the course of this trial, folks, we
9 can take a break whenever you want. Now, we'll take some
10 scheduled breaks throughout the course of the trial, but, you
11 know, there are -- there are times when you may need a break
12 and I'm not aware of it. If you'll let me know, if you'll
13 get my attention or get Ann's attention and let us know that
14 you need to take a break, we can stop and take a break.

15 I would rather -- even in the middle of someone's
16 testimony, we can always pick up where we left off, but I
17 would rather you go ahead and tell me if you're uncomfortable
18 or if you need to use the restroom or something like that.
19 We can do that and I'd rather do that and pick up where we
20 left off rather than you sit there being uncomfortable
21 because then possibly your mind is not focused on the
22 testimony. It's on your being uncomfortable.

23 So rather than letting that occur, we can take breaks
24 anytime we need to. So don't hesitate to let me know if you
25 need a break. Okay?

1 So having -- oh. And at some point, I'm going to ask --
2 I'm going to appoint one of you to serve as the foreperson of
3 the jury, but until that point, there are no -- there's
4 really no assigned seating in the jury box other than for the
5 two alternates. You will always occupy those two seats. And
6 then for the foreperson, who will occupy this first chair
7 whenever I get around to doing that.

8 But other than those three seats, you can sit anywhere
9 you're comfortable or anywhere you -- like, you flow in and
10 out. I guess what I'm saying is you don't have to sit where
11 you're sitting right now. That's not an assigned seat. Now
12 -- and so that will avoid you having to crawl over each
13 other, depending on what order you come in and out.

14 So having said those things, I'm going to turn it over
15 now to Madam Clerk. If you would give her your attention,
16 she's going to place you under your oath for your role as
17 jurors in this case.

18 THE CLERK: Jurors, would you please stand? Please
19 raise your right hands.

20 You shall well and truly try and a true deliverance make
21 between the State of South Carolina and the defendant at bar,
22 whom you shall have in your charge, and a true verdict render
23 according to the law and evidence, so help you God.

24 THE COURT: All right. Thank you, ladies and gentlemen.
25 Well, we are ready to begin the case of the State of

1 South Carolina versus Royal Williams. Before we get started
2 too deeply, let me share a few things with you.

3 I don't know if any of you have ever actually sat in on
4 an actual jury trial before. You may have had that
5 experience through prior jury service, but I would tell you
6 that the vast majority of people in this country never have
7 the opportunity to do what you're doing this week and that is
8 to sit in on an actual jury trial. Most people's experience
9 regarding jury trials are what they've watched on TV or in
10 the movies or what they've read in books. We all know that
11 those trials are always full of high drama and intense
12 action. Those -- that's Hollywood's effort to entertain you.

13 Now, during the course of this trial, any one of those
14 things could occur, but what's important to understand in
15 this trial is that this trial is not for your entertainment.
16 This trial is a fundamental part of our democracy. And
17 unlike the movies, books, and television, this trial may --
18 it may be fast. It may be slow. It may be deliberate. It
19 may be repetitive. In other words, it's very different from
20 what you may have seen on TV, read in books or seen in the
21 movies.

22 This courtroom is a place of honor that is dedicated to
23 the protection and to the preservation of citizens' rights
24 through what many people have called the greatest justice
25 system ever created. The attorneys that appear before you

1 are advocates for the parties that they represent, but first
2 and foremost, they are officers of the Court sworn to uphold
3 the integrity and the fairness of our judicial system. You
4 should expect them to be professional, competent, and ethical
5 in the performance of their duties.

6 Now, you've just taken an oath to try this case and to
7 reach a fair and a just verdict and so you are also expected
8 to be professional, reasonable, and ethical in the
9 performance of your duties. I don't have any question that
10 you will do just that and I want to thank you for your
11 contribution to our system of justice here in Florence
12 County.

13 I'm going to share a few things with you. This is not a
14 charge on the law. I will give you the law that is
15 applicable to this case at the -- at the close of the case,
16 but I'm going to share a few things with you that'll maybe
17 help you follow along easier with what we're going to be
18 doing over the next several days.

19 Mr. Williams is charged, as you heard yesterday, by the
20 indictment that I read to you with the charge of murder. The
21 elements of that charge or of that crime I will give to you
22 when I charge you on the law, but as I told you yesterday,
23 the indictment is simply the charging document which brings
24 this case into court. It is not in any sense evidence in
25 this case, nor is it evidence of any of the allegations which

1 it contains.

2 Mr. Williams has pled not guilty to that indictment and
3 the State, therefore, has the burden of proving each of the
4 elements of that indictment beyond a reasonable doubt. It
5 will be your duty, ladies and gentlemen, to decide whether or
6 not the State has met that burden.

7 Your purpose as jurors is to find and to determine the
8 facts of this case. You are the sole judges of the facts in
9 this case. If at any time I make any comment regarding the
10 facts or the evidence, you must disregard those comments
11 because only you, the jury, are allowed to decide what the
12 facts are in this case.

13 You do that and you determine those facts from the
14 testimony that you hear from witnesses who are placed under
15 oath and take the witness stand, as well as any other
16 evidence that may be introduced during the course of the
17 trial. It is going to be up to you to determine which
18 inferences that you feel are properly to be -- are to be
19 properly drawn from that evidence. It is especially
20 important that you perform your duty of determining the facts
21 diligently and conscientiously because ordinarily there's no
22 way that the Court can correct an erroneous determination of
23 facts by a jury.

24 Now, on the other hand but with equal emphasis, the same
25 law that makes you the judges of the facts makes me the judge

1 of the law. The law as given by this Court is the only law
2 that you may consider. You must accept it and you must
3 follow it, even though you may disagree with it. I'm not
4 allowed to tell you what I think about the facts or the
5 evidence in this case and you're not allowed to disagree with
6 me about what the law is or what you feel the law should be.
7 Your job is to take the law as I give it to you and apply it
8 to the facts as you determine the facts from the evidence
9 that is presented during the course of this trial.

10 Now, it is very important that throughout this trial
11 that you keep an open mind and you do not decide any issue in
12 this case until all of the evidence has been presented, the
13 attorneys have had an opportunity to address you with their
14 closing remarks, and I've given you the charge on the law.
15 Only then is it appropriate for you to have any conversation
16 about this case.

17 It is your solemn responsibility to determine the guilt
18 or the innocence of the defendant, and your verdict in this
19 case must be based solely upon the evidence as it is
20 presented during the course of this trial and on the law as I
21 instruct you during the close of the trial.

22 Now, in just a moment, I'm going to recognize the State
23 for an opening statement. I don't know what will be shared
24 with you, but typically what's shared in an opening statement
25 is what the State believes the evidence in this case will

1 show. Once they have concluded their opening remarks, I
2 would recognize the defense for any opening remarks, if they
3 wish to make an opening remark. They are not required to,
4 but they certainly are entitled to.

5 The thing that's important to understand about the
6 opening remarks of the attorneys is this. What they're going
7 to share with you is not evidence. They are not under oath.
8 They are not testifying. What they're sharing with you is
9 their beliefs or their thoughts about what they think the
10 evidence in this case will show.

11 The evidence in the case, the evidence that you're going
12 to need to decide this case, will be based solely by the
13 witnesses that are placed under oath and testify, as well as
14 any exhibits that may come in during the course of the trial.

15 Now, during the course of the trial from time to time,
16 you may hear one of the attorneys say something along these
17 lines. Judge, we have a -- we have a matter of law we need
18 to take up with the Court, or, Your Honor, may we approach
19 the bench. If I can resolve a matter of law up here at the
20 bench and allow you to remain where you're at, I will do
21 that, but sometimes it's an issue that I have to go into
22 maybe greater detail about and so it may be that I have to
23 consider either the evidence that's presented or the
24 testimony that was presented in arriving at a decision on a
25 matter of law and it may require me to make comments about

1 that evidence.

2 As I told you earlier, I'm not to have any influence
3 over you regarding the evidence in this case. So when I'm
4 having to deal with a matter of law, I may need to ask you to
5 step back into the jury room, let me resolve the legal issue
6 and, once that's resolved, bring you back out and we'll pick
7 up where we left off.

8 It is -- in determining what the true facts of this case
9 are, you're going to have to decide whether or not the
10 testimony of a witness is believable. It's going to be my
11 job to rule as a matter of law whether certain testimony is
12 allowed into this record or not, but once testimony is
13 allowed into this record, whether or not you believe it is
14 solely up for you to decide.

15 In deciding whether to believe a witness, you have the
16 right to consider the interest of a witness, the bias of any
17 witness, the opportunity for that witness to have seen the
18 matters and the things about which they testify, and the way
19 the witness acts on the witness stand. You have the right,
20 ladies and gentlemen, to consider anything in this record
21 that will help you to evaluate the testimony of the
22 witnesses. That means that it is your duty and it's very
23 important that you listen carefully to the witnesses, observe
24 the witnesses, listen to them in their responses to the
25 attorneys, listen to the attorneys as they question the

1 witnesses.

2 Pay close -- pay close attention to all of the evidence
3 in this case. Try not to let your thoughts wander, but pay
4 close attention to all of the evidence so that at the end of
5 the evidence after the lawyers have had an opportunity to
6 address you with their closing remarks and I've given you the
7 charge on the law, you will then be in a position to go back
8 into your jury room and begin your deliberations in deciding
9 this case.

10 Now, before I turn it over to the attorneys, let me
11 first inquire from the State are there any objections or
12 exceptions to the Court's opening remarks?

13 MR. CLEMENTS: None, Your Honor.

14 THE COURT: Any from the defense?

15 MR. BROOKER: None, Your Honor.

16 THE COURT: All right. Thank you, gentlemen.

17 Now, ladies and gentlemen, I'm going to turn it over to
18 the attorneys. If you would, please give them your undivided
19 attention as they address you with their opening remarks.

20 Solicitor?

21 MR. CLEMENTS: Thank you, Your Honor. If it pleases the
22 Court?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT ON BEHALF OF THE STATE

25 MR. CLEMENTS: Good morning, ladies and gentlemen. We

1 are here today because of a murder on January 23rd, 2016, out
2 on Century Drive right off of Southborough Road here in
3 Florence County where Ms. Sherilyn Joseph lived in an
4 apartment.

5 She got off work. She usually goes straight home.
6 Nobody begins to hear from her. They hadn't heard from her
7 in a long time. People are calling and she doesn't answer.
8 People are texting and she doesn't respond. Her mother is
9 real worried about her.

10 So finally it gets later in the evening and Ms. Patricia
11 Stewart, Sherilyn's mother, goes to 3618-A Century Drive and
12 her car is there. Sherilyn's car is there. She goes up.
13 The door is not locked. She walks in.

14 She walked in the dark, calling. She bumps into
15 something. She cuts the light on and she finds it's her
16 daughter laying in the floor still in her work clothes, shot
17 with a single gunshot wound in the head. She calls 9-1-1
18 immediately and talks with them and does what they tell her
19 to try to do. She tries to give her CPR. She knows it's not
20 going to do any good.

21 And then the police arrived. The Sheriff's Department
22 responds. The coroner responds and then the investigation
23 begins.

24 What you're going to be hearing today is an attempt for
25 us to answer the question not of what happened because we

1 know what happened. The facts are pretty clear and the
2 evidence is pretty clear there, but what we have to present
3 and you have to answer is whodunit.

4 And the State has charged Royal Williams here. He's
5 sitting here with his attorney, Mr. Brooker. Mr. Williams is
6 -- just like he's got that white shirt on right now, he is
7 clothed with a presumption of innocence. Our law says that
8 everybody that's accused of a crime is presumed to be
9 innocent and then the burden is on the State.

10 The sole burden is on me representing the State of South
11 Carolina that I have to prove Mr. Williams is guilty beyond a
12 reasonable doubt. In other words, like I said, he's clothed
13 with that presumption of innocence. I've got to take that
14 off of him and remove that and show that he is guilty beyond
15 a reasonable doubt.

16 Well, how am I going to do that? The judge said that in
17 my opening statement I'm going to tell you what I feel like
18 the evidence shows and that's what I'm about to do. I want
19 to tell you what I think the evidence shows.

20 Number one, I think the evidence shows that there was no
21 signs of forced entry. The door was unlocked when Ms.
22 Stewart walked in, and law enforcement came and they checked
23 it out. There was no evidence anybody forced their way in.
24 There was no signs of a struggle. All this is indicative of
25 somebody was there that had a right to be there, that she was

1 comfortable being there with or that she knew the person.

2 And then she got shot in the head and what is revealed
3 there by the evidence they found was they found one wound to
4 the head and they found a comforter and a pillow that had a
5 hole through it with what looked like gunshot powder burns
6 and it was used to put between the gun and her head and
7 muffle the sound or whatever, but there was no stippling, no
8 soot. You'll hear the pathologist talk about that. Nothing
9 on her head, which shows there was something in between her
10 head and that gun that that bullet had to go through, but
11 that the soot and the stippling could not.

12 She was there for a while. The coroner came. He
13 checked out many things. He checked out her lividity,
14 checked out whether there was rigor mortis beginning to set
15 in to figure out about what time Ms. -- Ms. Sherilyn Joseph
16 was killed. They concluded it was approximately around 4
17 o'clock.

18 When law enforcement came, they came and Investigator
19 Thomas McFadden and Investigator Chad Collins worked as a
20 team on this investigation, and when they came they began to
21 look around to see what could they find. So Ms. Joseph's
22 phone was there, and Thomas McFadden said there's probably
23 some information there that would be valuable. He began to
24 look in the phone. He found addresses. He found some phone
25 numbers. He found some names and he began to investigate.

1 There were a lot of names of people he had to check into and
2 investigate and rule out.

3 So he started working from that angle and his partner,
4 Chad Collins, started working from another angle. He got a
5 tip that there was a neighbor who had surveillance cameras
6 that might've shown something. So he goes to the house with
7 the surveillance cameras and talks with the man there, and he
8 looks at what was on the cameras and the man agreed for Chad
9 Collins to take it back to the Sheriff's Office.

10 He gave it to Andy Clendenin, who you will hear from.
11 He copied that video so Chad could take it back to the
12 gentleman and his surveillance cameras could be back working.
13 But it showed the comings and goings right there where you
14 turn off Southborough and Century Drive, which is just a
15 little small cul-de-sac with some duplexes there.

16 You see something coming around the time frame that we
17 think might've been the key time frame. It was a cab that
18 came. It pulled up and so Chad Collins began to check with
19 the cab companies to see if he could find any call logs,
20 anybody going to that particular spot.

21 Well, he couldn't find one to begin with and then he
22 narrowed his field down to cabs that were shaped like a van.
23 And he checked Florence, nothing. He checked Darlington and
24 he found that they got a call for a cab to go and pick
25 someone up and take them to Darlington to the Plum Street

1 area along Doneraile, and this was right at the time frame of
2 when this event occurred or right shortly thereafter and they
3 let that person out.

4 They didn't know what his name was, but when they came
5 to question the passenger that was in the van that had the
6 best look at Mr. Williams, who sat right beside him, they got
7 with the SLED forensic artist and did a sketch, a forensic
8 drawing, and that forensic drawing -- a lot of people looked
9 at it and they had the name Royal Williams.

10 And so from that point, Investigator McFadden kept
11 working and talking with the individuals that were there that
12 witnessed what went on, that were in the area where he was
13 dropped off and checked out some of the addresses that were
14 in the victim's phone, and everything was leading back and
15 pointing to Royal Williams.

16 Then on the other side of the phone issue, Investigator
17 Collins got all of the records for Ms. Joseph's phone and
18 began to look and see what -- what was happening in there
19 that could be examined to see what was the context in the
20 time frame and began to see a number that was in the phone
21 records many, many, many times, but was deleted out of her
22 phone.

23 And they checked those numbers and they found out that
24 those numbers they thought were very important. So then they
25 got the records for that number and began to make

1 comparisons, and you'll hear that there were hundreds of
2 contracts in a short period of time from the phone whose
3 number went back to Royal Williams and Ms. Joseph's phone,
4 many, many calls, but then all of a sudden they stopped.

5 Around about the time of the death, there were no more
6 phone messages, no more attempted calls, nothing between
7 those two numbers, but everybody else was calling all that
8 afternoon trying to get in contact with her and that evening
9 and they couldn't until Ms. Stewart went to find out what
10 happened to her daughter.

11 But all those people kept calling. They didn't know
12 what was going on, but there was one number that didn't call
13 anymore and that was the number of Royal Williams. Those
14 communications, those attempts at communications stopped dead
15 in their tracks right there. I believe that evidence is
16 going to show that a person that knows somebody is dead is
17 not going to keep calling their number.

18 There was an examination of her apartment to see if
19 there was any evidence. I told you there was no signs of
20 struggle, no forced entry. One thing they noticed was they
21 noticed a condom in a trashcan in a trashcan liner and they
22 took that condom and they submitted it to a lab, Richland
23 County crime lab at the Sheriff's Department there, and they
24 developed an unknown male standard and they developed another
25 standard that matched Sherilyn Joseph. So her DNA is on that

1 condom. Later, law enforcement, Mr. McFadden and Andrew
2 Clendenin, they go and they get swabs from Mr. Williams and
3 those swabs are taken to the same lab and compared, and it is
4 linked to Royal Williams on that condom.

5 There were also swabs taken from Ms. Sherilyn's car,
6 which was there, left there with her dead body. It was taken
7 in to impound at the Sheriff's Office. They took the car to
8 the impound at the Sheriff's Office and they examined it and
9 they developed some swabs from a head rest on the passenger
10 side front seat and from the door handle on the passenger
11 side front seat and they developed standards there. And then
12 when they got Mr. Royal Williams' standards and compared it,
13 it was linked to him. Those were those DNA swabs.

14 So we've got DNA, we've got phone records, we've got
15 people that ID'd him by the way he looked and then later that
16 identification was more complete when the name was added.
17 And my burden is beyond a reasonable doubt I've got to prove
18 to you whodunit.

19 But when you hear all of this evidence in its entirety,
20 when you listen very carefully and critically, I would ask
21 you to be critical of everything you hear, listen to it
22 closely, check it out. When you do, when we get to the end
23 of this trial and you see all of the evidence the State has
24 put up against Mr. Royal Williams and you say did he do it
25 beyond a reasonable doubt, I believe your conclusion is

1 absolutely yes that Mr. Williams took Sherilyn Joseph's life
2 that evening, January 23rd, 2016, that afternoon, by taking a
3 gun, coming up to her in her house with a cushion, a pillow
4 and a comforter, held it up to her head and shot her, and
5 then called a cab and left. And that, ladies and gentlemen,
6 is guilty, guilty beyond a reasonable doubt of murder.

7 Murder is defined as when you take someone's life with
8 malice aforethought. The judge is going to tell you more
9 about that when he charges you on the law at the end of this
10 case, but you can look at the evidence and see we know who
11 did it. We know Royal Williams. We know he took her life.
12 We know it was done with malice aforethought. He's guilty
13 beyond a reasonable doubt of murder.

14 Thank you, ladies and gentlemen.

15 THE COURT: Thank you, Solicitor.

16 Mr. Brooker?

17 MR. BROOKER: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

20 MR. BROOKER: Good morning, ladies and gentlemen.

21 You often hear and it's often said that the criminal
22 justice system in the United States is the greatest system in
23 the world, and I don't dispute that. You hear it all the
24 time. It's the greatest system.

25 But one of the things that I always tell people is is

1 that that statement has to be said with a caveat, and what
2 that caveat is is that it's the greatest system in the world
3 if the principles in which that system are based upon are
4 properly applied by the Court. Our criminal justice system
5 is only as good as the principles in which the system is
6 based and as good as the application of those principles.

7 And of course, if those principles are not applied or if
8 they're in -- or if they're applied incorrectly, then we're
9 not the greatest system in the world. The system doesn't
10 work.

11 Now, the reason why I'm saying that to you is that if
12 you remember during jury selection I think there was
13 something like 87 jurors here and of those 87 people, you
14 twelve were selected along with the two alternates and, of
15 course, there's a reason for that.

16 The reason in which you were selected in exclusion of
17 all the other people is that both parties, the government and
18 the defendant, thought of all those 87 people that you group
19 would be the best to apply those principles and apply them
20 correctly. That you would understand those principles,
21 understand the importance of them, know what they mean, and
22 apply them correctly so that our greatest system in the world
23 works properly. Okay. So that's the pressure on you.

24 Now, one of those principles that make our system the
25 best in the world -- and of course, you heard Mr. Clements

1 mention a few of them. It's the presumption of innocence or
2 innocence until proven guilty, and we've probably -- I'm
3 pretty sure that y'all have probably heard that a million
4 times, you know, in television, movies, television shows, *Law*
5 *and Order* and all that sort of stuff, *CSI*. It's one of the
6 most important systems -- excuse me -- important principles
7 within our judicial system, but unless that principle is
8 applied and applied correctly, justice is not achieved and
9 the system is not great.

10 Now, what does proof beyond a reasonable doubt means
11 [sic] or either the presumption of innocence? What that
12 means is is that Royal Williams, who sits right here, is
13 presumed to be as innocent as anybody in this courtroom of
14 the charge in which he's charged with. He's charged with
15 murder.

16 Right now, in your mind when you look at Mr. Williams,
17 you have to assume that he's innocent. You can't apply any
18 sort of assumption to the fact that he sits here at the
19 defense table and that he's been accused. Millions of people
20 -- we have millions of criminal trials across this country
21 every year, millions of people are accused of crimes, some
22 innocent and some guilty, but they're accused. So the fact
23 that he sits there, you can apply no presumption to that.
24 You have to presume that he's innocent.

25 That's the first important principle that you have to

1 apply and you have to apply correctly, and that presumption
2 doesn't just rest with him right now. That presumption rests
3 with him throughout the course of the trial. So as witnesses
4 are getting on the stand and witnesses are testifying, every
5 time that you look over at Royal Williams, you have to
6 presume him to be innocent.

7 That presumption only leaves after this trial is
8 completed, the judge has given you your instructions, that
9 you've went into the jury room, you have thoroughly
10 deliberated what the State has provided, and you reach the
11 conclusion that the evidence is sufficient to remove that
12 presumption, but up until that point, opening arguments, the
13 trial of this case, closing arguments, every time you look at
14 Royal Williams, you have to presume that he's innocent.
15 That's the first important principle and you have to
16 understand that because.

17 The second principle that Mr. Clements also mentioned is
18 proof beyond a reasonable doubt and, of course, is if you've
19 ever saw any -- again, any movies or law enforcement or
20 television shows involving law enforcement or trials or
21 anything like that, then you understand in criminal cases the
22 burden is proof beyond a reasonable doubt.

23 It's the highest burden that we have in our judicial
24 system. It's higher than the burden that you would find in
25 civil court or either in any other court in the United

1 States. It is the highest and it should be the highest and
2 the reason why is is that criminal trials are the most
3 serious trials that we have because criminal trials, unlike
4 civil trials -- I mean civil trials involves money and
5 property. Criminal trials involves people's life and
6 people's freedom. That's why the standard is so high. It's
7 proof beyond a reasonable doubt. That is the standard. It's
8 the highest it gets. There is no higher in the land.

9 The judge is going to instruct you about what proof
10 beyond a reasonable doubt means at the conclusion of this
11 case and he's going to instruct you is is that it is a -- his
12 instruction is going to reveal it's a high burden. It's the
13 highest that we have because we're seeking to remove
14 someone's freedom, sometimes even someone's life. It has to
15 be high.

16 Now, that burden of proof beyond a reasonable doubt, Mr.
17 Clements also said this correctly. It rests entirely with
18 the State, with the government, and what that means is is
19 that Royal Williams doesn't have to prove his innocence. No
20 citizen does. No citizen has to prove to the government I'm
21 innocent of something. No citizen has to prove that
22 underneath our South Carolina Constitution and underneath our
23 Federal Constitution. The burden of proving someone --
24 someone's guilt beyond a reasonable doubt rests entirely with
25 the State. It's with the government, and they have to

1 satisfy that high burden.

2 At no time should you ever look over at Mr. Royal
3 Williams and say how is Mr. Williams going to respond to
4 that. That piece of evidence that we just heard on the
5 stand, what's the response to that? Mr. Williams doesn't
6 have to prove his innocence. He doesn't have to say a word.
7 The burden is never on the defendant to prove their
8 innocence. It's entirely on the government.

9 And why is that? Well, it's because, one, is is that
10 the government is seeking to remove something that's valuable
11 to its -- from its citizens in a criminal case, seeking to
12 remove their freedom or their life. So they're seeking to
13 remove that. The burden is on them.

14 The next thing is that oftentimes is is that it's
15 difficult to prove your innocence. It's difficult to prove
16 your innocence, but this burden underneath our Constitution
17 rests entirely upon the government. Mr. Williams doesn't
18 have to do anything. He doesn't have to lift a finger. They
19 have to do that.

20 Now, these are some important principles and I've
21 mentioned them to you is because unless you apply them
22 correctly -- unless you apply them correctly, then justice
23 will not be had in this courtroom.

24 You can't be guided by emotion or sympathy. You have to
25 strictly look at the evidence and at the -- at the conclusion

1 of this case, you have to look at the government and say to
2 the government have you proved beyond a reasonable doubt that
3 the person who took Ms. -- Ms. Joseph's life is Royal
4 Williams beyond a reasonable doubt that it's him and nobody
5 else, it's him, and I think at the conclusion of this case
6 that you'll find that that's not true.

7 Now, the State talks about evidence that it's going to
8 present. I think the State -- the government says that they
9 have cell phone records, that they have DNA records, that
10 they have DNA, and they have witnesses.

11 Listen closely to the evidence because it's your job to
12 scrutinize that evidence, every bit of it. And every time a
13 witness is testifying, every time evidence is presented, does
14 that evidence satisfy the burden? Does it meets [sic] proof
15 beyond a reasonable doubt that the person who killed Ms. --
16 Ms. Joseph is Royal Williams?

17 Now, the government says -- the government says that it
18 has cell phone evidence. Does that cell phone evidence -- I
19 think the government says that -- says that on the day on
20 which Ms. -- Ms. Lynn [sic] was murdered that she went to
21 work, that she had come back from work, and that -- that it's
22 believed that she was killed around 4 o'clock and that around
23 that time is is that someone called a taxicab and was picked
24 up from Ms. Lynn's apartment by a taxicab.

25 So I imagine the government has to prove to you that,

1 one, that that person who was picked up beyond a reasonable
2 doubt was Royal Williams and that Royal Williams committed
3 the murder beyond a reasonable doubt. And of course, is is
4 that if they prove that beyond a reasonable doubt, then you
5 vote guilty because that's what guilty means. Guilty means
6 that the government has proved its case beyond a reasonable
7 doubt. That's what guilty means.

8 If at the conclusion of its case you says [sic] the
9 government has not met that high burden, then you have to
10 vote not guilty, and that's what not guilty means. And the
11 reason why I say this to you is is is that sometimes I think
12 some jurors confuse what the definition of not guilty is.
13 Sometimes the jurors think, well, if I vote not guilty, then
14 what I mean -- then what that means is is that I'm saying
15 that the person is innocent.

16 The person may be innocent, but that's not what you're
17 asked to decide. That's not what your job is. Your job is
18 not to determine whether or not -- you know, whether or not
19 he is innocent. Your job is to proven [sic] whether or not
20 he's been proven -- whether or not he's been proven -- guilt
21 has been proven beyond a reasonable doubt.

22 Now, if at the conclusion of this case if you says,
23 well, the government has presented a lot of circumstantial
24 evidence, it could be Royal Williams or it could not be Royal
25 Williams, I don't know that beyond a reasonable doubt, that's

1 the definition of not guilty. That the government has not
2 satisfied that burden beyond a reasonable doubt. That's what
3 not guilty means.

4 Like I said, at all times the burden rests with the
5 government. This is not a -- this is not a proof of
6 innocence. This is a proof of guilt in which the government
7 has to prove.

8 And of course, is that I would submit to you that after
9 you've listened to all of the evidence that the government
10 presents -- intends to present and, of course, the lack
11 thereof, I think you're going to notice there's a lot of
12 holes in this evidence. So I think you will find that that
13 burden has not been satisfied, that they have not proved
14 beyond a reasonable doubt that the person who took Ms. Lynn's
15 life is Royal Williams.

16 I have one last thing to say to you and I'll sit down
17 and, of course, we'll start taking the testimony, and it's
18 something very important that Judge Russo said that I always
19 remind jurors of this in any criminal trial I've -- I'm
20 involved in. I do quite a bit.

21 And that is that the role of lawyers in the courtroom,
22 what my role is and, of course, what Mr. Clements' role is
23 and Mr. Hoefer's role is as attorneys is is that the job of
24 an attorney in the courtroom is a facilitator and I would
25 argue is is that it's the same job of the judge.

1 Our job is is to -- is to facilitate the orderly
2 presentation of evidence to you or either lack of evidence to
3 you so that you can digest that and make a determination as
4 to whether or not proof beyond a reasonable doubt exists or
5 whether or not the government has not proved proof beyond a
6 reasonable doubt.

7 But at no time you should ever -- you should ever
8 consider what I say or what Mr. Clements say or what Mr.
9 Hoefer say as evidence. We didn't witness anything. We're
10 facilitators, is is that we're here to try to present this
11 case to you in a way in which you can make a decision. So
12 don't confuse us as being witnesses.

13 Is at this particular point in time, you have heard zero
14 evidence. What you've been given is just promises. Now you
15 have to sit back and listen to see whether or not the
16 government can satisfy those promises it's made to you, but
17 you haven't heard any evidence yet. So don't be confused and
18 that is the opening arguments and also the closing arguments.
19 Don't ever consider what we says [sic] as evidence. It's
20 not. It's not evidence.

21 Some people might even say the lawyer's job is to twist
22 the evidence. We're not witnesses. I was not present for
23 the murder of Ms. Joseph. Mr. Clements was not present for
24 the murder of Ms. Joseph. Mr. Hoefer was not present for the
25 murder of Ms. Joseph. The judge was not present at the time

1 Ms. Joseph was killed.

2 We're not witnesses. So don't ever get confused by
3 that. Witnesses will come -- come in the form of -- excuse
4 me. Evidence will come in the form of witnesses from the
5 stand and it will come in the form of exhibits, nothing more.
6 That's what you are to base your decision on. Nothing else.

7 Of course, the judge also has the unique role of also
8 instructing you on what the law is and so that's an
9 additional role he has is that he's going to tell you what
10 the law is that you must apply at the conclusion of this
11 case.

12 Thank you very much for your time and please, please
13 listen. Please, please understand the concepts of
14 presumption of innocence. Please try to understand the
15 concepts of proof beyond a reasonable doubt and understand
16 who that burden at all times rests on.

17 Thank you very much.

18 THE COURT: Thank you, Mr. Brooker.

19 MR. BROOKER: Thank you, Your Honor.

20 THE COURT: Solicitor, you may call your first witness,
21 sir.

22 MR. BROOKER: Thank you, Your Honor. We'd call Ms.
23 Patricia Stewart.

24 THE COURT: Ms. Stewart, if you'd please come around to
25 be sworn, ma'am.

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 THE CLERK: Ma'am, please place your left hand on the
2 Bible and raise your right hand. Do you swear that the
3 testimony you will give in this case will be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: You may be seated in the witness stand and
7 please state your name for the record.

8 THE WITNESS: My name is Patricia Stewart.

9 PATRICIA STEWART, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CLEMENTS:

13 Q: Ms. Stewart, I'm going to ask that you sit up close to
14 that microphone and kind of face the jury. Ms. Stewart, can
15 you please tell us what relationship you had with Sherilyn
16 Joseph?

17 A: Sherilyn Joseph was my daughter.

18 Q: And did she have any children?

19 A: She has one son.

20 Q: Did she have a job?

21 A: She was working at Starbucks.

22 Q: And who helped take care of her child when she was
23 working at Starbucks?

24 A: I did.

25 Q: Do you remember back to January 23rd, 2016?

1 A: Yes.

2 Q: Can you tell us what you were doing that day?

3 A: I was taking care of her son.

4 Q: And she was at work that day?

5 A: Yes, she went to work that day.

6 Q: Can you please tell the jury what was her normal routine
7 and your normal routine regarding her work and childcare?

8 A: Her normal routine was she would drop her son off in the
9 morning and pick him back -- and while she was at work, she
10 would usually FaceTime him or come by, but that morning she
11 didn't call him, FaceTime him, none of those things.

12 Q: Okay. And normally when she would get off work, what
13 time did she normally get off work or did it change around
14 based on --

15 A: It changes around. So she could get off, like, two or
16 she could get off, like, three.

17 Q: Do you know what time she was supposed to get off that
18 day?

19 A: No, I didn't know what time she got off that day.

20 Q: Was it afternoon or evening?

21 A: I don't know because I -- the last time I saw my
22 daughter was the Friday before.

23 Q: And how many days before was that?

24 A: That -- that was on the 22nd --

25 Q: Okay.

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 A: -- when she came.

2 Q: The day before?

3 A: Yeah, the day before.

4 Q: Okay. And she had dropped her son off?

5 A: She -- the son was with me from that day.

6 Q: Okay.

7 A: Because she couldn't take --

8 Q: He spent the night with you?

9 A: He spent the night with me that Friday night.

10 MR. BROOKER: Your Honor, just to be safe, you know,
11 maybe involve or make an objection based for leading so we
12 can just establish right now and ask that, you know, Mr.
13 Clements not lead the witness, but just ask the questions and
14 she'll answer.

15 THE COURT: All right. Make sure you're asking non-
16 leading questions.

17 MR. CLEMENTS: I'll do my best, Judge.

18 THE COURT: All right. Thank you.

19 BY MR. CLEMENTS:

20 Q: What did I just ask you last?

21 A: What time was -- I'm not sure. Repeat the question.

22 Q: He spent the night with you?

23 A: Yeah. He spent the night with me that Friday night.

24 Q: Okay. All right. Can you tell us what happened that
25 next day when you began to feel any type of alarm or

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 puzzlement or began to wonder about where she might be?

2 A: That Saturday, the 23rd, which is the Saturday, she
3 didn't call. It was kind of strange to me that she didn't
4 call her son because she was very protective over her child.
5 So she didn't call him that day at all.

6 So it was probably around four -- around four I called,
7 I FaceTimed. Her brother, her sister, they called, they
8 FaceTimed. They didn't get no answer and I kept on doing
9 that and it was like around 10 -- around 10 that night I
10 still didn't get no answer. So I said -- I said to my
11 husband I'm going to go to her apartment to go to see if she
12 was at her apartment.

13 I went and picked up my sister because my husband told
14 me not to go by myself. And as I pulled up, I saw her red
15 car in the driveway. I got out of my car. I got out of my
16 van, walked up to the car, pulled the car door to see if it
17 was locked. That was locked. I went to her door. The door
18 -- I had my keys was to put into the lock, but instead I put
19 it -- I just turned the knob and the door was open. I walked
20 into the door, straight down the hall.

21 When I got -- it was dark in the room and when I got to
22 the end of the -- the end of the hall, my foot felt -- hit
23 something. I reached around, turned the light on, and there
24 go my daughter laying on the floor. I screamed Gia, Gia. I
25 screamed.

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 My sister stood outside and she said what's the matter.
2 I said she's laying here. She's laying here. My sister
3 called 9-1-1. She stayed from outside and she said 9-1-1
4 answered and she said they say to do CPR. I said I don't
5 know how to do CPR. She said just do CPR and I started
6 pushing down on my child.

7 While I pushed, there was blood coming out of her nose.
8 I said she ain't moving. She ain't doing nothing. Somebody
9 needs to come and they was like -- she was, like, okay. So I
10 said I can't do no more. I ran outside and I threw up on the
11 floor.

12 I called my mother. I said, Ma, Gia is gone, Gia is
13 gone. My mother was, like, okay, calm down. I said -- then
14 I called my husband and I said, Wes, Gia's gone. I called my
15 best friend. I said, Joe, she's not here no more. Gia's
16 gone. Somebody took my child. Somebody took my child.

17 And I stood there and waited until the sheriffs came.
18 He came to me and I was sitting in my truck. My husband --
19 my husband showed up outside in the truck. The sheriff
20 showed up and he said, come, I need a statement. Talk to me.

21 MR. BROOKER: Your Honor, she's --

22 THE COURT: Hold on. Hold on.

23 MR. BROOKER: -- giving testimony of hearsay on what the
24 sheriff said.

25 THE COURT: All right. Sustained to any hearsay.

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 BY MR. CLEMENTS:

2 Q: Don't tell us what anybody said other than you, but did
3 --

4 A: I said the sheriff came and told me to come to him to --
5 so he could get what I saw, what happened. That was it. The
6 sheriff didn't -- I'm not saying nothing that the sheriff
7 said.

8 Q: Okay.

9 A: The sheriff didn't say nothing to me.

10 Q: All right. So you went and gave a statement --

11 A: Yeah. He said to come and give him a statement.

12 Q: -- to the sheriff?

13 A: I gave a statement and that was it.

14 Q: All right. Do you remember what officer that was?

15 A: The officer? I don't remember the officer's name, but
16 he's not in here right now.

17 Q: Okay. But did he have on a patrol-type uniform or was
18 he dressed like me?

19 A: He was dressed in ordinary clothes.

20 Q: Ordinary clothes? Okay.

21 A: Yeah.

22 Q: All right. And what did you tell the sheriff's officer?

23 A: I told the sheriff I called my daughter and I was
24 expecting -- my daughter never came to pick up her son and
25 never called to pick up her son and I came to see where my

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 child was and I found her inside the apartment.

2 Q: You said the front door --

3 A: The front door -- the front door was unlocked.

4 Q: It didn't have any signs of forced entry?

5 A: No.

6 Q: It was just open?

7 A: I just turned the knob and opened the door and walked
8 in.

9 Q: Did you notice anything else in the house that was out
10 of sorts or out of place?

11 A: No. It was dark in the house. That was it.

12 Q: And you -- you probably didn't look around because you
13 were just concerned about her?

14 A: No. Because the only light I turned on was her bedroom
15 light.

16 Q: Okay.

17 MR. CLEMENTS: I beg the Court's indulgence one moment.

18 THE COURT: Yes, sir.

19 BY MR. CLEMENTS:

20 Q: What, if any, problems did your daughter have with any
21 other people that you know of, any beef with anybody or
22 anybody that was, for lack of a better term, an enemy or
23 somebody she disagreed with? Did she have any kind of
24 dispute with anybody that you knew of?

25 A: No.

PATRICIA STEWART - DIRECT BY MR. CLEMENTS

1 Q: Okay. And what was her routine when she would drive
2 home when she did get off work?

3 A: Come and pick up her son and then go home.

4 Q: Was that what she was supposed to do that day?

5 A: Yes, sir.

6 Q: Okay. All right.

7 MR. CLEMENTS: Please answer any questions Mr. Brooker
8 may have.

9 THE WITNESS: Yes, sir.

10 THE COURT: Cross.

11 MR. BROOKER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BROOKER:

14 Q: Ms. Stewart, I'm sorry for your loss. I've just got a
15 very few questions for you and I'll be up here a second. You
16 were not present when your daughter was -- was killed, were
17 you not?

18 A: No.

19 Q: Okay.

20 MR. BROOKER: If you can indulge me for just a -- just a
21 second, Your Honor, I may not have any further questions for
22 Ms. Stewart.

23 THE COURT: Yeah.

24 MR. BROOKER: Please.

25 THE COURT: Sure.

1 MR. BROOKER: Your Honor, I have no further questions
2 for Ms. Stewart.

3 THE COURT: All right. Thank you, sir.
4 Anything further from the State?

5 MR. CLEMENTS: Your Honor, we ask that she be released
6 from her subpoena and would then be allowed to remain in the
7 courtroom for the trial.

8 THE COURT: All right. Any objection?

9 MR. BROOKER: No, sir.

10 THE COURT: Thank you very much, ma'am. You may step
11 down.

12 THE WITNESS: All right.

13 MR. CLEMENTS: Your Honor, our next witness will be Lt.
14 Michael Brumbles.

15 THE COURT: All right. Have Lt. Brumbles come in.

16 MR. CLEMENTS: He's right outside the door.

17 THE COURT: Sure.

18 THE CLERK: Sir, please -- sir?

19 THE WITNESS: Oh, I'm sorry.

20 THE CLERK: Please place your left hand on the Bible and
21 raise your right hand. Do you swear that the testimony you
22 will give in this case will be the truth, the whole truth,
23 and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated in the witness stand and

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 please state your name for the record.

2 THE WITNESS: Michael Brumbles.

3 MICHAEL BRUMBLES, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q: And where do you work?

8 A: Florence County Sheriff's Office.

9 Q: And what's your rank and what's your job duties?

10 A: Lieutenant over patrol.

11 Q: Okay. I'm going to ask you, if you will, kind of angle
12 yourself a little bit so you can be speaking to the jury.

13 A: All right.

14 Q: And how long have you been in law enforcement?

15 A: Seventeen years.

16 Q: Has that 17 years been in more than one place?

17 A: I worked at Pamplico for about six months. Other than
18 that, here.

19 Q: Okay. You've been with the Sheriff's Office ever since?

20 A: Yes.

21 Q: You're a lieutenant; right?

22 A: Yes, sir.

23 Q: Over patrol?

24 A: Yes, sir.

25 Q: Can you tell these jurors what being a lieutenant over

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 patrol what that means and actually distinguish what patrol
2 is from other aspects of law enforcement and tell us what you
3 do?

4 A: We're on the day-to-day operations of calls that come in
5 for service. We supervise. I'm in charge of eight different
6 deputies in the lower end in Florence and when I go to a
7 crime scene, I normally just call who I need to be there at
8 the time to take care of what needs to happen.

9 Q: Now, do you work shifts?

10 A: Yes, sir.

11 Q: All right. What are your shifts?

12 A: Twelve-hour shifts, nights and dayshift.

13 Q: Okay. On January 23rd, 2016, what shift were you
14 working?

15 A: I was on night shift.

16 Q: All right. And how many deputies did you have out on
17 night shift with you?

18 A: I have no idea how many was there that night.

19 Q: No. I mean on your shift.

20 A: On the shift that night?

21 Q: Yeah.

22 A: I don't know. It varies. We have them come and go.

23 Q: Okay. So it could be eight, it could be twelve?

24 A: It could be nine, it could be five, it could be seven.

25 Q: Okay. Tell us how you received the call on January 23rd

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 to go out to Century Drive?

2 A: Call come in via 9-1-1.

3 Q: Okay.

4 A: Central dispatch.

5 Q: Central dispatch, when they get a 9-1-1 call, then they

6 hook up with y'all immediately?

7 A: Yes, sir.

8 Q: Okay. And when you got the call, what did you proceed

9 to do?

10 A: I respond to the scene.

11 Q: All right. Can you tell these jurors exactly where that

12 scene is?

13 A: It was on Century Drive located off of Southborough Road

14 in Florence County.

15 Q: Is that kind of close to Traces golf course?

16 A: Yes, sir.

17 Q: Kind of close to Lambs Chapel?

18 A: Yes, sir.

19 Q: Okay. When you responded, were you the first one on the

20 scene?

21 A: No, sir. I believe I was second, I believe.

22 Q: Okay. Who was first on the scene?

23 A: Sgt. Summerset.

24 Q: Sgt. Summerset?

25 A: Yes, sir.

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 Q: Does he work for you?

2 A: He did. Yes, sir. He's recently been promoted to
3 lieutenant though.

4 Q: Okay. And so now y'all do the same thing?

5 A: Yes, sir.

6 Q: Okay. Being the person that was in charge of the shift,
7 you got there right after Grant or a few minutes or what was
8 your time frame?

9 A: I have -- I'd have to look at the CAD report and see. I
10 wasn't far behind him though.

11 Q: Pretty quickly?

12 A: Yes, sir.

13 Q: Okay. When you get to the scene there, you know it's a
14 call from 9-1-1 and as to what type of situation it is, don't
15 you?

16 A: Yes, sir.

17 Q: Okay. And what type of situation was it?

18 A: I believe it was a female down, wasn't responding.

19 Q: Okay.

20 A: If I'm not mistaken though.

21 Q: When you got there, tell this jury what you did and what
22 you had Summerset do and the rest of the people on your shift
23 as they arrived?

24 A: When I got on scene, Sgt. Summerset had already arrived
25 on scene. When I walked in the door, it was a small

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 apartment so you could pretty much see everything and I
2 observed a female laying in the hallway. Sgt. Summerset
3 stated that she wasn't responding and we needed to call crime
4 scene and investigators.

5 So at that time, I contacted Investigator McFadden and
6 Sgt. Clendenin with crime scene and Lt. Bellflowers, who was
7 at the time the admin on call, to respond to the scene. From
8 that point forward, I just held the crime scene until they
9 got there and released me from the scene.

10 Q: Lieutenant, I'm going to show you something that has
11 been marked as State's ID number 1-M, Number 1-N, and Number
12 1-0 [sic]. I'm going to show you and see if you can tell me
13 how this comports with what you saw. These are marked for
14 identification purposes only. The first would be Exhibit 1-0
15 or 1-O. How does that show what you saw that evening?

16 A: That's exactly what I saw.

17 Q: I'm going to show you what's been marked State's Exhibit
18 for identification only right at this moment 1-N?

19 A: Yes, sir.

20 Q: Does that indicate what you saw?

21 A: Yes, sir.

22 Q: That was the condition of her body?

23 A: Yes, sir.

24 Q: I'm going to show you what's been marked as State's ID
25 1-M. Tell me about that?

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 A: Yes, sir.

2 Q: That's how she was?

3 A: Yes, sir.

4 Q: Okay. Now, you say that you called crime scene and
5 investigators to come?

6 A: Yes, sir.

7 Q: Who responded?

8 A: There was -- I know Investigator McFadden responded.
9 Sgt. Clendenin responded. We had a bunch respond when I was
10 looking at the crime scene entry log earlier.

11 Q: Yeah. So Sgt. Clendenin, what is his job?

12 A: He's over crime scene.

13 Q: Okay. Forensics?

14 A: Yes, sir.

15 Q: And how about Investigator McFadden?

16 A: He was the lead investigator at the time.

17 Q: Okay. All right. When you -- when you came to the
18 scene and you looked around, did you notice anything that
19 looked like it was in disarray or anything of that nature?

20 A: No, sir.

21 Q: Okay. All right. Anything that you observed that you
22 thought was significant other than the body?

23 A: No, sir.

24 Q: When you walked in the apartment, tell us which
25 direction you went in to find the body?

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 A: Well, the apartment was -- you walk in the door and
2 you've got what we call a short wall on this side and you
3 walk in and the hallway cuts to the left. Everything is kind
4 of together in the little apartments. You walk in, time as
5 you turn to the left, you could see her body laying in the
6 hallway.

7 Q: At the end of the hallway?

8 A: Yes, sir. With her head this way and her feet was in
9 the other room.

10 Q: Okay. So her head was in one room and her feet in the
11 other room?

12 A: Yes, sir.

13 Q: Okay. Did you notice any signs of struggle?

14 A: No, sir.

15 Q: Okay. Who -- you called forensics and investigators.
16 Who notified the coroner?

17 A: EMS normally calls and says they need a coroner to
18 respond.

19 Q: And was EMS present on the scene?

20 A: I believe they were dispatched. Yes, sir. It's been a
21 while so I can't --

22 Q: Okay.

23 A: -- quite remember.

24 Q: Now, once you notified forensics and the investigators,
25 then what does your role become?

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 A: Just secure the crime scene to make sure it has its
2 integrity.

3 Q: All right. When you say you secure the crime scene to
4 make sure it has its integrity?

5 A: Yes, sir.

6 Q: Explain that a little better for the jurors. What
7 exactly does that phrase means?

8 A: It just means that the way we found it is the way it's
9 going to be until they get there and process it and do what
10 the investigators have to do. I don't get involved in that
11 part of it. I stay there and secure it until they tell me I
12 can leave. Once they tell me I can leave, then I leave it
13 with them.

14 Q: How do you secure a crime scene?

15 A: Normally, it's with crime scene tape.

16 Q: That yellow tape we've seen on TV?

17 A: Yes, sir.

18 Q: Okay. All right. And y'all did that?

19 A: I'm not sure if that was done or not, considering
20 everything was inside the residence.

21 Q: Okay.

22 A: I can't recall whether we -- we put it on the outside or
23 not.

24 Q: Okay. All right.

25 MR. CLEMENTS: I beg the Court's indulgence.

MICHAEL BRUMBLES - DIRECT BY MR. CLEMENTS

1 THE COURT: Yes, sir.

2 BY MR. CLEMENTS:

3 Q: While you were there, had they done anything to the car
4 that was Ms. Joseph's car while you were there?

5 A: I remember a car being outside. I can't remember
6 whether they did anything with it while I was there or not.

7 Q: Okay. Did you keep people from around there?

8 A: Yes, sir.

9 Q: Okay.

10 MR. CLEMENTS: All right. Lt. Brumbles, I appreciate
11 it. Would you please answer any questions Mr. Brooker has?

12 THE WITNESS: Yes, sir.

13 MR. CLEMENTS: Thank you.

14 THE COURT: Cross?

15 MR. BROOKER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BROOKER:

18 Q: Lt. Brumbles, I'll be very quick. Do you know what time
19 you arrived on the crime scene?

20 A: I do not. I don't have the CAD report in front of me.
21 No, sir.

22 Q: Okay. Have you seen the CAD report?

23 A: Yes, sir.

24 Q: Okay. Does around -- around after 11 o'clock -- does
25 that sound about right, sometime after 11 o'clock?

MICHAEL BRUMBLES - CROSS BY MR. BROOKER

1 A: I'd have to look at it, but I believe that sounds about
2 right.

3 Q: Would you like to see the CAD report to refresh your
4 memory?

5 A: Yes, sir, if you have it. Yes, sir, it was after 11.

6 Q: It was after 11 o'clock --

7 A: Yes, sir.

8 Q: -- that you got on the scene?

9 A: Yes, sir.

10 Q: Okay. And I think you testified that you were -- and
11 you correct me if I'm wrong. I don't -- I don't want to
12 misstate anything that you said. Were you, like, the second
13 officer that arrived?

14 A: Yes, sir.

15 Q: Okay. Okay. All right. And I think you were asked a
16 question of Mr. Clements about whether or not the -- when you
17 entered the apartment whether or not it was in disarray?

18 A: Yes, sir.

19 Q: Okay. Have you ever been at that apartment before?

20 A: No, sir.

21 Q: Do you know what the normal condition of that apartment
22 is?

23 A: No, sir.

24 Q: So you're not in a position to be able to testify as to
25 whether or not anything inside of the apartment was out of

MICHAEL BRUMBLES - CROSS BY MR. BROOKER

1 the ordinary?

2 A: No, sir.

3 Q: Okay. Because you don't know what the normal condition
4 of that apartment is; is that correct?

5 A: Correct.

6 Q: Okay. Thank you, sir. And just one more question.
7 Were you present at the time in which Ms. Joseph was killed?

8 A: No, sir.

9 Q: You were not?

10 A: No, sir.

11 Q: Okay.

12 MR. BROOKER: If you can indulge me for just a second,
13 Your Honor.

14 THE COURT: Yes.

15 MR. BROOKER: Let me check, but I don't think I have any
16 further questions --

17 THE COURT: Okay.

18 MR. BROOKER: -- for Lt. Brumbles. No further
19 questions, Your Honor.

20 THE COURT: All right. Anything on redirect?

21 MR. CLEMENTS: No, Your Honor. We would ask that Lt.
22 Brumbles be allowed to be released from his subpoena.

23 THE COURT: All right. Any objection?

24 MR. BROOKER: Without -- without objection, Your Honor.

25 THE COURT: All right. Thank you very much, sir.

BO MYERS - DIRECT BY MR. CLEMENTS

1 THE WITNESS: Thank you, Judge.

2 THE COURT: You're free to go.

3 MR. CLEMENTS: Your Honor, our next witness would be
4 Deputy Coroner Bo Myers.

5 THE COURT: All right.

6 THE CLERK: Sir, please place your left hand on the
7 Bible and raise your right hand. Do you swear that the
8 testimony you will give in this case will be the truth, the
9 whole truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: You may be seated in the witness stand and
12 please state your name for the record.

13 THE WITNESS: My name is Thomas Myers.

14 BO MYERS, being first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CLEMENTS:

18 Q: Thomas Myers? How did you get the name Bo?

19 A: Family.

20 Q: Okay.

21 A: Long history. I also go by Bo.

22 Q: Now, you serve the citizens of Florence County?

23 A: I do.

24 Q: In what capacity?

25 A: Currently, I'm the deputy coroner of Florence County.

BO MYERS - DIRECT BY MR. CLEMENTS

1 Q: Can you explain to this jury what a deputy coroner's
2 duties are and responsibilities?

3 A: The duties of the Coroner's Office as a whole are to
4 investigate death of essentially every citizen that dies in
5 the County of Florence. Our primary goal is to investigate
6 the non-natural deaths, anything that may occur outside of a
7 hospital setting, outside of a doctor's care. Anything
8 unexpected, unnatural falls under our jurisdiction.

9 Q: Now, who is the coroner?

10 A: The coroner is Keith von Lutcken.

11 Q: Okay. And you work directly for him?

12 A: That's correct.

13 Q: Okay. How long have you been working with the deputy
14 coroner?

15 A: Approximately four years.

16 Q: And what would you say qualifies you to be a deputy
17 coroner?

18 A: My background is in law enforcement. Specifically, I
19 served the City of Florence Police Department for 12-and-a-
20 half years, nine of that being assigned directly to the crime
21 scene unit and the majority of that as a supervisor. A lot
22 of the in-house training, state-wide training that I'd had as
23 a crime scene investigator flows into what we do now as far
24 as this investigation.

25 Q: Okay. Now, you mentioned your life prior to being a

BO MYERS - DIRECT BY MR. CLEMENTS

1 deputy coroner. It was with where?

2 A: Florence Police Department.

3 Q: And how many years were with crime scene?

4 A: About nine years with crime scene.

5 Q: And you did -- you were in charge of training and
6 supervising other officers?

7 A: Supervised my unit and trained new investigators and new
8 supervisors on the street in crime scene related tools.

9 Q: Now, how many people were in your unit?

10 A: At the time I left, there was four.

11 Q: Okay. Was that the whole crime scene unit for the City?

12 A: It was.

13 Q: Now, do you recall the evening of January 23rd, 2016?

14 A: I do.

15 Q: What stands out about that evening to you?

16 A: In my role as deputy coroner, I was on call that
17 particular week and received a call from our dispatch to
18 respond to Century Drive to a presumed crime that took place,
19 that it involved a death.

20 Q: All right. And you received a call. What did you do?

21 A: Got dressed and responded. I arrived on scene at about
22 11:38 p.m. that night.

23 Q: All right. When did you receive the call?

24 A: The call came in -- I've got noted 11:22.

25 Q: Okay. And who gave you notice or contacted you?

BO MYERS - DIRECT BY MR. CLEMENTS

1 A: Central dispatch.

2 Q: Okay. 9-1-1?

3 A: That's right. The 9-1-1 dispatch center.

4 Q: When you got there on the scene, what did you find and
5 who did you find?

6 A: I initially met with Sgt. Clendenin with the County's
7 crime scene unit, as well as Investigator Price with the
8 County's -- one of the investigators that had been assigned
9 this case.

10 Q: Did you notice Chad Collins or not?

11 A: I'm sorry. It was Chad Collins.

12 Q: And not Price?

13 A: That's right.

14 Q: Okay.

15 A: That's right. My apologies.

16 Q: When you got there, you saw them before -- did you talk
17 with them at all before you did anything or not? Just tell
18 the jury, kind of run through. When you arrived on the scene
19 and you saw Clendenin and Collins, what you did and who you
20 talked with?

21 A: That scene wouldn't have been unlike any others. I
22 would have found a responding officer, if they were
23 available. Certainly, the investigative team just to kind of
24 get a rundown of the situation as they understood it. From
25 that point, we would -- and I did that with Collins and

BO MYERS - DIRECT BY MR. CLEMENTS

1 Clendenin. McFadden was also there, but I believe at that
2 time he was speaking with the family. I walked through the
3 scene with them and just make a general assessment as we
4 continued to discuss the details as had been provided to
5 them.

6 Q: Okay. And I want to back up a little bit and ask you --
7 tell me some about your training. What kind of training did
8 you receive when you were with the City that carries over to
9 being a coroner?

10 A: Ultimately, my training has been -- it's varied from
11 general death investigation, scene reconstruction,
12 specifically homicide training. I've had training in
13 bloodstain analysis, which is blood pattern from scenes,
14 child investigation, crimes, death investigations relating to
15 children, and I think I had mentioned just general crime
16 scene training, reconstruction, and homicide classes.

17 Q: What, if any, training have you received in time of
18 death?

19 A: A lot of that has just been in part of some of those
20 trainings and then on-the-job routine of our investigation
21 and the training that took place early on with my career with
22 the Coroner's Office, but a lot of that was imparted -- that
23 specific training was imparted with the death investigation
24 training.

25 Q: So that wasn't a separate training?

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1 A: No.

2 Q: Have you been qualified as an expert before in court?

3 A: I have.

4 Q: On what matters?

5 A: In the area of marijuana analysis. Also in bloodstain
6 analysis and crime scene investigation.

7 Q: Okay. Is time of death part of crime scene
8 investigation or not?

9 A: It is.

10 Q: Okay. On January the 23rd, 2016, when you found the body
11 of Ms. Sherilyn Joseph in her apartment, tell us what you did
12 to examine that body and answer any questions you might have
13 had about the time of death, the cause of death, any of that?

14 A: Okay. As I stated earlier, I walked through the scene
15 with the investigators. During that walk-through, I was
16 directed to Ms. Joseph's body. My initial indication -- as
17 prior to getting to the body, my initial notice was of the --
18 of the door not having been forced. That's probably more so
19 on my crime scene background rather than specifically the
20 coroner's background, but as we entered as I was led into the
21 residence down the hall, I noticed the lower portion of a
22 body from the waist down extending from one bedroom to the
23 other across the hallway. I began investigating and
24 examining the body directly at that point.

25 Q: So it was across the hallway?

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1 A: Right.

2 Q: Instead of up and down the hallway?

3 A: That's right. From -- from room to room across.

4 Q: Okay. I'm going to show you what's been marked State's
5 identification 1-O. Can you tell me how that matches up to
6 what you found or what you saw?

7 A: I would have come in from the --

8 Q: Don't show it to the jury. This is just for
9 identification?

10 A: Yes. I can identify with that.

11 Q: All right. Is that what you found there?

12 A: That's right.

13 Q: All right. State's Exhibit for identification 1-N,
14 describe that to us?

15 A: That's the body, the upper portion of the body laying in
16 one of the bedrooms.

17 Q: Okay.

18 A: Off of that hallway.

19 Q: Okay. And State's Exhibit 1-M?

20 A: Same bedroom, different angle.

21 Q: Okay. And there's something that appears to be purple
22 there. What does that look like?

23 A: It looks like a child's toy.

24 Q: Okay.

25 A: There were several toys in that room.