

RECEIVED

Jun 15 2022

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 III OF IV

Elizabeth Franklin-Best
S.C. Appellate Law Group, LLC
SC Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
(803) 445-1333

Counsel for Appellant

Other Counsel:
William Blitch, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3372

Counsel for Respondent

INDEX

PRE-TRIAL TRANSCRIPT, JUNE 13, 2019.....	0001
THOMAS MCFADDIN	
Direct Examination	0066
Cross Examination	0073
PRE-TRIAL TRANSCRIPT, JUNE 17-18, 2019.....	0108
LONI PROFFITT	
Direct Examination	0171
ANDREW CLENDENIN	
Direct Examination	0183
Cross Examination	0191
THOMAS MCFADDIN	
Direct Examination	0210
Cross Examination	0222
TRIAL TRANSCRIPT, SEPTEMBER 9-14, 2019.....	0269
VOIR DIRE	0279
JURY SELECTION.....	0295
STATE’S OPENING	0443
DEFENSE OPENING	0451
PATRICIA STEWART	
Direct Examination	0462
Cross Examination	0469
MICHAEL BRUMBLES	
Direct Examination	0471
Cross Examination	0479
BO MYERS	
Direct Examination	0482
Proffered Direct Examination	0500
Voir Dire	0503
Direct by the Court.....	0508

JUROR ISSUE.....	0513
BO MYERS	
Direct Examination	0520
Cross Examination	0524
DR ANGELA PHILLIPS	
Direct Examination	0538
Cross Examination	0548
Redirect Examination.....	0554
ANDREW CLENDENIN	
Direct Examination	0555
Cross Examination	0583
Redirect Examination.....	0612
Recross Examination	0613
DAVID WALKER	
Direct Examination	0627
Cross Examination	0647
ASHLEIGH DIXON	
Direct Examination	0652
Cross Examination	0657
Redirect Examination	0668
Recross Examination	0669
JOHN BARRON	
Direct Examination	0675
Cross Examination	0699
RYAN KEEP	
Direct Examination	0747
Cross Examination	0765
JAMES SWINTON	
Direct Examination	0771
Cross Examination	0777
LINDA JONES	
Direct Examination	0780
Cross Examination	0790
DEBORAH GOFF	
Direct Examination	0794
Cross Examination	0804

LAKEYA BACOTE

Direct Examination	0807
Cross Examination	0821
Redirect Examination	0832
Recross Examination	0834

LERON WHITTEN

Direct Examination	0838
Cross Examination	0845

CHAD COLLINS

Direct Examination	0893
Proffered Direct Examination	0941
Resumed Direct Examination	0944
Cross Examination	0950
Redirect Examination.....	1012
Recross Examination	1017

CHRIS JOHNSON

Direct Examination	1024
Voir Dire Examination	1027
Direct Examination	1029
Proffered Direct Examination	1051
Resumed Direct Examination	1055
Cross Examination	1071
Redirect Examination.....	1097
Recross Examination	1097

THOMAS MCFADDIN

Direct Examination	1108
Cross Examination	1133
Redirect Examination	1152
Recross Examination	1153

THOMAS J. SLOVENSKI (Proffered)

Direct Examination	1197
Cross Examination	1200

ROBERT N. BENNETT (Proffered)

Direct Examination	1203
Cross Examination	1205
Redirect Examination.....	1223

THOMAS J. SLOVENSKI

Direct Examination	1237

Cross Examination	1274
Redirect Examination.....	1286
Recross Examination	1289
ROBERT N. BENNETT	
Direct Examination	1290
Cross Examination	1311
Redirect Examination.....	1328
KENDRELL DAVIS	
Direct Examination	1331
Cross Examination	1332
STATE RESTS	1236
DEFENSE RESTS	1333
STATE’S CLOSING ARGUMENT.....	1361
DEFENSE’S CLOSING ARGUMENT	1385
STATE’S REBUTTAL CLOSING ARGUMENT.....	1423
JURY CHARGES.....	1431
VERDICT	1446
SENTENCING	1454
TRIAL EXHIBITS	
State’s Exhibit 7 – AT&T Subscriber Information.....	1459
State’s Exhibit 12 – Forensic Sketch	1460
State’s Exhibit 19 – Photo Defendant DMV.....	1461
State’s Exhibit 20 – Photo Defendant Social Media.....	1462
State’s Exhibit 10 – Sprint Records	1463
INDICTMENT.....	1576
SENTENCING SHEET	1578
SCHMERBER ORDER, JUNE 19, 2019	1579

MOTION TO INVALIDATE, FEBRUARY 4, 2019, DATED SEARCH WARRANT, JUNE 10, 2019.....	1581
MOTION FOR NEW TRIAL, SEPTEMBER 24, 2019.....	1585
SPRINT SEARCH WARRANT, FEBRUARY 19, 2016	1598
DNA SEARCH WARRANT ON APPELLANT, FEBRUARY 4, 2019.....	1602

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 MR. BROOKER: He can't testify to it since it's not in
2 evidence.

3 MR. CLEMENTS: Okay. So I got one more question to ask.

4 THE COURT: Okay.

5 (WHEREUPON, the bench conference ended and the
6 proceedings resumed as follows.)

7 THE COURT: I'm going to sustain the objection, and go
8 ahead.

9 BY MR. CLEMENTS:

10 Q: On your trip to Walmart, were you able to develop any
11 leads or anything of evidentiary value to this case?

12 A: The only thing I was able to really determine is there
13 was a purchase made of a Straight Talk phone.

14 Q: Okay. That's it?

15 A: Yes.

16 Q: And what did y'all begin to do or what did you do next
17 in regards to this investigation?

18 A: I then developed search warrants for the information of
19 Ms. Sherilyn Joseph's phone.

20 Q: Okay.

21 A: I completed a search warrant for that.

22 Q: To get what?

23 A: The request was for phone records, to include calls,
24 text messages, cell tower locations, any data that would be
25 available to us for investigation.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: I'm going to show you what's marked State's Exhibit 6.

2 Can you tell me what that is?

3 A: Yes. This is AT&T records. The first page is a
4 declaration of authenticity of AT&T records. The second page
5 details subscriber information.

6 Q: Okay. And whose records are these?

7 A: The billing party is Sherilyn Joseph.

8 Q: Okay. Was there any other -- she's the financially
9 liable party; is that correct?

10 A: According to the paperwork, yes.

11 Q: Who is the billing party and who is the user?

12 A: Sherilyn Joseph.

13 Q: Okay. Did you request any other information from AT&T?

14 A: Yes, I did. Subscriber information on a phone number
15 that was on the call log for Ms. Bacote.

16 Q: And what number was that?

17 A: It was 704-526-6079.

18 Q: Did you determine who the financially liable party, the
19 billing party, and the user was on that phone number?

20 A: Yes. The information delivered to me for just the
21 subscriber information was Jessica Corthon [ph]. I believe
22 that's the name.

23 Q: Now, were you able to develop any leads from this or did
24 you check that out?

25 A: No. There was nothing, any contact, any information

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 that was related to either Royal Williams or Ms. Joseph with
2 that phone number.

3 Q: Okay. When you got Ms. Joseph's phone records, what did
4 you begin to do with them?

5 A: I began to look through the phone records to see if
6 there were any anomalies that stood out, anything that should
7 be there or should not be there.

8 Q: When you say anomaly, what would be an example of an
9 anomaly?

10 A: A phone number that stood out that may not have been in
11 her phone. Upon check of her phone, anything that was
12 different from the phone records that was in the phone or not
13 in the phone.

14 Q: Okay. Did you look to see frequency of calls or
15 anything of that nature?

16 A: Yes, I did.

17 Q: Okay. During your examination of these records, is
18 there any question raised in your mind about a particular
19 phone number?

20 A: Yes, there was.

21 Q: What was that phone number?

22 A: That phone number was 843-468-6516.

23 Q: Did you have -- at that time, did you have a name to go
24 with that phone number?

25 A: At that time, I did not.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: What did you do in regards to this phone number?

2 A: I completed another search warrant to send to the owner
3 of that phone number, which at this point was Sprint. I
4 completed an affidavit and signed it in front of the
5 magistrate.

6 Q: Okay. I'm going to show you what's been marked State's
7 Exhibit Number 10. Can you tell me what this is?

8 A: Yes. That -- the first page is a letter of
9 certification from Sprint Corporation on the records that
10 were requested for 843-468-6516.

11 Q: I think -- are these the same records testified by Mr.
12 Keep from Sprint?

13 A: Yes, they are.

14 Q: Okay. What is different about the Sprint records than
15 the AT&T records?

16 A: The Sprint records are a little easier to understand
17 than AT&T records.

18 Q: Okay. Is there anything included on the AT&T records
19 that Sprint maintains differently?

20 A: The times are a little different. One is UTC time, one
21 is actual time.

22 Q: Okay. And UTC time, I think, that was explained as
23 being, like, Greenwich mean time?

24 A: Yes.

25 Q: Okay. I'm going to show you State's Exhibit 9. Can you

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 tell me what that is?

2 A: Yes. These are cell tower locations for Sprint
3 Corporation's towers located in South Carolina, I believe.

4 Q: Okay. Columbia market?

5 A: Yes.

6 Q: Now, where are the cell phone tower sites on the AT&T
7 records?

8 A: They are actually on the records for AT&T.

9 Q: For the phone calls and the text messages?

10 A: Yes.

11 Q: Okay. And did you ask for phone calls and text messages
12 on both of these phone numbers?

13 A: Yes. The information requested in the affidavit or
14 information requested through the affidavit for search
15 warrant included phone calls, text messages, cell tower
16 locations, any data that they could provide for the
17 investigation.

18 Q: And can you tell me what was revealed to be the user of
19 the phone number 843-468-6516?

20 A: Ultimately, the information or subscriber information
21 was for Royal Williams.

22 Q: Did you look back and investigate to see when contacts
23 began being made between that number and 843-260-8624, which
24 is Sherilyn Joseph's number?

25 A: Yes, I did.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: As far as you could determine on your review of the
2 records, when did the contacts begin and start?

3 A: It began January 14th of 2016.

4 Q: January 14th, 2016? And how many -- when did they end?
5 When was the last contact?

6 A: The last actual contact with the phone numbers or any
7 type of contact with those numbers was January 22nd of 2016.

8 Q: So it stopped on the 22nd?

9 A: Yes, that I could see.

10 Q: And began on the 14th?

11 A: Yes.

12 Q: Did you peruse these records and count how many contacts
13 between those two numbers?

14 A: Yes, sir.

15 Q: Either by cell phone call or text message?

16 A: Yes, I did.

17 Q: And what was that number?

18 A: I came up to 383 contacts.

19 Q: 383 contacts?

20 A: Yes.

21 Q: Between January 14th and January 22nd?

22 A: Yes.

23 Q: Were there any -- did you look further than the 23rd to
24 see if there were any further contacts or attempted contacts
25 made between those two numbers?

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 A: Yes. The original search warrant for the -- were for
2 the entire month of January from January 1 to January 25 or
3 30, towards the end of the month for both search warrants.

4 Q: Okay. And you -- and it revealed no further attempts to
5 contact?

6 A: Beyond the 22nd, there were no contacts between those two
7 numbers.

8 Q: Okay. What else did you look at in regards to these
9 phone numbers?

10 A: I also checked the cell tower locations associated with
11 certain calls at certain times.

12 Q: And as far as the relevant times on January 23rd and
13 January 22nd, did you check the pings, I guess is what we call
14 them, on the 843-260-8624?

15 A: Yes, I did.

16 Q: And when was -- what was the first ping that you notated
17 as being relevant?

18 A: The first one that I noticed was at 2:08. It was at the
19 tower behind Harris Teeter --

20 Q: Okay.

21 A: -- in Florence at Five Points.

22 Q: Okay. And then how about at 2:15?

23 A: It was near Star Way. If you are familiar with Florence
24 County, it is where the old IRIX Pharmaceuticals is near
25 Ebenezer across 95 and 20 where they meet.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: All right. Was that the only tower --

2 A: No.

3 Q: -- pinged on?

4 A: There was another tower that it hit off of at Sneed Road
5 behind Sneed Middle School.

6 Q: And where is Sneed Middle School in relation to Ms.
7 Joseph's apartment?

8 A: In a straight line, it's probably less than two miles.

9 Q: Okay. What about at 3:11?

10 A: Again --

11 Q: Any pings there?

12 A: Yes. Again, the call log showed that there was a call
13 made that pinged off the tower again behind Harris Teeter at
14 3:11.

15 Q: Okay. And was that the last phone call made by her
16 according to these records?

17 A: According to the records, this was the last outgoing
18 either message or phone call.

19 Q: All right. How about at 4:52?

20 A: There were several attempts according to the phone
21 records to reach Ms. Joseph by other numbers that began
22 coming in at a certain time and most of --

23 Q: When you say other numbers, I want to be sure I'm not
24 confused. You're talking about other people calling from --
25 calling her?

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 A: Yes. Based on the records, the number associated that I
2 requested the search warrant for, the 843-468-6516 number,
3 was not one of the numbers attempting to call at that time.
4 There were several other numbers, to include Ms. Stewart's
5 number as well.

6 Q: Okay. Let's look at Royal Williams' phone number here.
7 At 2:09, did you get a ping off a tower there?

8 A: Yes. Again, it pinged off a tower that is located on
9 Star Way again over near IRIX Pharm -- the old IRIX
10 Pharmaceutical plant located at 95 and I-20.

11 Q: All right. When was the next ping that you noted here?

12 A: At 2:38, again the same tower.

13 Q: How about the next ping?

14 A: 3:13, it was pinged off the tower located behind Harris
15 Teeter at Five Points in Florence.

16 Q: At 3:19?

17 A: It was -- it pinged off the tower near Sneed Middle
18 School on Sneed Road.

19 Q: And then 3:26?

20 A: At 3:26, was pinged off the tower near Star Way again
21 near the old IRIX Pharmaceutical plant.

22 Q: And what is the -- there in the small print, what is
23 that?

24 A: In the small print it states at 3:35 cab departs victim
25 apartment towards Darlington.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: Okay. And you're sure you got that right with the --
2 with the -- what do you call it? UTC?

3 A: Yes.

4 Q: All right. At 3:55, it pings where?

5 A: That particular call pinged on Star Way, again located
6 near IRIX Pharm -- old IRIX Pharmaceuticals at 95 and 20.

7 Q: And then how about at 4:42?

8 A: It pinged off a tower off of Friendship Street in
9 Darlington, South Carolina.

10 Q: Okay. Now, you -- I think I asked you earlier where is
11 Doneraile Avenue, which was the destination on the cab log?

12 A: It is in Darlington County.

13 Q: Okay. What -- what connection or what proximity does
14 Doneraile have to 225 Plum Street?

15 A: Doneraile and Plum Street intersect.

16 Q: They intersect?

17 A: Yes.

18 Q: Okay. All right.

19 MR. CLEMENTS: I beg the Court's indulgence one moment.

20 THE COURT: Yes, sir.

21 (WHEREUPON, counsel conferred off the record.)

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury but out of the hearing of the jury as
24 follows.)

25 MR. CLEMENTS: I've got these. I think Thurmond is

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 going to object to them because Chad got them off the -- off
2 Google and he says that we've got to authenticate it.

3 MR. BROOKER: I don't see how to authenticate it. *State*
4 *v. Brown* says you've got to authenticate it.

5 MR. CLEMENTS: The question is how.

6 MR. BROOKER: *State v. Brown* tells you.

7 MR. CLEMENTS: Yeah.

8 THE COURT: All right. What do you mean? By getting a
9 Google guy in here?

10 MR. BROOKER: No. I don't think he'd necessarily have
11 to have a Google guy in here, but I think it says that you
12 have to have somebody that -- that at least has a little bit
13 of knowledge, knowledge of the system and how the system
14 works, so that they can testify that the system at the time
15 in which they drewed this information was working accurately
16 and that what it generated is accurate, but *State v. Brown*
17 says all of that in there.

18 THE COURT: We might need to take a break and let me
19 look at *State v. Brown*.

20 MR. CLEMENTS: Yeah. We've been going for a long time.

21 THE COURT: My thing is -- well, have you got a copy or
22 have you at least got a cite for it?

23 MR. BROOKER: I've got the cite.

24 THE COURT: Give me the cite.

25 MR. BROOKER: It's 424 S.C. 479, 2018.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 (WHEREUPON, the bench conference ended and the
2 proceedings resumed as follows.)

3 THE COURT: All right. Ladies and gentlemen, I need to
4 take up a matter of law before we continue; so we're going to
5 take a short break. If you need anything, just let Ms. Ann
6 know and we'll get you back out here shortly. Please
7 continue to have no conversation.

8 (WHEREUPON, the jury exited the courtroom at 11:21 a.m.)

9 THE COURT: Chad, if you want to step down, you can.

10 THE WITNESS: I need to use the restroom.

11 THE COURT: Yeah. And just -- just don't have any
12 conversation about your testimony.

13 THE WITNESS: Yes, sir.

14 (WHEREUPON, there was a pause in the proceedings, after
15 which the proceedings resumed as follows.)

16 THE COURT: All right. Are y'all ready to argue it? I
17 just read what Mr. Brooker --

18 MR. CLEMENTS: Your Honor, I have -- I haven't read it
19 yet. Mr. Hoefer went to go get it. I guess he's bringing it
20 and he hasn't brought it yet.

21 THE COURT: Well, here. And to save you having to read
22 the whole gosh darn thing, I think you can start with 7.

23 J.D., is that what --

24 THE LAW CLERK: Seven is the meat and potatoes of it.

25 THE COURT: Yeah. But that's the case.

CHAD COLLINS - PROFFERED DIRECT BY MR. CLEMENTS

1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)

3 MR. CLEMENTS: Your Honor, if I might ask a question?

4 THE COURT: Yeah.

5 MR. CLEMENTS: One question and we might be able to move
6 on.

7 THE COURT: You mean of the witness?

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: Well, I'll let you proffer that while the
10 jury is out.

11 MR. BROOKER: Sure.

12 THE COURT: So go ahead.

13 PROFFERED DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q: Lt. Collins, are you knowledgeable, trained and
16 experienced in the analysis of GPS or Google map systems on
17 the computer and know anything about how those are done?

18 A: Just novice to input information into Google search line
19 with numbers.

20 Q: Okay.

21 THE COURT: I think --

22 MR. CLEMENTS: That's what we would offer, Your Honor.

23 THE COURT: I think that -- and I think Mr. Brooker
24 would agree it's going to take more than someone who knows
25 how to use it.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 MR. BROOKER: Yeah.

2 THE COURT: For example, I know how to use it, but I
3 couldn't tell you -- I couldn't testify as to its accuracy or
4 how it works. I would think -- I mean -- and when you think
5 about, well, who would, because I asked about would you have
6 to have a Google rep come in. I don't think you need that,
7 but I do think you need someone. For example, I don't know,
8 these guys that do electronic monitoring, someone of that
9 nature would be someone that could authenticate that system
10 and --

11 MR. CLEMENTS: Yes, sir.

12 THE COURT: -- its accuracy and I think without that
13 authentication -- and I didn't look at the -- are all of
14 those exhibits that you showed me basically off of that GPS
15 system?

16 MR. CLEMENTS: It is off -- all off of Google.

17 THE COURT: Yeah. And I think you would have to have --

18 MR. CLEMENTS: Am I correct, Lieutenant?

19 THE WITNESS: Yes.

20 THE COURT: You'd have to --

21 MR. CLEMENTS: It's all off of Google.

22 THE COURT: You'd have to have someone to come in to
23 authenticate those records, I think.

24 MR. CLEMENTS: Yes, sir.

25 THE COURT: So at this stage, I would sustain your

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 objection to those being --

2 MR. CLEMENTS: That doesn't preclude us from getting
3 somebody up here?

4 THE COURT: No, no, no, it doesn't, but for -- thus far,
5 I would sustain the objection. And if you can produce
6 someone who could do that, I certainly, would -- you know,
7 will let you put that up.

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: Why don't -- while the jury is out, why
10 don't -- if any of us need a break, why don't we take it? So
11 that way when they come back in -- because what I was going
12 to do, I was going to take a break at the close of the
13 State's direct before you began your cross.

14 MR. BROOKER: Okay.

15 THE COURT: But since they're out, why don't we go ahead
16 because -- do you have a lot more left here?

17 MR. CLEMENTS: I don't have a lot more, Your Honor.

18 THE COURT: So we'll go right into the cross. So let's
19 go ahead and take the break that I would've taken then while
20 we've got them out?

21 (WHEREUPON, there was a break in the proceedings from
22 11:32 a.m. until 11:48 a.m., after which the proceedings
23 resumed as follows.)

24 THE COURT: All right. Are we squared away?

25 MR. BROOKER: We are, Your Honor.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 THE COURT: Okay. All right. What we'll do is I'll
2 bring the jury back in, Solicitor, allow you to continue with
3 your direct, understanding that I've sustained the objection
4 as to the use of those documents at this time.

5 MR. BROOKER: Yes, sir.

6 THE COURT: Okay.

7 MR. CLEMENTS: Tell me that one more time, please, sir.

8 THE COURT: Just when -- we'll bring the jury out, let
9 you continue with your direct, just with the understanding
10 that at least at this time I've sustained the objection as to
11 the use of those documents.

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: Okay. You can bring them in.

14 (WHEREUPON, the jury entered the courtroom at 11:49
15 a.m.)

16 THE COURT: All right. Ladies and gentlemen, we will
17 pick up and recognize Mr. Clements for the continuation of
18 his direct examination.

19 RESUMED DIRECT EXAMINATION

20 BY MR. CLEMENTS:

21 Q: Lt. Collins, did you sit down with the video and chart
22 everything out that you felt like was important?

23 A: Yes.

24 Q: What time did you start observing?

25 A: I began observing based on the time that I knew that the

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 victim had left work previous to the 2 o'clock hour.

2 Q: So what --

3 A: It would have been -- I'm sorry. It would have been
4 around 1:30 or somewhere around that time.

5 Q: Okay. About 13:29:03? Is that what was on --

6 A: Yes.

7 Q: -- the video?

8 A: Yes.

9 Q: And 1300 in military time is one?

10 A: It's 1 o'clock.

11 Q: Okay.

12 A: In the afternoon.

13 Q: And at 2:25, did the car enter on Century Drive?

14 A: Yes. Based on the timestamp of that video, the vehicle
15 entered Century Drive at 2:25.

16 Q: And then what happened next?

17 A: About 30 seconds later, the vehicle exits Century Drive
18 and turns right on Southborough Road.

19 Q: So when -- when was it the victim's car first showed up?

20 A: I apologize. At 2:51. I apologize. 2:51 is when the
21 vehicle pulls down Century Drive. At about 1511 or somewhere
22 around that time frame, 1512, the vehicle left again going
23 back in the direction of Pine Needles Road.

24 Q: Now, what indicated to you that the car might be the
25 victim's car?

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 A: The description of the victim's vehicle included two
2 hubcaps missing on the passenger side of the vehicle. It was
3 a smaller vehicle and that was the only vehicle with that
4 description that was parked or anywhere near that area, which
5 led me to believe that that particular vehicle turning onto
6 and off of Century Drive was the victim's vehicle.

7 Q: You couldn't tell anything about the color, could you?

8 A: I could not. The discoloration in the video does not
9 allow for color.

10 Q: You didn't go help process the car, did you?

11 A: I did not.

12 Q: Are you familiar with the car?

13 A: Yes, I am, based on the photos.

14 Q: I'll show you what's marked as State's Exhibit 2-F. Do
15 you know that is?

16 A: Yes. That is the vehicle that was parked in front of
17 the apartment at 3618 Century Drive, Apartment A.

18 MR. CLEMENTS: I beg the Court's indulgence one moment.
19 I probably skipped right over it.

20 BY MR. CLEMENTS:

21 Q: Now, I'm going to show you State's Exhibit 2-A. Does
22 that refresh your recollection at all?

23 A: Yes. That shows the side view of her vehicle.

24 Q: How many missing hubcaps you got?

25 A: There was one.

1 Q: One?

2 A: Yes. My recollection was there was two. I was wrong.

3 Q: Okay. But that's -- that's the car?

4 A: Yes. That is the same vehicle that was moved from that
5 residence.

6 Q: And what was the -- in your observation, what was the
7 next time that the victim shows back up? You said they
8 turned down, like, 3:11 towards -- towards Lambs Chapel?

9 A: Yes. The next time the vehicle returns is 1553.

10 Q: So that would be 3:53?

11 A: Yes, it is.

12 Q: Okay. And did you ever see the victim's car move again?

13 A: I did not, based the my observation of the video.

14 Q: And when did the cab show up?

15 A: The cab comes into view on Southborough Road at 4:33 or
16 1633.

17 Q: And then 1634, what happens?

18 A: The cab comes up to the stop sign on Century Drive. It
19 pulls up to the stop sign and then stops and then begins to
20 back up.

21 Q: Okay. And then at 1635, what happens with the cab?

22 A: At 1635, the cab pulls up to the stop sign at Century
23 Drive and Southborough Road and then exits, turning to the
24 right going towards Pine Needles.

25 Q: Is there anything of significance on that stretch of

1 that video?

2 A: Beyond that, no.

3 Q: You didn't see anybody else pull down there?

4 A: No, I did not.

5 Q: Was this in the time frame when the -- when the victim
6 was unresponsive to telephone calls or text messages?

7 A: Yes. Based on the information contained in the phone
8 records, there were no other phone calls received or outgoing
9 from the victim's phone beyond that time frame earlier
10 testified to.

11 Q: How does this -- this time frame -- how does it mesh
12 with the deputy coroner's approximate time of death or
13 presumed time of death?

14 A: We were aware during the investigation that the victim,
15 Ms. Joseph, had left work around 2 o'clock that afternoon on
16 January 23rd.

17 MR. BROOKER: Your Honor, he's seeking to bolster.
18 Objection based upon bolstering.

19 THE COURT: Based upon what?

20 MR. BROOKER: Bolstering. Bolstering the time frame.

21 THE COURT: All right. Overruled.

22 MR. BROOKER: One witness can't bolster the testimony of
23 another.

24 THE COURT: Well, it's not bolstering. Overruled.

25 BY MR. CLEMENTS:

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: Continue.

2 A: Again, during the investigation we learned that Ms.
3 Joseph had left her place of work around 2 o'clock that
4 afternoon. Based on the timestamp of the video and watching
5 that vehicle turn into Century Drive, it fits around the time
6 that it would've taken probably for her to drive if she had
7 made any stops or anything like that on to Century Drive and
8 then exit and then come back. And then, of course, with the
9 information we discovered with the call log at Speedy Cab
10 showing that there was a call made around 3:40 for service at
11 that location at 3618 Century Drive, Apartment A, and again
12 based on the information that the coroner provided.

13 Q: Okay. Now, did you check out anything regarding Amtrak?

14 A: Yes, I did. There was some information that was sent in
15 to the Sheriff's Office that there was a possibility of a
16 person or parties involved that may have left on an Amtrak
17 train. I made contact with the Amtrak police. I spoke with
18 them, got a copy of their manifest, and it showed that their
19 train did not even depart or exit or enter Florence County on
20 1/23/16. The earliest or latest departure was 1/21/2016. So
21 that lead turned out to be false.

22 Q: Okay. Did you have occasion to check any other leads
23 out?

24 A: Other than the Laurinburg, North Carolina, outside of
25 that there wasn't too much more.

CHAD COLLINS - DIRECT BY MR. CLEMENTS

1 Q: Were there people that you looked at as potential
2 suspects?

3 A: Yes. Along with Investigator McFadden, we checked into
4 other parties that were listed that we needed to talk to, and
5 we spoke with those and cleared those.

6 Q: Where or to what did you always circle back to when you
7 were following all of your leads?

8 A: The majority of the leads that we followed up to and all
9 the information that we received at that point again brought
10 us back to Royal Williams.

11 Q: Okay.

12 MR. CLEMENTS: Please answer any questions that Mr.
13 Brooker may have.

14 THE COURT: All right. Cross?

15 MR. BROOKER: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. BROOKER:

18 Q: Just a second, Mr. Collins. I'm sorry. Sgt. Collins;
19 right?

20 A: Lieutenant, but it's okay.

21 Q: Lieutenant?

22 A: Whatever you want to call me.

23 Q: I can do that.

24 A: Chad is fine too.

25 Q: Lieutenant, isn't it?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: Yes, sir.

2 Q: Okay. Lt. Collins, I believe that you testified that
3 you reported on the scene the night of Ms. Joseph's death; is
4 that correct?

5 A: Yes, it is.

6 Q: Okay. Do you know about what time that you arrived on
7 the scene?

8 A: Without looking at the crime scene log, it was probably
9 sometime between 11 and 12 o'clock that evening.

10 Q: Okay. And my understanding is that your investigation
11 revealed that the first person on the -- on the -- on the
12 scene or the first person to discover Ms. Joseph dead in her
13 apartment was her mother, Ms. Stewart; is that correct?

14 A: That is my understanding that Ms. Stewart was the first
15 one.

16 Q: Okay. And then, of course, is is that Ms. Stewart would
17 have discovered her someway -- somewhere around 11 o'clock;
18 is that correct?

19 A: My understanding of the time frame would have been
20 sometime after 11 or around 11, yes.

21 Q: Okay. Okay. Now, the coroner testified that the time
22 of death was around 4 p.m.; is that correct?

23 A: If I recollect his testimony, it was at 4 o'clock, yes.

24 Q: And of course, is is that Ms. Joseph [sic] testified
25 and, of course, is is that he says, you know, give or take an

CHAD COLLINS - CROSS BY MR. BROOKER

1 hour and he can't be absolutely precise with respect to the
2 time of death; is that correct?

3 A: My recollection to his testimony is he did state that.

4 Q: Okay. And of course, is is that the time in which she
5 was discovered is, I think, around 11 p.m.; is that correct?

6 A: Again, my recollection of the time frame is sometime
7 between 11 and 12, yes.

8 Q: So between 4 p.m. and 11 p.m. Let's just assume that if
9 the time of death is around 4 p.m. and between 4 p.m. and 11
10 p.m., so you've got five, six, seven, eight, nine, ten,
11 eleven. So basically, that would be a gap of between seven
12 hours from 4 -- from 4 p.m., the time in which the coroner
13 estimates that she may have been killed and, of course, 11
14 p.m., the time her body was discovered; is that correct?

15 A: If my math is correct, yes, that would be about seven
16 hours.

17 Q: A seven-hour gap. And of course, is I think you said
18 your investigation revealed that between that seven-hour gap
19 that -- that at least when the mother arrived at 11 p.m., the
20 door was unlocked; is that correct?

21 A: My recollection was that the door was unsecured, yes.

22 Q: So what I want to ask you is, is is that from -- from 4
23 p.m. to 11 p.m., during that seven-hour gap, can you -- do
24 you have any evidence to say who went in and out of that
25 apartment during those seven hours?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I do not.

2 Q: Okay. So during those seven hours -- during those seven
3 hours before her body was discovered, anyone could've come --
4 could've come in and out of that apartment; is that correct?

5 A: Yes.

6 Q: Okay. Now, with respect to the time of death of 4 p.m.,
7 I think you also -- were you in the courtroom when the
8 pathologist testified that -- that -- that the -- the
9 estimation of the time of death that was used, I think that
10 method that was used is highly inaccurate and, of course, it
11 can vary anyway between one to six hours -- excuse me -- a
12 one- to six-hour variance? Were you in the courtroom when
13 the pathologist testified to that?

14 MR. CLEMENTS: Your Honor --

15 THE COURT: Hold on. What?

16 MR. CLEMENTS: May we approach?

17 THE COURT: Yeah.

18 (WHEREUPON, a bench conference was held in the presence
19 of the jury but out of the hearing of the jury as
20 follows.)

21 MR. CLEMENTS: I don't see where we need to have every
22 witness' testimony reiterated by Lt. Collins. I don't think
23 that's -- if that's not bolstering, I don't know what is
24 because he's doing it with every witness.

25 THE COURT: Well, he's asking do you recall the

CHAD COLLINS - CROSS BY MR. BROOKER

1 testimony of the pathologist who gave a time range. He's
2 asking did you recall that testimony.

3 MR. CLEMENTS: Yeah.

4 THE COURT: Were you here for that testimony? Do you
5 recall that?

6 MR. BROOKER: I'm not asking him to support -- to
7 support the accuracy of it. That's not bolstering.

8 THE COURT: I know where he's going and I think he's
9 entitled to do that.

10 MR. CLEMENTS: Okay. All right.

11 THE COURT: He's trying to show that there's a range.

12 MR. CLEMENTS: Yeah.

13 THE COURT: Yeah. I think he can do that.

14 MR. CLEMENTS: We don't contest there's a range.

15 THE COURT: Of course, yeah.

16 MR. BROOKER: It's the pathologist's range.

17 (WHEREUPON, the bench conference ended and the
18 proceedings resumed as follows.)

19 THE COURT: All right. You may proceed, Mr. Thurmond --
20 Mr. Brooker.

21 MR. BROOKER: Thank you, Your Honor.

22 BY MR. BROOKER:

23 Q: And of course, is if you were in the courtroom when the
24 pathologist testified that the method for determining the
25 time of death is inaccurate and that actually is is that

CHAD COLLINS - CROSS BY MR. BROOKER

1 there could be a range anywhere between one hour to six-hour
2 variance which means is is that the estimate could be off
3 between one hours up to six hours?

4 A: Yes. I was present in the courtroom when that testimony
5 was given.

6 Q: So if that is correct and the pathologist is correct
7 that the range -- that the range for estimating the time of
8 death, that methodology that was used, can be off anywhere
9 between one to six hours, then, of course, what that means is
10 is is that she could have been killed at 5 o'clock, 6
11 o'clock, 7 o'clock, 8 o'clock, 9 o'clock or even 10 o'clock,
12 which would be within that one to six-hour range; is that
13 correct?

14 A: It's possible there that could have happened, yes.

15 Q: Okay. And of course, is is that you can't account for
16 that period of time, can you?

17 A: I cannot.

18 Q: And your investigation can't account for that period of
19 time, can it?

20 A: Other than the phone records showing no activity.

21 Q: And what I mean by account for that time, I'm not
22 talking about phone records. I'm talking about you can't
23 account for -- you can't account for someone physically going
24 to -- going in and out of her apartment during that seven
25 hours and harming her?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I cannot.

2 Q: Now, you also testified to the fact that once you
3 conduct your investigation, I think once you went through the
4 crime scene, reviewed the crime scene, it was not until the
5 next day that you received -- it was not until the next day
6 or, I believe, the day after that you received a tip in
7 reference to a neighbor that might have footage; is that
8 correct?

9 A: Yes, that's correct.

10 Q: And of course, that footage would show at least the
11 entrance -- the entrance and the exit, you know, of -- of the
12 -- of the road that leads to Ms. -- what is that? Century
13 Drive, which was the road that the apartment was at; is that
14 correct?

15 A: Yes. That video depicted that location.

16 Q: Okay. And of course, the video doesn't -- doesn't
17 depict the apartment. The apartment is not visible. Ms. --
18 Ms. Joseph -- the victim's apartment is not visible from the
19 video; is that correct?

20 A: It is not.

21 Q: What's visible from the video is is that the entrance
22 and exit people going in and out of Century Drive; is that
23 correct?

24 A: That is correct.

25 Q: All right.

CHAD COLLINS - CROSS BY MR. BROOKER

1 MR. BROOKER: Now, I think they showed that video and I
2 don't know whether or not we have access to that video or
3 either I also need the demonstrative exhibits that you used
4 to present to the jury.

5 MR. CLEMENTS: I can get somebody to run and play the
6 video.

7 MR. BROOKER: Okay. Okay. That would be great and I'll
8 go on and ask another question while he gets it. Do you have
9 a copy of the demonstrative on the video, that demonstrative
10 exhibit that you used to show the time frames on the video?
11 Since the jury has already seen it and you've already
12 published it to the jury, I would like to use it.

13 BY MR. BROOKER:

14 Q: How long was the original video?

15 A: My recollection is it's at least 12 or more hours. I
16 know it started that morning of the 23rd and went through
17 until the morning of the 24th, around that time.

18 Q: Okay. And did you -- and for the 12 hours of that
19 video, did you account for each and every vehicle that went
20 in and out of Century Drive?

21 A: What I did was I cut it down to the time frames that I
22 was aware of based on when I knew that the victim had left
23 work and used that as a starting point.

24 Q: Okay. And so the answer would be, no, you couldn't --
25 you didn't? You didn't account for every last vehicle that

CHAD COLLINS - CROSS BY MR. BROOKER

1 went in and out within that -- within the 12 hours of that
2 video, is that correct?

3 A: I did not start at 6 a.m. and go to 2 p.m. that day, no.

4 Q: Okay. All right. And the reason why I'm asking is is
5 that according, at least to your -- I think this -- this
6 demonstrative, I think, outline of the specific times of that
7 video -- and I have it up on screen. I think you indicated
8 that the -- that the -- if you can indulge me for just a
9 second. That the victim returned home, I think, at around
10 15:53:19 military time, which is roughly 3:53 -- 3:53 p.m.;
11 is that correct?

12 A: Yes.

13 Q: Okay. Now -- and I think you also testified that you
14 believe that she got off at 2 o'clock?

15 A: Yes. During the investigation, we learned that she was
16 due to get off at 2 o'clock that afternoon.

17 Q: Okay. Did you collect her work records?

18 A: I did not.

19 Q: Okay. So you didn't go to where she worked and collect
20 her work records to see what time she actually got off of
21 work?

22 A: No. Again, Investigator McFadden and I worked
23 separately on some issues and that was one of those issues.

24 Q: Okay. But you didn't collect -- you didn't -- you
25 didn't get the employment records to see exactly what time

CHAD COLLINS - CROSS BY MR. BROOKER

1 she got off work?

2 A: I did not, no.

3 Q: And of course, is let's go ahead and -- and I think that
4 2 o'clock, therefore, is an assumption by you. Okay. Let's
5 go ahead and assume she got off at 2 o'clock. I think you
6 testified, you know, that 2 -- 2 o'clock would be sufficient
7 enough time for her to get home from work, but of course, if
8 she -- if she got off at 2 o'clock -- and my understanding is
9 that your investigation revealed that she worked at Starbucks
10 here in Florence?

11 A: Yes. She worked at the Starbucks located at Five Points
12 in Florence.

13 Q: Okay. And of course, is is that from Starbucks to where
14 her apartment is located at would be no more than a 20-minute
15 drive; is that correct? Even if you had rough traffic, let's
16 say maybe a 25-minute drive; is that correct?

17 A: Without knowing her driving habits, I could not
18 educationally answer that question. I could assume that it
19 would probably take anywhere from 25 to 30 minutes probably,
20 yes.

21 Q: Okay. But of course, is is that we have an hour and 53
22 minutes here; is that correct?

23 A: Yes.

24 Q: Okay. So assuming if -- assuming if your hypothesis is
25 correct that she got off at 12 -- excuse me -- she got off at

CHAD COLLINS - CROSS BY MR. BROOKER

1 two and, of course, is is that she arrived home at -- you
2 know, at 3:53, an hour and 53 minutes later, then, of course,
3 can you account for the time between the time in which she
4 got off of work and the time in which she arrived at home?
5 A: The first time that I observed her vehicle arrive at
6 that location was at 14:51:10.
7 Q: Okay. Now, could -- now, that vehicle that you says
8 that you believe is hers, I think you said you believe it's
9 hers and, of course, we'll look at it once we get somebody to
10 play the video that's in evidence, but of course, is I think
11 you testified on direct examination is is that you can't see
12 the color of the vehicle or anything like that; is that
13 correct?
14 A: No. You cannot see the color.
15 Q: You can't see the license plate of the vehicle; is that
16 correct?
17 A: No, you can't.
18 Q: You can't see people inside of the vehicle; is that
19 correct?
20 A: No, you cannot, not from the distance.
21 Q: Okay. Not from that distance? Okay. So -- but you're
22 basically telling the jury -- of course, the jury saw that
23 video and, of course, they'll make their own determination as
24 to whether or not the car can be identified, can be
25 accurately and positively identified from that video, but

CHAD COLLINS - CROSS BY MR. BROOKER

1 you're saying that -- you said that you believe that that is
2 Ms. Joseph's vehicle from what you see from your eyes; is
3 that correct?

4 A: I do believe that was her vehicle, yes.

5 Q: Okay. All right. And of course, is is that assuming
6 that is Ms. Joseph's vehicle, you can't tell the jury whether
7 or not Ms. Joseph had a passenger in the vehicle with her?

8 A: I cannot.

9 Q: Okay. You can't say it at all, can you?

10 A: I cannot.

11 Q: But I think -- and the reason why I'm asking that
12 question is is is that let's say if Ms. Joseph did arrive
13 home at three -- at -- returns home at 3:50:19. That's the
14 last time you said you saw the car going, 3:59 -- excuse me
15 -- at 3:53:19; is that correct?

16 A: Yes, sir.

17 Q: Okay. Let's assume that that is her at 3:59:19 and, of
18 course, is the reason why I'm asking that question is is that
19 you said that -- that you talked with Mr. -- is it Swinton
20 from the Speedy Cab Company; is that correct?

21 A: Yes.

22 Q: And of course, Mr. Swinton testified -- of course, let
23 me get the exhibit. I think Mr. Swinton testified that he
24 received a call -- this is State's Exhibit Number 11. Mr.
25 Swinton testified, who was the dispatcher for Speedy Cab; is

CHAD COLLINS - CROSS BY MR. BROOKER

1 that correct?

2 A: Yes.

3 Q: And is it also correct that he testified and, of course,
4 from the log that he kept that he received a call for a
5 pickup at 3618 Century Drive, Apartment A, at 3:40; is that
6 correct?

7 A: That's what's on the log, yes.

8 Q: Okay. And of course, is that if Ms. -- if Ms. -- if the
9 victim, Ms. Joseph, didn't return home until -- at least she
10 didn't turn into Century Drive to return back home until
11 3:53, then, of course, is is that that would mean is is that
12 someone called for a pickup at -- pickup at that location 13
13 minutes or so prior to Ms. Joseph returning home; is that
14 correct?

15 A: Based on the time, yes.

16 Q: Based on the math what it means is that somebody called
17 and said I need a pickup at Century Drive, Apartment A, 13
18 minutes before she arrived home; right?

19 A: Yes. Based on --

20 Q: At least?

21 A: Based on the math, yes.

22 Q: You know, give or take, you know, because obviously, I'm
23 assuming 13 minutes from the time you saw her turning in at
24 the scene and she had -- she pulled in and got back into her
25 apartment and assume that's her in the car and get out and go

CHAD COLLINS - CROSS BY MR. BROOKER

1 in, you know. So roughly somewhere between 13 to 15 minutes
2 she arrives at home after the taxicab company received a call
3 for a pickup.

4 Now, I think you testified also and, of course, I think
5 your demonstrative exhibit show that the cab came into view
6 -- came into view at -- or came into view of the apartment --
7 excuse me -- turned into Century Drive at 16:33:18 hours,
8 which would be 4:33 p.m.; is that correct?

9 A: Yes. That's when the cab came into view on the camera
10 system, yes.

11 Q: That's when the cab turns in? Okay. And then, of
12 course, is that I think you said the cab finally departed --
13 finally departed, I think, at -- I think, according to this
14 exhibit -- or not exhibit, but that the cab then started to
15 pull out at 4:34 p.m. and then, of course, is that I think
16 the cab backs up and then, of course, the cab then finally is
17 seen leaving at Century Drive at 4:35 p.m.; is that correct?

18 A: Yes, that's correct.

19 Q: And I think what Mr. -- what Mr. Swinton from the cab
20 company said that they received a call at 4:45 -- excuse me
21 -- at 3:40 p.m. and, of course, is is that I'm assuming --
22 and you tell me if I'm wrong or whether or not I'm wrong. Is
23 it your theory that the person that the cab picked up, that
24 that's the assailant, that's the person, you know, that
25 harmed or ended Ms. -- Ms. Joseph's life? Is that your

CHAD COLLINS - CROSS BY MR. BROOKER

1 running theory?

2 A: Yes, that is.

3 Q: That's actually your running theory?

4 A: Yes.

5 Q: Okay. So -- so my understanding is -- and you correct
6 me if I'm wrong for the jury -- is is that you believe that
7 when Ms. Joseph got home that that person who had called for
8 a cab roughly 13 to -- 13 to 15 minutes before she got into
9 the house -- before she got to the house, killed her and
10 then, of course, the cab then shows up -- shows up and then,
11 of course, that person leaves? Is that your theory? Is that
12 correct?

13 A: That is our theory, yes.

14 Q: Okay. Now, let me ask you a question. I'm not trying
15 to say anything about the identity of the person, but the
16 person who left that apartment, how did you know -- the
17 person that the cab picked up -- the cab company picked up,
18 how did you know that that person was the person that ended
19 Ms. Joseph's life as opposed to someone coming to the
20 apartment in that seven-hour span --

21 MR. CLEMENTS: Your Honor --

22 Q: -- that you can't account for?

23 THE COURT: All right. Hold on.

24 Yes, sir?

25 MR. CLEMENTS: We need to object. He's trying to get

CHAD COLLINS - CROSS BY MR. BROOKER

1 the witness to answer the ultimate issue in fact.

2 MR. BROOKER: I don't understand that.

3 THE COURT: It's an extremely long question you're
4 asking there. Can you not break that up?

5 MR. BROOKER: I can try and break it up, Your Honor, to
6 make a little bit more easier if he doesn't understand it.

7 MR. CLEMENTS: He's asking him about the ultimate issue
8 in fact and he's also asking for speculation. That would be
9 our objections.

10 MR. BROOKER: I'm asking about his theory. He said that
11 was his theory.

12 THE COURT: All right. Overruled. I'm going to allow
13 it.

14 MR. BROOKER: Okay.

15 THE COURT: But you need to make --

16 MR. BROOKER: I'll shorten it.

17 THE COURT: You've got long narrative questions and you
18 need to ask --

19 MR. BROOKER: I'll shorten them up, Your Honor.

20 THE COURT: Yes, sir. Because you can lead.

21 MR. BROOKER: Okay.

22 BY MR. BROOKER:

23 Q: Now, the person who left who was picked up by the cab
24 company, you don't have any independent evidence that person
25 actually ended Ms. Joseph's life, do you?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: No, we do not.

2 Q: Okay. So you're assuming that the person who left by
3 cab ended Ms. Joseph's life; is that correct?

4 A: That is our theory on how the crime occurred, yes.

5 Q: Okay. But of course, is it that you have no evidence
6 that that person did it, that's just your theory; is that
7 correct?

8 A: That is our theory based on the evidence we have at
9 hand, yes.

10 Q: Okay. All right. And of course, is it that, like you
11 testified previously, is it that you have no way of knowing
12 that someone within that seven-hour span could have come and
13 killed her after that person left the residence, after that
14 person who was picked up by the taxicab had left; is that
15 correct?

16 A: In that time frame, no, we don't.

17 Q: Okay. So these are all theories; is that correct?

18 A: Yes.

19 Q: Okay. Now, let me let you take a look at the Sprint
20 records and, of course, these are already in evidence and, of
21 course, I think the Sprint records -- thank you, sir.

22 THE COURT: If you -- before you get on that, Keith is
23 here, if you want to do that video.

24 MR. BROOKER: Sure. That would be fine.

25 THE COURT: That's up to you. You can hold whatever you

CHAD COLLINS - CROSS BY MR. BROOKER

1 need to.

2 MR. BROOKER: No, no. We can do that, Your Honor, so we
3 don't have the hold him up.

4 (WHEREUPON, State's Exhibit Number 15 was played.)

5 MR. BROOKER: You can stop. You can stop it there.

6 Okay. It says 14:51. I think on your diagram it's
7 14:51:10.

8 If you could just roll it just a little bit and stop it.
9 Okay.

10 BY MR. BROOKER:

11 Q: Now, that's 14:51:10. Okay. That's the time in which
12 you said that the victim's car returned; is that correct?

13 A: Yes.

14 Q: Okay. And of course, are you looking at the screen?

15 A: I am. Yes, sir.

16 Q: And of course, is -- my understanding is is is that you
17 identified the victim's car from this photograph -- from this
18 video; is that correct?

19 A: Yes.

20 Q: This is the image that you used to identify the victim's
21 vehicle; is that correct?

22 A: Yes. Along with the knowledge that that was the vehicle
23 that would've been at the end of the road, yes.

24 Q: And of course, is is that what your testimony to the
25 jury is is is that that image that is seen that's currently

CHAD COLLINS - CROSS BY MR. BROOKER

1 on the screen is this vehicle?

2 A: Yes.

3 Q: That is the victim? And of course, I'm referring to
4 Exhibit -- State's Exhibit 2-A. And of course, so your
5 testimony to the jury is that you're able to positively
6 identify that the vehicle that is on that video screen is the
7 same vehicle that's in this photograph?

8 A: I can say with a certain degree of certainty, yes, that
9 is the vehicle.

10 Q: Okay. Are you positive that that's the vehicle?

11 A: Probably about 95 percent positive that's the vehicle.

12 Q: About 95 percent positive?

13 A: Yes, sir.

14 Q: Okay. And of course, is is that --

15 MR. BROOKER: If you could then take me to, I think,
16 15:11:57? I guess that's close enough. Okay. That's it.

17 BY MR. BROOKER:

18 Q: Now, I think you indicated on this -- on this -- on this
19 timeline where at 11 -- at 11 -- excuse me -- at 15:11:57,
20 which would be 3:11 -- 3:11 p.m. and, of course, I'm assuming
21 you're still looking at the screen?

22 A: Yes.

23 Q: That vehicle that is exiting and, of course, is is that
24 it's your testimony that you're able to identify --
25 positively identify from that video that that car that is

CHAD COLLINS - CROSS BY MR. BROOKER

1 exiting is the victim's vehicle that's contained within this
2 photograph?

3 A: During that time frame, that's the only vehicle the left
4 and came from that location, yes.

5 Q: Okay. Are you able to positively identify it as being
6 this vehicle in photograph Exhibit 2-A?

7 A: I'm fairly certain that's her vehicle, yes.

8 MR. BROOKER: And I'm almost finished, Keith. I'm
9 sorry.

10 MR. KEITH GODBOLD: No, you're good.

11 MR. BROOKER: The next frame is going to be 15:53:19.
12 Okay. Thank you.

13 BY MR. BROOKER:

14 Q: And of course, is is that in your timeline you indicate
15 that that vehicle that is turning in, that that is Ms.
16 Joseph's vehicle that's turning in and that she is returning
17 from -- she is returning back to her apartment? That's what
18 your testimony was; right?

19 A: That is my assumption that, yes, that vehicle was
20 returning, along with another vehicle that turns in the same
21 drive.

22 Q: Okay. And of course, is is that your testimony is is
23 that that vehicle is the same vehicle that is depicted in
24 Exhibit 2, State's Exhibit 2-A; is that correct?

25 A: Yes.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: And all of this and all of your assumptions and your --
2 and your -- and your calculations that that's the vehicle
3 comes from this video; is that correct?

4 A: Yes.

5 Q: Okay.

6 MR. BROOKER: Thank you.

7 MR. KEITH GODBOLD: Are you through?

8 MR. BROOKER: I'm sure.

9 MR. KEITH GODBOLD: No problem.

10 BY MR. BROOKER:

11 Q: Now, I think we've already established that the taxicab
12 company said that they received a call at -- they received a
13 call at 3:40 p.m. for a pickup from Ms. Joseph's residence;
14 is that correct?

15 A: Yes, based on their log.

16 Q: And of course, is that I have what is identified as
17 State's Exhibit 10. These are the Sprint records for the
18 phone number attributed to Royal Williams; is that correct?

19 A: Yes, it is.

20 Q: So if -- if the -- if the -- logic would dictate that if
21 Royal Williams called Speedy Cab Company at 3:40 p.m. -- and
22 of course, these are the official cell phone records, call
23 history for Mr. Williams' records, logic would dictate that
24 at 3:40 p.m. is that these cell phone records should show Mr.
25 Williams making a call out from his phone; is that correct?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: Yes.

2 Q: On January 23rd, 2016?

3 MR. BROOKER: Let me get these records straight. If you
4 can indulge me for just a second, Your Honor? Let me go to
5 that page. Okay. Do any of y'all have access to the screen?

6 THE COURT: There's a -- does a switch have to be
7 flipped based on Keith using the video? Does it -- never
8 mind.

9 MR. BROOKER: Yeah. I think she got it. Thank you very
10 much. Okay.

11 BY MR. BROOKER:

12 Q: Now, this is page 95 of the authenticated cell phone
13 records, State's Exhibit 10, of the -- 95 or 96 of the cell
14 phone records for Royal Williams. And of course, looking at
15 this --

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

17 BY MR. BROOKER:

18 Q: Let's go down to 15. Let's look at the outward bound
19 calls for Royal Williams. Excuse me. Yeah, the outward
20 bound calls. There's an outward bound call where it says
21 calling number is 843-468-6516. Did I read that correct?

22 A: Yes, you did.

23 Q: And that's Royal Williams' number?

24 A: Based on the subscriber information from Sprint, yes.

25 Q: Based upon -- yes. Based upon the subscriber

CHAD COLLINS - CROSS BY MR. BROOKER

1 information and, of course, that outward call went to called
2 number 843-206-3350; is that correct?

3 A: Yes, that's correct.

4 Q: And that outward bound call -- and of course, outward
5 bound means is that he is actually initiating the call; is
6 that correct?

7 A: From my understanding of the records, yes.

8 Q: That outward bound call was 11 -- excuse me -- was
9 15:13:17 military time, which translates into 3:13; is that
10 correct?

11 A: Yes.

12 Q: Okay. And then, of course, is is that -- then, of
13 course, there is a -- the next call is a routed call and
14 that's at 3:13; is that correct?

15 A: Yes. Looking at the records, 3:13 is correct.

16 Q: And then the next one, two, three -- the next four calls
17 are inbound calls, which means is is that he's being
18 called; is that correct?

19 A: Yes.

20 Q: He's not making any calls, someone is calling him. And
21 of course, the last inbound call that came at 3:55 -- 3:55 --
22 excuse me. It came at 3:55; is that correct?

23 A: Yes. Based on the records, yes.

24 Q: Is there any outward bound call for Royal Williams at
25 3:40?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I do not see one, no.

2 Q: And of course, that's the -- that's the time in which
3 the cab company said that they received a call from the
4 person at that residence saying that I need to be picked up,
5 you know, at -- at Century Drive, Apartment A? I'm right
6 about that; is that correct?

7 A: Yes, that's correct based on their log.

8 Q: But there is no outward bound call at that time for Mr.
9 Williams?

10 A: I do not see one on his records, no.

11 Q: In fact, I think the next outward bound call from Mr.
12 Williams was not until 1642 hours, which would be 4:42 p.m.;
13 is that correct?

14 A: Yes. That's correct, yes.

15 Q: Okay. So between the time period -- I think, if my
16 memory serves me correctly, the taxicab driver said that when
17 she was dispatched out to pick up this caller for Century
18 Drive, Apartment A, the victim's residence, that is is that
19 she had to call him to find out -- to find out, you know,
20 exactly where the apartment was. And I asked her -- were you
21 in the courtroom when I asked her specifically whether or not
22 she had specifically told you during your interview of her --
23 I think you were the one who interviewed her; is that
24 correct?

25 A: Yes, that is correct.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: That she looked at her cell phone and said she had
2 received a call from the -- she had received a call from the
3 passenger calling from Century Drive from a different number
4 at 4:01 p.m. Do you remember her stating that?

5 A: I recollect her saying she did receive a phone call from
6 a number, yes.

7 Q: Okay. Do you remember her saying 4:01 p.m., because I
8 wrote it down?

9 A: Without listening to the statement, I don't know.
10 You're probably right. Yes.

11 Q: Sure. I don't want to go through the statement again.
12 Okay. So if Mr. -- if -- according to the Sprint cell phone
13 records, if Mr. Williams, the last call that he made -- the
14 last call that he made was at 3:15 p.m., the last outward
15 bound call he made was at 3:15 p.m. and then -- excuse me,
16 the first outward bound call -- that between 3:15 p.m. and
17 4:42 p.m., that there was no outward calls from Mr. Williams'
18 cell number, they were all inward calls, which means people
19 was calling him; is that correct?

20 A: Yes. From this phone number, yes.

21 Q: From that phone number. Now --

22 MR. BROOKER: If you can indulge me for just a second,
23 Your Honor, I want to make sure I keep these exhibits
24 straight and there's nothing mixed up.

25 BY MR. BROOKER:

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: So now, I think you testified -- you testified, I think,
2 to -- and of course, this is not an exhibit. You testified,
3 I think, from this demonstrative draft that you prepared;
4 right? You prepared this?

5 A: I was -- I was present when it was being prepared.

6 Q: You didn't prepare this?

7 A: I was present and put input in preparing it. I did not
8 physically type it, no.

9 Q: Did you physically do the calculations?

10 A: Yes.

11 Q: Okay. And someone else typed it up?

12 A: Yes.

13 Q: Okay. All right. I understand. Now, you said that --
14 that -- that Mr. -- that I think the red columns is Royal
15 Williams' Sprint cell number and, of course, is is that you
16 said that, according to this, that Royal Williams' cell --
17 cell phone number pinged off of a tower at 3:13 p.m.; is that
18 correct?

19 A: Yes. Based on his phone records, yes.

20 Q: Okay. And then it pings off of a tower at 3:19 p.m.?

21 A: Yes, that is correct.

22 Q: It pings off of a tower at 3:26 p.m.?

23 A: That is correct.

24 Q: And then 3:55 p.m.?

25 A: That is correct.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Okay. All right. And of course, is that I think you
2 indicated where those cell phone towers -- well, at 3:26 p.m.
3 where it says tower nearest -- nearest Star Way, I think you
4 indicated that at 3:35 cab departs. I'm assuming that's an
5 error. I thought that it was established that the cab
6 departed at 3:40 -- excuse me -- at 4:35 -- around 4:35
7 instead of 3:35?

8 A: It might've been a typo. I know it was around -- it was
9 after 4.

10 Q: Okay. All right. And so -- and the reason why I'm
11 asking you is is that if this -- if this -- assuming that
12 this graph is correct and, of course, if his cell number
13 pinged off this tower and I think you said the tower near
14 Star Way and, of course, at 3:26, then that would -- that
15 would've been roughly over an hour before he was picked up
16 and departed. Excuse me. An hour before the passenger at --
17 what is it? -- Century Drive would have been picked up and
18 departed; is that correct?

19 A: Yes.

20 Q: Okay. So if that was an hour before the passenger was
21 picked up and departed, then -- well, let me scratch that
22 question. I think you said the next one was 3:55 where there
23 was a ping off the tower. Okay. And of course, but nothing
24 on here to shows -- to shows that there were -- you know,
25 that a call was being made, you know, at 3:40; is that

CHAD COLLINS - CROSS BY MR. BROOKER

1 correct?

2 A: On this, no.

3 Q: Nothing here to show that a call was being made at 4:01
4 p.m.; is that correct?

5 A: No. Not from that phone number, no.

6 Q: Okay. Now, you -- indulge me for just a second. Now,
7 on -- I think it was January 27th, 2016, is when you made
8 contact with Speedy Cab Company; is that correct? According
9 to your --

10 A: I'm getting to it. Yes. That is when I made contact
11 with Speedy Cab.

12 Q: Now, of course, is is that -- excuse me. Of course,
13 that's when you talked with Mr. Swinton, Mr. Swinton
14 confirmed to you that he had received a call on January 23rd
15 to pick up a passenger from Century Drive, Apartment A, and
16 you learned that Ms. Lakeya Bacote was actually the taxicab
17 driver who went and that was dispatched to pick up that --
18 that individual at Century Drive; is that correct?

19 A: That is when I learned it, yes.

20 Q: And of course, is that you interviewed Ms. -- Ms.
21 Bacote; is that correct?

22 A: Yes, I did.

23 Q: And of course, is is that Ms. Bacote gave you a
24 description of the passenger?

25 A: Yes, she did.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: And of course, is it that I think the jury heard a video
2 played of that -- played of that description. I think where
3 it says -- I'm not going to quibble about light skinned or
4 light skinny, but of course, is that in that video is it
5 correct that Ms. Bacote told you that the person that she
6 saw, you know, was -- the person that she saw was --

7 MR. BROOKER: Indulge me for just a second, Your Honor.

8 BY MR. BROOKER:

9 Q: That the person that she saw was around 5'9", 5'10" and,
10 of course, had good hair pulled back in a ponytail; is that
11 correct? That was the description that she gave you, good
12 hair pulled back in a ponytail?

13 A: The recollection of her statement, yes, that's what she
14 said. That's what she told me.

15 Q: And of course, is it that from that -- now, you also
16 heard -- were you in the courtroom when Ms. -- when Ms.
17 Bacote testified that -- that about a week or so later that
18 the same passenger that she picked up on January 23rd from
19 Century Drive, Apartment A, that she picked up that person
20 again in -- in Darlington? Were you in here when she
21 testified to that?

22 A: I was present when she testified, yes.

23 Q: Okay. Now, would that be considered to be relevant
24 evidence in connection with your investigation?

25 A: In my experience, yes, I think it would be good

CHAD COLLINS - CROSS BY MR. BROOKER

1 information, yes.

2 Q: Okay. If she's saying that she had a second encounter
3 with the person that she picked up at Century -- at Century
4 Drive on the day -- on the day of Ms. Joseph's killing, that
5 would be relevant; right?

6 A: Yes. I would think so, yes.

7 Q: And of course, is that your job as an investigator is is
8 that you record -- you collect and record relevant
9 information?

10 A: Yes.

11 Q: To help build your case?

12 A: Yes.

13 Q: Okay. And of course, is that one of the reasons why
14 that y'all generate reports is is to preserve that relevant
15 information; is that correct?

16 A: Yes.

17 Q: Okay. Now, do you have -- do you have any recording of
18 Ms. Bacote telling you that a week later -- that a week later
19 she ran across the same guy and picked him up and delivered a
20 drive -- delivered a ride for him?

21 A: I don't recall having any information related to that,
22 no.

23 Q: If you would have had -- if she had told you that, do
24 you think you would've recorded that in your notes?

25 A: I would think so, yes.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Do you need to take a look at your investigative report
2 to determine whether or not it's in there?

3 A: Looking back at my notes, the only date I have speaking
4 with Ms. Bacote was 1/27/2016.

5 Q: That's the only date you have speaking with her?

6 A: Yes.

7 Q: And you don't have anything in there about her telling
8 you about giving this -- this person a second ride a week or
9 two later?

10 A: Not in my notes, no.

11 Q: Now, Ms. Bacote testified -- let me return these
12 exhibits while I'm not using them. Ms. Bacote testified, I
13 think, that she keeps a log -- a manifesto [sic]. It's
14 identified as State's Exhibit 13. That she keeps a manifesto
15 -- manifest. I'm sorry. Not manifesto. A manifest of -- of
16 her rides, her passengers that she picks up and drop off; is
17 that correct?

18 A: Yes, that is correct.

19 Q: And of course, State's Exhibit 13 is that manifest; is
20 that correct?

21 A: Yes. That is an accurate description of it there, yes.

22 Q: Okay. And it's dated at the top, I think, January 23rd
23 of 2016.

24 Q: Yes, that is correct.

25 Q: Okay. And I think on the second page -- and it's been

CHAD COLLINS - CROSS BY MR. BROOKER

1 highlighted that she said that -- it has here on the -- on
2 the manifest that she picked up a passenger from 3618 Century
3 Drive, Apartment A, and dropped him off, I think she
4 testified, on Doneraile between two trees -- between two
5 trees or on Doneraile; is that correct?

6 A: That's my understanding of her testimony, yes.

7 Q: And of course, she also testified that she took the
8 number of the person that -- that -- that called for that
9 ride; is that correct?

10 A: Yes. She stated she did get a phone call, yes.

11 Q: And she also stated that she -- that she -- she recorded
12 that number and, of course, is she -- it's written on the
13 manifest and I asked her about this as 704-526-6079; is that
14 correct?

15 A: Yes, that is correct.

16 Q: That's the number that she said that -- that -- that the
17 person called to pick up -- to get picked up for a ride?

18 A: That is correct.

19 Q: Okay. Now, I have what's been identified as State's
20 Exhibit Number 6. State's Exhibit Number 6 is actually the
21 AT&T cell phone records; is that correct?

22 A: The full records, yes.

23 Q: Yeah.

24 A: These are the full records, yes.

25 Q: AT&T cell phone records. These are the same records in

CHAD COLLINS - CROSS BY MR. BROOKER

1 which the AT&T custodian who testified, I think, yesterday
2 authenticated as being officially AT&T's records; is that
3 correct?

4 A: Yes. Without looking through all of those pages, yes.

5 Q: Sure.

6 A: That's what they testified to.

7 Q: Sure. But it's been identified as State's Exhibit
8 Number 6; is that correct?

9 A: Yes.

10 Q: On the second page of State's Exhibit Number 6 is a
11 subscriber information sheet; is that correct?

12 A: Yes, it is.

13 Q: And of course, financial liability party? Did I read
14 that correctly?

15 A: Yes, you did.

16 Q: And it says Jessica Corthon, if I read that name -- last
17 name correctly; is that correct?

18 A: Yes, that's what's displayed on the paper.

19 Q: And the address is 3542 Linhart Lane, Fredericks --
20 excuse me -- Fredericksburg, Virginia 22408; is that correct?

21 A: Yes, that's correct.

22 Q: And of course, is is that it says the billing party is
23 Jessica Corthon, same address; is that correct?

24 A: Yes, that is correct.

25 Q: And it says user information and, of course, is is that

CHAD COLLINS - CROSS BY MR. BROOKER

1 it has down here the number and that number is 704-526-6079.
2 That's the same -- that's the same number that -- that Ms. --
3 Ms. Bacote, the taxicab driver, said was called to pick up
4 the -- to pick -- that's the same number that was called from
5 to Speedy Taxicab Company to pick up a ride on the day of Ms.
6 Lynn's [sic] death at around 4 -- 3:40 p.m.; is that correct?

7 A: That's the number she wrote down, yes.

8 Q: That's the number that she wrote down and, of course, is
9 is that it says -- under user information, it has Jessica
10 Craig [sic] and it has also 425 W. Fifth Street, apartment
11 403, Charlotte, North Carolina. Did I read that correctly?

12 A: Yes, you did.

13 Q: Now, basically, what that says is that number that was
14 used to call to pick up a ride from -- from the victim's
15 apartment on the day of her death, that that number is
16 attached to someone, is it not?

17 A: Yes, it is.

18 Q: According to AT&T?

19 A: According to AT&T, yes.

20 Q: It's attached to someone and I think you testified
21 earlier that the only, I think, investigation that you did
22 outside of -- of -- of South Carolina was that you went to a
23 North Carolina, I think, Walmart based upon a receipt that
24 you found in the victim's apartment; is that correct?

25 A: That's correct, yes.

CHAD COLLINS - CROSS BY MR. BROOKER

- 1 Q: But you did no further investigation in North Carolina?
- 2 A: Beyond that, no, other than reaching out for this phone
3 number.
- 4 Q: Okay. Did you contact Jessica Craig?
- 5 A: That number was inactive when I called it.
- 6 Q: Okay. Did you contact Jessica -- I'm not talking about
7 just the number. Did you contact Jessica Craig?
- 8 A: No, I did not.
- 9 Q: Did you go down to this address in Charlotte, North
10 Carolina, to try to sit down and talk with Jessica Craig?
- 11 A: I did not.
- 12 Q: To try and figure out why was your cell phone number
13 being called for a pickup from Ms. Joseph's apartment at the
14 time in which -- at -- at the time in which or around the
15 time in which she was found dead?
- 16 A: I did not.
- 17 Q: You didn't do that?
- 18 A: No.
- 19 Q: Let me ask you a question is and you tell me. Do you
20 think that is an investigative oversight?
- 21 A: Looking through the victim's phone records, there was no
22 connection to this phone number. There were no calls made to
23 her nor text messages back and forth from this number.
- 24 Q: Do you think that was an investigative oversight? Yes
25 or no and you can respond.

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I don't believe it was, no.

2 Q: You don't believe it was? All right. So we have no
3 idea -- do you know whether or not Ms. Craig was the one who
4 made the call from the victim's apartment?

5 A: I know it was a male party that made the call.

6 Q: Do you know whether or not Ms. -- Ms. Craig was there?

7 A: I do not.

8 Q: Okay. We have something to suggest that her phone may
9 have been. Do you think that if you went and talked with her
10 and try to figure out, you know, did you had your phone on
11 that day or did someone else had your phone on that day, were
12 you in South Carolina on that day with someone, did you think
13 those were fruitful questions that maybe you should have --
14 you could -- you should have asked her and then she could
15 have answered, given the fact that her cell phone number was
16 the cell phone number used to call for pickup for a ride from
17 the apartment of a deceased person?

18 A: When she showed me the second number that she called and
19 was talking to, it showed me that there was a possibility
20 that something was not right with the phone numbers. There
21 was a second number on her log sheet.

22 Q: We'll get to the second number. Of course, this number
23 is attached to someone, is it not?

24 A: Yes.

25 Q: And your testimony is that you did not -- you didn't try

CHAD COLLINS - CROSS BY MR. BROOKER

1 to contact the person that this number is attached to?

2 A: I did try to call the phone number. It was not active.

3 Q: Okay. And then after that you just -- I guess it was
4 just too much to drive down there or either have someone to
5 go down there and talk with her? Was that too much to do?

6 A: No, sir. I was following up on other leads.

7 Q: Yeah. Okay. Now, you couldn't contact her and, of
8 course, is is that the financial responsible party is Jessica
9 Corthon in Virginia, which means is that I'm assuming she's
10 financially responsible for that phone, she's the -- I guess
11 the person maybe that phone is subscribed to. Did you try to
12 contact her?

13 A: No.

14 Q: Okay. There's a phone number here for her. There's a
15 -- it looks like there's a home phone number and a work
16 number here down for Jessica -- down for Jessica Corthon,
17 540-841-2950. Did you try to call that number to say, hey,
18 Jessica, this phone that you're responsible for was used to
19 call a cab for pickup at a home in which a deceased body was
20 found? Did you do that?

21 A: I did not call that number, no.

22 Q: Did you call the work number that she has down, 540-710-
23 9837, to try to reach Jessica at that number?

24 A: I did not.

25 Q: Okay. Did you go to Fredericksburg, Virginia --

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: No, sir.

2 Q: -- to try and talk with her?

3 A: I did not drive to Virginia, no.

4 Q: Okay.

5 MR. BROOKER: If you could indulge me for just a second,
6 Your Honor, I don't want to get these records out of order.

7 THE COURT: Yes, sir.

8 MR. BROOKER: I'll put them back together.

9 BY MR. BROOKER:

10 Q: Now, let's get to the second number. Now, I think Ms.
11 Bacote testified that -- that the party called her back at a
12 second number. When she couldn't find Apartment A -- Century
13 Drive, Apartment A, that -- that -- that the person who was
14 seeking a ride called her back at a second number. And were
15 you in the courtroom when I asked her what was that second
16 number?

17 A: Yes, I was.

18 Q: And of course, is is that that second number is also
19 written at the top of the manifest as 803-807-2989; is that
20 correct?

21 A: As I read it, yes.

22 Q: All right. Did you -- do you know who that number --
23 did you contact a subscriber to try to find out who that
24 number is subscribed to?

25 A: I did not. I called the number. It was not active at

CHAD COLLINS - CROSS BY MR. BROOKER

1 all.

2 Q: Okay. But that's not the only way to find out who a
3 number is subscribed to; right?

4 A: No. The number that I called, that particular number,
5 did not go to any subscriber information. There was no
6 Sprint, AT&T or anything. I could not find that number
7 anywhere.

8 Q: You couldn't find that?

9 A: No.

10 Q: Did you -- did you try to? Did you -- did you went to a
11 judge and ask the judge, I need a search warrant to send to
12 these subscribers, have them send me information or whatever
13 that relates to this phone number?

14 A: I did not go for that phone number, no.

15 Q: You did not seek information from a -- a subscriber for
16 that phone number?

17 A: No, I did not.

18 Q: Okay. So -- so at the time in which this phone was
19 used, obviously you have no information from a subscriber
20 identifying who that number belongs to; is that correct?

21 A: Which number are you referring to?

22 Q: I apologize. It's the number that we were talking
23 about, the 803-807-2989 number.

24 A: No, I do not.

25 Q: Okay. Do you think that was an investigative oversight?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I do not.

2 Q: You don't? Now, I think you testified or at least on --
3 on February 1, 2016, I think you testified that you found
4 your way to Leron Whitten's apartment; is that correct?

5 A: Yes. It's a residence, but yes.

6 Q: I'm sorry. A residence. I apologize.

7 THE COURT: Can you note where you're at right now?

8 MR. BROOKER: I certainly can.

9 THE COURT: Let me get you and Mr. Clements to step up
10 here real quick.

11 (WHEREUPON, a bench conference was held in the presence
12 of the jury but out of the hearing of the jury off the
13 record, after which the proceedings resumed as follows.)

14 THE COURT: All right. I wanted to double check with
15 Mr. Brooker, ladies and gentlemen, because with his cross-
16 examination, he went to another -- another subject and that's
17 why I wanted to interrupt him at that point.

18 What we're going to do is -- because I want to give him
19 his full time to cross-examine, but it is a little after 1
20 o'clock. We're going to break. Mr. Brooker says he can pick
21 up where he left off after the lunch break.

22 So I'm going to excuse you now and ask you to be back at
23 2:30 and please continue to not discuss the case, not allow
24 anyone to discuss it with you, and we'll see you back here at
25 2:30.

CHAD COLLINS - CROSS BY MR. BROOKER

1 (WHEREUPON, the jury exited the courtroom at 1:05 p.m.)

2 THE COURT: All right. Lieutenant?

3 THE WITNESS: Yes, sir.

4 THE COURT: Obviously, during the lunch break, have no
5 conversation. You can talk with people, but don't talk about
6 your testimony. Okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: Anything before we break at this point?

9 MR. CLEMENTS: Yes, Your Honor.

10 THE COURT: Yes, sir.

11 MR. CLEMENTS: The two demonstrative documents that were
12 the breakdown of times from the video at Mr. Profitt's house
13 and also the computation of the number of contacts between
14 the individuals and that Mr. Brooker and myself have both
15 used it and used it and presented it to the jury, I'd move it
16 into evidence at this time.

17 MR. BROOKER: That doesn't mean it can go into evidence,
18 Your Honor. Is is that Mr. Clements told me up there in
19 front of you that he was just going to use these for
20 demonstrative purposes and, of course, is that the only
21 reason why I didn't object at that particular point in time
22 is because he promised us he was going to use that for
23 demonstrative purposes and now he's saying, well, now because
24 they've been presented to the jury --

25 MR. CLEMENTS: That's not exactly what I'm saying, Your

CHAD COLLINS - CROSS BY MR. BROOKER

1 Honor.

2 THE COURT: Well --

3 MR. BROOKER: Your Honor, I felt deceived by that.

4 Otherwise, I would've objected to them being used as
5 demonstrative evidence. And just because they're used as
6 demonstrative evidence does not mean that -- that -- that
7 they should be admitted into evidence before the jury.

8 MR. CLEMENTS: Your Honor, I think that the jury has a
9 tendency to get confused sometimes, particularly when there's
10 been some backtracking and misstatement on both of these. I
11 think for clarity and just for justice for both sides that it
12 ought to be admitted into evidence.

13 And I did. I only intended to use it for demonstrative
14 purposes, which is what I did. That's all. I didn't
15 anticipate that Mr. Brooker was going to use them and ask for
16 them or go into such detail, but I think there's some things
17 that have been stated that are not quite accurate when we've
18 gone over these in the presentation; so I feel like it would
19 definitely help the jury if they go back and they have it in
20 front of them.

21 MR. BROOKER: I'll say this though and take 15 seconds
22 and I'll leave the discretion to you, Your Honor, is is that
23 often times when I'm in court and specifically in federal
24 court, when a witness is testifying on the stand in reference
25 -- in reference to a recorded statement, a lot of times that

CHAD COLLINS - CROSS BY MR. BROOKER

1 recorded statement, a transcript is produced and, of course,
2 the transcript will be -- will be displayed to the jury while
3 the recording is done and, of course, it's being done is that
4 there's a lot of case law out there that basically says that
5 even though the transcript is not into evidence, the jury
6 can't take it back into the jury room and it cannot be
7 admitted into evidence.

8 It can be used to assist -- assist the jury to
9 understand what's -- what's on that tape, which is in
10 evidence. That's the same thing here is that this is being
11 used to basically help the jury understand his testimony.
12 His testimony is already into evidence and, of course, this
13 is just -- this would be essential to putting his
14 investigative report into evidence, which is what he's
15 testifying to.

16 THE COURT: All right. I'm not going to allow it into
17 evidence, but I obviously will give you all the latitude you
18 need on redirect to correct those --

19 MR. CLEMENTS: That will be fine, Your Honor.

20 THE COURT: -- those issues.

21 All right. Anything else?

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

23 THE COURT: Okay. We'll -- we'll reconvene then at
24 2:30.

25 MR. BROOKER: Thank you, sir.

CHAD COLLINS - CROSS BY MR. BROOKER

1 (WHEREUPON, there was a break in the proceedings from
2 1:10 p.m. until 2:36 p.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: Okay. Anything from the State before we get
5 started?

6 MR. CLEMENTS: No, Your Honor.

7 THE COURT: Anything from the defense?

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

9 THE COURT: All right. And, Thurmond, you've got your
10 place where you were?

11 MR. BROOKER: Yes, sir.

12 THE COURT: Okay. All right. Okay, Chad, you're here.
13 So let's go ahead and bring the jury in, please.

14 (WHEREUPON, the jury entered the courtroom at 2:37 p.m.)

15 THE COURT: All right, folks. We're doing better.
16 We're a little closer than in the past. I hope everyone
17 enjoyed your lunch break.

18 And if you recall, I had to -- unfortunately, I didn't
19 -- don't like to do it, but sometimes we have to do this.
20 But I had to interrupt Mr. Brooker in the middle of his
21 cross, but he has noted his -- his place and he said he's
22 ready to pick up where he left off. So we'll recognize Mr.
23 Brooker to continue with his cross-examination.

24 MR. BROOKER: Thank you, Your Honor.

25 RESUMED CROSS-EXAMINATION

CHAD COLLINS - CROSS BY MR. BROOKER

1 BY MR. BROOKER:

2 Q: Okay. All right. Lt. Collins, I think when we left off
3 I was just about to ask you about, I think, your
4 investigation and going to 225 Plum Street, but let me finish
5 my previous line of questions before I move on. I think
6 before moving on to Plum Street, I think I was on the taxicab
7 driver and we discussed the taxicab driver. Also, there was
8 a passenger in that taxicab; is that correct?

9 A: Yes, there was.

10 Q: And that passenger was -- I believe it was -- was that
11 Linda Jones?

12 A: Yes. Linda Jones was a passenger in the vehicle and
13 another party in the front passenger seat.

14 Q: Okay. And I noticed that -- that you took a recorded
15 statement of the driver, which was Ms. Bacote who testified
16 earlier, but did you take a statement of Ms. Jones?

17 A: I did not personally, no.

18 Q: Okay. So when you met with Ms. Jones -- I'm assuming
19 that you met with Ms. Jones and from your conversations with
20 Ms. Jones that you were of the opinion, you know, that --
21 that she could at least provide information sufficient enough
22 to submit to a composite artist to try and get a sketch; is
23 that correct?

24 A: Yes. Based on the information that we had received from
25 her during discussion, she did have a better vantage point.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Okay. So now, I think you testified that you set up
2 that -- you set up her an appointment with the forensic
3 artist, which was Deborah Goff, who testified earlier, I
4 think yesterday; is that correct?

5 A: Yes, that is correct.

6 Q: Okay. Now, just -- just -- and -- and your reaction to
7 this may not -- may be no, but I need to ask it anyway. Is
8 is that do you know what description that Linda Jones gave to
9 Ms. Goff, the -- the forensic artist?

10 A: I was not present in the room when they discussed her
11 doing the sketch.

12 Q: Sure. That's fine. And I think that what's been
13 identified as State's Exhibit Number 12, that that is the
14 composite sketch that was generated as a result of -- of the,
15 I guess, description that Ms. Jones gave to the composite
16 artist; is that correct?

17 A: Yes. Based on what I heard from testimony, that was the
18 description she gave, yes.

19 Q: Okay. Now, just to be clear, you didn't write down any
20 description that she gave to you?

21 A: I did not, no.

22 Q: Okay.

23 A: Not then, no.

24 Q: Did you ask her for -- for a description?

25 A: I'm sure during the time that we talked with her that

CHAD COLLINS - CROSS BY MR. BROOKER

1 she described the person, but I was not present when she
2 described the information to Ms. Goff.

3 Q: Yes, sir. And I understand that. I guess what I'm
4 talking about is is that when you met with Ms. Jones and at
5 some point in time after meeting with Ms. Jones, you were the
6 one who set up the -- the appointment with the composite or
7 forensic artist; is that correct?

8 A: Yes. I made the appointment.

9 Q: And I'm assuming in order for you to make that
10 appointment, she must have -- you must have, I guess, reached
11 the belief that she had information that was sufficient to
12 give to a composite artist to create a composite sketch?

13 A: Yes. Based on the information that we received while
14 Mr. McFadden and I were interviewing her, she stated that she
15 was -- had -- that she had a better vantage point to be able
16 to do something along the lines of a sketch. Based on that
17 information, I determined that we should do a sketch. I
18 contacted SLED and set up the appointment in Darlington
19 County.

20 Q: But you didn't go into any specifics and try to identify
21 exactly, you know, what that better vantage point translated
22 into, you know, what she could actually see?

23 A: She stated that she was in the backseat and the person
24 that entered the vehicle had to pass her and go across the
25 seat to sit next to her.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Okay.

2 A: And she sat with that person during the duration of the
3 drive.

4 Q: Okay. Now, you also testified to, I think, at some
5 point in time -- I think it was on -- that the first time
6 that you went to meet Leron Winton -- Whitten -- I'm sorry --
7 was on February 1st, 2016. So is that correct?

8 A: Yes.

9 Q: Okay. That the homicide was -- we believe was on
10 February 20 -- February 23rd and, of course, you went to --
11 excuse me -- January 23rd, 2016, and of course, is is that you
12 went to see Mr. Leron Whitten on February 1st; is that
13 correct?

14 A: Yes. Based on my notes, that was the date that we went,
15 yes.

16 Q: And I think it's my understanding is that when you went
17 there that y'all searched. He gave you permission to search
18 his home, you did search his home and, of course, is that you
19 discovered a -- I think a gun that you tested -- had tested;
20 is that correct?

21 A: Yes, that's correct.

22 Q: Okay. In connection with this case, was the weapon that
23 was used to -- to -- we know it was a gun; right? Because
24 you got a slug?

25 A: Yes.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Was the weapon that was used to kill Ms. Joseph -- it
2 was never recovered in this case, was it not?

3 A: It was not.

4 Q: And of course, the -- the -- the weapon that you took
5 from Leron Whitten's home, that that weapon was determined to
6 have had no connection with Ms. Joseph's death; is that
7 correct?

8 A: I don't have those results in front of me. I can't
9 state that.

10 Q: Okay. That's fine. But do you know whether or not it
11 was the weapon used -- whether or not that weapon was used --
12 well, let me ask it this way. Do you know whether or not
13 that weapon -- that weapon was sent to SLED for testing?

14 A: I do know it was sent to SLED for testing, yes.

15 Q: And -- but you don't know what the test results were is
16 what you're saying?

17 A: I don't have those results in front of me to answer
18 that.

19 Q: Okay. I know you don't have them in front of you. I'm
20 asking you do you know what they -- what they were?

21 A: Discussions with other parties, yes, I do know what the
22 results were.

23 Q: Okay. Okay. All right. Now, I think when you -- I
24 think you testified earlier, you know, that -- that at some
25 point in time you -- that you collected a black bag from

CHAD COLLINS - CROSS BY MR. BROOKER

1 Leron Whitten's home that was thought to belong to Mr.

2 Williams; is that correct?

3 A: Yes, that is correct.

4 Q: Okay. That black bag was not there when you -- when you
5 went there on February 1st of 2016; is that correct?

6 A: No, it was not.

7 Q: Yeah. Because I think my understanding is is that he
8 gave you permission to search the home and you did search the
9 home and the only thing that you found that you took from
10 that -- I think -- I wouldn't say the only thing, but was
11 that gun, but no bag was taken; is that correct?

12 A: That is correct. No bag was taken that day.

13 Q: Okay. So now I think the next time that you went -- I
14 think you went back and revisited Mr. Whitten on -- I think
15 it was February 22nd. February 22nd, you went back to Mr.
16 Whitten's home; is that correct?

17 A: Yes, that is correct.

18 Q: Okay. And it was on that February 22nd visit that you
19 found a black bag. You found that black bag that's into
20 evidence as -- as a State exhibit. If you can indulge me for
21 just a second? There it is. I think that's been identified
22 as -- as State's Exhibit 14, I believe. It was -- it was on
23 that trip on February 22nd of 2016 that when you were at Leron
24 Whitten's home that you then got this bag that you believed
25 to belong to Mr. -- Mr. Williams; is that correct?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: Yes, that is correct.

2 Q: So that was roughly a -- that was not quite a month, but
3 almost a month after Ms. -- Ms. Joseph's death; is that
4 correct?

5 A: Yes, that is correct.

6 Q: That you recovered this bag? Okay. Now, with respect
7 to this bag, you were in the -- I think you were in the --
8 were you in the courtroom when Ms. Linda Jones testified?

9 A: Yes, I was.

10 Q: And I think Ms. -- Ms. Linda Jones testified that --
11 testified that the person that they picked up on January 23rd
12 of 2016 from the victim's home around 4 or so had a black
13 bag; is that correct?

14 A: If I recollect her testimony, she did state there was a
15 black-in-color bag, yes.

16 Q: Okay. Now, it is my understanding that at no time
17 during the course of the investigation that Ms. Linda Jones
18 was able to say this is the black bag that I saw the person
19 carrying when we picked up that person on January 23rd, 2016;
20 is that correct?

21 A: I don't believe she positively ID'd the bag. She just
22 said it was a black bag.

23 Q: She just said it was a black bag, but she -- she
24 couldn't identify this as being the bag; is that correct?

25 A: Not positively, no.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Okay. But did she identify it at all as being the bag?

2 A: She identified a black bag as being the bag that the
3 person got into the vehicle with.

4 Q: She identified a black bag; is that correct?

5 A: Yes, that is correct.

6 Q: And of course, is is that in your experience -- and I'm
7 asking you. This is a layperson's knowledge. In your lay
8 experience, do you think there might be thousands of black
9 bags I think that's out there in circulation in Florence
10 County?

11 A: Yes, absolutely.

12 Q: Possibly even more than that. Probably, you might have
13 a black bag. Most of us do. Do you?

14 A: I do.

15 Q: Yeah. I know. But it's important to try to identify
16 whether or not this was the black bag and she never
17 identified this as being the black bag in person, did she
18 not?

19 A: No, she did not.

20 Q: Okay. And also when you talked with -- with Ms. -- I
21 think Bacote, who was also the driver, I think Ms. Bacote
22 said that the person had a black bag, but again, Ms. Bacote
23 never identified this as being the black bag that she saw; is
24 that correct?

25 A: I did not hear Ms. Bacote say that that was the black

1 bag.

2 Q: Okay. If she had said that was being the black bag,
3 that would be important evidence; right?

4 A: Yes.

5 Q: And of course, is is that important evidence -- if she
6 had said that to you, you would've documented that in your
7 report; is that correct?

8 A: Yes. I would have, yes.

9 Q: And of course, that is not in your report, is it not?

10 A: It is not in my report, no.

11 Q: Okay. Now, I think you testified and, of course, you
12 correct me if I'm wrong or if I misquote anything that you
13 say. You testified, I think, to some cell phone pings, and
14 I'll be very quick with this. I think this is something that
15 -- that we talked about before. You testified to cell phone
16 pings; right?

17 A: Yes.

18 Q: And this may be beyond your knowledge. I know we've got
19 experts coming up, but I'm asking you this question because
20 you testified to cell phone pings. I think you said that --
21 that -- that at 2:08 and -- at 2:08, I think -- and of
22 course, this is with respect to Ms. Joseph. The tower behind
23 Harris Teeter pinged off of her phone; is that correct?

24 A: Yes, that is correct. Okay. Now, are you a forensic --
25 are you a cellular phone or forensic expert?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: I am not.

2 Q: Okay. All right. So when you go out to the -- when you
3 went out to the tower -- did you go out to the tower over
4 near Harris Teeter?

5 A: No, I did not. I utilized Google and keyed in the
6 latitude and longitude to find the location.

7 Q: Okay. You utilized Google. Okay. Let me ask you a
8 question. And the reason why I ask you whether or not you
9 went out to that tower is is that did you go out and test the
10 range of that cell phone tower?

11 A: I did not.

12 Q: Okay. Do you know what I mean by the range of that cell
13 phone tower?

14 A: If you can explain.

15 Q: What I mean by the range of that cell phone tower is is
16 if you go out and figure out how far an area does that cell
17 phone tower extends out. If I am 10 miles away, would that
18 cell phone tower pick up my cell phone from 10 miles away?

19 A: No, I did not do that.

20 Q: Okay. That -- that sort of -- that sort of science is
21 -- is, I'm assuming, beyond your expertise; is that correct?

22 A: I have not been trained in forensic science involving
23 cell phone towers.

24 Q: Sure. So when you're testifying about, you know, what
25 towers a cell phone pings off of, you're not trying to

CHAD COLLINS - CROSS BY MR. BROOKER

1 testify exactly where that cell phone was when it pinged off
2 of that tower; is that correct?

3 A: No, I'm not.

4 Q: Okay. Okay. So you don't know if that cell phone was a
5 mile away or whether or not it was 10 miles away; is that
6 correct?

7 A: I do not know that.

8 Q: Okay. Just a couple more questions and I'll be wrapping
9 up. You also testified that when you looked at -- and I
10 believe it was when you looked at, I think, the cell phone
11 records. I can't remember whether or not it was the cell
12 phone records for AT&T or Sprint.

13 I think on direct examination you were -- you said that
14 -- that -- that from the cell phone records that you've had
15 that -- that there was something like 300 calls that was --
16 that was made either from Mr. Williams' cell phone or either
17 between the victim and Mr. Williams' cell phone within the
18 time period that those cell phone records covered; is that
19 correct?

20 A: Yes.

21 Q: Which cell phone records were you referring to?

22 A: Mr. Williams' cell phone records.

23 Q: Okay. Mr. Williams' cell phone records. Okay. And of
24 course, is is that Mr. Williams' cell phone records are
25 identified -- identified as, I think, State's Exhibit 10. Do

CHAD COLLINS - CROSS BY MR. BROOKER

1 you know how many -- and I think this is -- again, this is --
2 this is State's Exhibit 10, cell phone records for -- for
3 that 843-468-6516 cell phone. And on this first page -- and
4 I'll do this quickly. This is -- these cell phone records go
5 from 1 to 96; is that correct?

6 A: According to the page numbers at the top, yes.

7 Q: Okay. And on that first page, I'm going to count how
8 many cell phone calls are on that first page. Would you
9 count with me and make sure I'm accurate because I'm a
10 terrible counter. One, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
11 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
12 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
13 43, 44, 45, 46 -- 46 calls. Did I do that relatively right?

14 A: I counted with you. It sounds right.

15 Q: And of course, is if you're talking about 46 calls and,
16 of course, is is that I will skip the last page. The last
17 page is not complete. I think page 96 is not a complete list
18 of calls, but if it's -- I'm going to just go look at 45
19 pages, 46 calls times 95 pages. Do you know what that --
20 what that calculates to be?

21 A: Not without a calculator.

22 Q: Would you trust me if I told you that that turns out to
23 be 4,370 phone calls, plus the last page. I don't know,
24 maybe 10 or 12 more on the last page. So roughly close to
25 4,400 calls; right?

CHAD COLLINS - CROSS BY MR. BROOKER

1 A: True. I would trust that.

2 Q: If that math is correct?

3 A: Uh-huh.

4 Q: And of course, of 4,400 calls, I think for this period,
5 I think you said 300 and something were -- were -- were
6 between -- were to -- and of course, I'm just going to rely
7 on your figures because I haven't counted myself and I'm not
8 going to go through them and count them. We'll be here all
9 day if I did. But I'm going to give a rough estimate and,
10 like I said, it may be a little bit over or a little bit
11 under, but roughly we're looking at -- indulge me for just a
12 second, please. How much -- how many -- how many was it? It
13 was 300 and what?

14 A: I counted 383.

15 Q: 383?

16 A: Yes, sir.

17 Q: So basically what that would say is is that if it was
18 383, from my calculation, then probably around 11 percent of
19 those calls, 300 would represent around 11 percent of those
20 calls, if I'm doing the right. But 383 calls out of nearly,
21 not quite, but almost 4,400 calls. Okay.

22 Now, did you track the frequency of every number called
23 to see -- to see how many of the other numbers -- what was
24 the frequency of some of the other numbers -- frequency of
25 some of the other numbers that Mr. -- that Mr. Williams

CHAD COLLINS - CROSS BY MR. BROOKER

1 called? Did he call -- did he call any other number more
2 than he called Ms. -- Ms. -- called Ms. -- the victim's
3 number?

4 A: There were several other numbers on there that were on
5 there quite frequently.

6 Q: Do you know how many times? Did you count them?

7 A: I counted the other phone calls. Probably about the
8 same, if not right around.

9 Q: So there's some people that he was calling just as much,
10 if not more, than Ms. -- than the -- than the victim; is that
11 correct?

12 A: Yes, but my focus was on Ms. Joseph's number and his
13 number.

14 Q: Okay. But the reason why I'm saying is is is that the
15 fact that he called her 380-something times, that is not --
16 to my logic, that has no evidentiary value -- has no
17 evidentiary value, you know, as to, you know, whether or not
18 he was the person that was at her home.

19 MR. HOEFER: Judge, I'm going to object.

20 THE COURT: Sustained.

21 MR. HOEFER: He's making a statement.

22 THE COURT: Sustained.

23 MR. HOEFER: He's not asking a question.

24 THE COURT: You're not asking a question. You're giving
25 your opinion.

CHAD COLLINS - CROSS BY MR. BROOKER

1 MR. BROOKER: Well, I'm --

2 THE COURT: That's not a question.

3 MR. BROOKER: I can change it. I can ask him does it
4 have any evidentiary value.

5 THE COURT: You can ask him that.

6 MR. BROOKER: Okay.

7 BY MR. BROOKER:

8 Q: In your opinion --

9 MR. BROOKER: And of course, I was just leading him --

10 THE COURT: Well, no. You said in your opinion.

11 MR. BROOKER: Okay.

12 THE COURT: You're not allowed to do that.

13 MR. BROOKER: Okay.

14 BY MR. BROOKER:

15 Q: Does that -- does that have any evidentiary value
16 whatsoever with respect to whether or not Mr. Williams was
17 the person -- and I'm talking about that number of calls
18 alone, does it have any evidentiary value whether or not that
19 was Mr. Williams that was picked up by the -- by that cab
20 that day?

21 A: It just showed the amount of contact between the two
22 parties.

23 Q: Okay. Okay. And you're right. Thank you for your
24 honesty.

25 MR. BROOKER: If you can indulge me for just a second,

CHAD COLLINS - CROSS BY MR. BROOKER

1 Your Honor, let me check to make sure I don't have any
2 further questions before I sit down.

3 Let me put this back up.

4 BY MR. BROOKER:

5 Q: Now, on January 23rd of 2016, that was the date on which
6 Ms. Lynn [sic] -- we believe Ms. Lynn was -- was killed; is
7 that correct?

8 A: Yes, that is correct.

9 Q: Okay. Did you look at the records to see whether or not
10 there was any calls between -- hold on just a minute, if you
11 can indulge me for just a second. On the day in which Ms. --
12 Ms. Lynn was -- excuse me. Ms. Joseph was murdered on
13 January 24 -- excuse me -- January 23rd. I apologize. I'm
14 sorry. From my review of the records, there was no call on
15 January 23rd, 2016, between -- between Mr. Williams' phone and
16 the victim's phone; is that correct?

17 A: There are no phone calls between the two phones numbers,
18 no.

19 Q: Okay.

20 A: On that date.

21 Q: So on that date, Mr. Williams made no attempt to -- Mr.
22 Williams made no attempt to contact the victim; is that
23 correct?

24 A: No, there was no contact between the two numbers on that
25 date. It stopped on the 22nd.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: Okay. And of course, you also said that, I think, these
2 records went up to -- what? The 25th; is that correct?

3 A: If I recollect correctly, yes. I think it was the 25th,
4 right around the end of the month.

5 Q: I'm sorry. I think it's the -- it's the 24th, the next
6 day. You can take a look at it and see.

7 A: Thank you. Yes. They ended 1:33:51 on 1/24.

8 Q: Okay. So that would have been 1:30, 1:30 the next day?

9 A: Yes.

10 Q: Okay.

11 A: Based on those records.

12 Q: Okay. So -- and the reason why I ask you that is is is
13 that -- that basically this was a period of less than 24
14 hours. These records cover a period of less than 24 hours
15 after Ms. -- Ms. Joseph's death. Ms. Joseph died, you know,
16 somewhere around, you know, we believe somewhere in the
17 afternoon of -- of -- you know, of the 23rd; is that correct?

18 A: Yes, that is correct.

19 Q: I know the coroner says around 4 o'clock, but it could
20 be -- it could be -- it could be different. So less than 24
21 hours; right?

22 A: Yes.

23 Q: So -- and of course, the day of her murder, there was no
24 calls; is that correct?

25 A: There were no calls between the two numbers.

CHAD COLLINS - CROSS BY MR. BROOKER

1 Q: So on -- so do you think it's -- you know, do you think
2 it's something significant or something remarkable that
3 within 15 hours after her murder that there would be no
4 calls, that Mr. Williams would make no attempt to contact
5 her, given the fact that he made no attempt to contact her on
6 the day of the murder?

7 A: I'm sorry. Could you repeat that?

8 Q: I'm sorry. I'll try not to confuse that. Do you think
9 that -- I think you testified on direct examination that --
10 you know, that he didn't call her number. Mr. Williams --
11 Mr. Williams' cell phone records indicate that he didn't call
12 her number -- call Ms. -- the victim's number after it was
13 believed that she was killed; is that correct? That's what
14 you testified on direct examination?

15 A: I did not see any other phone calls between the two
16 numbers beyond that day.

17 Q: Okay. Okay. And what I'm asking you is is that because
18 -- is there any -- is there any significance in that within a
19 -- 15 hours after her death that there was no calls -- there
20 was no call from Mr. Williams' phone to her phone given the
21 fact that he had not called her the 24 hours prior to her
22 death?

23 A: Just the amount of contacts that they had leading up to
24 that date just abruptly stopped.

25 Q: Okay.

CHAD COLLINS - REDIRECT BY MR. CLEMENTS

1 MR. BROOKER: If you can indulge me for just a second,
2 Your Honor. I have no further questions, Your Honor, at this
3 time.

4 THE COURT: Redirect?

5 MR. CLEMENTS: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. CLEMENTS:

9 Q: Now, I know it's 300 and something. Tell me what number
10 was the amount of contacts between Royal Williams and
11 Sherilyn Joseph between January 14th and January 22nd?

12 A: The amount of contacts that I found to include voicemail
13 and text messaging was 383 beginning January the 14th through
14 January 22nd of 2016.

15 Q: 380?

16 A: 383.

17 Q: 383? Did they contact each other every day?

18 A: The frequency was a lot on some days and then other days
19 there would be no contact.

20 Q: Does this include texts and phone calls as well?

21 A: Yes, that is correct.

22 Q: Let me ask you this. There was no contact on the 23rd,
23 none on that day?

24 A: I did not see any contact between those two phone
25 numbers on the 23rd.

CHAD COLLINS - REDIRECT BY MR. CLEMENTS

1 Q: Would there be any need to contact somebody on the phone
2 if you're with that person?

3 MR. BROOKER: Objection, Your Honor, calls for
4 speculation.

5 THE COURT: Overrule.

6 MR. BROOKER: Can we approach?

7 THE COURT: Yeah.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury but out of the hearing of the jury as
10 follows.)

11 MR. BROOKER: He is suggesting that there'd be no need
12 to call her because they were together and he can't speculate
13 about that.

14 MR. CLEMENTS: Well, he was asking him the significance
15 of the calls. I'm basically doing the same thing.

16 THE COURT: He's going off the records.

17 MR. BROOKER: Yeah. I'm going off the records, but I'm
18 not asking him to make a speculation about something like
19 that. That's highly inappropriate.

20 MR. CLEMENTS: This is common sense.

21 MR. BROOKER: Well, the jury can draw their common
22 sense. You can make it in closing arguments, but you can't
23 get into speculation like that.

24 (WHEREUPON, the bench conference ended and the
25 proceedings resumed as follows.)

CHAD COLLINS - REDIRECT BY MR. CLEMENTS

1 THE COURT: Overruled.

2 BY MR. CLEMENTS:

3 Q: Please answer the question.

4 A: Could you repeat the question, please?

5 Q: What significance would you find of people having to
6 contact each other by phone if they were together?

7 A: I would see that there would be no need if they were
8 together.

9 Q: Okay. I'm going to ask you about these AT&T records on
10 State's Exhibit 6. You or someone else is the one that got
11 the subpoena and got these records?

12 A: I did. I completed the search warrant for both the
13 phone records for Ms. Sherilyn Joseph and for Royal Williams.

14 Q: Excuse me. I didn't mean subpoena or search warrant.
15 What Mr. Brooker has been asking you about on the first page
16 under the certificate of authenticity, what is that?

17 A: That is a subscriber information for a phone number of
18 704, which is a North Carolina area code.

19 Q: Okay. And you contacted that number and it was -- you
20 couldn't reach it?

21 A: It was not reachable.

22 MR. CLEMENTS: I beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 BY MR. CLEMENTS:

25 Q: I'm going to show you State's Exhibit 13. I'm going to

CHAD COLLINS - REDIRECT BY MR. CLEMENTS

1 show you over here. Lieutenant, on Ms. Lakeya's manifest,
2 she lists a call for a fare on 3618 Central Drive, Apartment
3 A, on this manifest; is that correct?

4 A: Yes, that is correct.

5 Q: With the destination being Doneraile?

6 A: Yes, that is correct.

7 Q: And there's a number out to the side out there. That's
8 a 704 number. What is that 704 number?

9 A: If I can read it, it's 704-526-6079, I believe. I could
10 be wrong. The handwriting is a little off on this picture.

11 Q: Is that the same number as on -- on that AT&T?

12 A: Yes, that is the same number on the subscriber page on
13 the information.

14 Q: Okay. And is there another number up here that Ms.
15 Lakeya notated?

16 A: Yes. She annotated 803-807-2989.

17 Q: And you were present when Ms. Lakeya Bacote gave her
18 testimony; is that correct?

19 A: Yes, I was.

20 Q: Do you recall her saying that she tried to call the 704
21 number and she couldn't get it and then the customer called
22 right back immediately after that on the 803 number?

23 A: Yes, I do recall her saying that.

24 Q: Mr. Brooker asked you about that period and that there
25 were no outgoing calls from Mr. Royal Williams' 468 number;

1 is that correct?

2 A: At what -- which period, sir?

3 Q: That time period where the taxicab was called for?

4 A: There was one. If I recall correctly, one outbound call
5 and then four or five inbound calls to his phone number
6 during that time frame.

7 Q: But there were none to the taxicab number?

8 A: There were none to the taxicab company from that phone
9 number, no.

10 Q: Did you have any knowledge as to how many phones Mr.
11 Williams had?

12 A: I have no knowledge of how many phones Mr. Williams may
13 have had.

14 Q: What familiarity do you have with phone apps?

15 A: Very, very little. I know that there are apps available
16 that you can utilize off of Wi-Fi and also to hide your phone
17 number if you want to call someone.

18 Q: Okay. So somebody can actually call and utilize another
19 app and show up as another number?

20 A: I have been present when other phones -- or when people
21 have made phone calls from an app on their phone that went to
22 -- that was utilizing a different number than their own.

23 Q: Okay. And do you have any knowledge as to how that
24 shows up on their records or not?

25 A: I do not know that.

CHAD COLLINS - REDIRECT BY MR. CLEMENTS

1 Q: Okay. Now, as far as Ms. Linda Jones and Ms. Lakeya
2 Bacote, Mr. Brooker was asking you about them ID'ing Mr.
3 Williams or not or ID'ing the black bag or not. Do you know
4 if they were ever even asked?

5 A: I do not know.

6 Q: So you can't say they didn't ID it?

7 A: I was not present if they were shown a picture of the
8 bag to identify it.

9 Q: Okay.

10 MR. CLEMENTS: I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. CLEMENTS: Thank you, Lieutenant.

13 Thank you, Your Honor.

14 THE COURT: All right. Anything on recross?

15 MR. BROOKER: Yes, sir.

16 RECROSS-EXAMINATION

17 BY MR. BROOKER:

18 Q: Mr. Collins, you were -- sorry. I'm sorry. Lt.
19 Collins, you were asked just a minute ago on redirect
20 something to the extent that you don't need to call nobody if
21 you're with them. Do you remember being asked that?

22 A: I do recall being asked that question, yes.

23 Q: Okay. Now, just for the benefit of the jury is is that
24 I think you testified that your investigation was is is that
25 Ms. -- Ms. Joseph went to work that morning; right?

CHAD COLLINS - RECROSS BY MR. BROOKER

1 A: To my recollection, yes, she went to work that morning
2 and got off at two.

3 Q: What time was that?

4 A: I don't remember.

5 Q: Okay. Was it early morning? Five? Six? Seven?
6 Eight? It was early that morning?

7 A: From my understanding, her child was staying with her
8 parents and she had to go to work early that morning.

9 Q: Okay.

10 A: So that's my understanding.

11 Q: So she had to go to work early that morning and she got
12 off at around -- I think you testified that you believed that
13 she got off around 2 o'clock?

14 A: To my recollection, yes, it was 2 o'clock that she was
15 due to get off that day.

16 Q: And of course, is is that according -- according to your
17 -- according to, I think, that little -- that little sketch
18 of the -- that little sketch of the Profitt videotape, you
19 said that she first -- you think that -- you know, assuming
20 that you're correct, that you think that you saw her vehicle
21 first come home at around 3:11 p.m.?

22 A: I think it was closer to 2:51.

23 Q: Maybe you're right. I'm sorry. I got it so I don't
24 have to speculate. I think you said you saw a vehicle that
25 looks like hers that first came home at around 2:51; is that

CHAD COLLINS - RECROSS BY MR. BROOKER

1 correct? Am I reading this correct?

2 A: Yes.

3 Q: 2:51. And then, of course, leave 20 minutes later at
4 3:11 and then returned to Century Drive at 3:53?

5 A: Yes. Based on my observation of the video, that's what
6 I observed.

7 Q: Okay. So basically is what you're saying is is that she
8 was killed and, of course, if you accept the -- the assistant
9 coroner's proposition that the -- that the time of murder was
10 around 4 o'clock, then roughly she was -- she was killed
11 roughly around an hour -- about an hour after -- after the
12 first time she arrived home, a little more than an hour after
13 the first time that she came home and then, of course, is is
14 that the last time when she came home, that was around 3:53.
15 She would've been killed, you know, roughly around, you know,
16 eight -- you know, five to eight minutes after she got to the
17 house; right?

18 A: If math is correct, yes.

19 Q: If the math is correct.

20 A: Yes.

21 Q: And so she spent all day away from the home. Then, of
22 course, is is that this proposition that -- you know, that
23 you don't have to call someone if you're with them, but she
24 had been working most of that day, didn't she?

25 A: Until 2 o'clock, yes.

CHAD COLLINS - RECROSS BY MR. BROOKER

1 Q: Until 2 o'clock and she didn't get home until -- until
2 -- I think you said if you accept your -- if you accept your
3 eyes -- if you accept your eyes, she didn't get home until
4 around 2:51. That's when she started pulling into Century
5 Drive around 2:51; is that correct?

6 A: Based on the video, yes.

7 Q: Okay. So she had been gone all day until -- and didn't
8 get back home until around 2:51, 20 minutes later left there
9 -- left there 20 minutes later, and then came back and then
10 was killed five or eight minutes thereafter. So whoever she
11 -- for the majority of that day, for about 80 to 90 percent
12 of that day up until her death, she would not have been with
13 anybody except her coworkers and herself; is that right?

14 A: Up until 2 o'clock, yes.

15 Q: Okay. So the premise that, hey, you don't need to call
16 somebody that you're with, that premise doesn't fit in this
17 particular model because they were not together. Her --
18 there's no evidence that she was with Royal Williams; is that
19 correct?

20 A: There's no evidence to suggest that they were together
21 at that time, no.

22 Q: Yeah. Now, the next thing that you say -- excuse me.

23 MR. BROOKER: Excuse me, Your Honor.

24 BY MR. BROOKER:

25 Q: You testified to something about a phone app and you

CHAD COLLINS - RECROSS BY MR. BROOKER

1 said I don't know a whole lot about phone apps, but you said
2 -- and you correct me if I'm wrong because I don't want to
3 mis-say anything that you said. Now, I think Mr. Clements
4 asked you what do you know about phone apps and you said you
5 don't know much about them at all, very little, and he said
6 something to the effect -- you correct me if I'm wrong --
7 that, oh, don't they have these phone apps where you can call
8 someone and someone else's number showed up. Is that what
9 the question was?

10 A: To my recollection, yes.

11 Q: And your answer was, oh, yeah, they do have those phone
12 apps?

13 A: There are some apps available to do that, yes.

14 Q: Okay. Now, do you have any evidence that you've turned
15 over to me -- y'all did the investigation; right?

16 A: Yes.

17 Q: Any evidence that you turned over to me to suggest that
18 Royal Williams had some sort of -- some sort of spoofing app
19 on his phone?

20 A: No.

21 Q: None; right?

22 A: No.

23 Q: All right. Now, let's say, for instance, if someone did
24 have a spoofing app on the phone, I think you said -- I think
25 that's what they call it, a spoofing app where you spoof

CHAD COLLINS - RECROSS BY MR. BROOKER

1 someone or you show them a different number other than the
2 number that's calling. Even if a spoofing app had been made
3 -- and this is a question. Even if a spoofing app had been
4 made on Royal Williams' phone, then there would still be an
5 out -- an outgoing call, but the outgoing call, when it's
6 received by someone, would show a different number; that's
7 correct?

8 A: That's my understanding of how the app works, yes.

9 Q: But as we previously established and I think you
10 testified to -- and I won't show the records again -- is is
11 that between the time of -- I think it was 3:11 p.m. and 4:42
12 p.m., that there was no outgoing calls from Royal Williams'
13 cell phone; is that correct?

14 A: There were no outgoing phone calls from Royal Williams'
15 cell phone --

16 Q: So you --

17 A: -- between that time frame.

18 Q: I didn't mean to interrupt you. I apologize. And so --
19 so even if this allegation that, hey, he may have spoofed
20 someone when he called at 3:40 or when the call was made in
21 to the cab company at 3:40, that would still be impossible
22 because there was no outgoing call from his cell phone at
23 3:40; correct?

24 A: There was no outgoing phone call from his cell phone at
25 3:40 p.m.

CHAD COLLINS - RECROSS BY MR. BROOKER

1 Q: There was no outgoing call from his cell phone at 4:01,
2 the time in which Ms. -- the time in which Ms. Bacote said
3 that she received a call from the person from that 803
4 number, which was the -- which was a different number for the
5 pickup; is that correct?

6 A: There was no outgoing phone call from Royal Williams'
7 cell phone at 4:01 p.m. on 1/23/2016.

8 Q: Okay.

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

10 THE COURT: All right. Thank you very much, sir. You
11 may step down.

12 THE WITNESS: Thank you.

13 THE COURT: You may call your next witness.

14 MR. CLEMENTS: Your Honor, my next witness would be
15 Chris Johnson.

16 THE COURT: I'm sorry?

17 MR. CLEMENTS: Chris Johnson.

18 THE COURT: All right.

19 (WHEREUPON, a bench conference was held in the presence
20 of the jury but out of the hearing of the jury off the
21 record, after which the proceedings resumed as follows.)

22 THE CLERK: Please step up to the witness stand. Place
23 your left hand on the Bible and raise your right. Do you
24 swear or affirm the testimony you give in this case will be
25 the truth, the whole truth, and nothing but the truth, so

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your name for the
4 record.

5 THE WITNESS: Christopher Johnson.

6 CHRIS JOHNSON, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CLEMENTS:

10 Q: Sir, where do you work?

11 A: South Carolina State Law Enforcement Division.

12 Q: And what rank are you?

13 A: Lieutenant.

14 Q: Lt. Johnson, do you have any type of specialty that you
15 do with SLED?

16 A: Yes, sir. I handle all of our call record analysis, our
17 wiretapping software, pen registers, anything regarding
18 cellular telephones and their analysis.

19 Q: Everything about cellular analysis?

20 A: Yes, sir.

21 Q: You're in charge of?

22 A: Yes, sir.

23 Q: You train the other agents?

24 A: Yes, sir.

25 Q: Okay. As part of your cell phone thing, does it also

1 include mapping?

2 A: Yes, sir, it does.

3 Q: Okay. And what's your educational background?

4 A: I have a bachelor's degree from the University of South
5 Carolina.

6 Q: And what kind of experiential background do you have in
7 regards to cell phone analysis and cell tower locating and
8 mapping?

9 A: Yes, sir. I have been assigned to that task for the
10 last right at 14 years now. Different training classes from
11 the FBI's CASTViz program to the PenLink program, their
12 advanced LinkedIn administrator's course, several other
13 private courses that all deal with cellular analysis and the
14 mapping of call records.

15 Q: Also, have you had training since your training in
16 cellular tower mapping?

17 A: Yes, sir. All of that was part of the CASTViz program,
18 as well as PenLink and several other, you know, just private
19 classes.

20 Q: Have you been qualified as an expert before in state or
21 federal court?

22 A: Yes, sir. State court several times.

23 Q: Okay. And specifically, expertise in what area?

24 A: Call detail record analysis, cellular analysis.

25 Q: All right. All right. What type of -- of tools do you

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 use in your job?

2 A: So for mapping, typically, we -- we like to use CASTViz,
3 which is an FBI program. We use PenLink, which the version
4 we're on now is called PLX. We utilize that, but one of the
5 main things that I do when I instruct and teach my
6 subordinates that work for me, they have to be able to teach
7 or have to be able to map these call records by hand before
8 they're allowed to use the software.

9 Q: Okay. Do you routinely use your hands, as well as
10 software?

11 A: Yes, sir. Typically, every report that comes out of our
12 office, even if it's utilized software to map it, they have
13 to go back with a compass or the call records and confirm
14 those records by hand that what's been produced is accurate.

15 Q: Okay. And you're able to authenticate your records when
16 you do the cell analysis or mapping?

17 A: Yes, sir.

18 Q: Okay.

19 MR. CLEMENTS: Your Honor, at this time, we'd offer
20 Agent Johnson as an expert in this field.

21 THE COURT: Any objection?

22 MR. BROOKER: Just if I could just ask a couple of
23 questions, Your Honor?

24 THE COURT: Yes, sir.

25 MR. BROOKER: And I'll be very brief.

VOIR DIRE

BY MR. BROOKER:

Q: Agent Johnson -- I'm sorry. Agent -- Agent Johnson, the mapping that was done in this particular situation, I think the graphics that you prepared --

A: Yes, sir.

Q: -- for this case, did you do those yourself?

A: I did.

Q: Okay. And of course, is I think that you said is that y'all used a certain software for purposes of mapping? Am I understanding that correctly?

A: We like to, typically, because a lot of the records that we get are in the thousands of records. So if possible, we like to do it through a software obviously for time, but in this particular case, that was not an availability because the records were not in electronic format. They were only available in a printed format and so, therefore, I had to do all the records by hand.

Q: Okay. You had to do all of them by hand?

A: Yes, sir.

Q: Okay.

A: And I say by hand. I have to physically enter each call record into -- we utilize Google Earth Pro to produce the records, the maps, but it's physically done by hand entering each record versus a mass batch that the software programs

1 allow us to use.

2 Q: You use Google Earth to produce a map?

3 A: Yes, sir. Google Earth Pro.

4 Q: Pro?

5 A: Yes, sir. It's a free version of Google Earth that
6 Google produces.

7 Q: And just -- just one more question --

8 A: Yes, sir.

9 Q: -- in reference to it. As being an expert in this
10 particular area, I know that you said that you've been doing
11 it for 14 years and, of course, is is that you've taken
12 [sic] training courses and that sort of stuff; is that
13 correct?

14 A: Yes, sir.

15 Q: Okay. Do you have to certify every year as an expert in
16 this particular area?

17 A: No, sir. No, sir. A lot of it you -- you take the
18 courses and learn how and what to look for in the mapping and
19 then a lot of it is come from experience just from utilizing
20 this in fugitive cases.

21 Q: Okay. And because there is no certification, I'm
22 assuming is is that there is no required -- annually required
23 continuing legal education in connection with this?

24 A: No, sir.

25 MR. BROOKER: I have no further questions, Your Honor.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 THE COURT: All right. Any objection?

2 MR. BROOKER: No objection, Your Honor.

3 THE COURT: All right. Without objection.

4 MR. CLEMENTS: Thank you, Your Honor.

5 RESUMED DIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q: Lt. Johnson --

8 A: Yes, sir.

9 Q: Can you tell this jury how you became to be involved in
10 this particular investigation?

11 A: Yes, sir. I received a request from the Solicitor's
12 Office here in Florence to evaluate two sets of records, one
13 from Sprint and one from AT&T, regarding a homicide
14 investigation.

15 Q: Okay. And once you got that request, can you tell the
16 jurors how you began to do that job?

17 A: Yes, sir. So with AT&T, the phone records that they
18 provide, they provide their call detail records and then the
19 cell site locations that each call accesses as far as the
20 tower is confirmed is involved -- is involved in that
21 spreadsheet that I receive. And so we sit down with the
22 Solicitor's Office or the requesting agency and, at that
23 point, we determine what time frame that they're looking for
24 that they want analyzed.

25 Obviously, if they get 30 days' worth of records, we

1 prefer not to look at 30 days' worth of cell sites that each
2 time that phone has made a call, you know, we have to map
3 because that becomes extremely intense. So, therefore, we
4 determine a short, you know, date and time range that they
5 prefer that we look at it and then, at that point, with this
6 particular case, we look at each cell site and we enter those
7 GPS coordinates of the cell site into our mapping program in
8 order to locate where that tower is located at.

9 Q: Do you do that manually?

10 A: Yes, sir. We do that manually by entering it into
11 Google Earth. Typically, they have a -- basically, what they
12 call a 9-1-1 address. Just like your home has an address,
13 these towers have an address as well, but we typically do not
14 use that for the simple fact that if anybody's ever used a
15 GPS for driving directions, when you enter an address, it'll
16 tell you you've arrived, but yet you may go another hundred
17 yards down the road before you actually get to your location.

18 So we found that not to be as accurate as using the GPS
19 coordinates where when we enter those into the mapping
20 program, typically it puts us right on top of where the tower
21 is at. So, therefore, when we depict our mapping and our
22 images, they're are a lot more accurate in their location
23 than it would be.

24 Q: Are you able to go on Google Earth Pro and check those
25 manually as part of the --

1 A: Yes, sir.

2 Q: -- part of the site?

3 A: So if you're familiar with Google Earth at all, you can
4 go in. Obviously, I can enter the GPS coordinates and it'll
5 drop a pin on the map as to where that GPS coordinate is at.
6 You can zoom down and up with Google Earth that the visual --
7 you can actually see the tower sitting on the ground and, in
8 certain cases, if the Google Earth car, for lack of a better
9 term, has been through that area, you can actually go to a
10 street view and actually see it as if you were in the car and
11 see that tower sitting there. So you can confirm that the
12 tower number that they're providing and the location of that
13 tower is accurate as to where it sits on the map.

14 Q: We asked you to examine just one set of call records; is
15 that correct?

16 A: Two sets.

17 Q: Two sets?

18 A: There was a set of Sprint records and a set of AT&T
19 records.

20 Q: All right. Here's State's Exhibit 10. Does that look
21 familiar to you?

22 A: Yes, sir. These are Sprint phone records.

23 Q: Are they the same number that you analyzed for us?

24 A: Yes, sir.

25 Q: Okay. I'm going to show you State's Exhibit 6. Can you

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 identify that for us or do you recognize that?

2 A: Yes, sir. These are the AT&T formatted records that
3 were provided.

4 Q: Now, what -- as far as tower sites, are those included
5 on the AT&T records?

6 A: Yes, sir, they are. On the far right column of the
7 spreadsheet, they provide the cell location, which includes
8 the cell site location by GPS coordinates, and then it
9 provides the azimuth of the tower, which is the sector that
10 it utilized.

11 Q: Okay. I got a few questions about that, but let me get
12 -- get a little further here. State's Exhibit 9, can you
13 tell me what that is?

14 A: These are Sprint's spreadsheet of where their towers are
15 located. Unlike AT&T, on a Sprint spreadsheet, the only
16 thing that they provide is what they call an NEID, which is
17 basically like an area code for the phone records or for the
18 phone -- cell towers and then it provides the actual tower
19 number and so you have to cross reference the spreadsheet
20 that the call records are on to the tower list to find out
21 where that tower is located and the information that you need
22 for that tower to conduct your mapping.

23 Q: Were you able to do that in this case?

24 A: I was, yes, sir.

25 Q: Lieutenant, I'm going to show you page 1 of the phone

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 records from AT&T that are part of State's Exhibit 6 and I'm
2 going to ask if you can explain to me what columns are most
3 important to you on this record?

4 A: So the most important columns are, obviously, the
5 connection date and then the connection time, but you will
6 notice on AT&T's records the connection time is in UTC time,
7 which is typically 4 to 5 hours ahead of Eastern time
8 depending on daylight savings time.

9 Q: Okay. Can you explain to me where UTC time comes from
10 and what's its purpose?

11 Q: It's a universal time code. Typically, different phone
12 companies will utilize it in their -- their server
13 operations. Some companies will go ahead and convert it for
14 you before it comes to you. Sprint does. Verizon. A lot of
15 them will normally convert them back to Eastern time for you.
16 If it's not, that you have to convert it yourself.

17 Q: Where does UTC time come from?

18 A: It is one of the time codes that they use similar to
19 central time, GMT time, which is Greenwich mean time, is one
20 of the timing formats that they use.

21 Q: Greenwich mean time?

22 A: Yes, sir. It's basically the same as Greenwich mean
23 time as far as the time difference between Eastern time.

24 Q: And am I correct in saying that that's what time it is
25 in Greenwich, England?

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 A: Yes, sir.

2 Q: Okay. So however many time zones you are away, you've
3 got to subtract or add?

4 A: Yes, sir.

5 Q: Were you able to do that in this case?

6 A: Yes, sir.

7 MR. CLEMENTS: I beg the Court's indulgence for a
8 minute. I'm going to put this clip back on so they don't --
9 BY MR. CLEMENTS:

10 Q: I'm going to show you the first page of State's Exhibit
11 9, which is from Sprint, and ask if you could go through this
12 with me and tell me what these columns are and what their
13 significance is?

14 A: Okay. So this is your cell site locations. This is the
15 list of towers that Sprint has provided that correlate to
16 your call records that you have.

17 Q: Now, this -- does it contain any phone numbers or any
18 call information?

19 A: No, sir, this does not.

20 Q: This is just geographic location?

21 A: This is just the towers. You'll see in the first column
22 is the cell number and you'll see 1 is shown three times.
23 That is because most cell towers contain three sectors and
24 that's depending upon what is called the azimuth, which you
25 see over in the next-to-last column.

1 Q: Okay.

2 A: And then you have the lat and long of the towers, as we
3 discussed, and then, as I talked about earlier, the NEID,
4 which is basically the area code that lets you know which
5 group of towers to look for, and then the cell number, which
6 is the actual tower number.

7 Q: How about latitude and longitude?

8 A: That is the lat -- latitude and longitudinal coordinates
9 of the tower itself where it -- where it is located.

10 Q: Okay. And then you have the manufacturer. Why would
11 that be important?

12 A: So with Sprint records, they produce two different types
13 of towers. They produce a Lucent tower and they produce a
14 tower called a Nortel tower. Depending on which tower you
15 use, their sectors are numbered 1, 2, 3 or 4, 5, 6, and so
16 depending on how they're numbered is to whether -- well, I'm
17 sorry. It's 1, 2, 3 or 2, 3, 4. And so depending on what
18 type of manufacturer it is is to whether sector 1 -- and this
19 is very confusing, but as to whether sector 1 is indeed
20 sector 1 or if it's a Nortel tower, sector 1 is actually
21 numbered sector 2.

22 Q: Okay.

23 A: So it gets extremely confusing if you don't pay
24 attention to your manufacturer.

25 Q: Okay. Did you have to deal with any Nortel towers in

1 this --

2 A: No, sir.

3 Q: -- investigation?

4 A: No, sir. Everything is Lucent. Most of all of South
5 Carolina is Lucent, which makes it a little easier for us.

6 Q: Now, explain to me again what the azimuth is?

7 A: So the azimuth is the -- every -- every tower has three
8 sectors so it knows what face of the tower that a call is
9 utilizing and so they determined that sector on what they
10 call an azimuth, which is -- if anybody is familiar with a
11 compass heading, it goes from zero to 360.

12 And so the azimuth is going to be anywhere from zero to
13 360. If it's -- say the azimuth is 30, then the beam width
14 for that sector is 60 degrees to the left of 30 and 60
15 degrees to the right, and that is what gives you your beam
16 width, which you'll see on the images that I created for
17 that, the towers that were used.

18 Q: Explain to us what the beam is?

19 A: So the beam width is the size of the cone that that
20 typical signal goes out.

21 Q: Okay.

22 A: And again, it's a way for the towers to help handle the
23 mass number of phone calls and text messages that are coming
24 out. It splits them up into channels and sectors so that it
25 -- it can help handle that -- that load of calls without

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 dropping calls or text messages.

2 Q: How many sectors does a tower have?

3 A: Typically, three. Some are only one, but most of them
4 are three.

5 Q: Is there any four or five or two?

6 A: Typically, if you've got more than three, then you've
7 got what they call a stacked tower and so if you're in a real
8 populated area, then they'll put multiple antennas on a
9 single tower so that it can handle those locations. At those
10 points, I have seen sectors that are numbered 1, 2, 3, 4, 5,
11 6, but basically, what it does is you'll see the azimuth
12 repeat themselves because of it being a stacked tower.

13 Q: Okay.

14 A: Which is indicated -- if you can see the image on the
15 screen, that is a -- potentially an example of a stacked
16 tower or it could be that that particular tower has multiple
17 phone companies on it.

18 Q: Okay. So the top rack there on that picture?

19 A: Yes, sir.

20 Q: What are the little rectangular things that look like
21 they're attached to it?

22 A: Those are the antennas.

23 Q: Okay. And it appears to be three sides to it and then
24 three on each side?

25 A: Yes, sir. It looks like there's three stacks of

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 antennas, possibly cell phone companies. Everybody rents
2 space on those towers because the tower locations are so
3 expensive. They'll rent space on those towers; so you may
4 have other phone companies. You could have a radio system.
5 It just depends on who's paying rent on that tower.

6 Q: Okay. Can you explain three-sector towers and use this
7 illustration, please?

8 A: Yes, sir. So typically, when cell phones first came
9 out, you would make a phone call and if you're driving down
10 the road, inevitably you would drop that phone call.
11 Obviously, the customers were not happy with that and so as
12 the phone companies built their -- their networks, they would
13 get the towers close enough and strong enough that you would
14 have an little bit of overlap from one tower to the next
15 tower.

16 And so what that creates is what we call a hand-off
17 zone. So that way as your phone travels down the road, as
18 the signal gets weaker from one tower to the next, the next
19 tower that signal gets stronger. And as it gets into that
20 hand-off zone and it sees that, then that phone call will
21 hand off from one tower to the next tower and, therefore, you
22 don't drop your phone calls as much. Unfortunately, it still
23 occurs, but it's not as often as we first saw when cellular
24 technology first came out.

25 Q: When you see a signal moving from one tower to another,

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 what's -- what's that a strong signal of or a strong --

2 A: If they're moving from one tower to the next, then
3 typically what that indicates to us is that the tower -- that
4 the phone possibly may be moving. Now, if we see that a
5 phone is in an area where it consistently bounces from one
6 tower to the next tower, then back to that same tower and the
7 face doesn't change, then that indicates to us normally that
8 that phone is very possibly in that hand-off area, that it's
9 out there where the signal is strong from both towers and the
10 time frame is so tight, you know, like within minutes, that
11 it's bouncing back and forth between those towers, but yet
12 it's not moving away from -- to a different face, to a
13 different tower. It's those same couple towers. Typically,
14 it's sitting in what we think of as a hand-off area.

15 Q: Okay. If it's not bouncing back and forth, but still
16 moving, that's an indication that the phone is moving
17 possibly?

18 A: Possibly.

19 Q: Okay. Where these lines intersect on the circles here,
20 that's the hand-off zones?

21 A: So those areas where you see that -- that overlap
22 between the towers, they'll cross over. You'll see it past
23 each tower. You'll see a little bit of space where they
24 overlap. That is the hand-off area. And typically, again,
25 this is drawn in circles, but, you know, typically, a cell

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 phone signal isn't that clean. It's going to -- it's not
2 going to be a straight circle per se, but unfortunately,
3 that's the only way we have of depicting it when we draw it
4 by hand.

5 Q: Okay. What was one of the numbers you were asked to
6 analyze?

7 A: The AT&T number was 843-260-8624.

8 Q: Do you know whose number that was?

9 A: No, sir, I don't.

10 Q: Okay. And who is the service provider?

11 A: It was an AT&T number.

12 Q: And you analyzed the time frame of what?

13 A: January the 22nd through January the 23rd of 2016.

14 Q: And the incident location -- let me get to that in a
15 minute. When you're analyzing it, what are you analyzing
16 that number for specifically?

17 A: So the only thing that we're concerned with is -- you
18 know, this number is provided to us as being involved and so
19 we're looking to see what towers and what sectors of those
20 towers that that phone utilized during that time frame and
21 then we produce that onto a map.

22 The other thing that we ask for is any pertinent
23 locations as far as an incident location or a crime scene or
24 evidence that's found, anything like that. We request those
25 locations and we'll include those locations in on the map to

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 see how they correlate to the cell phone towers that are
2 being utilized by that device.

3 Q: Okay. What -- what difference does it make as to
4 whether one or two or three of the antennas on it?

5 A: So depending on what sector, whether it's sector 1,
6 sector 2 or sector 3, that tells me what side of the tower
7 it's on. It could be on the northwest side. It could be on
8 the northeast side. It could be on the southeast or the
9 southwest. That tells me, you know, what face of the tower,
10 which is going to help narrow down a -- typically, what we
11 call an omnidirectional tower, which would be just an entire
12 circle, we can now cut that down into pieces of a pie, which
13 help, you know, limit that area that we're looking at.

14 Q: Like 60 degrees or 45 degrees?

15 A: Usually, 120 degrees --

16 Q: 120 degrees?

17 A: -- is what we map. It's a 360-degree compass heading
18 and so we split that in three of 120 degrees each sector.

19 Q: So you've got a wide angle?

20 A: Yes, sir.

21 Q: For all three?

22 A: Yes, sir.

23 Q: And they overlap?

24 A: Sometimes they do, yes, sir. Like we discussed,
25 unfortunately, by having to do this by hand, typically, we

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 like to show that a cell phone tower is an open -- open line
2 and so when that signal comes out from the tower, it's
3 affected by buildings, it's affected by trees, it's affected
4 by terrain, hills, valleys, buildings, and so that --

5 Q: Anything can block the signal?

6 A: That's right. That cell phone signal is going to move
7 around a little bit and so, unfortunately, we're not able to
8 depict that by hand, but it does get a little bit more than
9 just a straight line.

10 Q: Let me ask you this. How far away from a cell tower can
11 you be before you are no longer able to be noticed or heard
12 or where it connected?

13 A: That depends on the tower. You know, I've seen towers
14 that their strength normally goes out a half a mile to a mile
15 if it's in a very urban area, city.

16 Q: Populated?

17 A: Populated. If it's very rural or in the upstate, I've
18 had a tower that we've looked at in -- I think it was Ocone
19 that's up in -- on some of the mountains and hills up there
20 in the upstate. That tower reached 8 to 10 miles.

21 Q: Okay.

22 A: That's why when we -- when we load up and look at the
23 towers, we try to look at all the other towers in the area
24 for that phone company. That helps us gauge what that signal
25 strength on that tower is going to -- going to typically look

1 like.

2 Q: What's a normal signal strength around Florence and
3 Darlington County?

4 A: Typically, it's a mile to a mile and a half. In some of
5 the rural areas, it can reach out three miles.

6 Q: Okay. And the incident location that you were concerned
7 with on this analysis?

8 A: Yes, sir. We were provided 3618 Century Drive,
9 Apartment A, in Florence, South Carolina.

10 Q: And what was the other location?

11 A: There was a taxi drop-off that was near the address of
12 225 Plum Street in Darlington, South Carolina.

13 Q: Okay. And AT&T -- they provided you detailed records?

14 A: Yes, sir.

15 Q: For this number?

16 A: They do. They provide -- they provide call records for
17 their voice calls, for their text message calls, and for
18 their data transactions. However, by policy of my unit and I
19 know I think of the FBI as well, we do not map data
20 transactions.

21 Q: What's a data transaction?

22 A: So basically, anytime you're surfing the Internet,
23 looking at Facebook, looking at social media, those come
24 across as data transactions, or if you're using any type of
25 voice over IP calling system.

1 Q: Okay.

2 A: It will go across data and not over your voice and so --

3 Q: What's the voice over IP? What's that?

4 A: That's basically, like, Internet phones. Instead of
5 using your actual cell phone service, you can use basically
6 Internet calling or your -- your FaceTime where you're doing
7 video chatting. A lot of that goes over your voice over IP
8 calls.

9 Q: Okay. Are those apps that you can use?

10 A: Some of them are apps. Yes, sir.

11 Q: What are apps and what are some examples of apps that
12 people are using, like, today?

13 A: Some of the more popular -- popular ones that we are
14 seeing are WhatsApp, Text Now. FaceTime is typically and
15 actually an app that's used and that just allows you to make
16 phone calls or text messages that aren't on your actual
17 service plan.

18 Q: How or do those -- those data usage -- does that show up
19 on your bills or on your phone records at all?

20 A: They will show up on your phone records. Typically, we
21 typically do not map them for the simple fact that when a
22 data session starts and when it ends and how it correlates to
23 the cell phone tower is not always accurate as far as
24 location of that actual device because it can span anywhere
25 from a minute to it may span 12 to 18 hours.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 And so if that device is moving, obviously, over 12 to
2 18 hours, the location information that is provided on the
3 call records are not always accurate and so, therefore, for
4 that reason, we choose not to map them to make sure that the
5 product that we're producing, you know, contains the most
6 accurate depiction of what the call records actually are.

7 Q: Now, are you familiar with any apps that could, like,
8 take somebody else's cell phone number and use it?

9 A: There are. Up until last year when the legislature made
10 it illegal, we would actually typically use some of those
11 apps as well as far as fugitive case. That when we're trying
12 to locate fugitives, obviously, we don't want to call them
13 from a government telephone number and so we could utilize
14 records -- we could utilize an app that would make our phone
15 look like it was, you know, Walmart or anywhere calling and
16 so, you know, we could -- we could call and make phone calls
17 that way without, you know, tipping off that it was law
18 enforcement.

19 Q: Is there a term for that?

20 A: We -- we used to refer to it as spoofing. I would
21 assume that's still the -- the common term. There's
22 different terms for it, but we always utilized the word
23 spoofing for it. You're making your number appear to be
24 something else.

25 Q: Now, you provided me with a lot of material. Do we need

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 -- we don't need to go into the AT&T call detail report
2 explanation form, do we?

3 A: No, sir. I don't believe so. I'm familiar enough with
4 it and I can explain it. That's just provided so that some
5 of the local agencies that aren't familiar with call records
6 sometimes, we produce that in all of our reports so that as
7 the local agencies look at them, there's an explanation form
8 as to some of the things that they're seeing in our report.

9 Q: Now, I'm not sure if you'll be able to read this or not.
10 This is call detail records from 843-260-8624 from AT&T?

11 A: Yes, sir.

12 Q: Are you able to tell -- he's blown that up a little
13 bigger so we can read that.

14 A: Okay.

15 MR. CLEMENTS: Your Honor, I ask permission for the
16 witness to step down for a moment.

17 THE COURT: Sure. Just you need to keep your voice up
18 so the court reporter can hear you.

19 THE WITNESS: Yes, sir.

20 BY MR. CLEMENTS:

21 Q: Lieutenant, can you explain to the jury what this --
22 what this is and how you used it in this case?

23 A: Yes, sir. So as we discussed earlier, I start off with
24 looking for my connection date and connection time. We
25 convert that from UTC back to Eastern time so that I can

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 relate it back to the local spread that I'm looking at for
2 the requesting agency as far as date and time that they're
3 looking for.

4 From there, we can look at when the phone call initially
5 started and what the entire elapsed time is of the phone
6 call. It's not really important as far as mapping goes
7 unless we get into the analysis of whether it was an actual
8 phone call or whether it connected or not. We're able to
9 tell how the phone call or who the phone call originated
10 from, whether it was our target or whether it was an incoming
11 call. So these tower -- these particular columns here tell
12 us whether it's incoming or outgoing.

13 Q: Okay.

14 A: And then we get into what they call an IMEI, which is
15 the international mobile equipment identifier. That's
16 identifying the type of telephone that's making the phone
17 call, which is basically it's always going to come back to
18 the actual account.

19 Q: So that shows that that's Apple right there?

20 A: It was an Apple iPhone 6s Plus is the phone that was
21 linked to this telephone number and account. The IMSI, again
22 the international mobile subscriber identifier, that is
23 basically the SIM card inside the phone.

24 Q: Okay.

25 A: Again, not important for mapping. Again, typically the

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 connection type is MO for outgoing and MT for mobile
2 terminating. Again, not necessarily important for mapping.

3 And then our features. That's different things from
4 voice, voice ID, voicemail. Again, not important for
5 mapping.

6 And then we get into our cell locations. This tells me
7 again, just like Sprint has an NEID which is an area code,
8 AT&T goes off of a system known as either a lack [ph] or an
9 e-node ID [ph]. It depends on whether it's LTE networks or
10 3G as to whether -- as to what the terminology is, but this
11 is basically the area code for the cell towers that are
12 utilized and this is the actual tower number, that last 5-
13 digit number.

14 And then we get into the actual coordinates of the
15 tower. This is what I entered into our mapping program to
16 tell me where that tower is located.

17 And then the next set of numbers after the semicolon
18 there is what is the azimuth. This is the particular tower
19 with a 50 degree azimuth and so we have a 60 degree to the
20 left, which would be 350, and then 60 degrees to the other
21 side, which would be 90. No, I'm sorry, 110. I didn't do
22 well with math.

23 And then again, this particular tower, the azimuth is
24 260, an azimuth of 240. So that is what we're looking at to
25 know what sector I'm looking at and then I know the full 60

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 degrees to one side and 60 to the other and that's what gives
2 me my sector.

3 Q: All right. I'm going to set this down. Lieutenant, do
4 you know what this is?

5 A: Yes, sir. That is an overview of all of the sectors
6 that I mapped out for -- I believe this is going to be the
7 AT&T phone.

8 Q: Okay. And do you have both with you, the AT&T and the
9 Sprint?

10 A: I do not. I don't have the actual reports that I
11 produced.

12 Q: Okay.

13 THE COURT: Can y'all -- can y'all step up here real
14 quick?

15 (WHEREUPON, a bench conference was held in the presence
16 of the jury but out of the hearing of the jury off the
17 record, after which the proceedings resumed as follows.)

18 THE COURT: Ladies and gentlemen, we're going to take a
19 break. So you've been sitting here for quite a while. So
20 we're going to do that and then I'll bring you back out after
21 the break. If you need anything, please let Ms. Ann know.

22 (WHEREUPON, the jury exited the courtroom at 4:09 p.m.)

23 THE COURT: All right. I just wanted to -- I didn't
24 know if you were going to go into -- I know y'all came up
25 earlier and we discussed briefly at the bench several

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 documents that at the time were not allowed in because of not
2 being able to authenticate them. I'm assuming that's what
3 you've done through this -- or attempted to do through this
4 witness and you want to use those documents now.

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: So we're going to need to move to have them
7 admitted and then I'm going to hear from Mr. Brooker
8 regarding his position on that. Do you need to look through
9 them?

10 MR. BROOKER: I don't, Your Honor. I'm assuming that he
11 is going to authenticate them and I think the authentication
12 process is the one in *Brown* and I imagine he's able to do
13 that. If he's able to authenticate the documents by the
14 *Brown* standard, then I have no objection.

15 THE COURT: He produced those documents; correct?

16 MR. CLEMENTS: He produced them, Your Honor.

17 THE WITNESS: Yes.

18 MR. CLEMENTS: And created them, and I questioned him at
19 the beginning with what I read out of *Brown* that I felt like
20 was necessary to cover that.

21 THE COURT: Yeah. But what I was going to say is just
22 -- and I'm just trying to speed things up a little bit.

23 Thurmond, you've seen all of these documents; correct?

24 MR. BROOKER: I think I have.

25 THE COURT: Okay. Solicitor, if you could just show

CHRIS JOHNSON - PROFFERED DIRECT BY MR. CLEMENTS

1 them to the witness and if he can identify them all as
2 documents that he's created and can authenticate them, then
3 you can move them in. At that point, there may not be an
4 objection.

5 MR. CLEMENTS: Yes, sir.

6 PROFFERED DIRECT EXAMINATION

7 BY MR. CLEMENTS:

8 Q: Can you look at these documents and tell me who created
9 them, if you know what they are, and then I'll number them?

10 THE COURT: They haven't been marked yet, have they?

11 MR. CLEMENTS: Yes, sir.

12 THE COURT: They have been?

13 MR. CLEMENTS: No, sir.

14 THE COURT: Have not been? Okay.

15 BY MR. CLEMENTS:

16 Q: Can you tell by that?

17 A: Yes, sir. These are the AT&T records that were mapped
18 out. These are the maps. This is the result of that
19 mapping.

20 Q: All right.

21 MR. CLEMENTS: I need to get those marked. Maybe we can
22 do them as a number with the alphabet behind them.

23 THE COURT: Yeah. I think that's -- what number are we
24 at? 13?

25 THE COURT REPORTER: 16.

CHRIS JOHNSON - PROFFERED DIRECT BY MR. CLEMENTS

1 THE COURT: 16.

2 (WHEREUPON, the AT&T map photographs were marked as
3 State's Exhibits Number 16-A through 16-P.)

4 THE COURT: Do you have 16?

5 MR. CLEMENTS: I've got 16.

6 THE COURT: It's supposed to be 16-A through P.

7 BY MR. CLEMENTS:

8 Q: Lt. Johnson, I'm going to show you another set for the
9 other phone number. Do you need these in a --

10 A: Yes, sir.

11 Q: You don't?

12 A: No, sir. I should not.

13 Q: Okay. Can you look at these and tell me if you
14 recognize them, what they are, and who prepared them?

15 A: These are the production of the map products from the
16 call records for the Sprint phone.

17 MR. CLEMENTS: I think there's 15 of these, unless
18 something stuck together. I believe there's 15, Your Honor.

19 THE COURT: So that would be 17-A through O? Is that
20 good?

21 MR. CLEMENTS: I'm impressed. Now could you say it
22 backwards?

23 THE COURT: I couldn't say it backwards. I could not do
24 that.

25 (WHEREUPON, the Sprint map photographs were marked as

CHRIS JOHNSON - PROFFERED DIRECT BY MR. CLEMENTS

1 State's Exhibits Number 17-A through 17-O.)

2 THE COURT: Thurmond, while they're out, if we -- if
3 y'all need to take a break, do that. Okay? Because I just
4 want to make sure that everybody has an opportunity.

5 (WHEREUPON, there was a break in the proceedings from
6 4:17 p.m. until 4:36 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: Are y'all ready?

9 MR. CLEMENTS: Yes, sir. We're just having a good time.

10 THE COURT: That's okay. Do I -- but we're good as far
11 as ready just to pick up with your --

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: -- direct?

14 MR. CLEMENTS: Yes, sir.

15 THE COURT: And -- but how about we do this? When we
16 bring the jury out, I'll recognize you to continue your
17 direct, but at that time then you could say, Your Honor,
18 during the break I've conferred with -- words to this effect
19 -- with you know, Mr. Brooker, and I'm assuming there's no
20 objection to those photos?

21 MR. CLEMENTS: We've got some that I've got marked for
22 identification that we're not going to enter into evidence at
23 this time, maybe not at all, but the other half we are. And
24 we -- well, I can explain that.

25 THE COURT: You just can't make this easy, can you?

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 MR. CLEMENTS: I tried to, but --

2 THE COURT: You're just not going to do it.

3 MR. BROOKER: Yeah, yeah.

4 THE COURT: Is there a stack you're going to use with
5 this witness that is agreed to or do we need to --

6 MR. CLEMENTS: There's a stack that's agreed to.

7 MR. BROOKER: This stack is agreed to. I think it's
8 going to be -- it's going to be the mapping -- mapping data
9 for -- for -- for Royal Williams' cell phone.

10 MR. CLEMENTS: Yeah.

11 MR. BROOKER: But not for the victim's cell phone.

12 THE COURT: All right. Is that what you're going to use
13 with this witness?

14 MR. CLEMENTS: Yes, sir.

15 THE COURT: Well, why don't you announce that State's
16 Exhibits whatever through whatever, we would move those in at
17 this time and then you can say no objection to those items.

18 MR. CLEMENTS: Your Honor, at this time -- I can say
19 this off the record. I offer those --

20 THE COURT: Well, do it in front of the jury.

21 MR. CLEMENTS: The ones that aren't going to be entered?

22 THE COURT: I'm sorry. I thought you were talking about
23 the ones you are going to enter.

24 MR. CLEMENTS: These are 16-A through P, Your Honor.

25 We've got them marked for identification. We are not moving

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 to introduce them as evidence at this time.

2 THE COURT: Okay. All right. So we'll just hold those
3 off.

4 MR. CLEMENTS: And the others I'll wait on the jury.

5 THE COURT: All right. Then we're ready to start back?

6 MR. BROOKER: Yes, sir. Thank you. Are you ready yet?

7 MR. CLEMENTS: Oh, one last thing.

8 (WHEREUPON, counsel conferred off the record.)

9 MR. CLEMENTS: We're ready, Your Honor.

10 THE COURT: All right. Bring the jury in, please.

11 (WHEREUPON, the jury entered the courtroom at 4:41 p.m.)

12 THE COURT: All right. Solicitor, you may continue.

13 MR. CLEMENTS: Thank you, Your Honor.

14 RESUMED DIRECT EXAMINATION

15 BY MR. CLEMENTS:

16 Q: Lt. Johnson, I'm going to show you what's been marked
17 for identification as State's Exhibit 17-A through O. Can
18 you tell me if you -- if you recognize that and what that is
19 and who prepared that?

20 A: This is the map images of the Sprint phone call --
21 Sprint call detail records that I produced.

22 Q: And that's number 843-468-6516?

23 A: Yes, sir.

24 Q: I'm going to show you what's been marked as State's
25 Exhibit 18-A, B, and C. Do you recognize those and tell me

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 what those are?

2 A: These are the actual call detail records from Sprint
3 that indicate the date, times, number dialed, and what cell
4 site and sector were utilized.

5 Q: Okay. I'm going to show you 17-A. Can you explain to
6 this jury what this is and what this depicts?

7 A: So this is the --

8 THE COURT: Well -- and I don't mean to interrupt. I
9 think this is where I interrupted the first time. Are you
10 going to move those into evidence at this time?

11 MR. CLEMENTS: I thought I did, Your Honor.

12 THE COURT: I don't think we've done that. I don't
13 believe I've ruled on that. He's identified them all and
14 that's State's --

15 MR. CLEMENTS: My bad, Your Honor.

16 THE COURT: What is it? Number?

17 MR. CLEMENTS: 17-A.

18 THE COURT: 17-A through O.

19 MR. CLEMENTS: O. And 18-A, B, and C.

20 THE COURT: All right. Any objection to those items,
21 Mr. Brooker?

22 MR. BROOKER: No objection, Your Honor.

23 THE COURT: All right. Without objection.

24 (WHEREUPON, State's Exhibits 17-A through 17-O and 18-A
25 through 18-C, map photographs, were admitted into

1 evidence.)

2 THE COURT: And I apologize, Solicitor. Now you can
3 take off with them.

4 BY MR. CLEMENTS:

5 Q: All right, Lieutenant. Let me start again. I'll show
6 you what's in evidence now as State's Exhibit 17-A. Can you
7 explain to the jury what this is and what it's created to
8 depict?

9 A: So typically, when I produce a report of call detail
10 analysis and the map files that I produce, the first slide is
11 typically the overview of all the different sectors that that
12 device utilized during the time frame that was requested.

13 Q: Okay. And are there two key -- two key locations here?

14 A: Yes, sir. Indicated in red with yellow writing are the
15 3618 Century Drive, Apartment A, in Florence and the 225 Plum
16 Street address that was indicated as the taxi drive-off --
17 taxi drop-off. I'm sorry.

18 Q: How many -- or I don't know if y'all use this term or if
19 this is a layperson term. How many pings were there close to
20 Plum Street?

21 A: There appears to only be one. We refer to it as a call
22 detail record. One record that indicated during that --
23 well, I won't say one. There's one tower that serviced that
24 area.

25 Q: Okay.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 A: I would have to look at the records to see how many
2 actual transactions there were.

3 Q: And then down at the bottom of the page here, 3618
4 Century Drive, Apartment A, about how many towers are
5 depicted in that overview?

6 A: There appear to be five, from what I can tell. There's
7 a lot of overlay and hand-off in that area.

8 Q: And those were five cell towers that were activated by
9 the Sprint number 468-6516?

10 A: That was -- yes, sir. Five different towers and sectors
11 that appear to have been utilized.

12 Q: Now, let me ask you a question here. Where this green
13 looks like -- kind of like a fan?

14 A: Yes, sir.

15 Q: Doesn't it? That circular part there, tell me about
16 that. Is that circular part accurate?

17 A: So, no, sir, not typically. If you don't mind, I've got
18 a little -- there should be a little trick here I can use.

19 Q: Yes, sir.

20 A: Typically, when we map with the software that I like to
21 use, we're able to indicate that that sector continues out,
22 like it does here.

23 Q: Yes.

24 A: And so the software that we prefer to use would have
25 indicated an extra line running out to show that that signal

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 can extend out past where that line is. By doing it by hand,
2 that is one of the limitations of having to do it by hand is
3 the fact that we can't depict the -- the tower accurately the
4 way we prefer to.

5 Q: Okay. Now, that tower, do you know how -- how the --
6 what is the range on that tower or not?

7 A: No, sir, I do not. That's one thing that the phone
8 companies don't provide. They typically maintain that
9 because of agreements with other phone companies. I say
10 agreements. They don't want that getting out with other
11 phone companies what their actual coverage area is.

12 Q: Okay. All right. State's Exhibit 17-B?

13 A: Yes, sir. So I know that one cut off a little bit.
14 That is indicated on the phone records as NEID 39, tower
15 40699, and that is again indicated by the tower number right
16 there, 40699. That was a phone trans -- phone call
17 transaction that was made on January the 22nd, 2016, at
18 20:38:08 Eastern Daylight Time.

19 Q: Tell me that time again?

20 A: It's 20:38:08 Eastern Daylight Time.

21 Q: I'm going to ask you now about State's Exhibit 17 --
22 well, first let me ask you one more question about this.
23 What location is this 17-B is that tower in?

24 A: It appears to provide coverage to the address located at
25 3618 Century Drive, Apartment A.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 Q: Okay.

2 A: Which is right near I-95.

3 Q: The same question for 17-C?

4 A: So again, this is tower 40700, and there's four
5 transactions that occurred on January the 22nd at 20:38:33
6 Eastern time and 20:39:20 Eastern time.

7 Q: 20:39 and what?

8 A: 20:39:20 Eastern time.

9 Q: Okay.

10 A: 21:23:59 Eastern time and 21:29:05 Eastern time. That
11 is all in military time, which is actually 8:38, 8:39, 9:23,
12 and 9:29 in the p.m.

13 Q: So that -- there was four transactions off that tower?

14 A: Yes, sir.

15 Q: And what -- what address is that close to?

16 A: Again, that outer edge of that tower covers the 3618
17 Century Drive, Apartment A, but as you can tell, that tower
18 is on the south side of that address.

19 Q: Okay.

20 Q: State's Exhibit 17-D. What is this?

21 A: Okay. That is, again, the 40700 tower and that was a
22 transaction at January the 23rd, 2016, at 8:40:53 Eastern time
23 on that morning. That's still military time, but it is in
24 the a.m. now.

25 Q: 17-E, same questions?

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 A: Okay. That tower now is 40699 and that is a -- hold on
2 just a second. That was January the 22nd, 2016, at 22:03:39
3 Eastern time, which is 10:03 p.m. in the evening, but it is
4 back to a tower to the northeast of the address at 3618
5 Century Drive, Apartment A.

6 Q: What would cause the signal to go south one way, east
7 another, and north another and still be the same general
8 area?

9 A: So as we talked about earlier, if a device gets into
10 what we refer to as a hand-off area, if it's out on the outer
11 edges of two towers and it's sitting still, sometimes it will
12 bounce back and forth between those two towers. Again --

13 Q: All right. 17-F?

14 A: That looks to be the tower 40700 on January the 23rd at
15 08:40:53 Eastern time.

16 Q: 08:40:53?

17 A: Yes, sir. That was in the a.m.

18 Q: All right. And what's the -- the --

19 A: Again, that is back to the tower to the south of 3618
20 Century Drive, Apartment A.

21 Q: Okay. State's Exhibit 17-G? What is this?

22 A: Okay. That is the tower back to the northeast of the
23 address at 3618 Century Drive, Apartment A. Again, tower
24 40699 on January the 23rd, 2016, at 9:16:06 Eastern time and
25 again at January 23rd, 2016, at 10:12:48 Eastern time.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 Q: All right. 10:12:48?

2 A: Yes, sir.

3 Q: I'll show you State's Exhibit 17-H.

4 A: Yes, sir. That appears to be tower 40700, again to the
5 south of the address at 3618 Century Drive, Apartment A, on
6 January the 23rd, 2016, at 11:11:20 Eastern time and again
7 January 23rd, 2016, at 11:11:33 Eastern time.

8 Q: Same day?

9 A: Same date. Yes, sir.

10 Q: So that was one phone call right after another?

11 A: Yes, sir.

12 Q: All right. State's Exhibit 17-I?

13 A: Yes, sir. Again, that is call detail transactions that
14 were on tower 40699, January 23rd, 2016, at 13:05:13 Eastern
15 time, 13:31:27 Eastern time, 14:07:54 Eastern time, and
16 14:38:30 Eastern time. Again, military time. Standard time
17 would be 1:05 p.m., 1:31 p.m., 2:07 p.m., and 2:38 p.m. on
18 January the 23rd of 2016.

19 Q: State's Exhibit 17-5 [sic].

20 A: So that is what we've been talking about as a hand-off
21 area, as was shown in the previous slides at the beginning.
22 When two towers typically overlap, that is what we would see.

23 Q: Okay. Let me clarify for the record. I misstated. I
24 said State's Exhibit 17-5. It's 17-J.

25 A: Yes, sir. 17-J. I'm sorry.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 Q: My bad. Go ahead.

2 A: But that is showing that bouncing pattern between tower
3 40699 and 4077 [sic], how they would overlay and then the
4 address of 3618 Century Drive, Apartment A, is consistent
5 with that -- that hand-off area.

6 Q: And that was bouncing back and forth on that call?

7 A: Yes, sir. During the 22nd and 23rd for most of those
8 calls, it bounced between those two towers.

9 Q: You don't have a time on that call depicted there
10 bouncing, do you?

11 A: No, sir. It was all -- all of the towers -- all of the
12 calls between the 22nd and the 23rd through, I think, midday,
13 they stayed on those two towers.

14 Q: Okay. You don't know how many calls those were?

15 A: No, sir. I sure don't. I didn't calculate them.

16 Q: State's Exhibit 17-K?

17 A: Yes, sir. That is a different tower at tower number
18 30699 on January the 23rd, 2016, at 14:49:44 Eastern time,
19 which converted time would be 2 p.m. -- 2:49 p.m.

20 Q: State's Exhibit 17-L?

21 A: That is tower number 40686 and that is a call
22 transaction that occurred on January the 23rd, 2016, at
23 15:13:17 Eastern time. Converted would be 3:13 p.m.

24 Q: That is close to what address?

25 A: It actually doesn't cover any of the incident location

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 addresses that I was given, but it is consistent with the
2 intersection of Highway 39 -- I'm sorry -- I-95 and I believe
3 that's Hoffmeyer Road. I'm not familiar with the area.

4 Q: Are you familiar with Five Points in Florence?

5 A: No, sir, I am not.

6 Q: Okay. Highway 76?

7 A: I would have to pull it up on the map. I'm not,
8 unfortunately, familiar. I do see Highway 76 there near the
9 base of the tower; so I would say that is correct. Yes, sir.

10 Q: But neither Doneraile or Century Drive was on that?

11 A: No, not that I can see. That was not one of the -- not
12 one of -- none of the addresses that I was provided as being
13 pertinent.

14 Q: Okay.

15 A: Or indicated in it.

16 Q: 17-M?

17 A: That is tower 20731, and that is a tower transaction
18 from January the 23rd, 2016, at 15:19:11 Eastern time,
19 translated to 3:19 p.m.

20 Q: And is there another call on there as well?

21 A: Not on that particular call. No, sir. Not on that
22 particular tower at that time.

23 Q: Okay. 17-N?

24 A: Yes, sir. The device returns back to the tower 40699
25 for two transactions on January the 23rd, 2016, at 15:26:56

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 and 15:55:21 Eastern time, translated to 3:26 p.m. and 3:55
2 p.m. And again, that tower is back consistent with the
3 address at 3618 Century Drive, Apartment A.
4 Q: State's Exhibit 17-O?
5 A: Yes, sir. At that time, the device moves to a tower
6 40702 for numerous transactions from January the 23rd, 2016,
7 at 1642.
8 Q: Hold on. Go a little slower.
9 A: Yes, sir.
10 Q: 1642?
11 A: Yes, sir. And zero seconds, Eastern time. January 23rd,
12 2016, at 18:01:45 Eastern time.
13 Q: Okay.
14 A: January 23rd, 2016, at 18:02:03 Eastern time.
15 Q: Next?
16 A: 18:27:31 Eastern time.
17 Q: How many seconds?
18 A: 31.
19 Q: All right.
20 A: 19:30:16 Eastern time.
21 Q: All right.
22 A: 19:33:23 Eastern time.
23 Q: Okay?
24 A: 19:58:41 Eastern time.
25 Q: Okay.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 A: 19:59:07 Eastern time.

2 Q: Okay.

3 A: 20:00:51 Eastern time.

4 Q: All right.

5 A: 20:02:29 Eastern time.

6 Q: Okay.

7 A: 20:11:31 Eastern time.

8 Q: Okay.

9 A: And 20:16:39 Eastern time. Converted, that is 4:42 p.m.
10 until 8:16 p.m. on -- on January the 23rd of 2016. And that
11 tower --

12 Q: 4:47 to 8:16?

13 A: Yes, sir. And that tower coverage area is consistent
14 with the address at 225 Plum Street, which was indicated as
15 the taxi drop-off.

16 Q: So there was 1 -- 2 -- 3 -- 4 -- 5 -- 6 -- 7 -- 8 -- 9
17 -- 10 -- 11 -- 12 phone or 12 transactions close to Plum
18 Street?

19 A: Yes, sir. Either call or text transactions.

20 Q: Okay.

21 A: Actually. They would be call transactions because this
22 is Sprint. So Sprint doesn't provide tower information for
23 texts. So --

24 Q: They provide you the text records, but they don't
25 provide you the towers?

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 A: Yes, sir. They provide the indication that the test
2 message occurred, but no location information. So these all
3 appear to be voice transactions or attempts.

4 Q: All right. Let me ask you about 18-A, B, and C. We
5 might not be able to read them, but you can tell us about
6 them, if you can read them?

7 A: I can read them. Yes, sir.

8 Q: Tell me about that number 468-6516?

9 A: So again, that is a Sprint telephone number with the
10 call detail records below it indicating the calling number,
11 the called number, and then the dialed digits. Again,
12 depending on what column that the target number is in will
13 indicate whether it's an inbound or outbound call. That is
14 also further indicated by the mobile roll information that's
15 identified in the fourth column. The start date and time and
16 the end date and time are all in Eastern time; so there's no
17 conversion from UTC or Greenwich mean time.

18 Q: So could you take these call detail records on 18-A and
19 go and look at your mapping and determine which of those
20 calls were made to what number and when it came and when it
21 bounced or -- heck, I forget what your phrase is. Pinged off
22 a tower?

23 A: Hand-off or transactions.

24 Q: Yeah. Transactions.

25 A: So yes, sir. When you look over at call type, you'll

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 notice for all of them that say text detail, the cell
2 location is a zero. As I indicated, there's no location
3 information, but under the voice calls, you'll see NEID 39
4 and you'll see the first cell, which is 47 -- 40700 or 40699,
5 depending on what cell site it utilized and, based on that
6 information, you can match that up to the maps that were
7 provided.

8 Q: Okay.

9 A: We do not map the last cell utilized. We only map the
10 first cell due to a phone's possibility of pushing off to
11 another -- to another tower during a call. So we always map
12 the first cell, as that's typically the --

13 Q: The originating cell?

14 A: That's the originating cell and that's typically the
15 cell site that the phone sees as the strongest when the call
16 originates.

17 Q: Okay. 18-B, is that just more of the transactions?

18 A: Yes, sir. Same.

19 Q: Is that the target -- target number?

20 A: Yes, sir. Same information. Just different date and
21 times, different called numbers.

22 Q: And last, State's Exhibit 18-C?

23 A: Yes, sir. And that -- that is the rest of the call
24 records through the 23rd that we were requested to analyze and
25 the corresponding cell sites.

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 Q: Okay. Now, you told me no mapping of text messages?

2 A: That's right. Yes, sir.

3 Q: And 18-A, B, and C, all the phone transactions are
4 mapped on 17-A through 17-O; is that correct?

5 A: Yes, sir. All of them that occurred on January the 22nd
6 and 23rd. On Exhibit C, there are some calls, I believe, from
7 the 24th, but that was outside of the time span that we were
8 requested to analyze and, therefore, those records were not
9 mapped.

10 Q: It looks like there's two calls there?

11 A: Yes, sir. We did not map those.

12 Q: Okay. Exhibit 17-A, can you tell me how many different
13 cell towers were -- that got a connection close to Century
14 Drive?

15 A: Yes, sir. It appears to be five different cell site
16 sectors -- towers and sectors that were utilized over those
17 two days.

18 Q: And they were on multiple numbers?

19 A: Multiple call transactions.

20 Q: Multiple calls?

21 A: Yes, sir. One target number.

22 Q: Okay. And then up there on Plum Street, there's one
23 cell tower there?

24 A: Yes, sir.

25 Q: Is that correct?

1 A: Yes, sir.

2 Q: And you got --

3 A: One cell tower. I think we just said it was 12
4 transactions during that time frame.

5 Q: Okay. And the tower -- the towers on here, they all
6 have a number like 40699, 40700; is that correct?

7 A: Yes, sir.

8 Q: Okay.

9 A: Typically, if you look -- the spreadsheet that was shown
10 earlier that are all of Sprint's towers --

11 Q: Yeah.

12 A: If you go and look through and try and find that tower,
13 you're going to look at the last two or last three digits of
14 the tower on the cell site. So if you're looking at 40699,
15 when you cross-reference that back to the tower list for
16 Sprint, you'll look up 699.

17 Q: Okay.

18 A: And so the Lucent tower being 2, 3, 4, like we talked
19 about in the beginning, that is -- that first digit is what
20 indicates the face of that tower.

21 Q: Can you take the 699 and find out exactly where the
22 tower is located?

23 A: Yes, sir. So when you look at that cell site list that
24 was provided from Sprint, you look for that first column and
25 look for 699 and, once you find that, then you look for

CHRIS JOHNSON - DIRECT BY MR. CLEMENTS

1 sector three, because it's a Lucent tower. It drops -- it
2 adds a digit. That will tell you the exact azimuth and the
3 exact coordinates where that tower is located.

4 Q: Okay. Can you tell me an address for 40699?

5 A: I would have to look at the call -- at the spreadsheet
6 for Sprint's towers, but I can tell you the coordinates.
7 Sprint doesn't -- on their call record sheet on their tower
8 list, they do not provide an address. They provide
9 coordinates.

10 Q: Okay. All right.

11 MR. CLEMENTS: I beg the Court's indulgence just a
12 moment.

13 Lieutenant, please answer any questions that Mr. Brooker
14 may have.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Cross?

17 MR. BROOKER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BROOKER:

20 Q: Okay. All right, Lt. Johnson. How are you?

21 A: Good.

22 Q: I just want to ask you a couple of questions.

23 A: Yes, sir.

24 Q: Okay. And first is is that I think you testified that
25 -- that you have your -- I think your B.S. from the

1 University of South Carolina?

2 A: Yes, sir.

3 Q: What was that bachelor's of science in?

4 A: Criminal justice.

5 Q: It's in criminal justice?

6 A: Yes, sir.

7 Q: And then, of course, is that I think you said you've
8 been working in your current position for roughly 14 years?

9 A: Yes, sir.

10 Q: Okay. And what is the technical term for your
11 profession that you do?

12 A: We conduct call detail record analysis.

13 Q: Call detail record analysis?

14 A: Yes, sir.

15 Q: Okay. And you said that -- I think you testified to the
16 fact is is that besides being in this position that you've --
17 you know, that you've taken various classes to prepare your
18 being a cell -- I think a call detail records analysis?

19 A: Yes, sir.

20 Q: Okay. And I think you said in your job that you use
21 certain software. What is that software that you use again?

22 A: So typically, we utilize CASTViz, which is a program
23 that was produced by the FBI through their CAST program,
24 which is their cellular analysis survey team, and then we
25 also utilize a program calls PLX, which is produced by

1 PenLink.

2 Q: And what does those softwares [sic] do, the ones you
3 just described?

4 A: So typically, instead of me having to map these products
5 by hand, we can take, you know, thousands to 10,000 of
6 records and dump them into this program and it will produce
7 those maps for me. Therefore, all I have to do then is go
8 back and confirm with a compass and GPS coordinates that, you
9 know, those towers are, you know, correct in where it's
10 mapped it.

11 Q: Okay. And of course, is is that for the mapping I think
12 for the Sprint records, was those mappings done by any of
13 that software?

14 A: No, sir.

15 Q: It was done by hand?

16 A: All of it is done by hand.

17 Q: Okay. And explain what you mean done by hand?

18 A: So I take it the tower list that was provided and the
19 call detail records and we identify which calls fall within
20 the analysis time period that was requested.

21 Q: Uh-huh.

22 A: And then I will take and basically write down each time
23 that there's a new tower and look up those coordinates. When
24 I locate those coordinates and that azimuth, then we enter
25 those into Google Earth Pro, which will then pull up that pin

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 point on the map. And then from there, we can use a program
2 called Range Reams [ph] that all it does is basically just
3 puts the shading on -- on the map for us as to what that
4 azimuth is and what the beam width of that sector is.

5 Q: Okay. So basically, is that once you put the
6 coordinates in is is that Google Earth -- Google Earth then
7 tells you where that tower is?

8 A: It tells where those coordinates are, but we know by
9 zooming in and looking that the tower is consistently, you
10 know, right up under that point.

11 Q: Okay. So -- okay. And so it tells you -- it tells you
12 where the location is. So those coordinates are not the
13 exact -- may not be the exact location of the tower? I want
14 to make sure I understand correctly.

15 A: No. Typically, they are the exact location. If we zoom
16 in, that pin drop is sitting on the base of the pad for that
17 tower.

18 Q: Okay. Okay. So -- so those coordinates are the exact
19 locations of the towers?

20 A: Right. If you look on that spreadsheet, the coordinates
21 are, you know, 34 point and then there's probably six digits
22 at the end of the degrees and so that is typically, you know,
23 very --

24 Q: Precise?

25 A: -- precise as to its location.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: Okay. All right. And then, of course, is that I think
2 you said that once -- once Google Earth identifies the tower,
3 then, of course, is is that you use another program to shade
4 it in?

5 A: Yes, sir. We just use the Range Reams program to
6 indicate that shading on the tower just for, you know, the
7 visual representation of the sector, but we're able to
8 confirm that with a compass heading. You know, on Google
9 Earth, it'll show that our map is showing true north and then
10 the compass heading will show that that Range Ream sector is
11 true to the azimuth that was provided by Sprint.

12 Q: For the benefit of the jury then, I'm going to put in, I
13 think, State's 17-B for illustration. So basically, is is
14 that -- and in 17-B, where would the tower be located at in
15 17-B?

16 A: So right at the drop of the pin. Hold on just a second
17 here. So right -- right there where that drop of that pin is
18 --

19 Q: Okay.

20 A: -- is where the tower is located.

21 Q: Okay. That's where the tower is located?

22 A: Yes, sir.

23 Q: Okay. And then, of course, is is that -- and then, of
24 course, you said you use another program to shade in the
25 green?

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 A: Yes, sir.

2 Q: And what does the green represent?

3 A: That's the sector that Sprint has indicated that that
4 tower services. And so when we look up tower 4069 --

5 Q: Uh-huh.

6 A: -- or 699, we know -- as I indicated before, the four
7 indicates what sector that is.

8 Q: Okay.

9 A: And so when I look on that spreadsheet for Sprint,
10 sector four is going to indicate that it has an azimuth for
11 that tower of 240 degrees.

12 Q: Okay.

13 A: And if I put a compass up on the screen here, you'll see
14 that 240 degrees points down the center of that sector, and
15 then you add 60 degrees to the right of it and 60 degrees to
16 the left and that gives you your 120 degree beam width.

17 Q: So it tells you the width of the -- the width of the
18 coverage?

19 A: Yes, sir.

20 Q: So pretty much is is that you determine how -- what's
21 the width of that coverage, whether or not that coverage has
22 a small band width or whether or not it has a wide band width
23 or whatever the width of the coverage is?

24 A: No. We -- we typically do all of ours at 120 degrees
25 because of the fact that we know that the RF signal is not an

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 exact straight-line science. So we do all of ours at 120
2 degrees. We don't do anything smaller. So that shows the RF
3 theory in the way that it runs through the topographic of the
4 map and that type thing.

5 Q: Okay. Just so I understand, why do you do all of that
6 at 120 degrees?

7 A: Typically, every tower is 360 degrees.

8 Q: Yeah.

9 A: And so when we cut that into three pies, it's 120
10 degrees per sector.

11 Q: Okay. And of course, that would be based upon -- I'm
12 assuming that that would be based upon whether or not you
13 have a tower that has, I guess, three triangular sides?

14 A: Right. If it identifies three sectors, then it has 120
15 degrees for each beam width for each sector. Now, if that
16 tower doesn't provide three sectors -- and matter of fact, I
17 just did a map for another agency last night and it's only
18 showing one sector and so that becomes an entire circle. We
19 can't narrow down if it's, you know, to the northeast of it
20 or whatever. It's an entire circle because it doesn't
21 provide the three sectors.

22 Q: Certainly. Certainly. And just at least for -- you
23 know, for my understanding is is that when you have a three
24 -- a three-sided tower, that has 360 degrees?

25 A: Yes, sir.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: And of course, you divide that 120 degrees for each one
2 of those three sides, but let me ask you this question. Is
3 is that does all three sides -- does the coverage area for
4 all three sides -- is it automatically equal? Is that how
5 it's set up or could it not be equal?

6 A: Typically, it depends on the terrain. Again, because
7 the RF signal is not an exact line, it depends on buildings
8 and terrain and things of that nature. They can be not as
9 straight as the lines are. They are going to extend out, but
10 it can go a little to the right. It can have pockets.
11 Without knowing what the RF signal is of that tower, what
12 that footprint is, this is the best way that we have right
13 now to depict that coverage based on the information provided
14 by the phone companies.

15 Q: So realistically -- realistically, that coverage area
16 can be wider than 120 degrees?

17 A: It can be a little bit. Typically, what we've seen is
18 it's not much. It can be maybe by 10 or 15 degrees, but it's
19 not very much at all.

20 Q: Okay. But it can be wider?

21 A: Yes, sir.

22 Q: Okay. And so what that means is is that these maps are
23 not absolute? The width of the band is not absolutely
24 accurate?

25 A: Right. Nor is the -- the strength of it.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: And that's what I was going to ask you the next time is
2 is that, obviously, is is that here where you have the width
3 of the band, which means is that how wide the coverage area
4 is and, of course, is that, obviously, you have a -- here,
5 you have -- obviously, is is that a band, you know, that
6 links the two. Is this meant to -- to identify the range of
7 that?

8 A: No, not at all.

9 Q: Okay.

10 A: Because of having to map this by hand, the Range Reams
11 program does not allow me to extend -- if you don't mind me
12 showing again.

13 Q: Sure, sure.

14 A: It doesn't allow me to show that this continues out past
15 those lines. That signal can continue out further.

16 Q: Okay.

17 A: Depending upon, again, buildings, you know, terrain,
18 that type thing.

19 Q: Okay. Okay. So -- and I want to say this for the
20 benefit of the jury is is that you're not trying -- you're
21 not telling the jury that when you put this bubble here, that
22 that is an indication of the range of that particular tower?

23 A: No, sir. Not on these particular records.

24 Q: Okay. Not on these records?

25 A: There are -- there are other reports that phone

1 companies can provide that will provide range to tower
2 information, but that is not something that we were able to
3 have for this particular one.

4 Q: Okay.

5 A: So this is not a range. This is just -- this is the
6 direction that that signal goes.

7 Q: Okay. This is the direction, but this is not to tell us
8 what the range is?

9 A: No, sir. This does not provide range. No, sir.

10 Q: And it would be a mistake for the jury to -- to think
11 that that bubble represents -- represents the -- the extent
12 of the range?

13 A: Right. It would -- it could be very much -- it could be
14 stronger than what's provided. That is what -- based off the
15 other towers in the area and what we see with the coverage of
16 the other towers, that is what we feel is an estimate of
17 where that tower goes. Again, it can go stronger, maybe even
18 a little weaker, but that is typically what we see from our
19 experience.

20 Q: Okay. That's just an estimate?

21 A: Yes, sir.

22 Q: Okay. But -- but there is -- there's no scientific way
23 for you to determine that based upon the information that you
24 had what the range would be?

25 A: Not without having RF information.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: Yes, sir. With the --

2 A: Now, there is an ability to do it, but you have to have
3 the RF signal of that tower.

4 Q: Yes, sir. And of course, you did not have that?

5 A: No, sir.

6 Q: And so with the information that you had, you did not
7 have the ability to be able to calculate range?

8 A: Not -- no, sir, not on this.

9 Q: Okay. Okay. And that's all I want to know. So is is
10 that on this map here is is that -- and of course, is that
11 we're still using 17-B. And of course, is is that I think
12 you said that -- that this 17-B represents a -- a call that's
13 January 22nd, 2016, and that is -- and it's kind of cut off on
14 this thing. That is -- just a second. Let me get to that.
15 That is January 22nd, 2016, at -- at 20:38:08; is that
16 correct?

17 A: Yes, sir. That's correct.

18 Q: And of course, is is that that is a routed call; is that
19 correct?

20 A: I'm sorry?

21 Q: Is that a routed call that you're mapping?

22 A: It's a voice call.

23 Q: Yeah, I know it's a voice call, but it is a routed call?

24 A: I would have to look at the call records to see what it
25 indicated.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: I'm sorry. And I'll show them to you. I'm sorry. I
2 didn't know that you didn't have that up there with you.

3 A: No, sir.

4 Q: Give me just a second. I think the exhibit is up here.
5 Let me see. Let me find the exhibit for you. Here's the
6 exhibit.

7 A: Okay.

8 Q: If you want to take a look at that?

9 A: Yes, sir. The mobile roll is showing it as routed.

10 Q: Now, with respect to routed calls, routed calls -- of
11 the transaction for routed calls can't be accurately plotted;
12 is that -- is that correct?

13 A: That is not my understanding. We've never had any issue
14 with it.

15 Q: Okay.

16 A: But it could be that it was a voicemail. We have never
17 had any issue with it.

18 Q: You've never had any issue with -- with using routed
19 calls to -- to -- to plot a transaction?

20 A: No, sir. Like I said, we also use this with fugitive
21 operations.

22 Q: And I think your testimony is is that routed calls are
23 just as reliable for purposes of tracking as non-routed
24 calls? Is that your testimony?

25 A: In our experience, yes, sir.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: Now, still on -- on Exhibit Number 17-B, obviously, is
2 that I think you indicated that at the point -- at the point
3 of this pie is where the -- is where the tower is?

4 A: Yes, sir.

5 Q: Okay. And of course, is is that when a -- when a call
6 is made -- and of course, we're talking about the call here
7 that is made on January 22nd, 2016 at 2:38:08. Is is that
8 where within this pie was the cell phone at when that call
9 was made?

10 A: We have no way of knowing. It's in that pie area.

11 Q: You have no way of knowing where the call -- where the
12 cell phone was at the time in which the call was made within
13 that pie area?

14 A: No.

15 Q: Now, could the cell phone -- could the cell phone be
16 outside of that pie area at the time in which the call was
17 made? Is that possible?

18 A: If that signal goes out further, then yes, sir.

19 Q: Okay. But of course, is is that that would be possible
20 in this particular situation because I think you indicated is
21 that you don't know how strong that signal is because the
22 data that you have, you're not able to determine the strength
23 of that particular tower?

24 A: Not exactly. No, sir.

25 Q: Okay. So -- so it could be -- it could be well outside

1 of this pie area?

2 A: I would not say well outside. It could be outside of
3 it. Typically, based off the other towers in the area and
4 knowing what the hand-off area is, it would not be well
5 outside of it, but it could be a little stronger than what it
6 is indicated.

7 Q: Okay. Now -- but of course, is is that you're making an
8 estimate because, again, you don't know the strength of that
9 tower; is that correct?

10 A: Not exactly, but we are taking that into consideration
11 depending on the other towers in the area. That gives us,
12 you know, a range as to what it would be.

13 Q: Okay.

14 A: You know, it's obviously not going to be stronger past
15 the other tower.

16 Q: But do you know what the strength of the other towers in
17 the area that's -- that's around this?

18 A: No. We know what the spacing of where they're at and
19 then we find the hand-off area, which is a median of the two.

20 Q: It's sometimes stronger than others?

21 A: They are typically in some places, but when they're
22 facing back toward each other, then typically, it's going to
23 be pretty close to.

24 Q: Okay. Now, I think on -- on -- so the five cell towers
25 that I think that you said -- and of course, let me see if I

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 could show that exhibit to the jurors. The five cell towers
2 that I think you said that was utilized during this tracking
3 process -- during the transactions in which -- the cell
4 transactions in which you tracked is that you said five
5 towers -- cell towers were utilized; is that correct?

6 A: Yes, sir.

7 Q: Do you know the strength of each one of those five cell
8 towers?

9 A: We do not have that information.

10 Q: In relationship to the others?

11 A: No, sir.

12 Q: You don't know the strength of those cell towers within
13 relationship to it?

14 A: No. That is not on the spreadsheets that are provided
15 to us.

16 Q: Okay. All right. Now, is -- and I know that on this --
17 on the screen that the diagram that you gave here -- I'm
18 looking at the red lines that you draw -- that you drew on
19 this diagram where the -- you know, where the lines -- red
20 lines go out here and out here, and I know that you said is
21 is that you can't tell how strong that signal is, but of
22 course, is is that based upon experience or whatever you
23 assume it's not going to be that much stronger --

24 A: Yes, sir.

25 Q: -- than what it is? Okay. Now -- okay. So is it

1 possible there's a possibility, you know, that -- that a cell
2 call -- a cell call can be made, you know, outside of the
3 front of this, you know, I guess pie because you don't know
4 how far the strength is; right?

5 A: That's right. Yes, sir.

6 Q: What about the side?

7 A: Possibly. Yes, sir.

8 Q: It could be made outside of the side, you know, where
9 the defining lines are here that defines the -- the -- I
10 guess the width of this range. It could be outside of that
11 width because, like you testified before, is is that this is
12 not an exact science; is that correct?

13 A: That's true. The only difference between this
14 particular maps is the fact that the others show that it was
15 bouncing between two towers. That it would have to be
16 somewhere that the signal is strong -- is in the same
17 strength as the two towers because it's bouncing between the
18 two.

19 Q: Okay. And so -- and so the -- this call could have been
20 made here, it could've been made here, it could've been made
21 here, it could've been made here, it could've been made in
22 any one of those areas?

23 A: No, sir. I would not think so because of the fact that
24 it continues to bounce between the 40700 tower. When you
25 look at the towers and the way they interact and the calls

1 interact, it's bouncing between two towers and some of them
2 are within just a matter of seconds. So --

3 Q: But then -- I didn't mean to interrupt you. Go ahead.
4 I'm sorry.

5 A: No. I'm just saying with it bouncing between two towers
6 within a matter of seconds, I would not think that it would
7 be near the base or on the other side of the base of that
8 tower.

9 Q: So on -- on -- on Exhibit 17-B, where is the other tower
10 at that this call was bouncing off of?

11 A: That one was not. I'm saying when you look at the call
12 records as a whole and the pattern that they were showing.

13 Q: Okay. So this call was not bouncing off of another cell
14 tower?

15 A: No, sir. This particular call was not. I'm talking
16 the call records as a whole.

17 Q: Okay. So when I said it could be -- so when I said it
18 could be outside of -- outside of this side of this pie,
19 outside of this side of this pie, outside of the front of
20 this pie, when I said that, that was not inaccurate; is that
21 correct? That is possible?

22 A: If you look at this single call, then yes.

23 Q: Yeah. And that's what I'm talking about. I'm talking
24 about the exhibit that we're talking about right now. We're
25 going to get to the other ones.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 A: Yeah. If you look --

2 Q: This is it.

3 A: If you take just this one call and not look at the call
4 records as a whole, then yes.

5 Q: Okay. And of course, so you can't tell the jury where
6 the cell phone was, the cell phone that was used. You can't
7 tell the jury where that cell phone was, can you?

8 A: Not to an exact point, no.

9 Q: Okay. And just one more thing. Now, I know at least on
10 17-B is is that this indicates that the victim's home is at
11 3618 Century Drive, Apartment A, and of course, within this
12 pie -- I know we've established that -- you know, that the
13 cell phone call can be made within or either to some extent
14 outside of this pie. You can't tell where the cell phone
15 would have been at the time in which it pinged off of this
16 cell tower?

17 A: No, sir. Other than that sector, no, sir.

18 Q: Other than that this is the coverage area for that
19 sector and then, of course, is is that -- that -- that it
20 pinged off of that cell phone tower?

21 A: That's right.

22 Q: But you cannot tell this jury this is where that cell
23 phone was?

24 THE COURT: All right.

25 A Yes, sir.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 THE COURT: I'm going to get you to stop for one minute.
2 Solicitor, y'all step over here for a second.

3 MR. BROOKER: Certainly.

4 (WHEREUPON, a bench conference was held in the presence
5 of the jury but out of the hearing of the jury off the
6 record, after which the proceedings resumed as follows.)

7 MR. BROOKER: All right.

8 THE COURT: All right. You may proceed.

9 MR. BROOKER: Sure. Thank you, Your Honor.

10 BY MR. BROOKER:

11 Q: Let's move on to another exhibit and I'm going to try to
12 get to the ones that I think are -- are relevant, at least to
13 the timeline. I think this is State's Exhibit -- let me make
14 sure that this is the one I want to show you. I'm looking at
15 State's Exhibit C. Let me make sure that's the one because I
16 can't see the -- the dates because they're cut off on the --
17 on the exhibits that's in the record. What I'm going to do
18 is I'm going to go ahead and take you to --

19 MR. BROOKER: If you can indulge me for just a second,
20 Your Honor.

21 THE COURT: Sure.

22 MR. BROOKER: I'm going to try to save some time.

23 THE COURT: Yes, sir.

24 MR. BROOKE: And move on to the exhibits that I think
25 are relevant.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 BY MR. BROOKER:

2 Q: I'm going to move to State's Exhibit -- I think this is
3 -- I think this is State's exhibit J. The reason why I'm
4 going to ask you a question about this is is that this
5 exhibit does not plot a cell transaction call, does it?

6 A: No, sir.

7 Q: Okay. So -- so this -- you know, so for the purposes of
8 the use of this -- this -- this exhibit, I'm assuming that
9 that you was using this simply as an example as to how some
10 towers in the coverage area might intersect?

11 A: This is to show how when -- on call detail records when
12 you have a phone that is bouncing between two towers and the
13 same sector each time, that that is indicative usually of a
14 hand-off area, which is what that indicates.

15 Q: Okay. All right. And of course, is is that we'll move
16 to State's Exhibit -- I think this is -- is it State's
17 Exhibit -- I think this is State's Exhibit 17-F and, of
18 course, I think this is a call. Correct me if I'm wrong.
19 It's for January 23rd, 2016, and, of course, 15:13:17 hours;
20 is that correct?

21 A: Yes, sir.

22 Q: And of course, that would be roughly 3:13; is that
23 correct?

24 A: That's correct.

25 Q: Okay?

1 A: In the p.m.

2 Q: The p.m. Thank you. And of course, this is also a
3 routed call; is that correct?

4 A: It appears it was. Yes, sir.

5 Q: Okay. And just briefly for my understanding, what is
6 the significance of a routed call? A routed call -- go
7 ahead. Tell me what this -- what is a routed call?

8 A: It could be a number of different things. It could be,
9 you know, that it was a voicemail call. It could be
10 anything.

11 Q: It could be a voicemail call or it could be anything?

12 A: It's different. They have different codes for them, but
13 typically, we have seen it as being possibly a call that went
14 to voicemail.

15 Q: Okay. What other type of calls could it be?

16 A: I would have to refer to a Sprint engineer.

17 Q: I understand. I guess I'm trying to figure out the --
18 the other type of calls that --

19 A: That would -- that, again, would have to come from a
20 Sprint engineer. What we have seen is typically that it's a
21 voicemail call.

22 Q: So you're guessing that it's a voicemail call and you
23 don't know?

24 A: From what we have seen in our experience.

25 Q: Do you know that it's a voicemail call?

1 A: No.

2 Q: Okay. That's all I'm looking for. Okay. And of
3 course, is is that I think you testified previously is that
4 voicemail calls are what you can plot, but other type -- some
5 other types of transactions that cannot be plotted?

6 A: The only other transactions that we don't plot are the
7 second cell sites and data calls.

8 Q: Okay. Okay.

9 A: Anything else, if it has a tower associated with it that
10 the phone companies provided, then we typically map it.

11 Q: Okay. All right. I think on your next exhibit -- I
12 think it's 17-M. I'm getting close to being finished. 17-M.
13 And of course, I think this is a call, a call transaction on
14 January 23rd, 2016, at 3:19 p.m.; is that correct?

15 A: Yes, sir.

16 Q: Okay. All right. And -- and I think you've already
17 explained this is is that the base of -- the base of this pie
18 is where the tower is?

19 A: Yes, sir.

20 Q: Okay. And of course, is is that a range -- the range
21 again is is that you can't tell what the range of this tower
22 is exactly?

23 A: Not exactly, no.

24 Q: Are there other variables that can interfere with you --
25 are there other variables -- I understand that there's a lot

1 of variables that can affect the accuracy, you know, of range
2 and then, of course, is is that of the range of the tower?

3 A: Uh-huh.

4 Q: Okay. And of course, is is that how do you calculate
5 for those variables that might interfere with the range of a
6 -- of a cell phone tower when you're doing this mapping like
7 this by hand?

8 A: By looking at the other towers that are in the area.

9 Q: Do you ever actually go out and physically take a look
10 at the towers and, of course, is is that and see the
11 structures around those towers to try to determine whether or
12 not there are -- there are variables -- that there are other
13 variables around those towers, other -- other things around
14 those towers that might affect the -- you know, the range or
15 the accuracy of -- of the signal?

16 A: No, sir. We have no way of knowing whether they affect
17 it or not, depending on the height of the tower, the height
18 of those buildings. There's just no way of knowing whether
19 they do or not.

20 Q: Okay. So you don't go take a physical check that is?

21 A: Not of the structures around it, no.

22 Q: Okay. Can you do that on a Google map? On Google map,
23 can you go take a look around to see what other buildings are
24 around those cell phone towers or see whether or not there is
25 a power substation around that cell phone tower, anything

1 that might interfere with the accuracy -- accuracy of the
2 signal for that cell phone tower?

3 A: You could go and look, but there would be no way of
4 knowing, you know, from an aerial view necessarily what the
5 height of those buildings or structures are or what the
6 strength, you know, of any power substation may be. I mean
7 there's no way of knowing that from looking at it on a map,
8 no.

9 Q: Okay. And of course, is is that I think we are close to
10 being done. I'm checking to make sure. Now, when you
11 plotted these calls, the cell phone calls, did you plotted
12 [sic] all the available data calls on January 23rd of --
13 January 23rd of 2016?

14 A: What do you mean data calls?

15 Q: I'm sorry. The available voice calls. Did you plotted
16 all of the -- did you map all of the available voice
17 transaction calls for January 23rd, 2016, using Sprint
18 records?

19 A: As far as I know, I did, yes, sir.

20 Q: Okay.

21 Q: And I'll ask this one last question to apply to all the
22 -- the cell towers. I know I asked you a series of questions
23 in reference to the cell phone tower that's -- that was
24 depicted in 17-B about the range and accuracy. That would
25 apply to all of the other towers what you testified to with

1 respect to, you know, the range of those cell phone towers?

2 A: Yes, sir.

3 Q: Okay. And then, of course, with respect to also, you
4 know, the band width of those cell phone towers?

5 A: Within a degree, yes, sir.

6 Q: Okay. And just again, we're not dealing with exact
7 science. Of course, we're dealing with -- I mean to the best
8 that we can with the technology that we have and I'll ask you
9 one more question about the technology. The technology that
10 you used to do this mapping, is this the -- is this the most
11 up-to-date available technology for mapping that there is?

12 A: There are some other information that's coming out
13 that's called -- that provides RF meters for the tower, but
14 it was not available to our agency when this map was created
15 or when this crime occurred.

16 Q: So there's -- you know, I'm trying to make sure I
17 understand what you said. So is -- is there a more accurate
18 technology out there?

19 A: There --

20 Q: Better technology?

21 A: There is the ability to see the RF signal of towers as
22 they sit now, but that -- again, that information was not,
23 you know, provided to us at this time.

24 Q: The information or the technology?

25 A: The technology.

CHRIS JOHNSON - CROSS BY MR. BROOKER

1 Q: Okay.

2 A: Or the information.

3 Q: Okay. Okay. So you don't have the -- you don't have
4 the latest in technology?

5 A: Not as far as the RF signals, no.

6 Q: Okay.

7 A: As far as mapping, yes.

8 Q: Okay. All right. And so if you had the latest in
9 technology, you could probably create a more accurate --
10 accurate mapping system; is that right?

11 A: We would know what the RF signal of the tower is, yes.

12 Q: Which would be more accurate; right?

13 A: Possibly.

14 MR. BROOKER: If you can indulge me for just a second,
15 Your Honor, let me make sure I don't have any further follow-
16 up questions.

17 THE COURT: Yes, sir.

18 MR. BROOKER: Just a couple more.

19 BY MR. BROOKER:

20 Q: Do you know of -- do you know of a Thomas Chase Levinson
21 [ph]?

22 A: No, sir. I do not.

23 Q: Okay.

24 MR. BROOKER: Indulge me for just a second, Your Honor?

25 THE COURT: Yes, sir.

CHRIS JOHNSON - REDIRECT BY MR. CLEMENTS

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

2 THE COURT: Redirect?

3 MR. CLEMENTS: One question, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q: Mr. Brooker asked you about the range. Based on your
8 experience and knowledge, do you have an opinion as to the
9 normal range of a suburban cell site?

10 A: Typically, they are a mile to a mile and a half,
11 depending on the towers in the area.

12 MR. CLEMENTS: No further questions, Your Honor. I
13 would ask that the lieutenant be released from his subpoena.

14 MR. BROOKER: Can I just ask one follow-up question?

15 THE COURT: Yes, sir.

16 RECROSS-EXAMINATION

17 BY MR. BROOKER:

18 Q: Okay. I think with respect to -- with respect to ranges
19 in suburban areas, is that that -- that would be -- that
20 would vary based upon the area itself, would it not?

21 A: It would.

22 Q: The size of the city and other variables?

23 A: Well, not necessarily the size of the city, but the
24 topographical area of the buildings, yes.

25 Q: So -- so the answer would be, yes, it would vary from

1 city to city?

2 A: Depending on the area and the buildings.

3 Q: Okay.

4 MR. BROOKER: Thank you very much.

5 THE COURT: Any objection to his being excused from his
6 subpoena?

7 MR. BROOKER: No objection from me, Your Honor.

8 THE COURT: All right. Thank you very much, sir.

9 THE WITNESS: Yes, sir.

10 THE COURT: You're free to go.

11 All right. Ladies and gentlemen, we're going to adjourn
12 for the evening. I'm going to ask you, if you would -- and
13 if anybody has an issue with this, let me know, but I'd kind
14 of like to start a little bit earlier tomorrow.

15 So how about can y'all be here at nine? If y'all will
16 be here at nine, we're going to be here before then to take
17 up anything that we might need to deal with and, hopefully,
18 we'll start at 9 o'clock and we'll get started then. Okay?

19 So everyone else please remain seated. Folks, continue
20 to protect your ability to remain fair and impartial. Don't
21 allow anyone to talk with you and we will see you at 9
22 o'clock.

23 (WHEREUPON, the jury exited the courtroom at 5:52 p.m.)

24 THE COURT: Anything we need to take up? First
25 regarding the case and then we'll talk about scheduling.

1 MR. CLEMENTS: Nothing, Your Honor.

2 THE COURT: Anything from the defense?

3 MR. BROOKER: Nothing, Your Honor.

4 THE COURT: Okay. Solicitor, how much -- how many other
5 witnesses or how many more witnesses would the State have?

6 MR. CLEMENTS: Your Honor, I believe we're down to the
7 coach.

8 THE COURT: Okay. And then --

9 MR. BROOKER: Then we're going to have -- we're going to
10 have three, potentially two experts and then, of course, just
11 one lay witness and, of course, the lay witness is going to
12 be extremely quick, less than five minutes.

13 THE COURT: Okay. What I want to do -- and I didn't say
14 anything to the jury this evening because I don't want to --
15 I don't want to pull the trigger too quickly. If this is not
16 necessary, I don't want to get them concerned if I don't need
17 to. We'll see how it goes tomorrow, but at some point, you
18 know, I want to let them know that if we don't -- if we don't
19 finish tomorrow, we're going to have to come in on Saturday.

20 So, you know, I don't know if they have schedules or
21 what they have going on, but we'll just see how it goes. All
22 right? All right.

23 Let's be here at 8:30 to take up -- if there is anything
24 to take up, then we'll take it up between then and nine, but
25 I'd like us to get started with the jury at nine. If we get

1 here at 8:30 and there's nothing that we need to deal with,
2 then we'll just hang out until nine. Okay?

3 (WHEREUPON, the proceedings adjourned for the day at
4 5:56 p.m.)

5

6 --- CONTINUED WITH DAYS 5 & 6 IN A SEPARATE VOLUME ---

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**Florence Co. Judicial Center
RANDOM STRIKE SHEET**

9/9/19

JUDGE NAME : Russo Thomas A.
TRIAL TYPE : Criminal
PANEL ID : 2017GS2100588A
COURTROOM 3A

DESCRIPTION : STATE VS ROYAL WILLIAMS

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Matthews, Christopher S	145	W	M	()	()	()	1
2 Bellon, Thomas A	12	W	M	()	(✓)	()	
3 Buxton, Sheila W	28	W	F	()	(✓)	()	
4 Altman, Stephen M	6	W	M	()	()	()	2
5 Pickett, Akeede D	173 ~~284~~	B	M	(✓)	()	()	
6 Williams, Theresa	239	B	F	()	(✓)	()	
7 Watford, Dane	228	W	M	()	()	()	3
8 Seeber, Derek A	200	W	M	()	(✓)	()	
9 Cooper, Meyell V	44	B	F	()	()	()	4
10 Cato, Elizabeth T	35	B	F	(✓)	()	()	
11 Pinckney, Yolanda Graham	87	B	F	()	(✓)	()	
12 Eaddy, Erin G	69	W	F	()	()	()	5
13 Nero, Elaine H	163	B	F	()	(✓)	()	
14 Harvey, Kimberly H	96	W	F	()	()	()	6
15 Mcallister-timmons, Terry	149	B	F	()	()	()	7
16 Hayes, David A	99	B	M	(✓)	()	()	
17 Matthews, Julie F	147	W	F	()	(✓)	()	
18 Milliner, Keith	158	B	M	(✓)	()	()	
19 Bethea, Deloris D	13	B	F	()	(✓)	()	
20 Black, Melissa A	16	W	F	()	()	()	8
21 Carraway, Joseph M	33	W	M	()	()	()	9
22 Newman, James A	166	W	M	()	()	()	10
23 Sanocoy, Londa H	199	NA ?	F	()	(✓)	()	
24 Chapman, Aaron Iv	39	B	M	()	()	()	11

4

**Florence Co. Judicial Center
RANDOM STRIKE SHEET**

JUDGE NAME : Russo Thomas A.
TRIAL TYPE : Criminal
PANEL ID : 2017GS2100588A
COURTROOM 3A

DESCRIPTION : STATE VS ROYAL WILLIAMS

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Hayes, William B	101	W	M	()	()	()	12
26 Hayes, Mitchell B	100	W	M	()	()	()	alt 1
27 Hatfield, Alicia Gail	98	W	F	()	()	()	alt 2
28 Fountain, Edwin W	70	W	M	()	()	()	
29 Mackey, Micheal B	143	B	M	()	()	()	
30 Nettles, Subrina S	164	W	F	()	()	()	
31 Strickland, Thomas R	212	W	M	()	()	()	
32 Beylotte, Ladonna M	14	W	F	()	()	()	
33 Hanna, Gregory A	92	W	M	()	()	()	
34 Lawson, Tabatha S	136	W	F	()	()	()	
35 Wells, Elizabeth S	233	W	F	()	()	()	
36 Ridgle, Christa S	191	W	F	()	()	()	
37 Feagins, Kenneth L	67	B	M	()	()	()	
38 Young, William H	249	B	M	()	()	()	
39 Hughes, Dianne B	111	W	F	()	()	()	
40 Yates, Bonnie S	247	W	F	()	()	()	
41 Chavez, Temujin T	41	H	M	()	()	()	
42 Keefe, Elizabeth L	129	W	F	()	()	()	
43 Brockington, Jasmine T	21	B	F	()	()	()	
44 Church, Jennifer L	42	W	F	()	()	()	
45 Gaster, Wyman B Jr.	75	W	M	()	()	()	
46 Jett, Latreece H	120	B	F	()	()	()	
47 Kirkley, Vivian A	134	B	F	()	()	()	
48 Gerald, Brenisha I	76	B	F	()	()	()	

1	State of South Carolina	)	In the Court
2	County of Florence	)	Of General Sessions
3	State of South Carolina,	)	Indictment No.: 2017-GS-21-00588
4	Plaintiff,	)	
5	vs.	)	Partial Transcript of Record
6	Royal Daniel Williams,	)	
7	III,	)	
8	Defendant.	)	

8

9

10

11

12

BEFORE:

13

14

15

16

APPEARANCES:

17

18

19

20

21

22

23

ALSO PRESENT:

24

25

September 13th and 14th, 2019

Florence, South Carolina

The Honorable Thomas A. Russo, Judge, and a
Jury

Edgar L. "Ed" Clements, III, State Solicitor
Twelfth Judicial Circuit
Rick Hoefer, II, Assistant State Solicitor
Attorneys for the State/Plaintiff

Thurmond Brooker, Esquire
Attorney for the Defendant

Royal Daniel Williams, III

1	INDEX	
2	SEPTEMBER 13, 2019	
3	WITNESS	PAGE
4	THOMAS McFADDIN	
5	Direct Examination by Mr. Clements	5
6	Cross Examination by Mr. Brooker	30
7	Redirect Examination by Mr. Clements	49
8	Recross Examination by Mr. Brooker	50
9	THOMAS J. SLOVENSKI (Proffered)	
10	Direct Examination by Mr. Brooker	94
11	Cross Examination by Mr. Clements	97
12	ROBERT N. BENNETT (Proffered)	
13	Direct Examination by Mr. Brooker	100
14	Cross Examination by Mr. Hoefer	102
15	Redirect Examination by Mr. Brooker	120
16	STATE/PLAINTIFF RESTS	133
17	THOMAS J. SLOVENSKI	
18	Direct Examination by Mr. Brooker	134
19	Cross Examination by Mr. Clements	171
20	Redirect Examination by Mr. Brooker	183
21	Recross Examination by Mr. Clements	186
22	ROBERT N. BENNETT	
23	Direct Examination by Mr. Brooker	187
24	Cross Examination by Mr. Hoefer	208
25	Redirect Examination by Mr. Brooker	225

1	SEPTEMBER 13, 2019	
2	WITNESS	PAGE
3	KENDRELL DAVIS	
4	Direct Examination by Mr. Brooker	228
5	Cross Examination by Mr. Clements	229
6	DEFENDANT RESTS	230
7		
8		
9	SEPTEMBER 14, 2019	
10	CLOSING ARGUMENT	
11	By Mr. Clements	258
12	By Mr. Brooker	282
13	By Mr. Clements	320
14	CHARGE OF THE COURT	328
15	VERDICT OF THE JURY	343
16	SENTENCE OF THE COURT	351
17	Certificate of Reporter	355
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS			
2	COURT'S			
3	NO.	DESCRIPTION	ID	EVDS.
4	4	Email	57	
5	5	Slovenski CV	99	
6	6	Bennett CV	124	
7	7	Defendant's Requested Charges	354	
8	STATE/PLAINTIFF'S			
9	NO.	DESCRIPTION	ID	EVDS.
10	19	Photo Defendant DMV	26	27
11	20	Photo Defendant Social Media	26	27
12	21	DNA Report	215	216
13	DEFENDANT'S			
14	NO.	DESCRIPTION	ID	EVDS.
15	2	Slovenski Report	148	148
16	2A-Y	Cell Phone Transaction Record	155	155
17	3	Four Photos of Defendant		
18				
19				
20				
21				
22				
23				
24				
25				

1 Thereupon, the following proceedings were had,

2 BAILIFF: Keep your seats.

3 THE COURT: All right. Let's bring the jury in.

4 (Whereupon, the jury entered the courtroom at 9:10
5 a.m.)

6 THE COURT: Welcome back, ladies and gentlemen. I
7 hope everyone had a good evening. We're gonna get right
8 back into the case. We're still on the State's case so I
9 would recognize Solicitor Clements for the State's next
10 witness.

11 MR. CLEMENTS: Thank you, Your Honor. May it please
12 the Court. Your Honor, we would like to call
13 Investigator Thomas McFaddin.

14 THE COURT: All right. Investigator McFaddin, come
15 around to be sworn please.

16 Thereupon,

17 THOMAS McFADDIN

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please be seated on the witness stand
20 and please state your name for the record.

21 THE WITNESS: Thomas McFaddin.

22 DIRECT EXAMINATION

23 BY MR. CLEMENTS:

24 Q. What do you do for a living?

25 A. I'm a criminal investigator with the Florence County

1 Sheriff's Office.

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

3 A. 23 years.

4 Q. 23 years?

5 A. Yes.

6 Q. How long have you been an investigator with the
7 Florence County Sheriff's Department?

8 A. Since 2004.

9 Q. What did you do before 2004?

10 A. I worked in the detention center back in the '90s,
11 and then I went to Lake City Police Department. I was on
12 patrol. I was a patrol supervisor.

13 Q. How long were you with Lake City?

14 A. Three years.

15 Q. Did you have occasion to be called out on January
16 23rd, 2016?

17 A. I did.

18 Q. Where were you called to?

19 A. Uhm, 3618 Century Drive.

20 Q. Where is that located at?

21 A. In Florence County off Southborough Road.

22 Q. What time was it when you got called or the
23 approximate time?

24 A. It was close to midnight when we got the call.

25 Q. Okay. What did you do when you received the call?

1 A. Uhm, I notified my supervisor because at that time
2 me, Investigator Collins and Lieutenant Street were part of a
3 homicide unit so I notified my lieutenant to notify the others
4 to let them know we had a homicide.

5 Q. Who was your lieutenant?

6 A. Lieutenant Albert Powell but Lieutenant Street was
7 over the homicide unit at that time.

8 Q. Okay. When you got on the scene, who was there?

9 A. Several deputies, Investigator Collins at the time.
10 Lieutenant Street didn't come out to that one. Lieutenant
11 Brumbles, Sergeant Summerset, Profit, a good bit of deputies
12 and EMS and the coroner.

13 Q. When you got there, did you find the scene to be
14 secure or not?

15 A. Yes. It was secured at that time.

16 Q. Did you see any other lay people?

17 A. Uhm, I saw what I found out to be the victim's
18 family. Uhm, I think they were in a pickup truck away from
19 the scene so I kind of briefly spoke to them.

20 Q. Did you talk to them and interview them?

21 A. Yes.

22 Q. Investigator Collins interviewed them as well?

23 A. Yes.

24 Q. Okay. Tell me what you first did when you got
25 there. Was this any different from any other scene that you

1 have responded to?

2 A. Not really. I like to walk in, kind of scan the
3 scene to see what I can see when I first get there, I like to
4 do an overview. Uhm, the first thing I noticed, uhm, which we
5 switched out homicide so I knew when I was on the way to that
6 scene I would be up next so when I walked through the scene
7 either the odor that I got from the apartment either it was
8 laundry detergent or like a Febreze scent. So I felt like,
9 it's gonna be a tough one. Like somebody tried to clean it
10 up.

11 MR. BROOKER: Objection, Your Honor. Speculation.

12 THE COURT: Sustained.

13 BY MR. CLEMENTS:

14 Q. All right. It smelled clean?

15 A. Yeah.

16 Q. Okay. Tell us about your walk through. What you
17 observed. What stood out to you other than the smell.

18 A. Uhm, when I first walked in, I could see the crime
19 scene log and I saw a cell phone sitting there when I went
20 around the corner.

21 Q. Let me show you State's Exhibit 16. This is State's
22 Exhibit 1C. Investigator McFaddin, can you tell us what that
23 is and does that look familiar to you?

24 A. Yes. That's the crime scene log. I could see that
25 cell phone when I walked in.

1 Q. What else did you notice?

2 A. Once I got further into the apartment, I looked to
3 the left and I could see what appeared to be the victim laying
4 across the hallway.

5 Q. What did you see down the hallway you said?

6 A. What appeared to be the victim's body laying across
7 the hallway.

8 Q. Okay. All right. Did you go and approach the
9 body?

10 A. Yes. I did.

11 Q. When you got down the hallway, was it a very long
12 hallway?

13 A. No. It was a short hallway.

14 Q. A short hallway?

15 A. Yes.

16 Q. When you got down to the end of the hallway, what
17 did you find when you observed the body?

18 A. I could see what appeared to be a gunshot wound to
19 the left side of her forehead and blood coming out of her
20 nose.

21 Q. Did you notice anything else around her?

22 A. You could see the pillow and a sheet, a comforter,
23 whatever you want to call it on the floor.

24 Q. A pillow and a comforter on the floor?

25 A. Yes.

1 Q. Would the position of the beds in that apartment,
2 did that seem to be out of place that they were right there?

3 A. Yes. Uhm, the bed in the other room was a child's
4 bed so the comforter was missing from the bed we later
5 discovered was the adult bedroom.

6 Q. What bedroom did that pillow and that comforter
7 relate at laying on the floor?

8 A. It was laying on the floor of the child's room.

9 Q. Of the child's room?

10 A. Yes.

11 Q. What else did you notice?

12 A. Uhm, she still had the cell phone case on her at
13 that time, but I later learned that it wasn't taken off of
14 her. Well, it was on top of her, but in a panic nobody could
15 remember whether it was still on her person or who moved it,
16 but I noticed her case was still on her side but the phone was
17 already gone.

18 Q. The case, what kind of case was it? Was it a clip
19 on case?

20 A. Yeah. Clip on case.

21 Q. Slide on case?

22 A. Clip on case.

23 Q. Where was it connected?

24 A. Still on her side.

25 Q. On her side on her belt?

1 A. Yes. So I noticed she was still in her work uniform
2 so I saw the Starbucks uniform on her so that's when I went
3 back out to interview the family again to find out when they
4 last heard from her or seen her.

5 Q. Okay. What else was there on scene there at the
6 apartment on the inside or the outside?

7 A. Uhm, after interviewing them, I learned that the red
8 vehicle was her car that was still there on scene.

9 Q. I show you State's Exhibit 2A. Does that look
10 familiar at all to you?

11 A. Yes. That's it.

12 Q. That's it?

13 A. Sherilyn's vehicle, what they identified as the
14 victim's vehicle.

15 Q. All right. What else did you notice?

16 A. Uhm, just went through the house trying to scan to
17 see if anything was left, uhm, something that could be of
18 evidentiary value to the case. That's when we discovered the
19 trash can that was in there.

20 Q. Did you collect that or leave that to forensics?

21 A. I left that to forensics.

22 Q. What did you see?

23 A. The condom. At that point I saw the condom wrapper
24 in there and later once they opened it to check it out you
25 could see an actual condom in there.

1 Q. But the condom wasn't in the wrapper?

2 A. No. It was not.

3 Q. So it was used or unused?

4 A. It appeared to be used.

5 Q. Now, you went back and talked with her family a
6 little more and what did you do next in your investigation?

7 A. I discovered she worked at Starbucks. Was supposed
8 to be getting off that day around 2:00 p.m., so once I saw
9 that, I went out the next morning because she was still in her
10 work uniform. I assumed it had to happen shortly after she
11 got off work. She didn't have a chance to change out of that
12 uniform, so the very next morning I went to Starbucks and
13 interviewed several of the employees that worked with her that
14 morning. After interviewing those employees, I was very
15 concerned about the individual she had at the apartment
16 waiting on her once she got off.

17 MR. BROOKER: Objection, Your Honor. May we
18 approach?

19 THE COURT: Yes.

20 (Side bar off the record.)

21 THE COURT: All right. Ladies and gentlemen, the
22 question and the response given, I'm striking that from
23 the record and I'll explain to you in more detail when I
24 give you the charge on the law, but when a matter is
25 stricken from the record, you are not allowed to give it

1 any consideration at all. It's as though it never
2 occurred, okay? Solicitor, you may continue.

3 MR. CLEMENTS: Thank you, Your Honor.

4 BY MR. CLEMENTS:

5 Q. Investigator McFaddin, once you talked to her
6 co-workers, what did you do?

7 A. I went back to find out individuals who she was in
8 contact with.

9 Q. All right. When you say individuals, do you mean
10 witnesses or suspects?

11 A. Witnesses.

12 Q. Potential suspects?

13 A. Potential suspects, that and individuals that she
14 was involved with.

15 Q. Did you develop any potential suspects?

16 A. Several. I developed several. I talked to Jonas
17 Hicks, got swabs from him, corroborated some of his stuff,
18 what he said. Kenton Gainey. Learned about her baby's
19 father. She had a small child. I learned about him. Talked
20 to him, interviewed him.

21 Q. What was his name?

22 A. His name was Gary Floyd. Aaron Smith. Interviewed
23 him. Got a swab from him as well. Corroborated him.

24 Q. Did you get swabs from anybody in Darlington?

25 A. I also later going through investigating, several

1 addresses developed. I went to 225 Plum Street and got a swab
2 from Leron Whitten.

3 Q. And all these people that you mentioned that you
4 followed leads on, did anything develop further on them or did
5 you exclude them?

6 A. Once all that was done, I was able to exclude them.
7 Whitten, like I said, me and Investigator Collins was working
8 two sides of it, so he was telling me what he was developing.
9 I was telling him. We would meet certain days in the morning
10 and we would meet in the afternoon once we developed, so he
11 was working on one side of the investigation, I was working on
12 another side, but we actually went to Whitten because both of
13 us developed, once he explained the situation with the
14 taxicab, I told him I had a address that was developed at 225
15 Plum Street so I was able to go over there and I could see
16 that the Doneraile address was right there beside Plum
17 Street.

18 Q. Doneraile and Plum Street are right together?

19 A. Right together.

20 Q. Was Mr. Whitten cooperative with you?

21 A. Yes. He was. Once I listed a description from the
22 taxicab people saying the guy was built, once I met with
23 Whitten, I saw a weight bench in the house, so I took a
24 picture of him and the weight bench. I thought we probably
25 got this guy. We've probably got our suspect so I showed it

1 to the individuals in the cab and they kind of laughed like
2 no. Heck, no. Not him. He ain't built.

3 Q. What did you do with his swabs?

4 A. We collected it and submitted it to evidence and I
5 guess later it was sent off to SLED.

6 Q. You said that you, some information was developed
7 through your investigation, some addresses. Can you tell us
8 what addresses and what you did with that?

9 A. Another address was 113 Westwood Court in
10 Bennettsville. Uhm, since we're Florence County,
11 Bennettsville is a little ways away. It wasn't too far, but I
12 called one of the investigators there from Bennettsville to go
13 check out that apartment for me while we stayed in Florence
14 County to check out other addresses we had and so he just said
15 he stopped by and an elderly female was there.

16 Q. That's all the information he gave you?

17 A. That's all he gave me at that time.

18 Q. Did you follow up -- Well, let me ask you this
19 before we get to that. You say there was some people in the
20 cab. What did y'all do to develop any information from
21 them?

22 A. Well, we go back and interview them. I was trying
23 to take - every time I developed a person, identity of a guy,
24 I would keep trying to show them. Is this the guy? Or is
25 that the guy? Even if they were cooperating, I would still

1 show them a picture of the person that I interviewed or
2 developed and they were like no.

3 Q. Did y'all have any occasion to call SLED in?

4 A. Yes. We called Ms. Linda because we felt Ms. Linda
5 was being the most cooperative, and she had the better view of
6 him sitting beside him in the back of the taxicab, we decided
7 that she probably needed to do a sketch because we go on her
8 job probably everyday trying to show a person. Is this right?
9 Is this the person?

10 Q. I'll show you what's marked as State's Exhibit
11 number 12. Do you recognize that?

12 A. Correct. Yes.

13 Q. What is that?

14 A. That's the sketch Ms. Linda did with a sketch artist
15 from SLED.

16 Q. When y'all were going out checking on addresses,
17 would you carry this with you?

18 A. Yes. I would have that sketch with him. We also
19 put it on the news.

20 Q. Put it on the news?

21 A. Yes.

22 Q. Now, did you go to the address in Bennettsville?

23 A. Yes. We went out to the address in Bennettsville
24 along with that sketch.

25 Q. Did you find out who lived there?

1 A. Yes. Correct. The individual Maggie, it ended up
2 being Royal's grandmother.

3 Q. Royal's grandmother?

4 A. Yes. Correct.

5 Q. Did you go -- Was there any connection, when you
6 discovered the address on Plum Street, was there any
7 connection with Mr. Whitten and Mr. Royal Williams? Did they
8 know one another?

9 A. Correct. After we developed that, I downloaded
10 Royal's DMV and we went immediately back to 225 Plum Street.

11 Q. Any other address you go to?

12 A. 326 Orange Street.

13 Q. Whose address was that?

14 A. It was Royal's brother's address, but the key part
15 of that is if you go back and look at his cell phone records,
16 you will notice that the 326 Plum Street --

17 THE COURT: Hold on.

18 MR. BROOKER: May we approach?

19 THE COURT: Yes.

20 (Side bar off the record.)

21 BY MR. CLEMENTS:

22 Q. Are you talking about Royal Williams' telephone?

23 A. Right. Correct.

24 Q. Talking about records from his phone?

25 A. Correct. Subscriber information.

1 Q. Okay. Now, what did you find out about that
2 address, who it belonged to. Who lived there.

3 A. Antonio lived there at the time. I took a picture
4 of a black Chrysler.

5 Q. The black Chrysler was whose car?

6 A. Antonio.

7 Q. Who was Antonio?

8 A. Royal's brother. We spoke to him as well.

9 MR. BROOKER: May we approach one more time, Your
10 Honor?

11 THE COURT: Yes, sir.

12 MR. BROOKER: I'm sorry to do this.

13 (Side bar off the record.)

14 THE COURT: Folks, let me get you to step back in
15 the jury room while I deal with this matter and then I'll
16 bring you back out.

17 (Whereupon, the jury entered the jury room at 9:30
18 a.m.)

19 THE COURT: Okay. Let me just say this because, and
20 I was gonna say we've been in here all week long dealing
21 with these things, but this goes well beyond this week.
22 This deals with all kind of pretrial motions we've had
23 and stuff. You can't do an end run around the law.

24 MR. CLEMENTS: Yes, sir.

25 THE COURT: Those cell phone -- You can clarify the

1 testimony. That's fine. But those cell phone records
2 don't have addresses in them.

3 MR. CLEMENTS: Yes, sir.

4 THE COURT: So if he's testifying that he ended up
5 at a particular address because he got that information
6 that has already been ruled inadmissible because of --
7 And I'm sorry that it got screwed up that phones didn't
8 get downloaded or didn't do whatever it was they were
9 supposed to do, but he cannot testify to anything that
10 hasn't been turned over to the defense and that the
11 defense has been made aware of and has had use of. And I
12 think, and if I'm wrong, I apologize, but I think that's
13 what's happening here because as far as I'm aware, and I
14 haven't looked at these records, these records don't have
15 addresses on them. They're phone numbers. Am I right?

16 MR. CLEMENTS: Yes, sir.

17 THE COURT: They're simply phone numbers?

18 MR. CLEMENTS: Yes, sir.

19 THE COURT: So it appears that the information that
20 he got that led him to that address came from somewhere
21 else.

22 MR. CLEMENTS: And I'm not sure --

23 THE COURT: I'm not sure where --

24 MR. CLEMENTS: -- what he was saying so...

25 THE COURT: I don't either so I'm gonna let you

1 proffer that line of testimony.

2 MR. CLEMENTS: Yes, sir.

3 BY MR. CLEMENTS:

4 Q. Let's back up a second, Lieutenant McFaddin. You
5 followed up on an address that was Anthony Williams?

6 A. Correct.

7 Q. Or an Antonio Williams?

8 A. Correct.

9 Q. You were starting to say something about cell phone.

10 A. Well --

11 Q. What are you talking about?

12 A. We submitted cell phone information, subscriber
13 information. If you look at the subscriber information,
14 Royal's when he subscribed on a Sprint phone, his address is
15 there of 326 Orange Street.

16 THE COURT: That's the address you were talking
17 about?

18 THE WITNESS: Yeah. It's on the subscriber if you
19 all allowed that in. That's what I was saying.

20 THE COURT: Right. That's the address we're talking
21 about, right?

22 THE WITNESS: Yeah. That's the address we're
23 talking about. Not from Sherilyn's phone, just the
24 subscriber information, if you look back at it it clearly
25 says when Royal subscribed to the Sprint phone it clearly

1 shows 326 Orange Street. You have to look at the
2 subscriber information.

3 MR. BROOKER: Your Honor, the only thing I would say
4 --

5 THE WITNESS: I wasn't saying anything about
6 Sherilyn's phone.

7 MR. BROOKER: -- maybe he better clarify to the jury
8 that when he said that, that he is, that he got that
9 address from, not from the cell phone records that came
10 from Sprint and not from the cell phone.

11 THE COURT: He doesn't have to clarify anything.
12 Y'all can question. That's what y'all's job is. If
13 you want to clarify something, you can do it on cross.
14 His testimony was using the cell phone records he got
15 that address.

16 MR. BROOKER: He said using the cell phone he got
17 that address and that's the difference between cell
18 phones and cell phone records. That's why I was trying
19 to make the distinction. If he said cell phone records,
20 that's fine. If he said cell phone, that's the physical
21 phone, and that's what I wanted to make clear so we don't
22 get into, you know, this mess about the phone, about the
23 physical phone versus the cell phone records because it
24 can be easily confused. And that's all I was about to
25 say, Your Honor.

1 THE COURT: And if it is, that's why y'all have the
2 opportunity to question witnesses to clarify these
3 things. Now, I want to make it clear, and I think it
4 should be already, the State's witnesses cannot testify
5 to anything that has not been turned over to the defense
6 and so my understanding is, and y'all correct me if I'm
7 wrong, no cell phone information was turned over to the
8 defense off of anybody's phone. If I remember from our
9 last hearing for whatever reason, technical or physical,
10 they were not able to extract any of that stuff and so
11 nothing was exchanged; is that correct?

12 MR. CLEMENTS: Your Honor, as far as the phone
13 itself being turned over, that is correct. What has been
14 turned over and was put in Lieutenant McFaddin's report
15 from the beginning is what they did and what numbers they
16 had, they looked at and those people that they checked
17 on, that's been disclosed. It's my understanding that
18 that was in his narrative that he did.

19 THE COURT: But that's not what we're talking
20 about.

21 MR. CLEMENTS: But the actual phone itself?

22 THE COURT: Information. Yeah.

23 MR. CLEMENTS: Yes, sir.

24 THE COURT: Okay. All right. Anything before we
25 bring the jury back?

1 MR. BROOKER: Nothing, Your Honor. The only
2 clarification I would make for that is that even for
3 something that was taken from the physical phone that was
4 not produced to us and he put it in his report, that
5 still doesn't make it admissible because his report is
6 not in the record and also those physical records are not
7 in, so if he looked at the phone and saw some information
8 and then wrote it in his report and then didn't turn that
9 data over to us, putting it in his report doesn't make it
10 admissible I think just for that clarification.

11 MR. CLEMENTS: And I haven't asked him any questions
12 about that. I think right now he understand he's not -
13 he's gonna respond to my questions and not run off in
14 another direction.

15 MR. BROOKER: I think we're ready to go, Your
16 Honor.

17 THE COURT: Okay. Let's bring the jury back in.

18 MR. CLEMENTS: One other thing. Slow down a little
19 bit.

20 THE WITNESS: Okay.

21 (Whereupon, the jury entered the courtroom at 9:40
22 a.m.)

23 THE COURT: You may proceed, Solicitor.

24 BY MR. CLEMENTS:

25 Q. I want to show you the third page of State's Exhibit

1 10 which has been identified as Sprint records for Leron
2 Whitten's phone number that we have already established here
3 in court and this is the subscriber details?

4 A. Correct.

5 Q. Can you tell me who is the account billing address,
6 the name and the address?

7 A. Royal Williams, 326 Orange Street, Lot 14,
8 Darlington, South Carolina 29532.

9 Q. Is that the address that you were talking about that
10 you took the picture of the car at?

11 A. Correct.

12 Q. Okay. What, if any, common denominator was common
13 in these addresses?

14 A. All of the addresses that we developed through the
15 investigation led back to Royal Williams.

16 Q. Any other common denominators?

17 A. Sherilyn Joseph.

18 MR. BROOKER: Can we approach, Your Honor?

19 (Side bar off the record.)

20 THE COURT: That last question and response, ladies
21 and gentlemen, is stricken from the record and is not to
22 be considered.

23 BY MR. CLEMENTS:

24 Q. What was your next step in the investigation?

25 A. What we did then, we went to speak to Royal

1 Williams.

2 Q. Okay. And then after that, what did you do next?

3 A. We finished compiling our evidence and more
4 information to take it before the Magistrate Judge.

5 Q. Did you have anything to do with the surveillance
6 video from the neighbor?

7 A. Negative. I just watched it after Lieutenant
8 Collins had it downloaded.

9 Q. Did you have anything to do with setting up the
10 appointment with the sketch artist from SLED?

11 A. No. I was just there when she arrived.

12 Q. Okay. Did you in your investigation as you
13 developed the name Royal Williams, what did you do to check
14 out who he was?

15 A. By doing follow up interviews. Talked to,
16 interviewed individuals, pulled his DMV, different aspects we
17 always do in investigations.

18 Q. You pulled his DMV?

19 A. Correct.

20 Q. Does it have an address on there?

21 A. Correct. I would have to look back.

22 Bennettsville.

23 Q. Does it have a picture?

24 A. Yes.

25 Q. Do you have that picture with you?

1 A. Correct.

2 MR. CLEMENTS: I would like to have this marked as a
3 State's Exhibit.

4 (Whereupon, State's Exhibit #19 marked for
5 identification.)

6 BY MR. CLEMENTS:

7 Q. Is this, what's been marked as State's Exhibit
8 number 19, is this from the driver's record?

9 A. Correct.

10 Q. What's the address there with this?

11 A. 200 Powell Street, Bennettsville.

12 Q. Whose picture is that?

13 A. That's Royal Daniel Williams the Third.

14 Q. Did you get any other pictures of Mr. Royal
15 Williams?

16 A. Once we developed who he was, I went on social
17 media.

18 Q. And got a picture from that?

19 A. Correct.

20 MR. CLEMENTS: Let's have this marked.

21 (Whereupon, State's Exhibit #20 marked for
22 identification.)

23 MR. CLEMENTS:

24 Q. I show you what's been marked as State's Exhibit
25 number 20. Do you recognize that?

1 A. Correct. That was the picture we pulled from social
2 media.

3 Q. Who is that?

4 A. Royal Daniel Williams.

5 MR. CLEMENTS: Your Honor, at this time I move
6 State's Exhibits 19 and 20 into evidence I believe
7 without objection.

8 MR. BROOKER: That's correct, Your Honor.

9 THE COURT: 19 and 20?

10 MR. CLEMENTS: That is correct, Your Honor.

11 MR. BROOKER: No objection.

12 THE COURT: Thank you, sir.

13 BY MR. CLEMENTS:

14 Q. Investigator McFaddin, did you go to Mr. Leron
15 Whitten's home?

16 A. Correct.

17 Q. How many times?

18 A. Several times. At least three times. But, yes,
19 several times in this investigation.

20 Q. At any time did you ever go there and take any
21 pictures?

22 A. Yes. The day after we went to, the same day we went
23 to Bennettsville and spoke to his grandmother which was the
24 22nd, we went straight back to Leron's house. That's when I
25 took a picture of a black bag.

1 Q. I show you State's Exhibit 14. Do you recognize
2 that?

3 A. Correct. This was the bag we took that day once we
4 discovered Royal at Leron's house.

5 Q. Why did you -- What's the significance of a black
6 bag?

7 A. Well, first because the individuals in the taxicab
8 was saying that, but the significance of that is that black
9 bag belonged to him and it was at 225 Plum Street so that was
10 the connection that he frequented that residence.

11 Q. Okay. The person riding in the cab --

12 A. Basically had a black bag with him.

13 Q. -- basically had a black bag with him. That was the
14 information you had?

15 A. Yes, sir.

16 Q. Okay. Did you follow up every lead that you got or
17 either had Collins follow up any lead that you got that you
18 thought had some possibility of truth in it?

19 A. Correct. We followed up. We even went to
20 Laurinburg. After the sketch was put on TV, we went to
21 Laurinburg.

22 Q. After it was put on TV, you went to Laurinburg?

23 A. Yeah. Somebody from Laurinburg called, had a murder
24 suspect. We went to Laurinburg interview him.

25 Q. Did that pan out at all?

1 A. No. That didn't pan out.

2 Q. Now, I want to show you State's Exhibit 2G. Do you
3 know what that is, what that picture depicts?

4 A. Yes. That's the middle console. That's the picture
5 of the receipt we found in Sherilyn Joseph's car when she was
6 in Laurinburg.

7 Q. Did that give you any further information that you
8 could develop?

9 A. No. It didn't.

10 Q. Did you ever develop a potential weapon in this
11 case?

12 A. Yes. When we were at Leron's house, we thought - he
13 had a weapon present at the residence. Since that residence
14 was tied in the case we asked could we take that weapon to
15 have it examined.

16 Q. Did that turn up anything of evidentiary value?

17 A. No.

18 Q. Bear with me, Investigator McFaddin. Make sure I'm
19 not leaving anything out. Investigator McFaddin, did you do
20 anything personally with the phone records yourself from the
21 search warrants? Did you participate in that at all?

22 A. Not the search warrants. I just reviewed them with
23 Investigator Collins.

24 Q. What did your information develop as to the time
25 that you thought she got off work?

1 A. Shortly after 2:00.

2 Q. Okay. And you and Collins were working from two
3 separate sides you said?

4 A. Correct. He was working one angle and I was working
5 another angle as if we was on the same trail but we was
6 working different sides of the trail.

7 Q. Different sides of the trail?

8 A. Yeah.

9 Q. Did they meet up?

10 A. Yes. They met back at Royal Williams.

11 Q. The two trails the two of y'all were pursuing met
12 back up at Royal Williams?

13 A. Correct.

14 Q. Every other suspect that you had or information you
15 had you did follow up on?

16 A. Correct.

17 MR. CLEMENTS: Please answer any questions that Mr.
18 Brooker may have.

19 THE COURT: Cross.

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

21 CROSS EXAMINATION

22 BY MR. BROOKER:

23 Q. Mr. McFaddin, Investigator McFaddin, I'm sorry, I
24 think you said that you got to the homicide scene, the
25 victim's apartment I think somewhere that night after, between

1 11 and 12? You tell me. I don't want to misstate it.

2 A. Yeah. I would have to look back at the CAV but the
3 call came close to midnight.

4 Q. Okay. Somewhere around midnight or 12ish that you
5 got there. And, of course, is, is that as a investigator you
6 don't collect evidence. That's done by the crime scene
7 investigation team; is that correct?

8 A. Correct.

9 Q. And, of course, my understanding is that you went
10 through and observed the scene and that sort of stuff and, of
11 course, spoke with the victim's family; is that correct?

12 A. Correct.

13 Q. I think you testified, too, that -- Well, let me say
14 this from the beginning is, is that whenever I ask you a
15 question, can we have an understanding when I ask you a
16 question about anything that I'm only asking you a question
17 about the evidence that's in the record? Do you understand
18 that?

19 A. Correct.

20 Q. If it's not in the record, I'm not asking you a
21 question about it.

22 A. Correct.

23 Q. We have that agreement?

24 A. Yes.

25 Q. Okay. Thank you very much. I know that you said

1 that you believe that she got off work, Ms. Joseph got off
2 work at around 2:00 p.m. that day; is that correct?

3 A. Yeah. Shortly after two.

4 Q. Shortly after two?

5 A. Correct.

6 Q. Did you collect her employment records?

7 A. No. I requested them and at that time looking back
8 I don't see that we even have them. No.

9 Q. You requested them but never received employment
10 records?

11 A. Correct.

12 Q. Okay. So the official time that she actually left
13 the job --

14 A. I wouldn't have the official time. It should have
15 said 2:00 but I couldn't you if she clocked out and walked out
16 at 2:05, 2:02 but the official time was supposed to be 2:00.

17 Q. That was the scheduled time?

18 A. Correct. Correct.

19 Q. You don't know if she worked any overtime --

20 A. No.

21 Q. -- or anything like that --

22 A. No.

23 Q. -- 20 minutes overtime, 40 minutes overtime? You
24 don't know any of that?

25 A. No. I don't.

1 Q. So when you said she got off around 2:00, to some
2 extent -- Scratch that. Let's move on. So I think you also
3 testified, too, on direct examination that you came into
4 contact with some individuals that Ms. Joseph associated with
5 and I think you mentioned Gary Floyd?

6 A. Correct.

7 Q. Is that correct?

8 A. Yes.

9 Q. And my understanding is that you testified that Gary
10 Floyd was actually, you can correct me if I'm wrong, that Gary
11 Floyd was actually the mother of --

12 A. No.

13 Q. Excuse me. Was actually the father of Ms. Joseph's
14 child?

15 A. Correct.

16 Q. So they had a child in common?

17 A. Correct.

18 Q. And, of course, you went and spoke with him and
19 then, of course, is, is that didn't you also take his DNA?

20 A. Correct. He came into the police station, to the
21 Sheriff's Office.

22 Q. Did you take his DNA?

23 A. I'm pretty sure we collected Gary's -- I'm pretty
24 sure they swabbed Gary. I'm thinking they did. They had to
25 swab Gary.

1 Q. If you put it in your records that you collected his
2 DNA -- Let me ask you, is, is that if you put it in your
3 records that you collected his DNA, do you think that that
4 would represent that you actually did?

5 A. Correct. Usually when I have any, I call them, even
6 if they their alibi panned out, I still call them in and say
7 give me a kit, a swab.

8 Q. Do you need to take a look in your records and
9 refresh your memory and see if you did? I can show you mine.

10 A. Yeah. If you say I took it, then we took it.

11 MR. BROOKER: Just to save some time, Your Honor.

12 THE COURT: Yes.

13 BY MR. BROOKER:

14 Q. So is that correct that you got DNA from him?

15 A. Yes. He came to the Sheriff's Office during the
16 interview.

17 Q. Now, if you can remember is, is that -- Let me ask
18 you, let me ask this question. I'll get to that in a minute.
19 I think you also testified on direct examination that you got,
20 you spoke with Aaron Smith and, of course, you got DNA from
21 Aaron Smith; is that correct?

22 A. Correct.

23 Q. You have explained to us what the relationship was
24 between, or explained to the jury what the relationship was
25 between Gary Floyd and the victim Ms. Joseph. What was the

1 relationship between Aaron Smith and the victim?

2 A. Aaron was acquainted but I know they had some sexual
3 relations as well.

4 Q. So she was or he was somebody that she had casually
5 had a sexual relationship with?

6 A. Correct.

7 Q. And then, of course, I think you testified that you
8 took DNA from Leron Whitten; is that correct?

9 A. Correct.

10 Q. Did you also take DNA evidence from a gentleman by
11 the name of Julius Hickson?

12 A. Correct.

13 Q. And what was the relationship between Mr. Hickson
14 and the victim?

15 A. He met her through a dating app so and he said at
16 some point he had sexual relations with her within a time
17 frame.

18 Q. He met her through a social dating app?

19 A. Yes.

20 Q. Do you know what that social dating app was?

21 A. Badoo.

22 Q. What type of app is Badoo? Is this one of those
23 hook up apps where you meet people and hook up with them?

24 A. Correct.

25 Q. So he was a hook up from one of those apps, from

1 that Badoo app --

2 A. Correct.

3 Q. -- that was Ms. Joseph hooked up with.

4 MR. CLEMENTS: May we approach, Your Honor.

5 THE COURT: Sure.

6 (Side bar off the record.)

7 BY MR. BROOKER:

8 Q. I think we were talking about Julius Hickson. Did
9 you take DNA -- I think you mentioned on direct examination
10 that you met with Julius Hickson --

11 A. Correct.

12 Q. -- in reference to your investigation?

13 A. Correct.

14 Q. Did you take DNA from Julius Hickson?

15 A. We may have. Some of them we told them we would
16 come back to them but if it's in my records, I have to look
17 back. If I say that in my record, we took them.

18 Q. Do you need to take a look at your records? I can
19 bring it to you quicker.

20 A. Yeah. Bring it. That would speed it up.

21 Q. (Indicating.)

22 A. Yes.

23 Q. So was a DNA sample collected from him? Does that
24 refresh your memory?

25 A. Correct.

1 Q. Was a DNA sample collected from Julius Hickson?

2 A. Correct.

3 Q. And then also did you also meet with a, I think
4 Kenton Raheem Gainey?

5 A. Correct.

6 Q. Was a DNA sample collected from him that you can
7 recall?

8 A. Him I met in his neighborhood. I was calling for
9 forensics. I don't know if they ever made it to me, but if I
10 put it in the record, they were supposed to come back and get
11 it from him. He was a classmate.

12 MR. BROOKER: Okay. All right. Now, if you can
13 indulge me for a second, Your Honor. I want to grab an
14 exhibit.

15 BY MR. BROOKER:

16 Q. Now, you just testified that you met with five
17 people, I think, Gary Floyd, Aaron Smith, Leron Whitten,
18 Julius Hickson and then, of course, Kenton Raheem Gainey?

19 A. Correct.

20 Q. Of course, you took DNA samples from those
21 individuals; is that correct?

22 A. Correct.

23 Q. DNA samples was submitted to SLED for testing; is
24 that correct?

25 A. Correct.

1 Q. And the reason why DNA samples was submitted to SLED
2 for testing is, is that because I think there was a used
3 condom that was found in the trash can; is that correct?

4 A. Correct.

5 Q. Of course, is, and I think that DNA report which has
6 already been entered into evidence as State's Exhibit number 8
7 and which I'm putting on the screen here, on that DNA report
8 where it says items received and, of course, I'm gonna look at
9 or at least specifically identify the persons in which DNA
10 samples was submitted for. So there was a DNA sample that was
11 submitted for Aaron Smith?

12 A. Correct.

13 Q. And there was a DNA sample that was submitted for
14 Whitten. Is that Leron Whitten?

15 A. Whitten. Leron Whitten.

16 Q. Leron Whitten. And there was a DNA sample that was
17 submitted for Royal Williams --

18 A. Correct.

19 Q. -- is that correct? Okay. But you would agree with
20 me at least on this report there is no DNA - the DNA sample
21 that was collected from Gary Floyd was never submitted to SLED
22 for comparison; is that correct?

23 A. Yeah. Not on this form here.

24 Q. And the DNA sample that was submitted for - the DNA
25 sample that was collected for Julius Hickson was never

1 submitted to SLED for comparison; is that correct?

2 A. Correct. I don't see that on here either.

3 Q. And the DNA sample for Kenton Raheem Gainey was
4 never submitted to SLED for DNA comparison for any of the DNA
5 that was collected from the used condom; is that correct?

6 A. Correct. I don't see Kenton on this form either.

7 Q. Okay. Now, you said that you met with the, I think,
8 the taxicab drivers; is that correct?

9 A. Yes. The driver and the passengers.

10 Q. Excuse me. I'm sorry. Yeah. The taxicab driver
11 and then, of course, the other passengers that was in the car
12 other than the unknown person that was picked up at 3618
13 Century Drive, Apartment A?

14 A. Correct.

15 Q. So I'm not talking about that person that was picked
16 up, the unknown person that was picked up at the apartment,
17 but there was two other passengers that was in the car along
18 with the driver, Ms. Bacote; is that correct?

19 A. Correct.

20 Q. And you met with Ms. Bacote, the driver?

21 A. Yes. And Linda Jones.

22 Q. And she testified earlier; is that correct?

23 A. Correct.

24 Q. You also met with Linda Jones who was the other
25 passenger in the back seat and she testified before the jury

1 earlier; is that correct?

2 A. Correct.

3 Q. Of course, is, is that I think you testified that
4 you went and you took various photographs to those persons at
5 various times to show them photographs; is that correct?

6 A. Correct.

7 Q. Of course, it's my understanding is that when
8 you went to show them photographs, you know, they would even
9 tell you that, well, this one kind of looks like him but we
10 can't say that it's him?

11 A. Yes.

12 Q. Similar features?

13 A. Similar features.

14 Q. But we can't identify this as the person?

15 A. Correct.

16 Q. And, of course, is, is that one of the photographs
17 that you sent was Royal -- You also showed the driver Royal
18 Williams; is that correct?

19 A. Correct.

20 Q. And, of course, is, is that in response to Royal
21 Williams' photographs their response was similar --

22 MR. CLEMENTS: Objection, Your Honor. Getting into
23 hearsay information.

24 MR. BROOKER: I think this is what they testified
25 to.

1 THE COURT: They were here and testified.

2 MR. CLEMENTS: They were here but I don't recall
3 them saying exactly what Mr. Brooker said.

4 THE COURT: Well, I mean, he can respond. The
5 investigator was here for the testimony. If he disagrees
6 with his --

7 MR. CLEMENTS: Subtle differences make a big
8 difference.

9 THE COURT: I'll give you an opportunity to
10 redirect.

11 MR. BROOKER: If he disagrees with me, he can
12 correct me or refer to his report.

13 BY MR. BROOKER:

14 Q. Now, when you gave them Royal Williams' photograph,
15 they gave you a similar response saying, yeah, it looks like
16 him but they said that they could not identify him as being
17 the person that they picked up?

18 A. No. They said that it looked more like him, but
19 they didn't want to say for a fact that was him. They didn't
20 want to pick out the wrong guy on a murder.

21 Q. So they said that they could not identify him as,
22 they could not positively identify him as being the guy they
23 picked up?

24 A. They said -- No. You got the notes.

25 Q. Yeah. I've got your notes. If you want to refer to

1 your notes.

2 A. Let me look at it. Make it faster.

3 Q. Sure (proffering.)

4 A. The picture of Royal Williams shown to the cab
5 driver and riders, they said that looked more like him, but
6 didn't want to say for a fact it was him because of the hoodie
7 and the hat that he wore that day.

8 Q. Okay. And so what they're saying is that, yeah,
9 this looks more like the guy than the photos that you showed
10 us the first time --

11 A. Correct.

12 Q. -- but we can't say it's the guy because we can't
13 say that it is him because he had a hoodie and a hat on?

14 A. Correct. Correct. Correct.

15 Q. Okay. So again, that would mean that they cannot
16 positively identify him?

17 A. Correct. Correct.

18 Q. Okay. That's what I asked before. Okay. All
19 right. And the reason why -- Well, let me move on. I won't
20 ask you that. Now, I'm just gonna ask you a few questions.
21 I want to make sure. I know that you said that Ms. Jones who
22 was sitting in that back seat with the person they picked up,
23 that she was in, I guess because she was closest to him,
24 that's the person that you all sent to the composite artist to
25 see if she could give a description?

1 A. Yeah. She felt she had the best vantage point to
2 see him.

3 Q. Okay. Now, of course, is, is that I think that Mr.
4 Clements already showed you that composite sketch, but that's
5 the composite sketch that was created as a result of
6 Ms. Jones' testimony to the composite sketch artist?

7 A. Correct. She said that was the best she could
8 remember at that time.

9 Q. Okay. Now, I want to, of course, is, is that
10 composite sketch is State's Exhibit 12. Now, that composite
11 sketch doesn't entirely -- Well, let me ask you this question.
12 Let me rephrase that. Were you in the courtroom when Ms. Goff
13 testified? That was the forensic artist.

14 A. Correct.

15 Q. And, of course, is, is that, did you hear her when
16 she said, you know, that normally when she does a forensic
17 sketch is, is that she tries to give a forensic sketch of what
18 the person actually saw and so she wants the forensic sketch
19 to be what that person actually saw. Do you remember her
20 saying that?

21 A. Yes. I heard her say that.

22 Q. And, of course, do you remember me asking her that,
23 okay, did Ms. Linda Jones tell you that he had a hoodie on and
24 a hat on and she said, no. I was never told that. You were
25 in the courtroom when she said that?

1 A. Correct. Correct. I heard it.

2 Q. And, of course, is, is that -- Now, so, and, of
3 course, you were also in the courtroom when Ms. Linda said
4 that I think it was Ms. Bacote the driver --

5 A. Correct.

6 Q. -- said that, you correct me if I'm wrong, did she
7 not say, you know, that she couldn't clearly see all of his
8 hair because he had on this hoodie that was on his head?

9 A. Correct.

10 Q. Okay. And, of course, Ms. Jones also said that same
11 thing; is that correct?

12 A. Correct.

13 Q. Because you would agree with me that a hoodie, you
14 know, it goes over your head and kind of covers your head up;
15 is that correct?

16 A. Right. They said a hoodie and possible hat.

17 Q. Okay. All right. And so, and then you would agree
18 with me is, is that this composite sketch is not a description
19 of what Ms. Jones saw; is that correct?

20 A. I wasn't in the interview with her and the sketch
21 artist, but this is what she said. I ain't claiming what she
22 said.

23 MR. HOEFER: Your Honor, he's asking what the
24 witness who gave the information from the composite was
25 thinking. I don't believe this witness can answer

1 that.

2 MR. BROOKER: That's not what I'm asking. I can
3 rephrase it.

4 THE COURT: Rephrase the question.

5 BY MR. BROOKER:

6 Q. Okay. Okay. Based upon the information that Ms.
7 Jones gave to the composite artist, the information that she
8 testified here, testified to here in the courtroom and based
9 upon the information that composite artist testified to that
10 this is not, this sketch was not a replicate of what Ms. Jones
11 said based upon her own testimony from the stand; is that
12 correct?

13 MR. HOEFER: Judge, what he's asking him to do is
14 interpret somebody else's testimony.

15 MR. BROOKER: I'm asking him to look at a photograph
16 that Ms. Jones says the guy had a hoodie on --

17 THE COURT: And the artist said that she wasn't told
18 that which is why there is not a hoodie on there.

19 MR. BROOKER: I know. And I'm asking him is that
20 based upon that testimony, this is not an exact replicate
21 of what her description is, number 12, State's Exhibit
22 12.

23 THE COURT: Well, it doesn't call for an opinion.
24 Clearly there's not a hoodie in the composite.

25 MR. BROOKER: Yeah. He's interpreting the

1 photograph.

2 THE COURT: Who?

3 MR. BROOKER: Him. I'm asking him to interpret the
4 photograph based upon what their testimony was.

5 THE COURT: He wasn't --

6 MR. BROOKER: I'll move on.

7 THE COURT: There was no hoodie that she told the
8 artist, but yet she did testify that guy she saw that
9 night had on a hoodie.

10 MR. BROOKER: Exactly, Your Honor.

11 THE COURT: That's pretty simple.

12 MR. BROOKER: I know.

13 BY MR. BROOKER:

14 Q. So there's no hoodie on this composite sketch?

15 A. Not on this sketch.

16 Q. And no hat on this composite sketch, is there?

17 A. No. No hat.

18 Q. So that composite sketch would not be exact, would
19 it?

20 A. From the driver?

21 Q. From that description?

22 A. Without the hoodie I guess that would be what she
23 saw she think he would look like.

24 Q. Okay. Thank you. Mr. McFaddin, do you remember
25 receiving an anonymous email identifying another potential

1 suspect?

2 A. Correct.

3 Q. And, of course, is, is that was there a name
4 developed as a result of that anonymous email?

5 A. I already had that name.

6 Q. What was that name?

7 A. Tyree Taylor. Whitten gave that earlier in the
8 investigation. He was already eliminated.

9 Q. Okay. Whitten gave that. And Tyree Taylor, is he
10 related to Whitten?

11 A. He was asked when we first got the address of 225
12 Plum Street, I asked him the individuals -- When I took a
13 picture of Whitten, I asked the other individuals living at
14 the residence, the only name at that time he gave was, he said
15 maybe three, four, five years ago Tyree stayed with him at
16 that residence. The people in the taxicab they were familiar
17 with him. They said the guy that they picked up couldn't have
18 been from Darlington. That knew Tyree and that wasn't Tyree
19 who had picked up from Century Drive.

20 Q. Did you try to locate Tyree Whitten?

21 A. No. I didn't try to locate. I just pulled up his
22 information. I got his information, but once they eliminated
23 said he wasn't the guy, I didn't even chase that rabbit.

24 Q. Did you get a photograph of Tyree Whitten for a
25 comparison for a composite sketch?

1 A. Correct. I pulled his photo first. I showed it to
2 the taxicab people. He was a little higher level. They said
3 no. Plus he was fat. They told me I needed to look for an
4 individual that wa fit that worked out.

5 Q. I assume because you've never located Tyree Whitten
6 -- I'm sorry. Tyree Taylor, that you never located Tyree
7 Taylor --

8 A. No. I didn't.

9 Q. I'm sorry. Since you never located Tyree Taylor or
10 made direct contact with him, I'm assuming that you never got
11 DNA from him for comparison?

12 A. No. They eliminated him. They said it wasn't
13 him.

14 Q. Okay. I think that what's been marked as State's
15 Exhibit 19 and, of course, State's Exhibit 20.

16 A. Correct.

17 Q. These are the -- I'm sorry.

18 A. Royal.

19 Q. These are the DMV photographs of Royal Williams and,
20 of course, this is also looks like another photograph of Royal
21 Williams with a hat on?

22 A. Yes. The one we knew back in '16.

23 Q. Okay. And, of course, is, is that, are these, I
24 think 19, State's Exhibit 19 and State's exhibit 20, are these
25 accurate reflections of what Royal Williams looked like at

1 that time back in 2016?

2 A. Correct. He was fit. You could tell he worked
3 out.

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

5 THE COURT: Anything on redirect?

6 REDIRECT EXAMINATION

7 BY MR. CLEMENTS:

8 Q. Investigator McFaddin, of the people that took DNA
9 that wasn't tested that Mr. Brooker asked you about, why did
10 you not test some of the DNA swabs?

11 A. They were eliminated.

12 Q. By other means?

13 A. Yeah. By other means. They had alibis. If they
14 worked that night or if they wasn't in town, we had eliminated
15 them. We only submitted the ones that we thought were
16 relevant to the case.

17 Q. As far as your use of the sketch when you went to
18 some of these locations, did you have that sketch with you and
19 use it?

20 A. Correct.

21 Q. Then after that you went and got warrants?

22 A. That's correct.

23 Q. Or a warrant against Mr. Williams?

24 A. Yes. Once we compiled all the information and put
25 everything together for us, videos, taxicab, all the

1 information we gathered, cell phone information, we went and
2 presented it to the judge and she gave me a warrant for
3 murder.

4 MR. CLEMENTS: Thank you.

5 MR. BROOKER: Just very quickly, Your Honor, on
6 recross.

7 THE COURT: Yes, sir.

8 RECROSS EXAMINATION

9 BY MR. BROOKER:

10 Q. I think you said that the only individuals that I
11 gave you the names of, that they were eliminated?

12 A. Yes. He didn't submit -- There were a few that were
13 submitted. If he didn't submit them, they were eliminated.
14 There should be another paper that had the names that actually
15 got submitted. Some of them had more intense investigation
16 than others.

17 Q. I'm sorry. I didn't hear what you said.

18 A. Some of them had more -- Aaron Smith, when we did
19 him, we went a little further with Aaron on his than others.

20 Q. Is this a complete list of the people that you saw,
21 the five that I identified?

22 A. Correct. There should be a list of whoever he
23 submitted besides that.

24 Q. I'm not sure.

25 A. Okay. I may be in that forensic file whoever he

1 submitted.

2 Q. Okay. Okay. Okay.

3 A. Andrew Clendenin's file had to check it out.

4 Q. You're saying there may be a list that Clendenin
5 submitted in addition to your report?

6 A. Correct. Correct.

7 Q. Okay. I got you. I understand what you're trying
8 to say. Okay. With respect to Floyd and the ones that the
9 DNA was not submitted, you say they were excluded?

10 A. Yeah. Gary was actually on the night shift at the
11 time. Well, he was actually on night shift at Walmart at the
12 time, but he did agree to come in.

13 Q. Did you get Walmart records to confirm that he was
14 on night shift?

15 A. I spoke to Walmart, but no, I don't have his
16 records.

17 Q. That's what I'm asking --

18 A. Correct. No.

19 Q. -- did you get Walmart's records --

20 A. No. I didn't.

21 Q. -- his work records on that date to confirm --

22 A. No. I did not get them. Once I spoke to them I
23 continued moving on.

24 Q. That's all I'm asking. I don't want you to tell me
25 what somebody said. That's hearsay. I just want to know did

1 you --

2 A. No. I didn't physically. They didn't physically
3 send me his record.

4 Q. Okay. Aaron Smith, how was he eliminated?

5 A. He was actually on shift working but he worked for
6 the Sheriff's Office so we knew where he was at.

7 Q. And then, of course, is, is that Julius Hickson?

8 A. On his record, he wasn't even present at the time
9 but just because he had recent contact within a few months I
10 think his traced back to maybe the end of '15 but I still
11 checked him.

12 Q. You're talking about the Sprint cell phone
13 records?

14 A. Jonas. No. What he showed me from his phone.

15 Q. Okay. I don't want you to tell me what somebody
16 showed you that's not in evidence, okay?

17 A. Julius. That's what you asked about.

18 Q. Julius.

19 A. Yes.

20 Q. Okay. All right. Did you -- So my understanding is
21 what you're saying is that he was excluded because was he at
22 work or something on that day? I'm specifically talking about
23 the day of January 23rd.

24 A. Yeah. His contact was before that, but because I
25 developed him, I still wanted to talk to him, the most recent

1 people that had contact with her.

2 Q. Okay. So my understanding is he was excluded. And
3 if I'm repeating you right, he was excluded because it's been
4 a little while before he had had contact with her --

5 A. Correct.

6 Q. -- that you are aware of?

7 A. That I was aware of.

8 Q. That you were aware of. Okay. But was he
9 working?

10 A. Yes. Correct. He --

11 Q. Did -- I'm sorry. I didn't mean to interrupt you.
12 I'm sorry. I thought you were finished. Go ahead.

13 A. Yeah. He couldn't be. He had been in a bad car
14 accident. He got brain damage, but he was working.

15 Q. He was working then?

16 A. Yes, sir.

17 Q. Did you get his records to confirm that he was
18 working on January 23rd, 2016?

19 A. No. I didn't get his records submitted, but his
20 contact was way before this.

21 Q. And then, of course, Kenton Raheem Gainey, was he
22 employed any place that you are aware of?

23 A. No. He was a classmate. He wasn't employed.

24 Q. Did you verify where his whereabouts was on January
25 23rd, 2016?

1 A. Correct. I verified his whereabouts and he was,
2 gave me all the information and anybody else that he can think
3 of that she made contact with.

4 Q. I'm sorry. Say that again.

5 A. He was trying to help me - he was trying to give me
6 information about anybody else he knew that had contact. He
7 was calling his classmates trying to figure out whoever
8 Sherilyn would have had contact with.

9 Q. Like I said, I don't want to -- I'm trying to do
10 this in a way in which you understand that I'm not asking you
11 to provide me with inappropriate information. I don't want
12 you to tell me any hearsay or anything like that. That's not
13 what I'm asking. That's why I'm referencing. How did you
14 independently verify --

15 A. He gave me his whereabouts so I was able to clear
16 him.

17 Q. Yeah. What I'm saying is, how did you independently
18 verify where he was on January 23rd?

19 A. Oh, I checked. I checked behind him and verified
20 and he was with his girlfriend. They were together.

21 Q. Did you take a statement from his girlfriend?

22 A. No. I just spoke to her. I just talked to her.

23 Q. And, of course, is, is that I think as far as the
24 list, I think, and you said this that I was not aware, that
25 there was a list that Clendenin may have generated as well?

1 A. Yeah. If you look on the evidence log, you should
2 be able to see the other names if he got them swabs.

3 Q. So he was responsible for handling --

4 A. Yeah. Every time I called him --

5 Q. I'm sorry. I don't want to keep talking over each
6 other --

7 A. Okay.

8 Q. -- because the court reporter can't record both of
9 us at the same time.

10 A. Okay.

11 Q. So my question was, is that on the list that
12 Clendenin generated, did Clendenin work towards clearing that
13 list on the list that he generated? I think you testified
14 previously that Clendenin may have generated a list.

15 A. Yes. That's correct. You would have to look at
16 what he did, what he submitted, the swabs.

17 Q. Okay. I think you answered my question. I just
18 wanted to know on whatever list that he generated he handled
19 that list?

20 A. Correct.

21 MR. BROOKER: Okay. That's all I'm asking. That's
22 all I'm asking. No further questions, Your Honor.

23 THE COURT: Thank you very much. You may step
24 down.

25 THE WITNESS: Thank you.

1 MR. CLEMENTS: Your Honor, we don't have any more
2 witnesses, but at this time before we actually go on the
3 record to rest I would like to check the exhibits and
4 make sure everything has been marked correctly so I would
5 assume this is a good time for a break to do that.

6 THE COURT: All right. Let me do this. Ladies and
7 gentlemen, Mr. Clements wants just to verify everything
8 is in that he intends to get in. It's my understanding
9 if that is, in fact, the case, then the State will be
10 resting.

11 MR. CLEMENTS: That is correct, Your Honor.

12 THE COURT: Typically what occurs then is once the
13 State has rested their case, I have to take up matters of
14 law with the attorneys so I would send you on a break
15 while I did that so while he's looking to make sure he
16 has everything that he intended to move in, we're going
17 to go ahead and take a break now. Continue to maintain
18 your ability to remain fair and impartial. Have no
19 conversation about the case. Let me take up these
20 matters of law and then I'll bring you back out and we'll
21 continue.

22 (Whereupon, the jury entered the jury room 10:40
23 a.m.)

24 THE COURT: Something else if you want to do that.
25 Meantime while you're doing that -- Hang on for a minute.

1 Mr. Brooker, you had an item you wanted to have marked as
2 a Court's Exhibit?

3 MR. BROOKER: Yes, Your Honor. And that is, this
4 anonymous email that was sent to Investigator McFaddin.

5 THE COURT: All right. We'll mark that as a Court's
6 Exhibit whatever number it is, Steve. I think it might
7 be --

8 COURT REPORTER: I think it's 4.

9 THE COURT: Okay.

10 (Whereupon, Court's Exhibit #4 marked for
11 identification.)

12 MR. CLEMENTS: Your Honor, I'm not clear if -- I
13 know the intent was that Mr. Brooker wanted to introduce
14 it into evidence and we objected. Do we need to put that
15 on the record or he's just making it a Court's Exhibit
16 just to make it a Court's Exhibit? Do we need to put
17 that on the record, or does this suffice it to cover that
18 issue on appeal?

19 MR. BROOKER: We can answer that, too. The reason
20 why we are putting it as a Court's Exhibit is, is that
21 obviously it's our understanding from the bench
22 conference that it would not be submitted into evidence.
23 We wanted to do that. I think Ed Clements objected so I
24 think is, is that I'm assuming you told me that you were
25 not going to allow it in over my intent to present it

1 in.

2 THE COURT: All right. Your reasoning for your
3 objection?

4 MR. CLEMENTS: Number 1, your Honor, is Rule 403,
5 the prejudicial effect outweighs the probative value and
6 further there's no foundation for it. It's anonymous.
7 Can't develop a foundation and can't be substantiated.

8 THE COURT: All right. And I agree with that Rule.
9 What it is, it's a photocopy of a email that -- Was it
10 Lieutenant McFaddin that received it?

11 MR. BROOKER: Yes, Your Honor.

12 THE COURT: -- that received it, received an
13 anonymous email telling him about another possible
14 suspect and Mr. Brooker when he asked the lieutenant
15 regarding the anonymous email he indicated, yes, he did
16 receive one and he was aware of it, familiar with it. He
17 followed up on it. Eliminated that individual. There
18 was no way to authenticate that email or - and the
19 testimony from Lieutenant McFaddin, he admitted he
20 received the email, he admitted that he followed up with
21 that information and that eliminated that suspect and
22 there was no way to authenticate an anonymous email like
23 that.

24 MR. CLEMENTS: Yes, sir. And, Your Honor, further
25 just for the record to make it complete, I think he also

1 indicated that he had that name previously and already
2 checked it out.

3 THE COURT: Had received that name from a previous
4 source as well so... But we have made it a Court's
5 Exhibit. While he's looking through the thing to make
6 sure he's got everything in that he wants in, let me go
7 ahead and take your motions at the close of the State's
8 case.

9 MR. BROOKER: Sure.

10 THE COURT: And then pay attention to his argument,
11 Solicitor, if you need to respond, okay?

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: I'm just trying to not waste time
14 because it might take a few minutes to go through all
15 that stuff.

16 MR. BROOKER: I think, Your Honor, I have some
17 motions to make and, of course, is, is that for a matter
18 of protection we've got to reassert our motion for
19 mistrial based upon the previous reasons that we gave
20 and, of course, also based upon new reasons that was
21 generated as a result of Investigator McFaddin's
22 testimony on direct examination. Investigator McFaddin,
23 I think, testified twice as to evidence that had to be
24 stricken from the record because it was evidence that, I
25 think, that was generated from cell phones, from the cell

1 phones that obviously you had previously ruled that no
2 evidence could be presented in reference to information
3 generated from those cell phones because that evidence
4 was never collected and turned over to defense.

5 And then, of course, also is, is that I think we
6 made an objection in addition to evidence presented from
7 the cell phones, that evidence was also presented by
8 Mr. McFaddin as it relates to the information that was
9 received from co-workers that Mr. McFaddin testified to I
10 think should be stricken from the record because we made
11 the motion that that information was obtained from
12 co-workers and the Court said the co-workers were not
13 present and it violates his confrontation clause rights.
14 And then, of course, Your Honor, I think, sustained our
15 objection to the Court striking that information. So
16 based upon those reasons is, is that we would renew, we
17 add that to the information and to the previous motion
18 for mistrial and, of course, we make a motion for
19 mistrial.

20 THE COURT: Mr. Brooker, I want to clarify
21 something. When you came up to the bench for the bench
22 conference, if I'm not mistaken your comment to the Court
23 was, Judge, I ask that that response be stricken and if
24 this keeps up, they're gonna force me to move for a
25 mistrial.

1 MR. BROOKER: That's correct, Your Honor.

2 THE COURT: You did not make a motion for a mistrial
3 at that time.

4 MR. BROOKER: Mm-hmm.

5 THE COURT: You just asked me to strike that
6 response from the record and if they kept going that way,
7 that they were gonna force you into having to do that.
8 So there was no motion for a mistrial today. I
9 understand you're renewing your grounds for your motion
10 yesterday and certainly note that for the record, but
11 there was no motion for a mistrial today that I'm aware
12 of.

13 MR. BROOKER: I'm not -- Yeah. Yeah. This is a new
14 motion that I'm making right now.

15 THE COURT: Doesn't that have to be made
16 contemporaneous?

17 MR. BROOKER: Yeah. Contemporaneous. And I'm
18 sorry. It may have been confusing. What I said may have
19 been confusing is that I am making this new motion based
20 upon the testimony that was stricken from the record that
21 Mr. McFaddin gave so I'm making a new motion based upon
22 that.

23 THE COURT: Which needed to be made at the time that
24 that occurred.

25 MR. BROOKER: And also is I'm renewing the previous

1 motion that we made.

2 THE COURT: I understand that and I'm certainly
3 noting for the record your arguments for yesterday's
4 motion for mistrial and all of that is noted for the
5 record. I don't believe that you have made an
6 appropriate motion for mistrial today because it wasn't
7 made contemporaneous with the testimony.

8 MR. BROOKER: Your Honor, I think it was made. I
9 think it was made immediately after his testimony the
10 same way we did yesterday.

11 THE COURT: It was not. It was not. There was no
12 motion for a mistrial made today.

13 MR. BROOKER: No. I'm saying immediately after his
14 testimony, we're making it right now immediately after he
15 finishes his testimony. We're making a motion
16 immediately after the witness finishes his testimony. We
17 didn't make it during his testimony and send the jury out
18 and make it then. We're making it immediately --

19 THE COURT: Which I think would have been
20 appropriate.

21 MR. BROOKER: And that's fine.

22 THE COURT: But I'm gonna deny the motion. I'll
23 note it for to record that you made that motion here
24 today as well --

25 MR. BROOKER: Thank you, Your Honor.

1 THE COURT: -- based on the new grounds.

2 MR. BROOKER: Thank you, Your Honor.

3 MR. CLEMENTS: Your Honor, I probably don't need to
4 respond, but I just wanted to add, I believe what he was
5 - it ended up being a cell phone address on Mr. Royal
6 Williams' cell phone records was what started this.

7 THE COURT: And I think that's what started it and I
8 think the testimony then was fleshed out that he did, in
9 fact, receive that information off the cell phone records
10 that were in the record that the State had moved into the
11 record. That's where he got that information.

12 MR. BROOKER: I know. That's not the only time,
13 Your Honor. I think the other time before that is when
14 he testified to a common link on those addresses. And,
15 of course, is, is that you have stricken that and, of
16 course, the other one --

17 THE COURT: Right.

18 MR. BROOKER: -- with the, with the testifying in
19 reference to the information that he had received from
20 co-workers, I think you have stricken that.

21 THE COURT: Yeah.

22 MR. BROOKER: It's that information I think that you
23 have to give the jury a curative instruction on stricken
24 from the record and it was that motion also, Your Honor.

25 THE COURT: Okay. All right. Any other motions?

1 MR. BROOKER: The next motion, Your Honor, would be
2 a motion for directed verdict. And, of course, is, is
3 that that motion, Your Honor, would be based on the
4 ground, would be based on the ground -- Indulge me for
5 just a second, Your Honor. That motion is based upon
6 South Carolina Rules of Criminal Evidence. That rule is
7 - that motion is based upon the ground obviously, Your
8 Honor, is that in order for the jury, for the case to be
9 submitted to the jury is that Your Honor has to make a
10 determination as to whether or not there is sufficient
11 information that has been presented to the jury in which
12 the jury can make a determination on each and every
13 element of the offense that is being charged and, of
14 course, is, is that in this particular case, Your Honor,
15 in this particular case, Your Honor, is, is that we think
16 that that burden has not been satisfied.

17 I think in order to prove a charge for murder is, is
18 that the statute requires that the State proves the
19 killing of another person with malice aforethought
20 express or implied and, of course, is, is that as far as
21 I think there's two things that are missing, Your Honor,
22 is that, one, implicit in proving the killing of another
23 they have to prove the identify of the assailant. And,
24 of course, is, is that I don't think they have presented
25 sufficient information in which the jury could draw a

1 conclusion that the individual that allegedly left the
2 home was actually Royal Williams and even if you draw
3 that conclusion, Your Honor, even if Your Honor says,
4 well, okay, assume, you know, you know, we think that
5 there's enough evidence where a jury could conclude, hey,
6 maybe that was Royal Williams, you can remember when I
7 asked Investigator Clendenin, I think it was Collins on
8 the stand is, is that when that passenger was picked up
9 at around four something from Ms. Williams' residence,
10 even if you concluded that that was Royal Williams, I
11 asked him is there any evidence that Ms. Williams was
12 dead at that time and he said that there was no evidence
13 that Ms. Williams was dead at that time that the
14 individual had left the apartment.

15 THE COURT: You've got the name wrong on the
16 victim.

17 MR. BROOKER: I'm sorry. I apologize, Your Honor.

18 THE COURT: That's all right. I know what you mean.
19 Ms. Joseph.

20 MR. BROOKER: Yeah. There is no evidence, I think
21 that he testified to there is no evidence, there was no
22 evidence that he had that Ms. Joseph was dead at the time
23 in which that taxicab company picked up that anonymous
24 person. And, of course, what I asked him is, is that
25 during that seven hour span from the time in which this

1 passenger was picked up until the time in which she was
2 discovered shortly after 11 by her mother, is there any
3 evidence, I think, is there any evidence to exclude
4 someone else coming in and murdering her at that
5 particular time. He said no. We also talked with the
6 forensic pathologist and what he basically said is that
7 at the time of death from the, I think the methods that
8 the coroner testified to, that was unreliable and that
9 there was something like a one to six hour range. I
10 guess the one to six hours --

11 THE COURT: All of that though, Mr. Brooker, is
12 weight. The evidence in the record is what weight the
13 jury gives that.

14 MR. BROOKER: Okay. Okay. I'll move on to the next
15 element, Your Honor. We'll do this relatively quickly.
16 So we think identity has not been satisfied. And, of
17 course, is, is the next element, Your Honor, is malice
18 and, of course, is, is that malice has to be proven which
19 means there is, of course, Your Honor knows better than I
20 because I'm pretty sure you have given instructions as to
21 malice I think probably hundreds of times in reference to
22 juries and, of course, is, is that they have to prove
23 there was malice involved which means is, is that the
24 person who actually, if they are assuming that that
25 person is the one who ended this person's life, they have

1 to prove that person's state of mind which means that
2 that person committed the offense, if you assume that he
3 did, with malice and, of course, is, is that there has to
4 be testimony in the record on which the jury could
5 conclude that there was malice.

6 Now, I know previously a long time ago the state of
7 the law in South Carolina was, I think, until - was that
8 you could assume malice from the use of a weapon and, of
9 course, is, is that I think it was State versus Elmore
10 back in 1983 that basically says that you cannot assume
11 malice from the use of a weapon because it would then
12 create an improper burden shifting which means is, is
13 that the defense then would be in a position - or the
14 defendant would then have to contest that there actually
15 was malice and, of course, we all know that the burden
16 never shifts from the State. And, of course, is, and I
17 think that the Court in Elmore basically says is, is that
18 the most that you can say to the jury is, is that, you
19 know, is that it may create a presumption I believe is
20 the language they use. But, of course, is, is that
21 malice cannot be inferred from the fact that a weapon was
22 used in Ms. Joseph's life. They have to have some other
23 independent evidence to demonstrate that there was intent
24 to commit a murder with malice aforethought. There has
25 been no evidence of that whatsoever.

1 Of course, with the elements of aforethought, Your
2 Honor, again, I don't know how they can present evidence
3 of aforethought which means is, is that the person
4 thought about what he was doing prior to doing it which
5 means that it was something that was planned even if that
6 planning was for a split second as opposed to heat of
7 passion or something, heat of passion which would then
8 not be malice. It would then be another criminal
9 offense. But they have to specifically prove that so
10 that the jury can determine whether or not the person is
11 guilty of murder or whether or not the person is guilty
12 of some other offense so you have to exclude it. There's
13 been no testimony in which the Court can - in which the
14 jury can conclude, you know, that this event was planned
15 at all. There's been no testimony of that whatsoever
16 and, of course, the jury cannot assume that.

17 THE COURT: But there doesn't have to be evidence
18 that it was planned. There just has to be evidence that
19 there was malice prior to the killing.

20 MR. BROOKER: I'm speaking on the element of
21 aforethought. The elements are malice and, of course,
22 aforethought. And, of course, aforethought obviously
23 means is, is that --

24 THE COURT: Immediately prior. Well, it can be at
25 any time, but there is case law that says that malice can

1 be shown instantaneous prior to the event.

2 MR. BROOKER: Absolutely. And I'm not refuting
3 that.

4 THE COURT: I know. You're arguing that there is no
5 evidence of that.

6 MR. BROOKER: Yeah. There is no evidence that
7 whether or not it was a split second malice or whether or
8 not there was malice that's been thought about over two
9 weeks.

10 THE COURT: Correct.

11 MR. BROOKER: There is no evidence of aforethought
12 whatsoever and, of course, the jury would be left to
13 completely guess about that and each one of these
14 elements has to be proven. Even though it may seem like
15 a minor, mundane element, they still have to prove malice
16 and, of course, they still have to prove aforethought,
17 and there's no evidence, definitely no evidence of
18 aforethought and, of course, we would argue there is also
19 no evidence of malice, of depraved mind or heart at the
20 time in which the crime was committed and that would
21 distinguish it from involuntary manslaughter or even
22 manslaughter or even some other offense.

23 For those reasons, Your Honor, because we believe
24 that those elements have not been satisfied for murder
25 and that the jury can't be asked to guess about it, and I

1 think by not satisfying, some of them there is no
2 evidence at all and I think the rule is that they have to
3 present some evidence on every issue so you can't guess
4 --

5 THE COURT: I've got it. I've got it.

6 MR. BROOKER: -- on those from that one issue. And
7 then, of course, is, is leave out the other thing. And I
8 think this is a case in which there was front loading on
9 one issue in which they were trying to prove identity
10 and, of course, is it never got around to prove malice
11 and never got around to proving aforethought. Thank you,
12 Your Honor.

13 THE COURT: All right. Solicitor.

14 MR. CLEMENTS: Your Honor, my understanding of the
15 law in a related case says that the Court does not charge
16 it but we are allowed to argue inference of use of a
17 weapon and I can't recall the name of the case right now
18 but it's fairly recent.

19 THE COURT: It came down just a couple months ago I
20 think.

21 MR. CLEMENTS: Am I understanding that case
22 correctly, Your Honor?

23 THE COURT: Yes. My understanding of the case is
24 that at one time the Court would charge that -- I even
25 have it in an old charge -- that inferred malice may also

1 arise when the deed is done with a deadly weapon. A
2 person intentionally kills another during the commission
3 of a felony malice is inferred. In a case that's no
4 longer an appropriate charge so that the Court cannot
5 charge that malice may be inferred by the use of a deadly
6 weapon but it does not preclude the State from arguing
7 that in your closing.

8 MR. CLEMENTS: Your Honor, I would think that, and
9 the method more so than use of a weapon, just the method,
10 how it happened, the circumstances would show a cold
11 malicious heart and present malice. And as far as
12 planning which is the word used by Mr. Brooker, it takes
13 a planning - it doesn't take much planning. It can be
14 planned pretty quick. If you can decide that, hey, I'm
15 gonna kill this person, shoot them dead, and not only if
16 by you grab a comforter or a pillow and put it between
17 the gun and the forehead of the person you're shooting,
18 that's a little bit of planning and that's a little bit
19 if aforethought in my opinion.

20 MR. BROOKER: If I could say just 50 seconds in
21 response and then I'll let you make your ruling, Your
22 Honor, is that what Mr. Clements described is, is that
23 there's no evidence of that. There's no evidence of how
24 it happened. There's no evidence as to whether or not
25 the shooter --

1 THE COURT: That's not true.

2 MR. BROOKER: Well --

3 THE COURT: It's how the jury --

4 MR. BROOKER: I'm sorry. Go ahead.

5 THE COURT: Mr. Brooker, I'm not gonna let you go on
6 for another four minutes --

7 MR. BROOKER: I'm not.

8 THE COURT: -- on this. There's evidence in the
9 record of -- And I'm just repeating the evidence. The
10 jury will look at it however they want and give it
11 whatever weight they want to give it, if it gets there.
12 There's a bullet hole. It's clean. There's no
13 stippling. There's no thing, what they would typically
14 see in a close contact wound. There's a comforter with a
15 bullet hole in it and charring around the hole. There's
16 a pillow with a bullet hole in it. Now, that's all
17 circumstantial evidence and it's how the jury wants to
18 view it. But to say that there's no evidence isn't
19 correct. There's evidence in the record. Now, and you
20 know that my standard is to determine whether or not
21 there's evidence in the record, not to give weight to
22 that evidence. That's the jury's role. So, I mean, I
23 just don't want for you to start your argument that
24 there's no evidence in the record of what he described.
25 It's there. I don't know how the jury would view it.

1 MR. BROOKER: What I was going to say, Your Honor,
2 is, is that what he described is in the records, but what
3 I'm saying is, is that is not evidence of aforethought is
4 what I was gonna say. That's all I was gonna say. What
5 he described is in the record, that there was a shooting
6 in the head and there was a pillow and a comforter in
7 which presumably the bullet passed through. What I'm
8 saying is, is that that's not evidence that this was done
9 with aforethought. That's all I was gonna say, Your
10 Honor.

11 THE COURT: Okay. And again --

12 MR. BROOKER: I'm sorry. Go ahead.

13 THE COURT: No. You're fine. I'm just trying to
14 formulate what my point that I'm -- I think it's a close
15 call. Believe me, obviously having done this as long as
16 I've done this I knew I was going to be dealing with
17 motions that I'm hearing, the directed verdict motion and
18 the basis for it, but and my thought was all of the
19 things you have argued and in a case like this what, if
20 anything, is there in this case that could show the
21 element of malice, malice aforethought. And again, I go
22 back to what I stated earlier and that is that my role is
23 just to determine the evidence in the record. Is there
24 evidence in the record whereby a jury could find
25 depending on the way the jury views that evidence. I

1 don't know how the jury would view that evidence, but the
2 law does allow the State to argue that that inference of
3 the use of a weapon. But here it goes beyond that. It
4 goes to these other pieces of evidence that can be argued
5 several ways. But it is evidence in the record that the
6 jury can consider and so I think for those reasons that
7 I'm gonna deny the motion for directed verdict because I
8 think this is a factual, there's enough factual basis in
9 this record depending on how a jury looks at that
10 evidence so I'm gonna deny the motion for directed
11 verdict.

12 MR. BROOKER: Certainly.

13 THE COURT: Mr. Brooker, have you and Mr. Williams
14 discussed, I know that you indicated to the Court that
15 you have a couple of witnesses other than Mr. Williams
16 but have you talked with Mr. Williams about his decision
17 as to whether he intends to testify?

18 MR. BROOKER: We have, Your Honor, but one of the
19 things that I would suggest that you do for purposes of
20 appeal, we talked about it before, is to go ahead and
21 make your ruling on that motion that we filed to exclude
22 the evidence so that it doesn't become an appealable
23 offense because it very well may be if you don't make the
24 ruling on that motion.

25 THE COURT: I understand exactly what you're saying.

1 I can't make -- I mean -- All right. Solicitor, you
2 received Mr. Brooker's motion regarding Mr. Williams'
3 prior record?

4 MR. CLEMENTS: Your Honor, I did and I have
5 misplaced it.

6 THE COURT: Well, here you go (proffering.) I'll
7 give you this one. I'll need it back after I hear y'all's
8 arguments.

9 MR. CLEMENTS: Yes, sir. I found mine, Your Honor
10 (proffering.)

11 THE COURT: Thank you.

12 MR. BROOKER: Your Honor, with respect to I think we
13 filed our motion -- I'm pulling up that motion right now,
14 Your Honor.

15 THE COURT: Okay. All right. Just let me know when
16 you're ready.

17 MR. BROOKER: I think we filed our motion --

18 THE COURT: June the 10th.

19 MR. BROOKER: Yeah. We filed that motion, Your
20 Honor, on June 10th, 2019 seeking to exclude certain
21 records. Excuse me. To go exclude the use of criminal
22 history and/or bad acts based upon the South Carolina
23 Rules of Evidence and specifically on the rules that are
24 applicable in this case obviously would be Rule 609 where
25 Your Honor would analyze whether or not it's admissible

1 then, of course, is, is that if the Court believes that
2 those, that any criminal history is admissible then, of
3 course, there would be a 403 analysis about appropriate
4 value versus prejudice. And, of course, is I think under
5 the rules is, is that criminal offenses, prior criminal
6 record is excluded is obviously if there's anything
7 that's greater than 10 years, you know, is generally
8 excluded. If it's an old criminal offense greater than
9 10 years, it's generally excluded. If it's less than 10
10 years, of course, I think the next question would be is
11 whether or not it's something that goes to dishonesty and
12 deceit. And, of course, is, is that on number 1,
13 burglary second degree, of course, is that I think that
14 was 2010. Of course, is on that one, Your Honor, is that
15 is within 10 years but I would argue as to whether or not
16 that --

17 THE COURT: Well, let me, before you go any further,
18 let me back you up because I don't think you quoted the
19 rule correctly. If I understand Rule 609, under
20 609(a)(1), any crime that carries either death or
21 imprisonment in excess of one year is subject to being
22 used if it's within that 10 year frame. The evidence of
23 a crime that involves dishonesty or false statement, that
24 is a charge that can be used regardless of how much time
25 it carries regardless of the punishment.

1 MR. BROOKER: Okay. It's --

2 THE COURT: So --

3 MR. BROOKER: I thought you were finished. Go
4 ahead, Your Honor.

5 THE COURT: So my point is, is that the 10 year
6 rule, you've got them listed here, all of these that
7 you've listed here within the 10 years, I'm not aware of
8 there being anything outside the 10 years. The State
9 hasn't made me aware of anything outside the 10 years so
10 I'm essentially considering what you've got on your
11 motion here and not because it involves, and again, the
12 rule says that if it involves imprisonment in excess of
13 one year, but that rule regarding the punishment doesn't
14 apply if it's a charge that would involve dishonesty or
15 false statement. So someone who may have been accused of
16 perjury, that doesn't carry more than a year, that may
17 very well be admissible anyway even though it doesn't
18 meet that one year standard. That's my understanding of
19 the rule.

20 MR. BROOKER: Okay. And that's fine, Your Honor.
21 That's what we're going off of is your understanding of
22 the rule and, of course is, is that even with that, what
23 you have just explained, of course, I'm looking at the
24 rule right now, Your Honor, is that we would still
25 submit, and obviously you have to do, I think it's a 403

1 analysis on each one of those charges and, of course,
2 that's the probative value versus the weight and then, of
3 course, is, is that indicative of that you also would be
4 looking at, I think under 403, let me get that rule, it
5 is that you would also be looking at I think a 403 and a
6 404 analysis and, of course, is, is that whether or not,
7 you know, the probative value of the evidence is
8 outweighed by its prejudice and, of course, is in this
9 particular situation where he's being charged with
10 homicide then, of course, is that there's evidence of, at
11 least similar evidence I think underneath Lyle, State
12 versus Lyle which is a 1925 case that basically says if
13 you're looking at crimes, you know, in which, a prior
14 crime which has some sense of similarity with the crime
15 that he's currently charged with and, of course, is
16 underneath Lyle that those crimes are generally
17 admissible only for the purposes of proving certain
18 exceptions like intent and motive and that sort of thing.

19 I think here is that if you look at I think 1(b) in
20 our motion, he's charged with second degree burglary and,
21 of course, is, is that we argue to the Court the
22 probative value allowing the jury to hear that he was
23 charged with second degree burglary, you know, at some
24 point back in 2010 which is obviously within the 10 years
25 is that the prejudice that he would suffer by presenting

1 that information to the jury would be outweighed and, of
2 course, another reason would be is that we're always
3 concerned that the jury is looking at this information
4 and specifically in a case like this where you're talking
5 about a serious case like murder, you're also talking
6 about a circumstantial evidence case that we don't want
7 the jury to be able to convict him or convict him based
8 upon what I refer to as the bad person justification
9 where a jury looks at the evidence and said, well, the
10 evidence is lacking, but we think this person is a bad
11 person and we are afraid of this person. We don't think
12 this person is out on the street and should be out on the
13 street because he has a significant prior criminal record
14 and, of course, they're motivated by the prior record
15 more than they are motivated by the State's case.

16 And, of course, I think that is specifically of
17 concern or is of greater concern in a case like this one
18 where you're dealing with circumstantial evidence, no
19 direct evidence of identification and then, of course,
20 is, is that there's no positive DNA evidence. I think
21 all the testimony was with respect to he can't be
22 excluded. He could be the contributor and, of course,
23 evidence with respect to probability of that. I think
24 that argument goes to all of the offenses under (b),
25 violation of probation, unlawful carrying of a weapon,

1 common law robbery, common law robbery, third degree
2 burglary, common law robbery, involuntary manslaughter
3 which I think is one of those cases that I think, unless
4 it's intended, unless they're offering that involuntary
5 manslaughter under State versus Lyle, you know, to prove
6 motive or intent in this particular case, I think Lyle is
7 obvious that involuntary manslaughter should not be
8 presented to the jury. I think second degree arson and
9 that's listed and, of course, is, is that, and I have
10 down under "J", any other criminal offenses not
11 identified herein.

12 So obviously is that, Your Honor, you know, we think
13 the prejudicial effect of these offenses outweighs the
14 probative value especially in light of the type of case
15 it is and in light of the circumstantial evidence that's
16 being presented. Thank you, Your Honor.

17 THE COURT: Thank you, sir. Mr. Clements or Mr.
18 Hoefer, either one.

19 MR. CLEMENTS: Your Honor, we believe that some of
20 the offenses that he's been convicted of are admissible
21 regardless would be a crime of dishonesty, would be
22 common law robbery, 11/8/2010 and 1/10/2012, 12/22/2014.
23 We would argue that those involve dishonesty and they
24 would be admissible against him. Also, Your Honor, we
25 think burglary second degree, burglary third degree,

1 breaking into someone's house is certainly dishonest.
2 Along with --

3 THE COURT: I think there's case law that says
4 burglary is not considered a crime of dishonesty.

5 MR. CLEMENTS: Well, Your Honor, my argument with
6 that is that it would be probative.

7 THE COURT: If I understood the evidence here, there
8 is no allegation of planning a burglary in this case. I
9 think the witnesses were specifically questioned about
10 was there any sign of break-in or any sign of forced
11 entry or anything of that nature.

12 MR. CLEMENTS: No, sir. They were already lying in
13 wait. But I'll withdraw that if I can just refer to the
14 burglary code. Give me a second, Your Honor.

15 THE COURT: Sure.

16 MR. BROOKER: While he's doing that just for
17 clarification, Your Honor, I think on B and E I may have
18 been mistaken. Mr. Williams just advised me that's
19 actually one charge. And, of course, sometimes it's
20 confusing when you look at those reports but he says it's
21 all one time common law robbery I think is what he
22 advised me just for purposes of clarification.

23 THE COURT: Well, you have the record, right?

24 MR. CLEMENTS: Yes, sir. I do. I think that Mr.
25 Brooker has it as well.

1 THE COURT: On the record it should incident date.

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: Because sometimes that does reflect one
4 incident date and then it reflects later on a person like
5 it being invoked or something like that.

6 MR. CLEMENTS: It's got an offense date of 11/8/2010
7 on common law strong armed robbery, convicted, he got 12
8 years suspended upon the service of six years and a fine.
9 That was on 11/8/2010. Then on 1/10/2012 he's got
10 another conviction along with burglary third degree
11 conviction at the same time. Then on 12/22/2014 he's got
12 common law strong armed robbery conviction and I can't
13 tell from - the offense date was 7/9/2015. That's a
14 violation of city ordinance. Excuse me.

15 THE COURT: 12/22/14?

16 MR. CLEMENTS: 12/22/14, Your Honor.

17 THE COURT: I don't have the record in front of me.
18 I'm not looking at it and you might want to double check
19 your copy, Mr. Brooker, but it sounds like those two B
20 and E are separate offenses.

21 MR. BROOKER: Okay. That was my interpretation of
22 the record, but that was just simply what he advised me
23 just a moment ago. When I read it and I generated this,
24 I interpreted it the same way, that it was two separate
25 as well.

1 MR. CLEMENTS: Also, Your Honor, he's got a
2 conviction for unlawful carrying of a weapon on 5/13/2009
3 which is the court date and that certainly would be
4 within 10 years of this event. He's got an unlawful
5 carry there and also it wouldn't carry more than a year,
6 but it was a gun used here in this situation so we would
7 say that it would be relevant.

8 THE COURT: Well, I'm not aware that there's
9 anything that would allow me to allow that charge because
10 it doesn't fit the statute at all, the unlawful carry.
11 The fact that a weapon was involved in this crime that's
12 probably one of the reasons that the rule doesn't allow
13 it.

14 MR. CLEMENTS: I understand, Your Honor.

15 THE COURT: So what I am inclined to allow would be
16 if Mr. Williams were to take the stand, I would allow
17 there to be impeachment questions involving the three
18 common law robberies which would be B, E, and G. I'm
19 sorry. For the record, D, G and E as it appears on Mr.
20 Brooker's motion. All right. Anything further on that?

21 MR. CLEMENTS: Not from the State, Your Honor.

22 MR. BROOKER: I don't believe we do, Your Honor, but
23 I'm having a quick discussion with him.

24 THE COURT: Yeah.

25 MR. BROOKER: Nothing further on this issue.

1 THE COURT: Okay. But I do need to speak with you
2 and Mr. Williams regarding your decision. Mr. Williams,
3 I know that you have talked extensively with Mr. Brooker
4 and I know I'm gonna go over stuff that you already, you
5 and he have already discussed, but I need to go over
6 with you. Any time an individual is charged with a
7 criminal offense and they are at a trial you have a
8 constitutional right both to testify in your defense if
9 you choose to do that. You also have a constitutional
10 right to remain silent if you choose to do that. I'll
11 address the first one being your right to testify. If
12 you did decide to testify in this matter, you understand
13 that you would obviously be required to answer any
14 questions posed by Mr. Brooker while you're on the stand.
15 Do you understand that, sir?

16 MR. WILLIAMS: Yes, sir.

17 THE COURT: Okay. And then, of course, you know
18 that you would also be required to answer any questions
19 that would be posed by the State. Do you understand,
20 sir?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: Now, and you have been sitting here and
23 you have taken in all of what we have discussed regarding
24 your criminal history. Much of that I would not allow,
25 but if you were to take the stand, I would allow either

1 Mr. Brooker or Mr. Clements, either one, to ask you as to
2 your convictions regarding the three common law
3 robberies. However, I would not allow them to go into
4 any details with regards to those. They simply would be
5 able to ask you words to this effect. Isn't it true that
6 you were convicted of a common law robbery on this date?
7 And then you would respond. And that's the extent of it.
8 They would not be able to go any further or go into any
9 details as far as sentencing or what occurred. They
10 would just be allowed to ask you whether or not you have
11 been convicted of that offense. Do you understand that?

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: Okay. Now, the other option that you
14 have, the other right that you have is the right to
15 remain silent. Obviously that's fairly self explanatory.
16 If you decide that you are not going to take the stand
17 and testify, I would then instruct the jury that the
18 burden of proof in this case is upon the State. The
19 State has the burden of proof and they have to prove each
20 and every element of the crime beyond a reasonable doubt
21 and that you don't have to prove anything; that under the
22 laws of this nation a person charged with a criminal
23 offense is never required to prove themselves innocent.
24 I would instruct them that the fact that you chose to
25 remain silent could not be considered by them at all in

1 their deliberations as to your guilt or innocence. And
2 as a matter of fact, I would take it one step further. I
3 would tell them that the fact that you chose to remain
4 silent could not even be discussed in the jury room.
5 They are to give it no consideration whatsoever. Do you
6 understand, sir?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Okay. So with that understanding do you
9 wish to testify or to not testify?

10 MR. WILLIAMS: I will not testify.

11 THE COURT: You will?

12 MR. WILLIAMS: No, sir.

13 THE COURT: Will not. Okay. Now, and I will say
14 this though, Mr. Williams, just so you understand, your
15 decision here with me, that's not irrevocable or etched
16 in stone. Mr. Brooker, I think you indicated that you do
17 have a couple of witnesses --

18 MR. BROOKER: Yes.

19 THE COURT: -- other than Mr. Williams if he chose
20 to?

21 MR. BROOKER: That's right.

22 THE COURT: Okay. You understand that at any time
23 during that process if you've changed your mind and you
24 do wish to testify, you just need to let Mr. Brooker know
25 and he'll let me know and we'll honor that request, all

1 right?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: Okay. All right. Now, folks, let me
4 tell you what my thought process is regarding the jury
5 here. I'm gonna ask Melissa to go back and take their
6 lunch order because I think we can go faster and conserve
7 time if we don't let them take an hour and a half and go
8 out for lunch. So I'm gonna order lunch in for the jury.
9 So, Melissa, if you would, tell them that we're gonna
10 feed them today and -- You've already done it. You guys
11 are awesome. Okay. We don't have to worry about that.
12 They're way ahead of the crowd here. Well, this is what
13 I was about to ask Thurmond. Thurmond, and I know this
14 is a hard thing to gauge, but how many witnesses would
15 you have?

16 MR. BROOKER: I think right now three and they're
17 all going to be relatively quick.

18 THE COURT: Okay. Because what we may do depending
19 on how it goes, we may maybe take a break like when you
20 finish with, depending on where we're at, if we're around
21 1:00 and you still have one or two witnesses that you
22 need to put up, I was gonna say try to have their lunch
23 here at one. We'll try to look to break somewhere in
24 there. I won't interrupt a witness on the stand, but it
25 may be, if you get them all in before then, that's fine.

1 If you don't, we'll just take whatever we don't get we'll
2 take after lunch.

3 MR. BROOKER: I got you that's fine.

4 MR. HOEFER: We would like to voir dire the expert
5 witness and we'll want to do that outside of the jury's
6 presence.

7 THE COURT: You want to let's go ahead and do that?

8 MR. BROOKER: Yeah. Why don't we go ahead and do
9 that.

10 THE COURT: Listen, I've got -- If we're gonna go
11 ahead and do that, because I wasn't gonna let them, but
12 I've got four jurors that are asking if they can go smoke
13 a cigarette. I was not gonna let them do that because I
14 thought we should go ahead and get started, but if we're
15 gonna do, I think I'm gonna let them do that. So make
16 sure that -- So let's go ahead and let them do that and
17 we'll proffer that testimony.

18 MR. CLEMENTS: Everything is correct with the
19 exhibits except for 3 didn't get initialed and number 17,
20 a part of 17 and 17 was A through O, and M, N O didn't
21 get initialed.

22 THE COURT: What do you mean initialed?

23 MR. HOEFER: By the court reporter.

24 THE COURT: Oh, okay.

25 MR. CLEMENTS: I took them and I showed him on the

1 --

2 THE COURT: But if I recall, we put exhibit 17A
3 through O in without objection.

4 MR. HOEFER: Correct.

5 MR. CLEMENTS: Yes, sir. It's just these three
6 didn't get --

7 MR. HOEFER: I was going through them and I noticed
8 she initialed all of the other ones. Those were not.

9 THE COURT: Okay. Steve, if you would, would you
10 initial those. Those are in evidence. They were moved
11 into evidence without objection. Krystal initialed all
12 of those in that pack except those four. I don't want
13 there to be any confusion that those four are also in
14 evidence so...

15 MR. CLEMENTS: Actually three, Your Honor.

16 THE COURT: Three. If you would also initial those
17 and those are in evidence.

18 MR. CLEMENTS: And, Your Honor, 16 got identified
19 and marked for identification, but we have not put them
20 into evidence and I want to make sure they stay separate.

21 THE COURT: Right. 16, I think that was like A
22 through P or something like that.

23 MR. CLEMENTS: A through P. Yes, sir.

24 THE COURT: Those are marked for identification only
25 and so if you haven't put those in, why don't you just

1 take them so that they don't get mixed in.

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: Because typically you just return the
4 ones that were not admitted, right?

5 COURT REPORTER: Right.

6 MR. CLEMENTS: It might, if something may happen,
7 I'm anticipating possibly could happen, in that case I
8 would come up and put these in on reply.

9 THE COURT: Okay. But you will have them at your
10 desk?

11 MR. CLEMENTS: Yes, sir.

12 THE COURT: Okay. So they don't get mixed in. Now,
13 here's something else. Here's something that was marked
14 as a State's Exhibit 5 just for identification so I'll
15 hand you that and let you take that. That's all I have
16 here.

17 MR. CLEMENTS: I'll take that. Yes, sir. I'm not
18 putting that in.

19 THE COURT: Before you bring your witnesses in and
20 voir dire them regarding their qualifications, let's take
21 a short break and restroom and then we'll start shortly,
22 okay?

23 MR. BROOKER: Sure.

24 (Short break.)

25 THE COURT: All right. Mr. Brooker and Mr.

1 Clements, the purpose of this hearing outside the jury's
2 presence is simply to allow, Mr. Brooker, for you to lay
3 the foundation for your witnesses being classified as
4 expert and allow the State, if they wish, to voir dire on
5 that issue. Obviously you will be allowed to, if they
6 are, in fact, qualified as an expert, this does not
7 preclude you from being able to put their qualifications
8 on the record before the jury. We're just gonna do this
9 outside the jury's presence right now and so they will go
10 ahead and be qualified. So which witness? You've got
11 two, I think, here?

12 MR. BROOKER: Yes, sir, Your Honor. This is Thomas
13 J. Slovenski.

14 THE COURT: Mr. Slovenski, would you come around,
15 sir, to be sworn.

16 MR. CLEMENTS: Your Honor, while he's coming around
17 to be sworn, can I correct one thing?

18 THE COURT: Yeah.

19 MR. CLEMENTS: I believe that Mr. Brooker had added
20 a couple things. While one event, the strong armed
21 robbery, common law robbery charge with Mr. Williams,
22 Mr. Hoefer looked back over the record and we actually
23 think that the three things are that he had, the first
24 charge that he had he was convicted, then he was sent to
25 the Department of Corrections, and then he was out and

1 dealt with Probation, Pardon and Parole. So we really
2 think there's just one conviction, not three, and we want
3 to be as fair and as truthful as we can be so that's what
4 we think.

5 THE COURT: One -- All right. Because what I've got
6 here is I've got one that occurred on November the 8th,
7 2010.

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: Then there's one that appears -- I'm
10 just off Mr. Brooker's list -- of January of 2012, and
11 then there's another in December of 2014. So all of
12 those are just one?

13 MR. HOEFER: Judge, here's what it appears to me.
14 Sometimes these records are really difficult to figure
15 out exactly what they're saying.

16 THE COURT: Yeah.

17 MR. HOEFER: But the first instance, the offense
18 date, I believe, was November 8th of 2010. It references
19 Bennettsville Police Department and a warrant number. He
20 was charged with common law robbery, convicted of that it
21 appears on January the 9th, 2012, received a sentence of
22 12 years suspended on the service of six years and then
23 it cuts off so we don't know the balance. But I assume
24 the balance of that was a probationary sentence.

25 THE COURT: Correct.

1 MR. HOEFER: Again, that was on January the 9th.
2 The next record is dated January the 10th, 2012 and I
3 believe that is noted as being a record in South Carolina
4 Department of Corrections so what I think that is, is the
5 same thing showing him going in from the Bennettsville
6 jail in Marlboro County to the Department of Corrections.
7 There's just a separate entry for the same thing showing
8 his status as an inmate. And then - and they have listed
9 12 years suspended to six years, three years probation.

10 THE COURT: That's what's listed in the 2012 one?

11 MR. HOEFER: Yes, sir.

12 THE COURT: Okay. So I'm confident that's the same
13 one.

14 MR. HOEFER: So then the third entry is captioned
15 Marlboro PPP which I believe stands for Probation, Parole
16 and Pardon Services and so that entry would have been
17 made in 2014 after he was released from the Department of
18 Corrections and put into the probation cycle, they did a
19 separate entry. It's confusing. It does look like three
20 separate offenses because the dates change.

21 THE COURT: Does it list, on the third one does it
22 list the sentence or anything like that?

23 MR. HOEFER: There are no warrant numbers on either
24 of the Department of Corrections or the probation and
25 parole.

1 THE COURT: Okay. All right. So there would be one
2 entry for common law robbery. Okay. So you might, and
3 you'll have time to talk with Mr. Williams regarding that
4 whether or not that changes his decision so... Okay.
5 Sir, if you would please place your left hand on the
6 Bible and raise your right hand.

7 Thereupon,

8 THOMAS J. SLOVENSKI
9 after having been first duly sworn, testified as follows,

10 THE COURT: Mr. Slovenski, if you would when you
11 have a seat there, if you would just state your full name
12 for the record.

13 THE WITNESS: Thomas J. Slovenski.

14 THE COURT: Would you spell your last name for the
15 court reporter.

16 THE WITNESS: S-l-o-v-e-n-s-k-i.

17 THE COURT: Thank you, sir. Mr. Brooker.

18 DIRECT EXAMINATION

19 BY MR. BROOKER:

20 Q. Mr. Slovenski, do you have a copy of your CV?

21 A. Not in print. I do have it that I can send to you
22 electronically.

23 Q. Do you want a copy of it to refer to? I'm going to
24 ask you some questions in reference to your qualifications. I
25 don't know if you can remember all of this. It's 16 pages.

1 MR. BROOKER: I'm not going to go through all 16,
2 Your Honor. I promise you.

3 THE COURT: Thank you.

4 BY THE WITNESS:

5 A. Give me just a minute. I can pull it up right here
6 if that's okay.

7 BY MR. BROOKER:

8 Q. That's fine.

9 A. Okay, sir. I'm all set.

10 Q. What is your title?

11 A. I am the owner of Cellular Forensics, LLC in
12 Simpsonville, South Carolina.

13 Q. And of course, is, is that what does Cellular
14 Forensics do?

15 A. Cellular Forensics is a independent private digital
16 forensics firm specializing in mobile phones, cell towers,
17 testimony, consulting and instruction.

18 Q. And are you certified as a cell phone forensics
19 examiner?

20 A. Yes, sir. I am.

21 Q. What does a cell phone forensics examiner do?

22 A. With a cell phone, a cell phone forensics examiner
23 will preserve the evidence, acquire the evidence, identify the
24 evidence, and present the evidence from a mobile device.

25 Q. Now, what is your prior professional experience?

1 A. I was a police officer for 15 years. I have over 30
2 years of investigative experience.

3 Q. What is your educational experience?

4 A. I have a B.A. degree from Bob Jones University. I
5 am a graduate of the South Carolina Criminal Justice Academy.
6 I have completed the subject matter, expert qualifications by
7 the ZetX Corporation which is the corporation that makes the
8 software used not only by myself but by over 500 police,
9 federal, state, and local agencies across America and I have
10 various other courses that I have taken, certifications that I
11 have gotten along the way in my 12 years of doing mobile phone
12 forensics.

13 Q. Have you ever been certified as a cell phone
14 forensics examiner in court before?

15 A. Yes.

16 Q. And how many times roughly have you been certified
17 as cellular forensics examiner?

18 A. Let me double check my figures here. Seven times to
19 date, sir.

20 Q. And, of course, is, is that have you been certified
21 as a cellular forensics examiner in South Carolina, in any
22 courts in South Carolina?

23 A. Yes, sir. I have.

24 Q. Any Federal Courts?

25 A. No, sir.

1 Q. Of course, is, is that I think on your CV on the
2 front of your fourth page of your CV you list a certification
3 in mobile phone forensics data recovery and certified subject
4 matter, expert in cell tower records analyst and
5 geolocation?

6 A. Yes, sir.

7 Q. Okay. Is that the type of work that - is that
8 related to the type of work that you were commissioned to do
9 for us?

10 A. Yes, sir. It is.

11 MR. BROOKER: Your Honor, I don't have any further
12 questions for him with regard to his certification as a
13 cell phone expert. I'll allow them to do their
14 certification.

15 THE COURT: All right.

16 MR. CLEMENTS: Just a couple questions.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. CLEMENTS:

20 Q. Mr. Slovenski, I assume that you have plenty of
21 experience in mapping?

22 A. Yes, sir.

23 Q. Is that what you did in this instance regarding this
24 case is take SLED's mapping and do your own?

25 A. I took the call detail records that were provided to

1 me through the prosecution and performed my own mapping and
2 then compared my results with SLED's results.

3 Q. And there were very, very many similarities, were
4 there not?

5 A. There were some similarities.

6 Q. Now, you've been qualified as a court expert seven
7 times in the state courts in South Carolina?

8 A. Six in South Carolina, one just recently in Texas.

9 Q. All right. How many people do you have working for
10 you?

11 A. Myself.

12 Q. So you're kind of a one man band?

13 A. Yes, sir. Sure am.

14 Q. And you have been in law enforcement also?

15 A. Yes, sir. I was.

16 Q. Before going into private business, do you have much
17 familiarity with SLED?

18 A. Yes. I'm certified by SLED. Or I'm sorry, licensed
19 by SLED. We have to keep a private investigator's license if
20 you are a private investigator in South Carolina. So, yes. I
21 am very familiar with SLED.

22 MR. CLEMENTS: That's all the questions I have.

23 Thank you, sir.

24 MR. BROOKER: I have nothing further, Your Honor, at
25 least for the record is that, of course, we would make

1 this as Court's Exhibit.

2 MR. CLEMENTS: No objection.

3 MR. BROOKER: The CV. We would submit this in the
4 record as a Court's Exhibit of Thomas Slovenski's
5 qualifications as a cellular expert.

6 THE COURT: All right. Any objection by the State
7 to Mr. Slovenski regarding cellular mapping?

8 MR. CLEMENTS: No, Your Honor.

9 THE COURT: All right. Well, again, like I said,
10 there was a limited purpose. Mr. Slovenski, I'm going to
11 let you step down and I think we have one more. Let me
12 ask y'all to come up here.

13 (Side bar off the record.)

14 (Whereupon, Court's Exhibit #5 marked for
15 identification.)

16 THE COURT: Mr. Slovenski, if you would have a seat.
17 We've got to do another expert involving DNA.

18 MR. SLOVENSKI: You Honor, do I need to vacate or
19 can I stay?

20 THE COURT: Oh, I'm sorry.

21 MR. SLOVENSKI: Do I need to vacate or can I stay?

22 THE COURT: Uhm, they're not testifying in the same
23 -- There's no reason to sequester Mr. Slovenski, is
24 there?

25 MR. CLEMENTS: They're not gonna cross paths.

1 THE COURT: Right. No, sir. You can have a seat
2 here in the courtroom.

3 MR. SLOVENSKI: Thank you so much.

4 MR. BROOKER: Judge, this is Dr. Robert M. Bennett.

5 THE COURT: All right. Dr. Bennett, will you please
6 come around to be sworn, sir.

7 Thereupon,

8 ROBERT M. BENNETT

9 after having been first duly sworn, testified as follows,

10 DIRECT EXAMINATION

11 BY MR. BROOKER:

12 Q. Dr. Bennett, are you currently employed?

13 A. Yes.

14 Q. Where are you employed at?

15 A. I am employed at a facility in Charleston, South
16 Carolina called Medical Legal Services. It's an independent
17 provider of forensic services and consultation.

18 Q. And, of course, is, is that, what sort of work do
19 y'all do at that facility? Specifically just to get straight
20 to the point, do y'all do DNA testing and DNA analysis at that
21 facility?

22 A. We do. Our two main specialties are toxicology and
23 DNA analysis so nearly a hundred percent of our work is
24 focused on those two areas.

25 Q. Okay. And, of course, is, is that could you please

1 tell the Court what is your educational experience?

2 A. I have a pharmacy degree from the Medical University
3 of South Carolina, then after that I went back to school at
4 the Medical University of South Carolina and got a doctorate
5 degree, a Ph.D.

6 Q. Are you licensed in any particular area?

7 A. I have a pharmacy license with the South Carolina
8 Board of Pharmacy that's in good standing.

9 Q. Of course, is, is that certifications, do you have
10 any certifications?

11 A. Yes. Many certifications. Approximately 15 or so
12 specifically in the area of DNA administered by the U.S.
13 Department of Justice.

14 Q. Of course, are those certifications, I think you
15 have already said this but just to make sure, do you have any
16 certifications that are related to DNA testing and, of course,
17 DNA analysis?

18 A. Yes. The 15 DNA certifications from the U.S.
19 Department of Justice related to DNA.

20 Q. And, of course, is, is that how often - how long
21 have you been doing DNA testing and DNA analysis?

22 A. Approximately 25 years.

23 Q. Have you ever been certified in any court in South
24 Carolina to testify as a DNA expert in testing and analyzation
25 of DNA?

1 A. Yes. I have.

2 Q. Approximately how many times have you been certified
3 in the courts in South Carolina in those areas?

4 A. At least a half a dozen times if not more.

5 Q. And, of course, is, is that when I say courts in
6 South Carolina, were those state courts?

7 A. It's actually state, family court, military court,
8 civil court. There's a variety of courts that I have
9 testified in.

10 Q. When was the last time - when was the last time that
11 you were certified as a DNA expert in any court?

12 A. Two weeks ago in a military trial in Boston.

13 Q. Okay. Specifically what area were you certified to
14 testify in?

15 A. Certified as an expert in DNA analysis and
16 interpretation.

17 MR. BROOKER: Your Honor, that's all the questions I
18 have, Your Honor. I would submit the witness to them for
19 cross examination.

20 THE COURT: Mr. Hoefer.

21 CROSS EXAMINATION

22 BY MR. HOEFER:

23 Q. Sir, I believe your testimony is that you have been
24 certified by the United States Department of Justice for DNA
25 analysis?

1 A. Yes.

2 Q. Can you explain to us what that means?

3 A. The U.S. Department of Justice offers courses in
4 various areas of forensic subjects many of which are DNA and I
5 enrolled and took those courses and completed those courses.

6 Q. Would that include DNA extraction and quantitation
7 for forensic analyst?

8 A. Correct.

9 Q. Crime scene and DNA basis for forensic analyst?

10 A. I believe that's correct.

11 Q. Advanced and emergent DNA techniques and
12 technologies?

13 A. Correct.

14 Q. All right, sir. Now, in your CV there's a listing
15 of all of these things; is that correct?

16 A. Correct.

17 Q. Is that the courses you took?

18 A. Correct.

19 Q. Have you taken any other courses besides that?

20 A. There was another course more recently than those
21 courses that I took in 2016 at the International Open Academy
22 that involved DNA.

23 Q. All right, sir. Now, the courses that I just went
24 over with you, is it correct that every one of those courses
25 took place on October 22, 2014?

1 A. No. They didn't take place on that day. Many of
2 them were finally completed on that day. In other words, you
3 can start the course work early. The date is the completion
4 date.

5 Q. All right. Did you actually go to a U.S. Department
6 of Justice facility and sit in a classroom or something akin
7 to that for the purpose of taking this course?

8 A. No, sir. Those were online.

9 Q. All online?

10 A. Yes.

11 Q. But I note that you have completed every one of
12 these on October 22, 2014; is that correct?

13 A. Not all of them, but they were close. Many were on
14 that date.

15 Q. Well, you're the one that put the dates in your CV,
16 were you not?

17 A. Yes. And most of them were on that date but my
18 answer is not all of them.

19 Q. So this is an online study that you took?

20 A. Yes.

21 Q. All right. And did you have to take a test at the
22 end of this online study?

23 A. Some of those courses did require a test. Yes.

24 Q. And you say you have a certificate. Do you have it
25 with you?

1 A. I do not.

2 Q. Do you have it hanging on a wall somewhere?

3 A. In my office. Yes.

4 Q. And who issued that certificate?

5 A. The U.S. Department of Justice, I assume. That's
6 where I took the course.

7 Q. You've got it. Do you know what it says?

8 A. Yes, sir. I just answered that question.

9 Q. So who issued it?

10 A. It's my belief that it was the U.S. Department of
11 Justice.

12 Q. Does it say U.S. Department of Justice on the
13 certificate?

14 A. I would have to look at it again and see.

15 Q. Is it, in fact, a certificate of completion?

16 A. Yes. It is.

17 Q. Okay. So it's not certifying you as some specialist
18 in that field, is it?

19 A. It's a certification whatever you want to define
20 that as.

21 Q. All right. So the reason I'm asking that is because
22 you indicate on your CV that you're a court qualified expert.
23 Now, does that mean you have some blanket qualification from
24 the Court somewhere or does it mean that you have simply been
25 qualified in a particular area on a given day?

1 A. Both.

2 Q. Okay. So both. Tell us about, if you would, about
3 the overall blanket qualification that you have received from
4 the Court?

5 A. There was a court in Charleston that qualified me as
6 an expert for the Court and based on that I was essentially
7 the person that did all the testing for the courts in
8 Charleston County.

9 Q. Would that have been the Family Court?

10 A. Yes.

11 Q. Would that have been back in the day when you were
12 doing drug testing primarily?

13 A. Correct.

14 Q. And, in fact, that's what you did for a long time,
15 you collected urine and you drew blood and you sent it off to
16 be tested, got the results and went back in and testified in
17 Family Court based on the drug or urine analysis; isn't that
18 correct?

19 A. Some of it was sent off. Some of it I tested
20 myself.

21 Q. I believe in your office you can do the
22 immunoassay?

23 A. Yes.

24 Q. And that's really a kit you buy and stick the litmus
25 paper in it or something like that and it tells whether it's

1 positive for a drug?

2 A. Those devices do exist, but that's not what I was
3 referring to. I actually had an analytical instrument similar
4 to what's in the national labs where I would run the specimens
5 usually on a laboratory based instrument to run the tests so
6 not a dip stick test that I believe you're referring to.

7 Q. All right, sir. You have a doctor of philosophy in
8 pharmacology; is that correct?

9 A. Correct. Yes.

10 Q. And a bachelor's in pharmacy?

11 A. Correct.

12 Q. Do you have any degree, any degree from a recognized
13 university in the area of DNA analysis?

14 A. Well, I'm not familiar with a university that offers
15 a degree in DNA analysis.

16 Q. So that would be no?

17 A. I know of nobody who has that actually.

18 Q. So that would be no?

19 A. Correct.

20 Q. Now, you completed a course on October 22, 2014,
21 correct?

22 A. Some courses. Yes.

23 Q. And you completed a course, I believe, forensic DNA
24 for officers of the court for the U.S. Department of Justice
25 on June 19th, 2014. Does that sound correct?

1 A. Yes, sir.

2 Q. Okay. And those are the only DNA courses that I see
3 listed in your CV. Were there any others?

4 A. No, sir.

5 Q. Okay. And both of those occurred in 2014, yet I
6 understood your testimony to be that for 25 years you have
7 been doing DNA analysis?

8 A. Correct.

9 Q. So where did you get your training prior to these
10 courses that you finished in June and October of 2014?

11 A. As many DNA analysts get including ones at SLED you
12 get that in college level biology, specifically in the course
13 of genetics which I got.

14 Q. So and you graduated from, I believe, the College of
15 Charleston, correct?

16 A. I went there as well. Yes. Absolutely.

17 Q. And you graduated from there in 1980?

18 A. About that time period. Yes, sir.

19 Q. So you remember all of your DNA study in chemistry
20 or biology from then?

21 A. Oh, absolutely, because I use it almost every day.

22 Q. Do you remember having your deposition taken by an
23 attorney by the name of Elliott Barrow in the case of Karen
24 Ferguson versus Paul Ferguson?

25 A. Yes, sir.

1 Q. And Mr. Barrow spent a good deal of time with you
2 going over your qualifications, did he not?

3 A. I believe it was like six or seven hours. Yes.

4 Q. Yes, sir. And he asked you about all of your
5 qualifications and what you would do, correct?

6 A. He probably did.

7 Q. He was very thorough, was he not?

8 A. I would say he was. Yes.

9 Q. All right. And he probably asked you the same
10 questions multiple times to get you to confirm that your
11 answer had not changed, true?

12 A. He may have. That was a long time ago.

13 Q. And would it surprise you that when he's talking
14 about the things you did and all of your qualifications, DNA
15 analysis was not mentioned anywhere? It was all drug testing
16 and that type of thing?

17 A. Oh, absolutely because the case involved just drugs,
18 nothing to do with DNA.

19 Q. Well, he spent a lot of time developing your skills
20 overall, didn't he?

21 A. I answered his questions.

22 Q. Let me ask you this: What specifically were you
23 asked to do for the purpose of testifying in this case?

24 A. Review the SLED findings of the DNA analysis of
25 various items of evidence in the case.

1 Q. Did you actually look at the slides to see the loci,
2 anything like that?

3 A. That was not provided to me so I couldn't look at
4 them.

5 Q. All right. So here's what I'm trying to figure out.
6 What your testimony would be to see if you have that
7 particular qualification. Does that make sense?

8 A. I believe it does and my reason for being here was I
9 was requested by the defendant's attorney to provide an
10 opinion on the results that were reported by the laboratory
11 that did the test.

12 Q. All right.

13 A. Not necessarily the procedure which is what your
14 question referred to but the results.

15 Q. Not the procedure but the results?

16 A. I didn't review the actual pherograms which is the
17 output of the machine. I didn't review what's called the raw
18 data. I just reviewed the findings and the methodology but
19 not the actual procedure.

20 Q. Okay. Now, you claim that you do analysis in your
21 office at Medical Legal, correct?

22 A. We do some. Yes.

23 Q. Do you actually have the machinery that you can run
24 the sample and extract the DNA from that sample and then
25 multiply it so that you have a large enough sample to test?

1 A. No, sir.

2 Q. You do not have that machinery?

3 A. No, sir.

4 Q. So if that's the case, how do you do an analysis, do
5 a test and an analysis in your facility as you testified to?

6 A. On DNA?

7 Q. Yes, sir.

8 A. I do not. That's subcontracted out to my laboratory
9 that I have hired to do that for me.

10 Q. Okay. Did I misunderstand you when you said I do
11 DNA analysis at my facility in Charleston?

12 A. Yes, sir. You did misunderstand. I said I do some
13 testing at my facility in Charleston. It's not DNA. It's
14 drug testing.

15 Q. So you never do any DNA testing through your
16 facility?

17 A. Yes. I do it all the time through my facility but
18 not at my facility.

19 Q. So whatever you get, you send it off, somebody
20 develops it and sends it back to you?

21 A. Well, the DNA analysis is fully automated so there
22 are numerous labs around the country that have that equipment
23 and they will provide that service contractually to people who
24 need that service. So it's a standard procedure for doing DNA
25 analysis because DNA equipment is very expensive. So not

1 every facility that provides the service can afford the
2 millions of dollars it takes to operate an actual DNA analysis
3 laboratory, but I have done some of that myself personally in
4 a DNA laboratory.

5 Q. But you don't have one yourself?

6 A. I currently do not have one myself. Yes.

7 Q. All right. So when you send something off and they
8 run it through their machine, they send you back what, raw
9 data?

10 A. They send me whatever I need. Absolutely.

11 Q. You get the pherogram?

12 A. Pherograms. Yes.

13 Q. You get all of that so that so you can sit down and
14 make the call on what it means, correct?

15 A. Well, when you say "make the call", I'm not sure
16 what you're --

17 Q. I'm assuming, I'm talking about your analysis.

18 A. Well, yeah. We get to an answer. Yes. Absolutely.
19 So making the call is getting an answer of what the results
20 show us.

21 Q. So you need that to be able to make your analysis?

22 A. I don't need the actual pherogram to make the
23 analysis because the pherogram provides the analysis, it
24 provides the results, it provides the loci links, the allele
25 links on each loci and then I evaluate that data because

1 that's the data that's used to determine the probability of a
2 match. The actual pherograms are routine.

3 Q. So what is your particular training or education in
4 this area of making an analysis?

5 A. I've been doing it for 25 years.

6 Q. How did you get the training to do that?

7 A. Well, one is you start with taking college level
8 courses in genetics and then based on that you continue having
9 experience in that field which includes keeping up to date on
10 literature.

11 Q. Sir, you and I are about the same age, I believe,
12 and I think back to my college days and I'll be doggoned if I
13 remember a whole lot of DNA mapping going on back then.

14 A. That's correct.

15 Q. You're saying that you started doing this in the
16 '80s?

17 A. I started doing DNA analysis ever since I took
18 genetics. DNA analysis was being done by electrophoresis long
19 before it reached the point where it is today.

20 Q. Who taught you how to do DNA analysis through
21 electrophoresis?

22 A. My professor at college.

23 Q. Who was that?

24 A. I don't remember his name.

25 Q. Was it a particular course or just something, come

1 over here, let me show you something neat?

2 A. Particular course called genetics.

3 Q. And in that course you learned how to read these
4 pherogram which didn't exist at the time so where did you
5 learn how to read to be able to determine that a particular
6 piece of DNA matched my gene pool?

7 A. By reading the capillary electrophoresis charts.

8 Q. By what?

9 A. By reading the capillary electrophoresis charts
10 which is how it was done in the beginning.

11 Q. I believe you indicated that you have a current
12 license to practice pharmacy; is that correct?

13 A. I have a pharmacy license with the South Carolina
14 Board of Pharmacy that is and has always been in good
15 standing.

16 Q. All right. Let's ferret that out a little bit. Is
17 that license active?

18 A. No, sir.

19 Q. How long has it been inactive?

20 A. I don't recall the exact date. It's been a while.

21 Q. Better than ten years though, right?

22 A. Yes, sir.

23 Q. And is it correct that for you to be licensed as a
24 pharmacist at this point you would have to take the exam
25 again, would you not?

1 A. Yes, sir. But that's to fill prescriptions which I
2 haven't done in 25 years.

3 Q. Is there any individual or any organization that
4 oversees your work? In other words, that you have to answer
5 to if you don't do it correctly?

6 A. That's kind of a broad question, but for me the work
7 that I do there are organizations that oversee the testing
8 that's done. For example, with DNA, the AABB agency is the
9 organization that oversees DNA testing.

10 Q. Say that again.

11 A. AABB, which is the American Association of Blood
12 Banks which is the agency that regulates and certifies DNA
13 testing laboratories, for example, and so the DNA testing
14 that's done through my office is all certified by the AABB
15 national accrediting agency for the laboratory.

16 Q. Are you a member of the AABB?

17 A. No, sir.

18 Q. Only the labs that you send your stuff to are
19 members of?

20 A. Correct.

21 Q. So they are subject to it, but you are not, right?

22 A. Correct. Because I'm not the one doing the actual
23 DNA analysis.

24 Q. That's what I'm getting at. Is your work subject to
25 review by anyone?

1 A. Could you specify as far as work? Are you referring
2 to DNA work?

3 Q. Yes. I'm talking about DNA work.

4 A. All right. There's no agency that oversees me
5 personally regarding DNA work.

6 Q. All right. And the reality is there's no agency
7 that oversees you on the drug testing or any of that stuff
8 either, is there?

9 A. Yes. There is. There's actually Federal
10 regulations, 49CFR part 40 that oversees the work that I do in
11 relation to what I do for drug testing.

12 Q. That's when you're testing truck drivers on the
13 road, that type of thing?

14 A. Correct.

15 Q. Okay. But you don't do a lot of that, do you?

16 A. I do not.

17 Q. You do a lot of job site drug testing, correct?

18 A. Yes.

19 Q. That don't involve the Federal Government, the
20 highway department, highway administration or anything like
21 that, correct?

22 A. Currently I don't do a lot of that. I used to in
23 the past but currently my work has been focusing just in the
24 forensic field.

25 Q. So would it be fair to say that the bottom line is

1 that you don't have any entity that would let you know if you
2 are doing things inappropriately, wrong, missing the standard
3 or anything like that, do you?

4 A. In regards to DNA testing?

5 Q. Yes.

6 A. Yes. Because the work that I do is reviewed as part
7 of the procedure by the actual laboratory that is certified by
8 AABB, and if there is an error, then I get notified so there
9 is an overseeing authority for the work that I do.

10 Q. Wait a minute. I'm confused. Because your work
11 begins once you get the results back from the lab, is that not
12 correct?

13 A. No, sir. I do the collection and processing and
14 extraction as well.

15 Q. So you collect it?

16 A. Mm-hmm.

17 Q. You send it off. They run the analysis. They send
18 you back the results, and then you analyze the results. Is
19 that how it works?

20 A. Correct.

21 Q. So if you make a mistake in the analysis, there is
22 no one, no entity that can call your hand on it, true?

23 A. Not true. The analysis of the end product is also
24 done by the scientist at the laboratory who I collaborate with
25 so we have to be in agreement which is their work is, the

1 oversight is by the accrediting agency.

2 Q. All right. So without, for our purposes today,
3 without the raw data that was obtained from the various
4 individuals involved in this legal case you can simply look at
5 a report that was generated by South Carolina Law Enforcement
6 Division's analyst and you can make your separate distinct
7 analysis based on that?

8 A. Absolutely. I do it all the time.

9 Q. Sir, do you have any significant training in
10 probabilities and statistics?

11 A. Yes, sir. Graduate level.

12 Q. What is that?

13 A. Graduate level statistics at the Medical University
14 of South Carolina.

15 Q. Anything other than that?

16 A. No, sir.

17 Q. And your office is located in Charleston County?

18 A. Yes, sir.

19 Q. Do you have any offices anywhere else?

20 A. Just affiliate sites that work with me. There are
21 other sites that will provide services at my request.

22 Q. Is that when you go to draw blood or take urine
23 samples, something like that?

24 A. Yes. For example, if the person can't come to me in
25 my office, then we can set up an alternate facility for the

1 specimen collection.

2 Q. I believe you said that you have testified in
3 General Sessions court on about six occasions in South
4 Carolina?

5 A. In South Carolina. Yes.

6 Q. Would you mind telling me the counties that you have
7 testified in?

8 A. Definitely Charleston County. I might have to look
9 at my CV and actually go through them and start picking them
10 out to answer that question accurately.

11 Q. But those were as to DNA specifically or a
12 combination of alcohol and controlled substances or some type
13 of drug case?

14 A. Most were DNA specific, but some did also involve
15 drugs and alcohol because many times sexual assault not only
16 include a DNA portion, but drugs and alcohol is involved as
17 well and I can provide consultation and testimony on both.

18 Q. When was the most recent?

19 A. Two weeks ago for the Air Force in Boston.

20 Q. No. No. In South Carolina, General Sessions Court
21 in South Carolina when was the most recent?

22 A. I would have to refer to my CV and look it up. I
23 just go down the list until I find it.

24 MR. BROOKER: Your Honor, if it would make it
25 easier, I have a copy of his CV and I can hand it to

1 him.

2 MR. HOEFER: I'm done.

3 MR. BROOKER: He can review his CV, Your Honor, and,
4 of course, this only takes a couple seconds is that I
5 would like to provide him a copy of his CV so that he can
6 respond to at least a couple questions that I have, if
7 that's okay.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION

10 BY MR. BROOKER:

11 Q. (Proffering.) Dr. Bennett, do you have a copy of
12 your CV?

13 A. Yes.

14 Q. And, of course, is, I'm looking at page 5 and I
15 think you were asked a question with respect to what courses
16 that you have taken with respect to DNA extraction and
17 analysis or courses related to that. And, of course, is, if
18 you can take a look at that page with me and, of course,
19 correct me if I'm wrong. I think there was a DNA extraction
20 and qualification for forensic analysis by the Department of
21 Justice and that's October 22nd, 2014?

22 A. Correct.

23 Q. You took that course?

24 A. Correct.

25 Q. And, of course, is, is that's related to at least

1 the task that you are being asked to perform today?

2 A. Correct.

3 Q. And, of course, crime scene and DNA basis for
4 forensic analysis, U.S. Department of Justice, October 22nd,
5 2014. Is that related to the task that you have been asked to
6 perform here today in analyzing DNA reports that was generated
7 by the State's DNA expert?

8 A. Yes.

9 Q. Advanced and emerging DNA technologies and
10 techniques and technologies, Department of Justice October
11 22nd, 2014; is that correct?

12 A. Yes.

13 Q. DNA amplification for forensic analysis, U.S.
14 Department of Justice, October 22nd, 2014; is that correct?

15 A. Yes.

16 Q. STR DNA analysis and interpretation for forensic
17 analysis, United States Department of Corrections; is that
18 correct?

19 A. Yes.

20 Q. Amplified DNA product separation for forensic
21 analyst, Department of Corrections, United States Department
22 of Corrections; is that correct?

23 A. You're saying Department of Corrections. You mean
24 Department of Justice?

25 Q. Department of Justice. I apologize.

1 A. Yes. That's correct.

2 Q. And, of course, is, is that I think a couple lines
3 down there is a collection DNA evidence at property crime
4 scenes, United States Department of Corrections?

5 A. Department of Justice.

6 Q. Excuse me. I don't know why I keep saying
7 Department of Corrections. I apologize.

8 A. No problem. Yes, sir.

9 Q. And, of course, non STR DNA markers. And, of
10 course, is, is that that's United States Department of
11 Justice; is that correct?

12 A. Correct.

13 Q. And, of course, on the next page I'm looking at
14 seven lines down, forensic DNA for officers of the Court,
15 United States Department of Justice; is that correct?

16 A. Correct.

17 Q. Okay. Now, I think you said that you have been
18 certified to testify in courts, of course, I'm looking on page
19 9 of your CV, is that a sample list of the courts that you
20 have testified in as a DNA expert?

21 A. Yes. It is.

22 MR. BROOKER: Of course, Your Honor doesn't have the
23 CV. I can provide Your Honor with a copy of it if you
24 want to follow along.

25 THE COURT: If you've got it.

1 MR. BROOKER: Yes, sir. I do (proffering.)

2 BY MR. BROOKER:

3 Q. You have a list of cases that you have testified on
4 that starts on page 9 and goes all the way I think to page 18.

5 A. Yes, sir.

6 Q. Of course, is if you can take a look at that. We're
7 not gonna go through all of this, just a couple. Are those
8 cases that, starting on page 9, if you would take a look, if
9 you could name a couple of those cases that you most recently
10 testified as a DNA expert and analyst.

11 A. The most recent for the U.S. Air Force, a couple,
12 two weeks ago where I was certified as an expert in DNA in a
13 sexual assault case. The next one for the same branch of the
14 military, also certified as an expert in DNA. That was
15 earlier this year. United States versus Joseph Roger
16 Moultrie, criminal case in which I was certified as an expert
17 in DNA for a case that was held earlier this summer.

18 Q. I'll ask you, I see there is a State of South
19 Carolina versus Darrin D. Garvin. Was that a criminal case?

20 A. Yes.

21 Q. State of South Carolina?

22 A. Correct.

23 Q. And, of course, you were certified in that case?

24 A. Yes. DNA involved in the evidence and I was trying
25 to link it to the alleged.

1 Q. And, of course, that was in the Court of General
2 Sessions in Lexington, South Carolina?

3 A. Correct.

4 Q. And, of course, that was this year?

5 A. Yes, sir.

6 Q. All right. So just to round it up is, is that
7 there's been countless of times in Federal and State Courts
8 that you have been qualified as a certified DNA expert; is
9 that correct?

10 A. Correct. Yes, sir.

11 MR. BROOKER: Your Honor, I would move to enter Dr.
12 Bennett's CV into the record as a Court's Exhibit.

13 MR. HOEFER: I have no objection to the CV being a
14 Court's Exhibit.

15 THE COURT: All right. That's a Court's Exhibit.

16 (Whereupon, Court's Exhibit #6 marked for
17 identification.)

18 MR. BROOKER: We can do it in front of the jury. If
19 not, I would submit Dr. Bennett as an expert in the area
20 of DNA testing and analysis.

21 THE COURT: Mr. Hoefer.

22 MR. HOEFER: Judge, his testimony was is that he
23 draws a sample and sends it off. He doesn't actually do
24 the testing. He says when he gets it back, he does the
25 analysis. I object. I don't think he's established that

1 he's an expert in testing and I don't believe he's
2 established the qualifications that he needs to be an
3 expert in DNA analysis.

4 MR. BROOKER: Just simply for the record, Your
5 Honor, is to make this simple is, is that Dr. Bennett has
6 not been asked to do any testing of DNA. In this case
7 our purpose for calling Dr. Bennett is going to be to
8 analyze the DNA report that the State's DNA expert has
9 prepared. There is no DNA testing in this case by Dr.
10 Bennett.

11 THE COURT: Let me ask because I'm slightly
12 confused. Was Dr. Bennett provided any samples or any of
13 the actual materials that were collected during the
14 course of this case or is he just breaking down the
15 report that SLED provided?

16 MR. BROOKER: He's interpreting SLED's report. We
17 did not ask him to, we're not questioning the validity of
18 the underlying testing, otherwise we would ask him to
19 perform independent testing to verify.

20 THE COURT: No. I understand. Again, let me ask my
21 question because I'm trying to do the same thing I think
22 Mr. Hoefer is, is trying to figure out exactly what
23 you're gonna be asking him to testify to as an expert.
24 The SLED report, and I don't have it in front of me, but
25 the SLED report has these findings. Is he basically

1 gonna be asked to interpret those findings? Like what
2 does it mean if something is 12,500 times more likely
3 than not.

4 MR. BROOKER: That's correct, Your Honor. He's
5 gonna be asked those questions.

6 MR. HOEFER: Well, that's not really an analysis
7 then.

8 THE COURT: It's really not. It's based on his
9 understanding of DNA and that's just interpreting a
10 result. That's an interpretation. Like, in other words,
11 this is what it means when I say something is, like the
12 probability of something is 300 quintillion to one and
13 then explaining what that means.

14 MR. BROOKER: Your Honor, if I'm getting what you're
15 getting at is, is that if Dr. Bennett is qualified as an
16 expert the same as if SLED's expert is, SLED's expert is
17 able to testify to what all of this means.

18 THE COURT: Correct.

19 MR. BROOKER: So I'm assuming is, is that a DNA
20 expert, a person who is, who has been qualified as an
21 expert in DNA testing and also DNA analyzation, is that a
22 part of that analyzation is also interpreting DNA
23 reports. He has done this many times before and that's
24 what we are asking him. So he can do the same thing that
25 SLED's expert has done. And, of course, the SLED expert

1 did do that for them when he got up and testified. He's
2 not asked to do anything beyond what their expert is
3 qualified to do.

4 THE COURT: But that's my point though. And maybe
5 I'm wrong because I have no experience in this, but my
6 understanding is, and Lord knows I'm sitting here today
7 instead of maybe being over in a hospital because
8 medicine involves way too much math and I stay clear of
9 it, but numbers are numbers. In other words, and I'm
10 getting the number wrong, okay? I recall there being
11 some testimony here that this number came up to be
12 something along the lines of 12,500 times more likely or
13 something of that nature. Those, that number is a
14 number, right?

15 MR. BROOKER: It is a number, Your Honor, but, of
16 course, is, is that obviously is that that number is
17 being used to present testimony. For instance, is, is
18 that when I asked that on cross examination, when I cross
19 examined the State's expert, is that he testified to some
20 things that he had not quantified on his report and, of
21 course, is, is that when you ask the jury, for instance,
22 if you ask the jury, let's say for instance the number is
23 12,000 times more likely within a certain population, and
24 I think the SLED expert basically didn't testify to the
25 size of that population. I asked him about the size of

1 that population with respect to the United States. He
2 didn't testify to the size of that population. If you're
3 looking at specifically just Florence, he didn't testify
4 to the size of that population, if you're just simply
5 looking at South Carolina. So is, is that he's gonna be
6 asked to testify to a greater detail to those statistics
7 beyond what the SLED expert testified to because what the
8 jury needs to know is, is that I think the SLED expert
9 testified that, hey, this is a probability. There is a
10 probability that this DNA --

11 THE COURT: Based on the number of people on the
12 planet.

13 MR. BROOKER: Yeah. On the planet. But, of course,
14 is, is that one of the things that that SLED expert
15 did not do in his report, he looked at the number of
16 people on the planet, that size population. He didn't
17 look at the smaller population because we're dealing with
18 Florence County. How does that number equate to the
19 number of people in Florence County? How does that
20 equate? Because that's closer and obviously their
21 argument is, and I think they made this argument I think
22 before the SLED expert is, and I think the SLED expert
23 testified to, is that that number is narrowed down
24 because the whole population is not in Florence County or
25 within proximity of the crime scene.

1 So they said, well, the whole population although
2 you're dealing with the population of the world, but the
3 population of the world is not in Florence County. He's
4 going to equate that number as it relates to the
5 population in Florence County, people who would have been
6 in the vicinity of the crime scene, people who would have
7 been in proximity of the crime scene and, of course, he
8 can also quantify that with respect to the population of
9 South Carolina, people who were geographically close
10 enough to the crime scene where they could potentially
11 could have been a contributor and that's the information
12 not was provided by the SLED expert in which he's gonna
13 be asked to quantify. So it's not gonna be a situation
14 where he's gonna get up here and just read the report.

15 THE COURT: I didn't think it was that.

16 MR. BROOKER: And he is qualified to do that just
17 like the SLED expert was qualified to quantify, make
18 statistical quantifications, probability quantifications
19 based upon the population of the world. If he wants to
20 challenge on cross examination his ability to be able to
21 do that, that goes to the weight. But, of course, is, is
22 that from his CV he's been qualified in Federal and State
23 courts. He's been qualified in military courts not just
24 in some remote period of time but also this year to
25 testify as a DNA expert and also as an analyst and so it

1 is, is that, and quite frankly I think his testimony that
2 he gave with respect to his CV, with respect to his
3 qualifications has been much more extensive than the
4 qualifications that was testified to by the SLED expert
5 who got on the stand and testified.

6 THE COURT: All right.

7 MR. HOEFER: The problem is he hasn't offered him as
8 an expert in statistics or probabilities. He's offered
9 him as an expert in DNA analysis and the population, I
10 was asking him about the fact that it didn't really exist
11 when we were in school. Back then nobody knew anything
12 about it and then, you know, it grew real quickly and
13 it's an accepted, it is an accepted mathematical
14 determination and the standard is the population, the
15 universal population of the United States.

16 THE COURT: I'm gonna hear from you. Calm down.

17 MR. BROOKER: Okay.

18 MR. HOEFER: The use of a smaller population,
19 obviously you can change everything statistically by
20 either decreasing the size of the population or
21 increasing the size of the population. That works. But
22 the fact is these calculations are based on this size of
23 population. I don't believe that this witness has
24 prepared any charts to say given these alleles, the loci
25 on this result, if we reduce the population, we would get

1 a different result. He couldn't because he doesn't have
2 it. He's already testified he didn't get any of that
3 stuff. He is simply going to look at this and I guess
4 testify that if I reduce the population, it changes. If
5 he's testifying as a mathematician on statistics and
6 probability, then that's where he probably should be
7 offered as an expert in, not necessarily DNA because what
8 that would be saying is it has nothing to do with the DNA
9 itself, it has everything to do with the size of the
10 population which is strictly a mathematical
11 computation.

12 MR. BROOKER: If I could say very briefly, Your
13 Honor, is, is that I think SLED's expert also did not
14 testify, you know, that he had advanced degrees in
15 mathematics and statistics. And I think Mr. Hoefer asked
16 him a question as to whether or not he has any education
17 in statistics and math that would allow him to make
18 quantifications, make these calculations and, of course,
19 these quantifications I think he told Mr. Hoefer that,
20 yes, he did. Now, if Mr. Hoefer wants to ask him that
21 question again, I think he can clarify on the record that
22 he does.

23 THE COURT: All right.

24 MR. HOEFER: He did say that he took the statistics
25 course but I did, too. I'm certainly not an expert in

1 statistics.

2 MR. BROOKER: You may not be but he is.

3 THE COURT: All right. I'm gonna overrule the
4 objection. I'm gonna allow Dr. Bennett to testify to his
5 analysis of the report.

6 MR. BROOKER: Thank you, Your Honor.

7 THE COURT: Mr. Brooker, I know you've got three
8 folks listed here. Do you have a witness that would be
9 short?

10 MR. BROOKER: Mr. Slovenski is not gonna be that
11 long, Your Honor. I'm hoping that we can get him in.
12 He's got like a five hour drive that's past Greenville.

13 THE COURT: Okay. And I won't be the one that will
14 hold Mr. Slovenski. Trust me.

15 MR. BROOKER: I think I know what you're getting at,
16 Your Honor.

17 THE COURT: Yeah. And so then the jury's meal will
18 be here in about 20 minutes. Is that reasonable to think
19 you might get this witness in in 20 minutes?

20 MR. BROOKER: I think it's reasonable.

21 THE COURT: Well, all right. Dr. Bennett, thank you
22 very much, sir. You may step down. Obviously you may
23 remain in the courtroom, if you like. Is there anything
24 else we need to take up before we bring the jury back in?

25 MR. BROOKER: Nothing that I'm aware of, Your

1 Honor.

2 MR. CLEMENTS: Nothing from the State, Your Honor.

3 THE COURT: All right. Let's bring them in.

4 MR. BROOKER: Your Honor, we have begun our
5 qualifications for expert or did we need to do it again?

6 THE COURT: It's sufficient for the record.

7 MR. CLEMENTS: There an impeachment issue, Your
8 Honor.

9 THE COURT: All right. You can go through his
10 qualifications again.

11 MR. HOEFER: I plan on going into it as impeachment,
12 Your Honor.

13 THE COURT: Yeah. All right.

14 MR. BROOKER: We're ready, Your Honor.

15 THE COURT: Bring them in.

16 (Whereupon, the jury entered the courtroom at 1:00
17 p.m.)

18 THE COURT: All right. Ladies and gentlemen, if you
19 recall, when we broke, Mr. Clements was gonna review the
20 evidence in the record and then at that point we would
21 make a determination as to the State's case. So, Mr.
22 Clements.

23 MR. CLEMENTS: At this time, Your Honor, the State
24 rests.

25 THE COURT: All right. The State has rested their

1 case which at that point I've been taking up matters of
2 law that is necessary at the close of the State's case,
3 and that's in every case that's tried here. At the close
4 of the State's evidence the Court always has to take up
5 matters of law before we proceed. We've done that.
6 We've taken those up and your lunch is on the way. It
7 will be here shortly. And Mr. Brooker, we would
8 recognize on behalf of the defense for his first
9 witness.

10 MR. BROOKER: Thank you, Your Honor. Your Honor, we
11 would call Thomas J. Slovenski.

12 THE COURT: All right. Mr. Slovenski, if you would
13 please come around, sir, to be sworn.

14 Thereupon,

15 THOMAS J. SLOVENSKI
16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please be seated on the witness stand
18 and state your full name for the record.

19 THE WITNESS: Thomas J. Slovenski.

20 DIRECT EXAMINATION

21 BY MR. BROOKER:

22 Q. Mr. Slovenski, who do you work for?

23 A. I own my own company, Cellular Forensics, LLC out of
24 Greenville County, South Carolina.

25 Q. What is your title?

1 A. My title is, I am a cellular forensic examiner,
2 analyst, author, instructor and consultant.

3 Q. Of course, is, is that one of your -- What is your
4 educational qualifications?

5 A. My educational qualifications are as follows: I
6 have a bachelor of arts degree from Bob Johns University. In
7 2007 I was certified by Dr., Professor Rick Mislin of Purdue
8 University. I pursued mobile forensics, cell phone forensics
9 on my own out of my own pocket and at that time in 2007 there
10 was nobody teaching it except this one person so I pursued to
11 Indiana where I was certified after receiving his training, I
12 then proceeded in 2009 to be established and certified as a
13 cell tower analyst, cell tower records analyst by Cellular
14 Data Resources, Mr. Brent Bailey, was certified in 2011. In
15 2016 - correction. In 2017 I attended 80 hours of in class
16 training with the ZetX Corporation, then afterwards pursued my
17 subject matter, expert certification with them in cell tower
18 record analysis and geolocation analysis and every year --

19 MR. CLEMENTS: Your Honor, we would agree to submit
20 Mr. Slovenski as an expert in the field.

21 THE COURT: All right. If there's no objection to
22 Mr. Slovenski being qualified as an expert, I certainly
23 find that he is qualified in that field. You may
24 proceed.

25 MR. BROOKER: Thank you, Your Honor.

1 BY MR. BROOKER:

2 Q. Mr. Slovenski, is that I think you testified that
3 you are a certified cell phone records analyst?

4 A. Yes, sir. I am.

5 Q. And, of course, is, is that when you talk about a
6 certified cell phone analyst, what are you doing as a
7 certified cell phone analyst?

8 A. Okay. The first thing is that when we are given a
9 case, we ask for the official from the provider call detail
10 records also known as CDR's, after which we take those CDR's
11 and we perform an analysis of them, examine them first of all
12 for authenticity and no manipulation making sure that they did
13 indeed come from the original provider, then take those
14 records, analyze them, map them and then present them to the
15 client with our analysis.

16 Q. Okay. And, of course, in this particular situation
17 --

18 MR. BROOKER: If you can indulge me, Your Honor.

19 BY MR. BROOKER:

20 Q. Let me show you what's marked as State's Exhibit 10.
21 I hand you what's been identified as State's Exhibit 10
22 (proffering.)

23 A. Yes, sir.

24 Q. Do you recognize what's been identified as State's
25 Exhibit 10?

1 A. Yes. These are what appear to be official certified
2 records from the Sprint Corporation.

3 Q. Of course, were you presented those records for
4 analyzation?

5 A. I was provided with the call detail records.
6 Prosecution did not forward to us any type of registration as
7 to who the actual owner of the number was so they also gave us
8 the tower location but those were the only two things that we
9 had, sir.

10 Q. And I was gonna ask you that next. I have what's
11 been identified as State's Exhibit number 9. If you could
12 take a look at that and, of course, tell the jury what that
13 is?

14 A. Sure. Okay. Just right off the bat the very first
15 part, this is the cell site locations that are listed --

16 Q. If you want me to, I can put that on the screen, if
17 that would make it easier --

18 A. Sure. That would be great.

19 Q. -- so you can explain it to the jury. Can you see
20 that?

21 A. Yes, sir. I can.

22 Q. Go ahead with your explanation.

23 A. This is again provided by the Sprint Corporation and
24 deals with the cell site locations for a specific what's
25 called an NEID. If you think of an NEID as like a zip code.

1 It's a grouping of cell towers. What you will see is that if
2 you look on the left hand column you have cell 1, 2, 3, 4.
3 Okay. You see all that there. When we take the call detail
4 records, it will not tell us exactly the longitude and
5 latitude of that tower just off of that record. We have to
6 cross reference it with these records here. So if it said
7 that a call came off of, and I'm just gonna make something up,
8 cell 1, then we have to go over here and correlate, okay, the
9 latitude and longitude is here and that's what we use to map
10 it and then from there we can see the sector and the azimuth
11 and then it also says that the status of it was active at that
12 time.

13 Q. Okay. And, of course, is, is that with State's
14 Exhibit 9 which is the cell site location records, of course,
15 I think State's Exhibit 10 which is the cell detail call
16 records, is that the information that you need in order to do
17 your mapping?

18 A. Yes, sir. It is.

19 Q. Okay. And you had access to both State's Exhibit 9
20 and also State's Exhibit 10 for purposes of doing your
21 analysis; is that correct?

22 A. Yes, sir. It is.

23 Q. Okay. And, of course, is, is that I believe I have,
24 I am looking at what's been identified as State's Exhibit
25 number 14. Excuse me. State's Exhibit 17, I think this is B.

1 Of course, I'm gonna put this on the screen for you and I'm
2 gonna ask you whether or not you have had an opportunity to
3 see these records, to see these, I guess, mapping results
4 before? This is State's Exhibit B. Have you had an
5 opportunity to review that mapping, that map?

6 A. Yes, sir.

7 Q. Okay. And, of course, is, is that State's Exhibit
8 C, have you had an opportunity to see that map before today?

9 A. Yes, sir.

10 Q. 17D?

11 A. Yes, sir.

12 Q. Did you see that map before?

13 A. I'm sorry. Yes, sir.

14 Q. 17E, have you seen that map before?

15 A. Yes, sir.

16 Q. 17F, have you seen that map before?

17 A. Yes, sir.

18 Q. 17G, did you see that map before?

19 A. Yes, sir.

20 Q. 17H, did you see that map before?

21 A. Yes, sir.

22 Q. 17I, did you see that map before?

23 A. Yes, sir.

24 Q. 17J, did you see that map before today?

25 A. Yes, sir.

1 Q. 17K, did you see that map before?

2 A. Yes, sir.

3 Q. 17L, did you see that map before?

4 A. Yes, sir.

5 Q. 17M, did you see that map before?

6 A. Yes, sir.

7 Q. 17N, did you see that map before?

8 A. Yes, sir.

9 Q. And 17O, did you see that map before?

10 A. Yes, sir.

11 Q. Okay. And, of course, is, is that when you get
12 these maps, these maps that I have just showed to you, did you
13 have a chance to analyze these maps?

14 A. Yes, sir.

15 Q. And, of course, is, is that before I ask you any
16 specific questions in reference to these maps, is that these
17 maps, are these maps generated as a result of the cell phone
18 tower location information and, of course, the cell detail
19 records that we present, that we just, I think I just showed
20 you State's Exhibit 9 and State's Exhibit 10?

21 A. The map itself is not generated by the Sprint
22 Corporation. Those that you showed me just now in succession
23 were maps that were made by the SLED agent identified as, I
24 believe, I'm trying to find his name real quick, I think it
25 was Lieutenant Johnson, sir.

1 Q. Okay. And, of course, just a quick question for
2 purposes of the jury is, is that is there - probably -- Let me
3 ask you, what's the distinction between cell site location
4 information and GPS information? What's the difference
5 between the two?

6 A. GPS location is more exacting. Think of the
7 military. If there was a particular enemy that had weapons
8 stored, then they would know exactly pinpoint where to drop
9 the armament to destroy it. In the analyzation of call detail
10 records, and every one of our phones gives these up no matter
11 who the provider is, we are able to provide an estimated area
12 of where a particular device was being used at the time of the
13 entry whether it's a text, voice call, or data, so GPS is very
14 concise. Call detail records is estimated.

15 Q. Okay. And so what we're dealing with in State's
16 Exhibit 9 and also State's Exhibit 10, those records that I
17 previously showed you, is that GPS? Does that have anything
18 to do with GPS?

19 A. It does on the part of the tower. When it gives
20 longitude and latitude of the tower, that's where the tower is
21 at and then it's up to the examiner to take the rest of the
22 data that was provided in those call detail records and then
23 provide an estimated shaded area to show the Court where the
24 device was being utilized at the time.

25 Q. Okay. Now, what's been identified as, I think,

1 State's Exhibit B and O, those records that I just showed you,
2 were these maps generated as a result of cell site location
3 information to your knowledge?

4 A. To my knowledge, and I'm familiar with SLED's work,
5 that is a depiction of that examiner's analysis.

6 Q. Okay. And, of course, is, is that if you look at
7 what's been identified on the screen as State's Exhibit B and,
8 of course, is if you can interpret this for the jury, do you
9 know where the cell phone tower is in State's Exhibit B?

10 A. Yes, sir. It would be right here. Is there a way I
11 can draw on this?

12 Q. I think there is.

13 A. If I circle it or something? Oh, there we go.
14 Fantastic. Okay. Where you see that pinpoint and the number
15 40699, that would be where whatever software they use planted
16 that pinpoint as that's where the tower is at.

17 Q. Okay. And then, of course, is, also is that if you
18 could see at least on this graph is, is that they have this
19 kind of pie cone that's shaded in green.

20 A. Yes.

21 Q. How is that generated?

22 A. Because I wasn't able to sit in on SLED's testimony,
23 therefore, I don't know specifically what they used, but I can
24 comment on this because I believe I was very possibly doing
25 tower work before they were because of how tower work is

1 progressed through all these years in its infancy up to now.
2 What you're seeing right there, and I call that a pie method.
3 When I teach classes to attorneys and judges and police
4 officers, I designate this to show the difference between what
5 I do and what is being done here. This is the pie method.
6 It's and antiquated, no offense to SLED, but it's an
7 antiquated methodology that was established years ago when all
8 we had were Microsoft streets and trips, Excel, and a digital
9 protractor and so that's why you get these straight lines is
10 because the way that they're trying to portray this is that
11 from that tower there is a median point called the azimuth and
12 then because most sectors are 120 degrees they say which that
13 can vary, then to stay on the side of safety they will go 60
14 degrees one way, 60 the other, and then they will just draw
15 straight lines. Now, back in 2009 when I started into tower
16 work, that was the only thing we knew how to do, however, I
17 can say unequivocally and with first hand knowledge that the
18 FBI is getting away from this now.

19 Q. Are you saying the FBI does not use this method
20 anymore?

21 A. Some of their divisions like their cast division
22 will still use this, however, because I'm very tied in with
23 cell towers and cell tower forensics and the companies that
24 make the software, that I can tell you just like right now
25 there was a very large burglary, armed robbery case with

1 multiple suspects out in Los Angeles and the company that
2 makes the software I use ZetX was called in and the FBI is now
3 looking at that and going, whoa, okay. So the Los Angeles FBI
4 office has already switched over. DEA is using the same
5 software. Secret Service, 42 offices just signed on.
6 Homeland Security. FBI, like I said that one portion.
7 Although if you're familiar with Federal entities it takes a
8 while for things to kind of go through, but most of the
9 Federal law enforcement agencies are now using a totally
10 different methodology than this right now.

11 Q. And why are they using a totally different
12 methodology than this right now? Is there something wrong
13 with this methodology compared to what's being used right
14 now?

15 A. The thing about this old methodology is you notice
16 that it has like these exacting lines. Radio frequencies from
17 a cell tower don't just cut off on a street necessarily. If
18 you remember back in your old biology days when there was the
19 amoeba that you were looking at through that micron
20 microscope, okay, and you noticed how it would kind of go in
21 and go out, go in, go out, that's the best way I can describe
22 how radio frequencies work and so this here is just like a
23 very general overlay, but it's one that's been used so long
24 and quite frankly in South Carolina where I'm in a number of
25 cases this is what's been presented and, therefore, everybody

1 just kind of went with it, and I'm here to tell you that
2 there's newer things out there like the things that I use that
3 are going to show you exactly how radio frequencies operates.

4 Also you will notice that it comes around in a pie
5 top. What can happen is that the Court can misconstrue that
6 as being that's where it stops. No. Radio frequencies,
7 there's two things that affect them. Always keep this in
8 mind. Attenuation and frequency reuse. Attenuation is
9 anything in the way, okay? Anything could be in the way. You
10 could have buildings. How about if you had, this was Columbia
11 and you had a big South Carolina game, whoa, all those people
12 there, yes, they absorb radio frequencies so then there would
13 have to be adjustments. Buildings, cars, water, land,
14 mountains, topography, geography. Weather affects the radio
15 frequency. Frequency reuse. This does not show any overlays.

16 What happens is, towers work in conjunction with
17 each other. You're going down the road, you don't hear it,
18 it's like a micro second. You're going from one tower to the
19 other as you're progressing through, okay? Well, frequency
20 reuse is this, every provider only has so much bandwidth.
21 You've heard now about the 5G thing going on. Okay. Well,
22 there's a fight also, Sprint and T-Mobile trying to get
23 together. Why? There's bandwidth there. It's like gold,
24 okay? And the thing is about frequency reuse is that say on
25 this side of town, I'm just gonna make up one, they're using

1 2.4.1 gigahertz, okay? Well, the fact is you can't keep using
2 that on every tower because then you would knock each other
3 out. 2.4.1, 2.4.1. So what happens is you will have a
4 spectrum that's on some particular towers, but if you go up
5 further, there has to be -- Now, I'm sorry, you're using the
6 spectrum here, but then you have to put a space in between
7 where those towers are to the next set of towers that you
8 assign 2.4.1 gigahertz to, all right?

9 But now what happens is this all plays together in
10 that when, if you see something like this, sometimes it's
11 explained, well, that coverage area, you know, how far does a
12 cell tower broadcast? Well, it depends. It depends on the
13 area. It depends on the other towers. It depends on
14 attenuation. What's in the way. We've got one tower in
15 Montana that goes 40 miles, but you can see it 40 miles away.
16 In Florence the nearest tower to you or the tower that you're
17 using may be anywhere from a quarter to a half mile away.
18 Just today I learned in listening to a broadcast in Columbia
19 alone there's over 140 towers so they're very prolific and you
20 will see them, sometimes you don't because they may be just a
21 little antenna on the side of a building.

22 But what happens here getting back to this overlay
23 is that it seems to kind of bring in a more concise type area
24 that can misconstrue because it's not a true template of how
25 cell towers work. It's great if it meets your thesis if

1 you're trying to say a person is at a certain place and, oh,
2 look here, it covers it. Well, as you can see as we go
3 through my report, which I think you will, the area is much
4 broader.

5 Q. So what you're saying is, is that this pie cone,
6 this pie shape and, of course, is, is that the pie topping, if
7 my understanding is correct, that may not actually represent
8 how far that cell signal extends?

9 A. Correct. Because it does not take into account the
10 other surrounding accompanying cell towers that work on that
11 network because you're not gonna have one side of that tower
12 go five miles over into another tower when you got that one
13 covering it. Does that make sense?

14 Q. That makes sense.

15 A. Okay.

16 Q. Now, what I'm gonna do to speed this up just a
17 little bit is, is that did you take the analytical mappings,
18 the mappings that were prepared by SLED, the one that we just
19 discussed, 17B through 170, did you take those maps and then,
20 of course, using the same information generated maps using
21 this newer method that you told the jury about?

22 A. Yes, sir. I did.

23 Q. Okay. Of course, is, is that I want you to take a
24 look at this and tell me whether or not this is the report
25 which you generated now as a result (proffering)?

1 A. Yes. It is.

2 MR. BROOKER: Your Honor, I would seek to move this
3 into evidence as a defense exhibit.

4 MR. CLEMENTS: No objection.

5 THE COURT: Without objection.

6 MR. CLEMENTS: Well, let me see it and make sure
7 it's exactly what I think it is.

8 MR. BROOKER: Sure (proffering.)

9 MR. CLEMENTS: No objection.

10 (Whereupon, Defendant's Exhibit #2 marked for
11 identification and entered.)

12 THE COURT: Come on up.

13 (Side bar off the record.)

14 THE COURT: Ladies and gentlemen, I apologize. I
15 think this is a good breaking point. Mr. Brooker is
16 getting ready to go into Mr. Slovenski's report, but I
17 have been informed that your lunch is here and we're
18 gonna need to take a break at this time. Now, one of the
19 reasons I brought in lunch for you is because I just felt
20 like you deserved for the county to treat you to lunch
21 one day. The other is it's faster than because if I send
22 you out to lunch, I need to give you an hour and a half
23 for time to get to your car, drive, get back, drive, and
24 all that. This is way it's much faster so we won't take
25 an hour and a half for lunch today, but I do want you to

1 go back and enjoy your lunch and then when you're ready,
2 everybody is finished with their lunch and you're ready
3 to start back, you let me know. Same instructions as
4 always. No conversation about the case. Enjoy your
5 lunch. We'll start back whenever you're done.

6 (Whereupon, the jury entered the jury room for lunch
7 break at 1:30 p.m.)

8 THE COURT: All right. I apologize. I didn't know
9 it would take this long. I don't know how long they're
10 gonna take so, folks, don't go terribly far. Try to get
11 back in and as soon as they tell me they're ready, I'll
12 get with y'all and we'll get started back.

13 MR. BROOKER: Thank you, Your Honor.

14 THE COURT: All right. And, Mr. Slovenski, you
15 obviously can take a lunch break, just don't have any
16 conversation with anyone about your testimony, no one.

17 (Lunch break.)

18 THE COURT: Bring the jury in.

19 (Whereupon, the jury entered the courtroom at 2:35
20 p.m.)

21 THE COURT: All right. Ladies and gentlemen, if you
22 recall, Mr. Brooker was on his direct examination of Mr.
23 Slovenski so we'll recognize you, Mr. Brooker, to pick up
24 where you left off.

25 MR. BROOKER: Thank you.

1 BY MR. BROOKER:

2 Q. Mr. Slovenski, I think where we last left off is, is
3 that we had just entered into evidence the report that you
4 generated; is that correct?

5 A. Yes, sir.

6 Q. Of course, at this particular time I'm gonna go over
7 that report with you and, of course, is, is that I'm gonna at
8 least present the first page of that report so that you can
9 identify that. Is this the first page of the report that you
10 generated?

11 A. Yes, sir. It is.

12 Q. Okay. And then, of course, is, is that you
13 generated that report I think based on this page is dated June
14 17th, 2019; is that correct?

15 A. Yes, sir.

16 Q. And, of course, what number is this report? What, I
17 guess, cell number is this report analyzing the records for?

18 A. It's cell number 843-468-6516.

19 Q. Okay. And, of course, is, is that there's a second
20 page of that report. It says -- I'll ask you to read that.

21 A. This is the color code that I used to distinguish
22 SLED's results versus my results. All shaded areas in green
23 are from and of the SLED reports, their maps, their results,
24 and all the shaded areas in red are ones produced by myself
25 feature Cellular Forensics, LLC, my maps, my results.

1 Q. Okay. So SLED, the maps already in evidence that
2 was generated by SLED, those are in green and then, of course,
3 the maps that you generated are gonna be in red?

4 A. Correct.

5 Q. Okay. Now, just for identification purposes, this
6 is the first map that SLED generated; is that correct?

7 A. Yes, sir.

8 Q. And, of course, is, is that what date is that map?

9 A. It is showing a map of a transaction January 22nd,
10 2016 at 20:16:43 hours eastern standard time.

11 Q. And that time that is located, does that time
12 represent a cell detail call?

13 A. Yes, sir. It does.

14 MR. CLEMENTS: Your Honor, may I ask what exhibit
15 number it is? I can't see it on the screen.

16 MR. BROOKER: I apologize. I apologize.

17 BY MR. BROOKER:

18 Q. Okay. What's on the screen, of course, is, is that

19 --

20 MR. BROOKER: If you can indulge me for just a
21 second, Your Honor. I'm just trying to make sure that
22 we're all on the same page and I think we are.

23 BY MR. BROOKER:

24 Q. What's on the screen, of course, this is your
25 report and, of course, this is your report as it relates to

1 SLED's exhibit, I think, 14D. This is a map of SLED's exhibit
2 14D. And, of course, I'll show the SLED's exhibit first, the
3 one that at least has the exhibit marking on it.

4 MR. CLEMENTS: I think it's 17D, Your Honor.

5 MR. BROOKER: Yes. 17D.

6 THE COURT: 17D.

7 BY MR. BROOKER:

8 Q. 17D. Of course, this is the SLED's - this is what's
9 already in the records by the SLED analyst of 17D. Of course,
10 on your report is, is that this is your report looking at
11 SLED's 17D; is that correct?

12 A. That's what it appears.

13 Q. Okay. And then, of course, is, is that on this one
14 I think the date is January 23rd, 2016?

15 A. January 22nd, 2016.

16 Q. I'm sorry. January 22nd, 2016?

17 A. Correct.

18 Q. And you have already established that this date
19 represents a call transaction on the cell detail records from
20 the cell detail records that's already in evidence as State's
21 Exhibit 10; is that correct?

22 A. Correct.

23 Q. All right. And, of course, is, is that I think you
24 have already testified, and I don't want to go back over this,
25 you have already testified at least a little bit about the

1 problems with respect to the methodology that's used by SLED
2 before we broke for lunch.

3 A. Correct.

4 Q. And, of course, is, is that, let me ask you just one
5 more question in reference about that. I know that just in
6 case the jury doesn't remember, I know that you testified that
7 this methodology that's used to recreate this green kind of
8 pie, that that methodology is the old methodology?

9 A. Yes, sir.

10 Q. And that it's less accurate?

11 A. Yes, sir.

12 Q. And, of course, is, is that my understanding is, is
13 that, I guess, the top of the pie which is the circle here,
14 does that circle represent the actual range of that antenna?

15 A. No, sir.

16 Q. Okay. So the range of that antenna can extend out
17 beyond that?

18 A. Possibly, but not very -- Well, if we go to the next
19 slide, you will see that, yes, it can extend, but to how far
20 we would have to show the slide. It doesn't go ad nauseam out
21 forever and ever for 15 miles.

22 Q. So and, of course, is, is that so we're gonna go to
23 the next report and, of course, is, is that that was SLED's
24 map generated as a result of that cell call transaction and is
25 this the report that you generated as a result of that cell

1 call transaction?

2 A. Yes, sir.

3 Q. And, of course, is, is that cell phone transaction
4 is the same number, I think, January 22, 2016 at 20:16:42; is
5 that correct?

6 A. Yes. It's off by one second and that is because of
7 Microsoft.

8 Q. Okay. That's because of Microsoft.

9 MR. CLEMENTS: Your Honor, I think if he's moving
10 this into evidence, we don't have any objection, but it
11 hasn't been marked. I think the item needs to be
12 marked.

13 MR. BROOKER: You want to mark them individually? I
14 think he marked the whole thing. We can have them marked
15 individually, Your Honor. I think that's what he's
16 talking about, each page of the report.

17 MR. CLEMENTS: Otherwise we've got pages and the
18 record doesn't show what we're talking about.

19 MR. BROOKER: I guess to make it easier to follow.

20 THE COURT: Yeah. I mean, if you're gonna -- The
21 same as when the State first put their items into
22 evidence, these items which are being published to the
23 jury, they've got to be moved into evidence before you
24 can do that.

25 MR. BROOKER: I'm sorry, Your Honor. I thought we

1 did. Your Honor, we would move to enter this into
2 evidence as Defendant's Exhibit 2.

3 MR. CLEMENTS: No objection, Your Honor. But I
4 suggest they be 2A through however many.

5 THE COURT: Do you know how many of those you have?

6 MR. BROOKER: I think there's a total of 17 pages.
7 If he wants to mark each individual page, it might be
8 easier for identification purposes.

9 THE COURT: Yeah.

10 MR. BROOKER: We'll do that.

11 THE COURT: So that will be defense, what number are
12 you using?

13 MR. BROOKER: 2. And, of course, I guess it's gonna
14 be A through Q.

15 THE COURT: A through Q. 17 pages you said? I'm
16 just talking about the charts though. Is that full?
17 It's just made up of charts?

18 MR. BROOKER: Yeah.

19 THE COURT: All right. So that would be Defense 2A
20 through 2Q.

21 (Whereupon, Defendant's Exhibit 2A through 2Y marked
22 for identification and entered.)

23 BY MR. BROOKER:

24 Q. I think we were last talking about, I think this is
25 the SLED exhibit for, this is SLED's mapping that we

1 previously talked about; is that correct?

2 A. Yes, sir.

3 Q. That's for the cell call transaction for January 27,
4 2016 at 20:16:43; is that correct?

5 A. Correct.

6 Q. Of course, you've also testified about the
7 methodology that SLED used to generate that mapping; is that
8 correct?

9 A. Correct.

10 Q. And, of course, is, is that using that same cell
11 number is that you also generate a mapping using a different
12 methodology; is that correct?

13 A. Yes.

14 Q. And, of course, I'm gonna put up what's been
15 identified as State's Exhibit 2C. Okay. Is that the mapping
16 that you generated using that same cell call transaction?

17 A. Yes.

18 Q. Now, how is it different? Or can you explain to the
19 jury how different is this mapping from the mapping that was
20 used by SLED for that same cell call transaction?

21 A. The one generated by SLED tends to be narrow in
22 scope and does not take into account the other nearby cell
23 towers that are also providing service in that area on the
24 Sprint network.

25 Q. And I noticed is, is that at least the mapping that

1 you created is not of the pie shape as the one that was
2 created by SLED?

3 A. Correct.

4 Q. And, of course, is, is that I think the map that you
5 created, I think there is at least a little indicator on that
6 map?

7 A. Yes.

8 Q. What is that indicator?

9 A. That is the actual cell tower location.

10 Q. Now, of course, is, is that with respect to the
11 range, how different is the range used or the methodology that
12 you generated on this mapping than from the previous mapping
13 by SLED?

14 A. Well, you will notice that this template that I use,
15 it is drawn from the actual tower manufacturers. If you were
16 to look up the patents on tower manufacturers, this is how
17 they show they broadcast the radio frequencies from their
18 antennas, hence, that's where that template came from. It's
19 not something that I invented.

20 Q. So the range of your mapping, is it greater than the
21 range that was on the previous mapping that was showed by
22 SLED?

23 A. Yes. It is.

24 Q. Okay. Okay. Now, also with respect to the mapping
25 that you generated, I know that you testified is, is that with

1 the map that was generated, previous map that we looked at
2 that was generated by SLED for that cell call transaction,
3 that that is not absolutely accurate. Could you explain? Is
4 yours more accurate than the one that was generated by SLED?

5 A. Yes. Mine is more accurate because it actually
6 utilizes not only the manufacturer's specifications and
7 templates, but it also takes into account a huge database of
8 antenna information that we have from that area.

9 Q. Now, although the mapping that you generated is more
10 accurate than the map that was generated by SLED just for
11 purposes of the jury is, is that, is your map absolutely
12 accurate? Does your map, even though your map has greater,
13 has a newer methodology, but is that map absolutely accurate
14 or is there room for error in that map?

15 A. When you say "error", what do you mean?

16 Q. That means is there a possibility that the range
17 could be slightly beyond at least the red graphic area that
18 you have illustrated?

19 A. Yes.

20 Q. Okay. All right. And so it's not absolutely
21 accurate but, of course, is, is that it's much more accurate
22 than the map that was generated by SLED?

23 A. Correct. What we have here is an estimation. Now,
24 if SLED would have gone out there and done actual drive by
25 testing, then you would have a more accurate presentation.

1 Q. Okay. And, of course, is, is that drive by mapping,
2 what makes drive by mapping more accurate? How can that make
3 it more accurate?

4 A. What you're doing is you're taking a piece of
5 equipment that is used by the cell phone companies and is also
6 available to law enforcement practically anywhere in the U.S.
7 and when an incident occurs, if they did due process, if they
8 did their due diligence, someone should have gone out there
9 and immediately mapped that tower after they had already found
10 out what towers were utilized by that device. What will
11 happen then is you will see the hand-offs, you will see the
12 range, you will see how far as you're driving around it that
13 the tower is actually broadcasting to the point that where it
14 then hands off to another tower.

15 Q. Okay. So you could accurately then, if they had
16 went and physically go out there, that they would have been
17 more accurately able to determine what the range and the scope
18 of the coverage area of that antenna?

19 A. That is correct.

20 Q. I understand now. And I'm gonna ask you about this
21 with respect to, I'll go onto the next one. I'll go through
22 these relatively quickly. I think the next map that SLED
23 generated is, is that this map and, of course, is, is that I
24 think at least on the exhibit that was presented by SLED it's
25 exhibit 17E and, of course, is, is that on our report it's 2D.

1 Now, I'm assuming is, is that this is the map they generated
2 and, of course, it was for cell call transaction number dated
3 January 22, 2016 at 2:38:08; is that correct?

4 A. Actually 20:38:08.

5 Q. I'm sorry. 20:38:08; is that correct?

6 A. That is correct, sir.

7 Q. Now, is, is that I note that that call, when you
8 looked it up, that call is identified in your report as a
9 routed call?

10 A. That is correct.

11 Q. Does that make a difference? Can you map a routed
12 call?

13 A. You can but it will be inaccurate.

14 Q. Why would it be inaccurate?

15 A. Because Sprint specifically states that routed calls
16 are not to be taken as accurate due to the routing fashion.
17 Also, we have found, we being myself and those that I trained
18 with as well as my instructors have instructed us that routed
19 calls are inaccurate because of how Sprint handles those
20 specific types of calls, hence, when I map call detail
21 records, if there is a routed call, I don't map it. Why map
22 something that's going to bring questions as to its
23 accuracy.

24 Q. Okay. So you don't normally map a routed call
25 because there is inaccuracy with respect to mapping routed

1 calls?

2 A. Yes. Numerous times we have found where routed
3 calls from Sprint could be miles away than what they may show
4 and that goes back to the switches and to the other areas so
5 as a rule in the community that I'm in we do not route Sprint,
6 we do not map Sprint routed calls.

7 Q. So what you're saying is, is that this call detail
8 transaction, that potentially that call detail transaction
9 that the cell phone could have been many, many miles away
10 outside of at least this mapping area because it was a routed
11 call?

12 A. Right. Correct.

13 Q. Okay. And so and, of course, when the SLED map
14 basically depicts that this call may have been within that
15 particular region is, is that that is highly inaccurate. You
16 can't conclude that?

17 A. You can't conclude that.

18 MR. CLEMENTS: Your Honor, I object to leading.

19 THE COURT: Sustained.

20 MR. BROOKER: Sustained. All right.

21 BY MR. BROOKER:

22 Q. Next up in the report is 2E and, of course, is, is
23 that and I notice is that, did you do a mapping for this
24 routed call?

25 A. No, sir. Because of their inaccuracies and also

1 because of what Sprint says, we did not pursue that particular
2 call.

3 Q. So you didn't even do a mapping for it?

4 A. No, sir. No need to.

5 Q. Of course, the next one is, is that Defendant's
6 Exhibit 2E. And, of course, is, is that these are mappings
7 for these four cell call transactions; is that correct?

8 A. That is correct.

9 Q. Did you do a mapping using the new methodology for
10 these same cell call transactions?

11 A. Yes, sir. I did.

12 Q. This is the one from SLED. Okay. All right. Now,
13 this is your cell mapping; is that correct?

14 A. That is correct.

15 Q. And again, is, is that, it's quite different; is
16 that correct?

17 A. That is correct.

18 Q. Why is it different?

19 A. Well, if you - I don't know if you are able to but
20 if you could put them side by side or if the - if I may I
21 could draw using this screen --

22 Q. Sure.

23 A. -- as to from the one that you showed me just
24 previously, the SLED one, now compared to this one, and please
25 tell me if it comes out. In fact --

1 Q. The angle is off.

2 A. Yeah. The angle is probably a little bit wrong, but
3 what we're doing is we're just basically showing you a pie
4 transposed over there. In fact, let's do this. Let's just do
5 it all over again. This is an estimation. Okay. But theirs,
6 SLED's doesn't go out as far as mine end and you will notice
7 that here there is a lot of area here compared to the SLED
8 that's not covered by them and then you have the side lobes
9 and then you have the rear lobes down here and, yes, a cell
10 phone can transmit or receive reception from a cell tower
11 behind it.

12 Q. From behind it as well?

13 A. Yes, sir.

14 Q. Okay. I'm going to the next one on your report.
15 The next page is 2G and, of course, is, is that on 2G that is
16 for cell transaction number, January 28th, 2016, 22:03:39; is
17 that correct?

18 A. No. It's actually January 22nd, 2016.

19 Q. I apologize. I have dyslexia I think sometimes.

20 A. That's okay. 22:03:29.

21 Q. Okay. And, of course, is, is that a routed call?

22 A. Yes, sir. It is.

23 Q. And, of course, and I want to ask you to talk about
24 routed calls. Did you do a mapping for that call?

25 A. No, sir.

1 Q. And, of course, was it for the same reason that you
2 explained before?

3 A. Yes, sir.

4 Q. Okay. 2H. Okay. And that's for transaction number
5 -- and I'll get the date right this time -- January 23rd,
6 2016, 8:40:53; is that correct?

7 A. That is correct.

8 Q. And that is their map and, of course, did you do a
9 mapping for that same call transaction?

10 A. Yes, sir.

11 Q. And, of course, is, is that for what's identified as
12 2I, is that the mapping that you created for that same cell
13 call transaction?

14 A. Yes, sir.

15 Q. The next on is, I think, defense 2J. That has two
16 cell call transactions, January 23rd, 2016, 9:16:06, January,
17 23rd, 2016, 10:12:48; is that correct?

18 A. That is correct.

19 Q. And did you do a mapping for those two transactions
20 just like SLED did?

21 A. Yes, sir. I did.

22 Q. Okay. And is this your mapping for those
23 transactions?

24 A. Yes, sir.

25 Q. The next transaction that SLED mapped is identified

1 as defense 2L and it's for January 23rd, 2016, 11:11:20,
2 January 23rd, 2016 for 11:11:33. That's SLED's map; is that
3 correct?

4 A. Correct.

5 Q. Did you do a mapping for those two cell call
6 transactions?

7 A. Yes, sir. I did.

8 Q. Is this your map?

9 A. Yes, sir. It is.

10 Q. And, of course, is, is that your map is defense
11 number 2M. The next SLED mapping is defense exhibit number
12 2N. And it's for four, I think, cell call transactions; is
13 that correct?

14 A. Correct.

15 Q. And, of course, they're all January 23rd, 2016; is
16 that correct?

17 A. Correct.

18 Q. And did you do equivalent mapping for those four
19 cell phone transactions?

20 A. Yes, sir.

21 Q. And is this, I'm putting on the screen what's
22 defense 20 and, of course, is this the mapping that you
23 generated for those cell call transactions?

24 A. Yes, sir.

25 Q. I notice that there is only three transactions that

1 you actually mapped. Of course, on the SLED there was four
2 cell call transactions. Why is that?

3 A. Because one of those transactions was a routed
4 call.

5 Q. And you didn't do that because routed calls --

6 A. Are inaccurate.

7 Q. -- can't be mapped accurately?

8 A. That's correct. They should not be.

9 Q. Okay. The next one is defense 2P and, of course,
10 is, is that that is a cell map. Is that cell map tracking any
11 cell call phone transaction that you are aware of?

12 A. There was none designated so none that I'm aware
13 of.

14 Q. Okay. So at least, what value does this have do you
15 think?

16 MR. HOEFER: Objection.

17 MR. BROOKER: I'm asking his opinion as an expert.

18 MR. HOEFER: Asking what value it has, that's up to
19 the jury to determine.

20 MR. BROOKER: I can rephrase the question.

21 THE COURT: You need to rephrase that.

22 BY MR. BROOKER:

23 Q. What, if any, information does this mapping give
24 you?

25 A. I can tell you what I doesn't give me.

1 Q. What doesn't it give you?

2 A. It doesn't give me the date or time of the
3 transactions. You will notice that there is not even
4 pinpoints here although right there this is a little
5 designation a possible tower. Here it's very faint. There is
6 no dates and times. We don't know what this is referring
7 to.

8 Q. Okay.

9 A. And that's SLED's. That's not mine.

10 Q. Yes. Your's are in red; is that correct?

11 A. Correct, sir.

12 Q. The next SLED map and, of course, is, is that and
13 it's depicted in defense 2Q, and asks for cell transaction
14 January 23rd, 2016, the time is 14:19:44. Is that SLED's
15 mapping of that transaction?

16 A. Actually it's 14:49:44.

17 Q. I'm sorry. I said I think I have dyslexia.
18 14:49:44.

19 A. Yes, sir.

20 Q. And, of course, did you do an equivalent mapping?

21 A. Yes, sir.

22 THE COURT: Y'all step up real quick, I need to ask
23 a question real quick.

24 MR. BROOKER: Sure.

25 (Side bar off the record.)

1 BY MR. BROOKER:

2 Q. Now, for the benefit of time, is, is that the report
3 that you generated that starts from, that's State's Exhibit 2,
4 2A and it goes all the way through 2Y, is that every cell
5 mapping, and I'm not gonna go through each cell mapping
6 individually to save some time, every cell phone transaction
7 that they mapped you did an equivalent map except for which
8 ones?

9 A. First of all, the routed calls. I did not do those.
10 And then this one that you just spoke about, I don't have the
11 designation as you do, but it's the one where I told you that
12 I don't know why it was even in there.

13 Q. Would it have been defense exhibit 2P?

14 A. Yes. That's it.

15 Q. So you didn't do mapping for that?

16 A. No, sir. I don't know what they're trying to refer
17 to.

18 Q. Okay. So all of your mapping is completely
19 different from theirs?

20 A. Correct.

21 Q. And, of course, is, is that, and what's the reason
22 for all of your mapping being completely different from
23 theirs?

24 A. Because the system that I use and the methodology
25 which has been through numerous Daubert and Frye Hearings that

1 has passed, unlike the other one used, has been found to be
2 significantly correct, admissible in court, and takes into
3 account not only how cell towers work but the technology of
4 cell towers.

5 Q. Now, on all the mappings that you did of those cell
6 call transactions versus all of the mappings that SLED did on
7 those cell transactions, is there a difference in the coverage
8 area from the mappings that they did, all the mappings that
9 they did versus all the mappings that you did?

10 A. Yes. Mine are more broad, but that is because
11 that's how the cell tower was transmitting.

12 Q. Okay. Now, on all of those mappings, and these are
13 mappings including the mappings that was done by SLED and also
14 the mappings that you did is that can cell site location, can
15 cell site location information be used to identify exactly
16 where a cell phone is?

17 A. No.

18 Q. Okay. Explain why.

19 A. Because what SLED is doing and what I am doing are
20 estimations. We can give you an approximate area where that
21 device was utilized, however, in and of itself that is not
22 enough on its own to say that that device was in a precise
23 location as you so requested or asked about.

24 Q. Okay. Now, I'm gonna refer to at least one of these
25 exhibits and ask you to give the jury an answer. I'm gonna

1 pick out at least one of your maps. Give me just a second to
2 find one. I think on what's identified as 2I of defense
3 exhibit, at least on this particular map you see that there's
4 a designation for the incident location; is that correct.

5 A. Yes, sir.

6 Q. Okay. And, of course, could you tell the jury where
7 the cell phone was made - excuse me - where the cell phone was
8 using this mapping, where the cell phone was at the time in
9 which the cell call transaction was made within this
10 particular zone that you've created in that mapping?

11 A. Estimated anywhere in the shaded area.

12 Q. Estimated anywhere within the shaded area?

13 A. Correct.

14 Q. Could it have been outside of that shaded area?

15 A. Slightly. Yes.

16 Q. But you can't tell exactly where in proximity to the
17 incident location?

18 A. No, sir. You need other corroborating evidence.

19 Q. Would GPS -- And, of course, is this GPS? This is
20 not GPS data, is it not? This is not GPS tracking, is it
21 not?

22 A. No, sir. No. That's different totally.

23 Q. Totally different. Would GPS tracking as opposed to
24 this be able to give you a more accurate picture or accurate
25 determination as to where a cell phone was?

1 A. If the police would have a put in a warrant for a
2 cell phone pinging, then they could track more accurately
3 where the device is going. Using CDR's all you're gonna get
4 is an estimation, and anybody tells you any different than
5 that is wrong.

6 Q. You get an estimation of the coverage area?

7 A. Of the area in which that device would have been
8 utilized.

9 MR. BROOKER: If you can indulge me for just a
10 second, Your Honor, I may not have anymore follow up
11 questions. No further questions, Your Honor.

12 THE COURT: Cross.

13 CROSS EXAMINATION

14 BY MR. CLEMENTS:

15 Q. Mr. Slovenski, this is kind of an unusual question.
16 Have you ever been on the radio? You got a great radio voice.
17 Just steps up.

18 A. I've done a number of interviews in phone forensics
19 for television and radio.

20 Q. If you retire, you ought to take up being a radio
21 announcer.

22 A. Thank you, sir. I appreciate that.

23 Q. Now, I'm gonna ask you just a few questions. I'll
24 try to be as brief as I can. I appreciate you coming today.
25 Now, you said a routed call is inaccurate or not accurate

1 enough that you would put your embellishment or endorsement on
2 it?

3 A. Correct, sir.

4 Q. My question is, what is a routed call?

5 A. A routed call could be several different things. A
6 routed call could be that someone was on the phone and it got
7 sent to voice mail or that it got rejected or a number of
8 other avenues.

9 Q. Okay. Even though it has a tendency to be
10 inaccurate, are there ever occasions where it could be
11 accurate?

12 A. We have found more inaccurate than we have
13 accurate.

14 Q. But you have found some accurate?

15 A. I have not. I never have.

16 Q. You know some have been found?

17 A. I don't know anybody personally.

18 Q. Okay. Now, Chris Johnson with SLED was telling us
19 they were looking at ZetX, is that Z-e-t-X?

20 A. Correct.

21 Q. You're real enthused about that. Do you have any
22 proprietary interest in it?

23 A. Not on the law enforcement side. ZetX, if I may, in
24 2016 when all of us in tower forensics were in a lull, in a
25 lurch, excuse me, that's the word, we were in a lurch because

1 the software we were using was going out the door and it
2 wasn't being updated, hence, Microsoft streets and trips, so
3 we are all scrambling trying to find the best software for our
4 proficiencies. I looked at every one that was on the market
5 and I've got a lot of connections in the market. In other
6 words, I know the players. I know the people. I've been at
7 this since 2007 when it was in its infancy. Okay. ZetX was
8 the most accurate, up to date, customer friendly that the
9 police were starting to look at and I was very fortunate in
10 that because I'm not a police officer anymore, I had one
11 company called Cell Hawk, they said, no, you can't come in. I
12 was like, why not? Well, because you're not law enforcement
13 anymore. Well, ZetX looked at my credentials and vetted me.

14 Q. You use ZetX now yourself?

15 A. I use and pay for it myself, however, I am also, to
16 put all cards on the table, I am tied to ZetX as a business
17 partner but not for law enforcement. I present --

18 Q. Private side?

19 A. Private side. Yes. I vett the people who want it
20 on the private side. Like I said, it's another private
21 investigator or another examiner that retired. ZetX will send
22 that person to me, I'll vett them, and then we see if they
23 have enough proficiency to even handle the software.

24 Q. And in doing that job for ZetX, do you get endorsed
25 or paid in any way?

1 A. I get a commission.

2 Q. I want to show you some of these maps and I guess
3 I'll refer to them as a pie and a brain because that red one
4 looks like a brain to me.

5 A. Okay.

6 Q. Now, you understand the purpose of why we were
7 tracking and mapping these cell calls, don't you?

8 A. No, sir. I was just asked to map them and to do a
9 comparison and I did. I really don't know a lot about this
10 case.

11 Q. We were looking to see if a cell phone was in
12 proximity to a certain area.

13 A. Okay.

14 Q. We weren't looking for exact because we know we
15 can't get exact without GPS. So my question is on Defendant's
16 Exhibit 2B which is a SLED map, is that address in that
17 proximity?

18 A. It appears to be. I cannot testify to what SLED did
19 because I didn't hear their testimony. I don't know what
20 software they are using right now. They may be using Cell
21 Hawk, they may be using Geocell.

22 Q. But it appears to be that address within that range
23 of where that cell phone --

24 A. That's what they're designating. I can't tell you
25 how accurate it is.

1 Q. Look at 2C. Does it have incident location depicted
2 there in that range, in that area?

3 A. Yes, sir.

4 Q. So it's in proximity, correct?

5 A. In proximity of what, the tower?

6 Q. The incident location.

7 A. The tower coverage area is estimated to be that that
8 you see right there.

9 Q. Right.

10 A. Okay. So to say is that incident location in the
11 estimated range, yes, but so are a lot of other locations in
12 there.

13 Q. Certainly. But I'm only concerned about that one
14 location. Your testimony is that it is in that location?

15 A. Yes, sir.

16 Q. Approximately?

17 A. Yes.

18 Q. Thank you, sir. Now, SLED in defense 2D, that's
19 their map and you said that you cannot plot it because it was
20 a routed call?

21 A. Correct.

22 Q. So I'm not gonna ask you any questions about this
23 map because you can't in good conscious answer; is that
24 correct?

25 A. Correct.

1 Q. Now, defense exhibit 2E is another SLED map, SLED
2 pie with four phone calls on it and does it appear that in
3 their pie that the incident location is there within that
4 range that they picked?

5 A. They put it in there.

6 Q. They put it in there. Okay. Now, 2F which is your
7 brain of the incident location, did you put it there?

8 A. The incident location, I put that address in
9 there.

10 Q. Okay. Thank you. 2G, that's another routed call?

11 A. I can't comment on that one.

12 Q. Can't help us there?

13 A. No, sir.

14 Q. 2H, one telephone call and it appears it's in the
15 same proximity as the incident location according to SLED?

16 A. According to SLED they put that there.

17 Q. 2I is your version of that. Let's see what's
18 contained in the brain here. Incident location?

19 A. Yes, sir.

20 Q. You put it there?

21 A. Of course.

22 Q. 2J is SLED's and it's two phone calls and they put
23 it there with incident location within that range; is that
24 correct?

25 A. They put it there.

1 Q. Yes, sir. And 2K is your version of that. Did you
2 put the incident location in that proximity?

3 A. I mapped that location.

4 Q. Okay. 2L is a SLED map with two phone calls on it.
5 Did they put the incident location in that range?

6 A. They did.

7 Q. 2M is your version that's more accurate and on 2M
8 you put that incident location there, didn't you?

9 A. Correct.

10 Q. That would be for both of those phone calls?

11 A. I'm sorry.

12 Q. That would be for both phone calls?

13 A. Yes.

14 Q. 2N is defense exhibit that shows SLED pie with four
15 phone calls on it and they put them all in this proximity of
16 the incident location, did they not?

17 A. Can you rephrase that?

18 Q. Okay. I'm trying to go a little too fast. There's
19 four phone telephone calls here on this pie?

20 A. Yes, sir.

21 Q. Was in this pie were these four telephone calls were
22 hitting the tower, was the incident location within that
23 pie?

24 A. Within their coverage area that's what they're
25 saying.

1 Q. Okay. And your version of that is 20, and I believe
2 one of those calls was a routed call so you couldn't do
3 anything with that?

4 A. Correct.

5 Q. But the other calls, other three calls is the
6 incident location within proximity in those three calls?

7 A. In proximity?

8 Q. In proximity to that incident location?

9 A. The incident location appears to be in the estimated
10 radio frequency coverage area.

11 Q. Okay. Now, 2P, you didn't know anything about that.
12 Let me suggest to you -- First, let me ask you this question.
13 Have you ever heard of a hand off zone?

14 A. All the time.

15 Q. Okay. What's a hand off zone?

16 A. That's where one tower sector is then covered over
17 partially by another tower sector.

18 Q. Kind of like those graphs you used to use in math,
19 boolean graph or something like that? I can't remember
20 exactly, but it kind of, they intersect and they make a shape
21 like this?

22 A. Right.

23 Q. Do you think that could be a possible explanation to
24 defense exhibit 2P that that's what that is?

25 A. I'm not even gonna comment on that one, sir, simply

1 because there is not enough information in that slide to give
2 a professional opinion on that. I cannot comment.

3 Q. So you cannot say that looks like it might be a --

4 A. No. No. I cannot comment on that slide.

5 Q. All right. Fair enough. Very consistent. Defense
6 Exhibit 2Q shows the one phone call and the incident location
7 is not in that, right?

8 A. Correct.

9 Q. And 2R, is that your version of that? And you've
10 got a more accurate broader range. Do you have the incident
11 location within that range?

12 A. I looked at that with more attention and it is right
13 there on the edge.

14 Q. On the edge?

15 A. Yes, sir.

16 Q. And, of course, it could be out of that, out from
17 under the brain and still pick up?

18 A. It could go either way. It could go -- That's just
19 the way --

20 Q. Depending on whether the ground is flat or a lot of
21 big buildings, any of those features?

22 A. How many people are on that thoroughfare that day.
23 There is attenuation, frequency reuse again.

24 Q. 2S you couldn't do anything with that because it's a
25 routed call, right?

1 A. I'm not gonna touch it.

2 Q. 2T, the SLED pie with one telephone call, does it
3 appear to have incident location there on that?

4 A. I don't see it marked.

5 Q. Okay. And your version of that is 2U. Is the
6 incident location marked there?

7 A. Yes, sir. It is.

8 Q. But it's not within the area of that range?

9 A. No, sir.

10 Q. 2V is defense exhibit for two telephone calls and
11 the SLED pie places the incident location there in proximity
12 to where those calls came off the tower?

13 A. That's what it appears SLED did.

14 Q. In your version that's 2W and you do the same thing
15 with the incident location, don't you, put it within the
16 range?

17 A. No, sir. I inputted the incident location and so I
18 did not like just pick a spot and throw it in there.

19 Q. Right. I know that.

20 A. Okay.

21 Q. I know it's accurate, but the end result is, isn't
22 it true that the incident location shows up in your graph of
23 what the coverage area is and also shows up in the SLED graph
24 of what the coverage is?

25 A. I'm not gonna comment on SLED because they do what

1 they do, but mine does, yes.

2 Q. Okay. And 2X has 12 telephone calls shown on the
3 SLED pie that they have the incident location within that pie;
4 is that correct?

5 A. No, sir.

6 Q. Is that what appears?

7 A. No, sir.

8 Q. You don't see the incident location there?

9 A. No, sir. That's not the incident location.

10 Q. What's is that red?

11 A. That's a - as was told to me that was a drop off
12 near 225 Plum Street in Darlington.

13 Q. Is that the incident location but it's not within
14 that cell range?

15 A. No, sir.

16 Q. Okay. Where is it then?

17 A. The incident location? Way below.

18 Q. Do you understand that there were two incident
19 locations, one where the murder happened and one where the
20 suspect was let off of a cab?

21 A. I was given two locations, incident location and 225
22 Plum Street in Darlington and that's where I'm at.

23 Q. This is 225 Plum Street?

24 A. Correct.

25 Q. And they show all those calls made in within the

1 range where that incident location --

2 A. Right.

3 Q. -- in Darlington was; is that correct?

4 A. That's what they're showing.

5 Q. And your version of that is 2Y, and there is a phone
6 call that was routed that you could not do anything with but
7 then all the other phone calls, the range you have for them
8 and the graph shows the incident location on Plum Street in
9 Darlington, does it not?

10 A. Correct, sir.

11 Q. So even though you went on different methodologies
12 and different tools to work with, yours were superior, on most
13 of these phone calls the estimation made by SLED of the
14 incident location being within that call range for that
15 particular tower and your estimation in what you computed,
16 most of those you had the incident location within the range,
17 within the brain in that red area?

18 A. In the brain. Yes.

19 Q. Okay. And that's the end of your report?

20 A. Yes, sir. It is.

21 MR. CLEMENTS: Okay. Now, I appreciate you letting
22 me be a little - this is certainly a serious matter but
23 we've been here for a long time so I'm kind of being a
24 little, making some little funny comments but this is
25 nothing to be funny about but I do appreciate the work

1 you've done. That's all the questions I have.

2 MR. BROOKER: I'll be very quick, Your Honor. I'm
3 not gonna --

4 THE COURT: Don't say it if you don't mean it.

5 MR. BROOKER: I'm not gonna go back over all of
6 those maps like Ed did. I'm just gonna pick out one or
7 two.

8 THE COURT: Redirect.

9 MR. BROOKER: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BROOKER:

12 Q. Let me just pick out one or two of these maps and
13 then ask you questions in reference to one or two of these
14 maps and, of course, I'll ask you whether or not the principle
15 that we established applies to all the maps. I'm gonna look
16 at defense exhibit 2J and, of course, is, is that that's those
17 two cell phone transactions and this was generated by SLED; is
18 that correct?

19 A. Yes, sir.

20 Q. The information that's contained within this map
21 that's generated by SLED is, is that, can you tell me where
22 the tower is at?

23 A. According to SLED they are saying the tower is
24 there.

25 Q. And could you tell me where SLED is saying the

1 incident location is?

2 A. From what I can see it appears to be here. Right
3 there.

4 Q. Okay. Now, can you tell me where the cell phone was
5 at the time in which this call was made by looking at this
6 map? Where was the cell phone actually at at the time the
7 call was made?

8 A. You want the actual pinpointed spot?

9 Q. Yes. Where the cell phone was.

10 A. I can't tell you other than what SLED is saying is
11 that it was somewhere in this highlighted area.

12 Q. From your professional opinion, what you know about
13 mapping, could the call have been made here?

14 A. Yes, sir. It could have.

15 Q. Could it have been here?

16 A. Yes, sir.

17 Q. Could the cell phone have been here?

18 A. Yes, sir.

19 Q. Could it have been here?

20 A. Yes, sir.

21 Q. Could it have been slightly outside the green?

22 THE COURT: Anywhere in that range.

23 MR. BROOKER: Okay. And I was just gonna ask him,
24 Your Honor, because the last one I pointed outside the
25 green.

1 THE COURT: And he'll tell you yes, if it's within a
2 close range.

3 BY MR. BROOKER:

4 Q. Okay. So it could have been outside of that. Okay.
5 So I'll ask you this: The same thing with respect to yours,
6 does that same principle apply with respect to yours is that
7 in yours it identifies and, of course, this is your mapping of
8 the same two calls, is that it indicates, does it indicate
9 where the cell phone tower is?

10 A. Yes, sir. Right --

11 Q. Does it indicate where the incident location is?

12 A. Right there, sir.

13 Q. Does it indicate where the phone was at the exact
14 time the call was made?

15 A. Estimated anywhere within the highlighted area.

16 Q. Could you tell me where within that highlighted area
17 it was?

18 A. No, sir.

19 Q. Is it possible it could have been slightly outside
20 the highlighted area?

21 A. Yes, sir. Could have been behind the tower.

22 Q. It could have been behind the tower?

23 A. Yes, sir.

24 Q. Okay. And does that principle, and I'll ask this,
25 does that principle that we just established using those two

1 maps with respect to where the exact location the cell phone
2 is, that's the most important thing, where the cell phone is,
3 does that principle apply to all of those maps by SLED and you
4 on all of those maps that was generated by SLED and that was
5 generated by you, could you go through those maps and tell me
6 exactly where the cell phone was at the time in which that
7 call was made?

8 A. No.

9 MR. BROOKER: I think that's gonna be the extent of
10 my redirect. No further redirect, Your Honor.

11 MR. CLEMENTS: One question, Your Honor.

12 THE COURT: Yes, sir.

13 RECROSS EXAMINATION

14 BY MR. CLEMENTS:

15 Q. Mr. Slovenski, do you have a estimation or do you
16 have a accurate presentation of how much space on those maps
17 equals a mile or a half mile or anything of that nature? Does
18 anything bring it to a scale?

19 A. Not that I can show right off the bat. I would have
20 to go into the computer.

21 Q. So no distances have been shown?

22 A. No, sir.

23 Q. Let me ask you this: You may not know. Without
24 looking in your computer would you know if it would be a range
25 of two miles or three miles or one mile or what on these

1 maps?

2 A. I don't know.

3 MR. CLEMENTS: Thank you, sir.

4 THE COURT: All right. Any objection to

5 Mr. Slovenski being excused from his subpoena?

6 MR. BROOKER: None from me, Your Honor.

7 THE COURT: Anything from the State?

8 MR. CLEMENTS: None from me, Your Honor.

9 THE COURT: All right. Thank you very much, sir.

10 Appreciate you being here. Y'all come up quick, get an

11 idea where we're at.

12 (Side bar off the record.)

13 THE COURT: All right. Call your next witness.

14 MR. BROOKER: We call Dr. Bennett, Your Honor.

15 THE COURT: All right. Dr. Bennett, please come

16 around to be sworn, sir.

17 Thereupon,

18 ROBERT M. BENNETT

19 after having been first duly sworn, testified as follows,

20 THE CLERK: Be seated on the stand and please state

21 your full name for the record.

22 THE WITNESS: Robert M. Bennett.

23 DIRECT EXAMINATION

24 BY MR. BROOKER:

25 Q. Dr. Bennett, what is your education?

1 A. I have a pharmacy degree from the Medical University
2 of South Carolina and I also have a doctorate degree, Ph.D.
3 from the Medical University of South Carolina in Charleston.

4 Q. Bachelor's degree in pharmacology. A bachelor's
5 degree, what is that in?

6 A. That's in Pharmacy.

7 Q. And the Ph.D., a doctorate degree, what's that in?

8 A. That's in pharmaceutical sciences which includes
9 toxicology and related courses.

10 Q. Do you have education as it relates to DNA and DNA
11 testing?

12 A. Yes. Through genetics course work.

13 Q. Tell me about the education that you have received,
14 courses, training, whatever, that relates to DNA and DNA
15 testing?

16 A. Mainly genetics, but also in anatomy, physiology,
17 pharmacology. The basic health science courses that I took at
18 the Medical University of South Carolina along with the
19 medical students.

20 Q. And, of course, do you have any sorts of
21 certifications?

22 A. I'm sorry. Could you repeat the question?

23 Q. Are you certified? Do you have certifications or
24 have certifications --

25 A. Yes.

1 Q. -- from the institutions?

2 A. Yes.

3 Q. Tell me about the certifications that you have.

4 A. Since there is no specific educational degree in
5 DNA, then education comes through certifications after
6 college, after graduate school and those certifications that I
7 received are from the U.S. Department of Justice on a variety
8 of course work in the field of DNA.

9 Q. And could you give the jury an example of some of
10 the courses that you were certified in from the Department of
11 Justice that relates to DNA?

12 A. Yes. Those courses are geared more towards DNA used
13 in a forensic setting or in a legal setting such as DNA for
14 officers of the court, DNA in crime scene analysis, DNA in
15 genetic relationships so the course work from the U.S.
16 Department of Justice is course work that is geared towards
17 DNA for use in legal situations.

18 Q. And, of course, I'm gonna ask you something and, of
19 course, is, is that, and I'll be very brief, I don't want to
20 delay this any longer, is, is that, and I think you have
21 alluded to this is that is there any specific degree that you
22 have to have that allows you to become a DNA expert or a DNA
23 analyst?

24 A. There is not. That type of degree to the best of my
25 knowledge doesn't exist. It's people who specialize in the

1 health sciences beginning in the field of biology that use
2 those health related courses to become an expert in DNA.

3 Q. Do you have any, at least any education in the area
4 of statistics?

5 A. Yes. Not just only general statistics but
6 specifically on a graduate level medical statistics which I
7 took at the Medical University of South Carolina.

8 Q. Have you taken any, I guess the best way to ask that
9 is, have you taken any medical courses?

10 A. Well, the courses that I took at the Medical
11 University of South Carolina were the same level courses that
12 the medical students were taking. Some of the courses I took
13 with the medical students.

14 Q. And what are some of those courses that you took?

15 A. Such as anatomy, physiology, pharmacology,
16 biochemistry.

17 Q. Do those courses help inform you in your work of DNA
18 testing and DNA analyzing?

19 A. Yes.

20 Q. Have you ever testified as an expert, as a DNA
21 expert or a DNA analyst in any court?

22 A. Yes. I have.

23 Q. Have you specifically testified as a DNA expert or
24 analyst in any state courts of South Carolina?

25 A. Yes.

1 Q. Approximately how many times have you testified as a
2 DNA expert or analyst in the state courts in South Carolina?

3 A. At least a half a dozen times.

4 Q. Have you testified as a DNA expert in any military
5 courts?

6 A. Yes.

7 Q. How many times have you been certified as a DNA
8 expert in military courts?

9 A. Approximately a half a dozen times as well.

10 Q. When was the last time you were certified as a DNA
11 expert in a military court?

12 A. Approximately two weeks ago when I testified in a
13 court martial at an air base outside of Boston,
14 Massachusetts.

15 Q. When was the last time that you testified, and you
16 don't have to give me specific dates, give me the year, when
17 was the last time that you testified as a DNA expert or
18 analyst in a South Carolina state court?

19 A. Within this year.

20 MR. BROOKER: Your Honor, I submit Dr. Bennett as an
21 expert in DNA testing and DNA analysis.

22 THE COURT: All right. Subject to the State's --

23 MR. HOEFER: Subject to our previous objections.

24 THE COURT: Yes, sir. All right. You may
25 proceed.

1 MR. BROOKER: Thank you, Your Honor.

2 BY MR. BROOKER:

3 Q. Dr. Bennett, were you asked to do any independent
4 DNA testing in this particular case?

5 A. No.

6 Q. If I can find the exhibit, I'm gonna ask you to take
7 a look at an exhibit. I think the exhibit is -- I'll put it
8 on the screen. This exhibit is identified as State's Exhibit
9 8. Have you ever seen that exhibit before?

10 A. Yes. I have.

11 Q. Could you tell the jury just quickly what that is?

12 A. It's a report from the South Carolina Law
13 Enforcement Division which is also known as SLED from the
14 laboratory results of DNA testing related to this case.

15 Q. And, of course, is, is that did you have an
16 opportunity to review and study this report?

17 A. Yes. I did.

18 Q. Okay. Now, let me ask you some questions in
19 reference to this report is, is that does it indicate on this
20 report what, I guess, method that the Richland County
21 Sheriff's Department Forensic Examination Department used to
22 examine the DNA that they collected?

23 MR. CLEMENTS: Object to leading, Your Honor.

24 MR. BROOKER: I thought I asked him a question.

25 Well --

1 THE COURT: Sustained.

2 MR. BROOKER: I'll rephrase it, Your Honor.

3 BY MR. BROOKER:

4 Q. Is, is that, does this report identify the method
5 that they used to analyze the DNA?

6 A. Are you referring to SLED?

7 Q. Yes. On this report. And I think it's not SLED. I
8 think it's Richland County. Does this report identify --

9 MR. HOEFER: Your Honor, I wish he wouldn't testify
10 and instruct his own witness.

11 THE COURT: You're not on - you've been on cross for
12 three days now. You're on direct now. You can ask non
13 leading questions. You can't correct the witness. You
14 can just ask your questions.

15 MR. BROOKER: I'm just reading the report, Your
16 Honor. That's on the report. I'll rephrase it, Your
17 Honor, if you want me to.

18 THE COURT: Yeah.

19 BY MR. BROOKER:

20 Q. Is, is that this report that we're looking at,
21 State's Exhibit 8, is there a method in which they use to
22 analyze the DNA? Is it contained within that report?

23 A. I would have to look at the detail of the report
24 again. I believe it does, but it's further down from what I
25 can see on the screen.

1 Q. Okay. Can you see now?

2 A. Okay. It's listing the PowerPlex Fusion System from
3 Promega, the AmpFLSTR system from Applied Biosystems, and
4 those are common methods to use for DNA detection.

5 Q. Are you familiar with those methods?

6 A. Yes. I am.

7 Q. Okay. Are those methods accurate?

8 A. Yes. They're actually very accurate. They're able
9 to pick up DNA and map that DNA from a variety of objects.
10 The method is very selective for DNA. In other words, not
11 other items can cause a positive for DNA other than DNA. More
12 importantly these systems are very sensitive for DNA. They
13 can pick up minute amounts of DNA. For example, even touch
14 DNA. What I mean by that is if someone touches something,
15 their DNA is left on that item, like if they touch it with
16 their hand. It can even pick up what's called transfer DNA.
17 That's where someone touches an item or a person and that item
18 or person touches something else, that DNA can be transferred
19 to that item. So it's a very accurate system, very sensitive,
20 and is very powerful.

21 Q. Okay. All right. And, of course, is, is that I'm
22 gonna ask you some questions now in reference to the
23 conclusions that were reached or at least let's look at the
24 items listed. And, of course, is, is that -- Well, let's skip
25 that. Let's go straight to the conclusions. And, of course,

1 is, is that I'm gonna be selective. I'm simply going to look
2 at the conclusions as it relates to Royal Williams. I think
3 on item number 2, I think in paragraph number 1 in the
4 conclusion section it says, and I'm gonna read this and ask
5 you a question and, of course, if I read it wrong, you correct
6 me, okay?

7 A. Yes, sir.

8 Q. It says the DNA result from item 2.1 is a mixture.
9 The victim cannot be excluded. It says the minor contributor
10 from 2.1 does not match Whitten, Smith or Williams. What is
11 2.1? What item is 2.1 on this report?

12 A. That is a swab from the inside of a condom.

13 Q. When it says that, where it says that the minor
14 contributor from 2.1 does not match Williams, what does that
15 mean?

16 A. That means in looking at the allele lengths without
17 getting too technical, DNA is a look at the specific lengths
18 of DNA and certain fragments of DNA and for a DNA match to
19 occur those lengths have to be the same. If those lengths in
20 comparing two DNA specimens are of different lengths, then the
21 likelihood of it being the same person is zero and so when the
22 report is given under this type of terminology, what the data
23 means is that the DNA cannot be that of the individuals listed
24 on the report namely Mr. Williams. It's biologically
25 impossible.

1 Q. Okay. All right. Now, it goes on to say, I think
2 on paragraph 2, and I'll read this and, of course, I'm just
3 gonna read at least a portion of it that as it relates
4 probably as it relates to Mr. Williams and if I read anything
5 wrong, you correct me.

6 A. Yes, sir.

7 Q. It says the DNA results from item 2.2 is a mixture.
8 And, of course, what item is identified as item 2.2?

9 A. A swab from the outside of the condom. It's a
10 mixture of multiple individuals.

11 Q. That's what it says. It says the victim cannot be
12 excluded and it says the minor contributor from 2.2 does not
13 match Whitten or Smith and it says Williams the Third cannot
14 be excluded and, of course, I'm gonna ask you about that.
15 When it says Williams cannot be excluded, what does that
16 mean?

17 A. That means that in comparing the different segments
18 of the DNA none of the segments indicated a non match meaning
19 he has to be excluded. It's biologically impossible for him
20 to match. That was not found on this item. So when you have
21 a DNA report in which an individual cannot be excluded, then
22 the next step is to start looking to see, okay, well, can he
23 be included, and that's where you look at the probability of
24 matching.

25 Q. Okay. All right. And then, of course, it goes on

1 to say that based on the most recent population data available
2 and the genetic results obtained, Williams the Third is
3 approximately 12,500 times more likely to be the source of the
4 DNA result than a random unrelated individual. What does that
5 mean?

6 A. That's where we look at the probability of matching,
7 the likelihood of matching and that is a statistical
8 calculation as the report says based on a population database
9 and so the statistics of the analysis is such that what is the
10 likelihood that this person is a match. How much of a
11 likelihood is it. The greater the matching, the greater the
12 probability of it being a match and the more confidence you
13 can put in that the person is a match to the DNA and that
14 likelihood of matching is evaluated based on the degree of
15 matching based on a probability that is given as a number and
16 in this case 12,500 times more likely.

17 Q. I'm gonna ask you a question in reference to that
18 trying to get to the point. Does that statement, is
19 Mr. Williams positively identified as a contributor to that
20 DNA?

21 A. No. He is not.

22 Q. He's not positively identified. The probability,
23 tell me what the probability is. I know that they give those
24 numbers. Can you quantify those numbers?

25 A. Yes. Yes.

1 Q. Go ahead.

2 A. I mentioned earlier the DNA testing is now very
3 sensitive. We can do a comparison of DNA found to a
4 population database to determine the likelihood of matching
5 and we can get matching probabilities in the billions, the
6 trillions, even in the quintillions, and even higher. DNA is
7 that sensitive. In fact, that's what we commonly get is a
8 match in those areas. So when we get a match that's lower
9 than that, we lose confidence in that match. For example, if
10 there is 7.7 billion people in the world and we get a
11 probability of matching one in 7.7 billion, then there's
12 nobody else on the planet that could be a match, so that's a
13 pretty high degree of confidence that he is the person that
14 his DNA matches with.

15 But when those numbers start going down, then that
16 means there potentially could be other people that also match
17 that. So, for example, in in one in 12,500, that's a
18 relatively low match even though the number seems high. And
19 let me give you an example as far as how does that compare to
20 the population database which is the way DNA is compared. If
21 you look at the population of Florence County, for example,
22 168,500 people and if it's one in 1 in 12,500 percent chance
23 of a match, that means that just in Florence County there are
24 11 other people that his DNA potentially could match. If you
25 look at the population of South Carolina, 5.8 million, then

1 there potentially could be 434 people in the State of South
2 Carolina that could also match. So the number is relatively
3 low to be able to do a, have a degree of confidence of a
4 confirmation that it is him and only him.

5 Q. Now, I'm gonna ask you a specific question is, is
6 that of those 11 people in Florence County could I be one of
7 those people?

8 A. Potentially, yes.

9 Q. And what's the only way to exclude me as being one
10 of those potential 11 people in Florence County that could
11 have contributed?

12 A. We would have to take your DNA and run it and
13 compare it to evidence item.

14 Q. Could anybody in this courtroom be one of those 11
15 people?

16 A. Statistically, yes.

17 Q. And, of course, is, is that I guess the same thing
18 in the State of South Carolina, how many people did you say
19 that could potentially have contributed, potentially could
20 have contributed to that sample considering the population
21 size of the State of South Carolina?

22 A. Approximately 434.

23 Q. Now, Dr. Bennett, I'm gonna move you to the next
24 page of this State's Exhibit number 8 and I'll go through this
25 quickly because I think some of the language is the same so I

1 don't want to belabor the point. I think page, I think item
2 number 2 on page number 2. You can see it there?

3 A. Yes.

4 Q. It says the DNA resulting from item 7 is a mixture.
5 The victim cannot be eliminated. Okay. Whitten and Smith are
6 excluded. Williams the Second cannot be excluded based upon
7 the most recent population data available and the genetic
8 results obtained Williams the Third is approximately 2.8 times
9 more likely to be the source of this DNA resulting from a
10 random unrelated individual. So the probability with respect
11 to this is 2.8 thousand; is that correct?

12 A. That's correct.

13 Q. I don't know whether or not you have done the math
14 or not. Have you done the math as it relates to the
15 population of Florence?

16 A. Well, that's 2.8 thousand which is significantly
17 less than 12.5 thousand by a factor of six almost, then it
18 would be, there would be six times more people that
19 potentially could match.

20 Q. Okay. So previously it could be 11, that could
21 potentially be doubled by six so with respect to that DNA
22 sample there's potentially roughly 66 people in Florence
23 County that could have been the contributor?

24 A. Approximately, yes.

25 Q. Approximately. I know you haven't done the math

1 absolute yet.

2 A. Right.

3 Q. And, of course, is, is that with respect to the 434
4 potential contributors, we discussed, I think, from the
5 previous sample considering that same probability of 2.8
6 thousand for this particular sample that would also include
7 the size of the population that could have contributed?

8 A. Exactly. Yeah. And to fine tune it a little more,
9 that 2.8 if we round it up --

10 THE COURT: I'm gonna get you to ask that question
11 in just a moment. We're gonna take a short break.

12 Ladies and gentlemen, we'll bring you back out shortly.

13 (Whereupon, the jury entered the jury room at 4:07
14 p.m.)

15 (Short break.)

16 THE COURT: All right. Let's bring the jury back.

17 (Whereupon, the jury entered the courtroom at 4:20
18 p.m.)

19 THE COURT: All right. Mr. Brooker, you notated
20 your last question. If you would reask that question,
21 please, and then Dr. Bennett can respond.

22 MR. BROOKER: Sure.

23 BY MR. BROOKER:

24 Q. I think my last question was going to be with
25 respect to -- Let's go back. With respect to that 2.8 million

1 where it says Williams is approximately 2.8 - excuse me - 2.8
2 thousand times more likely to be the source of this DNA result
3 than a random unrelated individual and, of course, is, and I
4 think I asked you is, is that can you equate that to the
5 population of Florence and, of course, is, is that your
6 testimony was?

7 A. Well, I actually during the break did the actual
8 calculation and in Florence County there would could be 50
9 individuals based on this probability that statistically could
10 be the source of the DNA and for the State of South Carolina
11 2071 potentially could be the source of the DNA.

12 Q. Okay. Let me mark that down. Okay. And you said
13 50 for Florence?

14 A. Florence County.

15 Q. Florence County. And then, of course, is, is that
16 what for the State of South Carolina?

17 A. Approximately 2071.

18 Q. Now, that statistic of 2.8 thousand more likely to
19 be the source that contributed to the DNA, is that a high
20 probability?

21 A. No. That's a very low probability relatively
22 speaking.

23 Q. Relatively speaking. I'm gonna ask this question
24 is, is that 2.8 thousand, you said that's a low probability?

25 A. Correct.

1 Q. What's the highest probability that you can get?

2 A. There's an infinite number, because it's a
3 mathematical calculation, then there is essentially the number
4 of identity. It just goes higher than we can tabulate. So
5 that's why in DNA testing when we do the calculations, you see
6 numbers billion, quintillion, hextillion, extraordinarily high
7 numbers and that's the numbers based on the sensitivity of DNA
8 testing that we have today that we commonly see when there's a
9 match.

10 Q. If the probability is in billions and quintillions,
11 is that a high probability?

12 A. Yes. And that means there's not anybody else on the
13 planet that could potentially match so it confirms a very high
14 degree of confidence that that is the person.

15 Q. And, of course, is, is that I think item number 8
16 same result. I'm gonna go through this quickly. It says that
17 the sample for item 8 was a mixture. It says that victim
18 can't be eliminated, and it goes on to say that Williams the
19 Second cannot be excluded and based upon the most recent
20 population data available and the genetic results obtained
21 Williams the Third is approximately 120,000 times more likely
22 to be the source of the contributor. Is that a high
23 probability?

24 A. No. It's relatively low.

25 Q. It's a relatively low probability?

1 A. Correct.

2 Q. Could the contributor of that source be someone else
3 other than Williams?

4 A. Yes.

5 Q. Okay. Now, I'm gonna go down to section 5 and, of
6 course, subsection 1 on paragraph 5 and, of course, I'm gonna
7 read that and ask you a quick question about that and I should
8 be almost done. It says the YSTR DNA result developed from
9 item 2.2. What was item 2.2 again?

10 A. I believe it was the inside of the condom.

11 Q. Let's look at it.

12 A. The outside. Sorry.

13 Q. Okay. 2.2 is the outside of the condom so we're
14 talking about the outside of the condom?

15 A. Correct.

16 Q. It says the YSTR DNA result developing from item 2.2
17 matches Williams and says based upon the most recent
18 population data available and the genetic results obtained
19 Williams the Second, and it says or a parental relative is
20 approximately 1850 times more likely to be the source of DNA.
21 First of all, YSTR DNA, what is that?

22 A. That's a subset of DNA analysis that specifically
23 looks at the Y chromosome or the male chromosome so when one
24 does an analysis of the Y chromosome, the person that's doing
25 the analysis or evaluation is only looking at the male

1 contribution of the DNA. So any DNA from the mother's side or
2 the mother's family, the mother's relatives do not enter the
3 picture. It's only from the father's side.

4 Q. Okay. I got you. And then, of course, is, it goes
5 on to say that Williams is 1850 times more likely to be the
6 source of the DNA that was found on item 2.2 which is the
7 outside of the condom. Is that a high probability?

8 A. That's very low. Now, you mentioned Williams, but
9 please note that it says or a paternal relative so it's
10 Williams or his son or his father or any paternal relative on
11 his father's side could be a match because they are all the
12 same Y DNA.

13 Q. Okay. So let me make sure I understand you
14 correctly. So what you're saying is, is that Williams could
15 have been the contributor or any male relatives on his
16 father's side. Is that what you're saying?

17 A. Correct. Has an equal probability of matching at
18 that rate.

19 Q. Okay. An equal probability of being a match?

20 A. Yes. At that rate which your question was is that a
21 high rate. No. It's a very low probability of matching.

22 MR. BROOKER: It's a very low probability. Okay.
23 Just asking. Okay. Just a very low probability. Give
24 me just a second, Your Honor. Let me make sure. I think
25 I have a couple other questions. Of course, it's gonna

1 be quick.

2 BY MR. BROOKER:

3 Q. I want to ask you about something because I think
4 the defense is gonna ask you about it so I'll give you a
5 chance to explain is, is that back in 2015 were you accused of
6 obtaining some information from the pharmaceutical database?

7 A. Yes.

8 Q. Tell the jury about that.

9 A. Well, being in the work that I'm in, I'm essentially
10 a target. When I uncover evidence, it can be very damaging to
11 people so people and their attorneys will try to do everything
12 they can to discredit me. I'm used to that. That happens all
13 the time. But back in 2015 there was one attorney that sent
14 her client to me for evaluation to determine if she was
15 abusing prescription drugs and this was back in the beginning
16 of the prescription drug epidemic, the opioid epidemic. When
17 she was in my office I had this person sign a written form
18 authorizing me to review her controlled substance database and
19 so she agreed as part of the evaluation. When I did that, I
20 found that she was on an extraordinary number of prescription
21 drugs. I reported back that information to her attorney. Her
22 attorney asked how I found out this information. I told her
23 that I accessed the computer database, well, my partner did,
24 my business partner, and then reported back to her what the
25 findings were. She got very upset with that. Filed a

1 complaint with DHEC. DHEC opens an investigation. Of course,
2 DHEC can't do anything once an investigation is completed.
3 They have to turn it over to the Attorney General's Office.
4 The Attorney General's Office evaluated whether it was
5 prosecutable or not. When they did the evaluation, they said
6 that this case is not prosecutable and it was immediately
7 dropped and the record expunged.

8 Q. Okay. So they investigated you for that and found
9 that you didn't do anything wrong?

10 A. Correct.

11 Q. Okay. Let me ask just one more follow up question,
12 is that the fact that what you just explained to me, I think
13 what you just explained to the jury when you were investigated
14 I think by the Attorney General for accessing that database,
15 does that have anything to do with your ability to be able to
16 testify as an expert, as a DNA expert or either a DNA analyst?

17 A. It's completely unrelated. It has no bearing.

18 Q. Okay. And, of course, is, is that that was 2015?

19 A. Correct.

20 Q. Since that time how many times have you testified as
21 a DNA expert and a DNA analyst in Federal and States and
22 Military Courts?

23 A. At least a half a dozen times or more.

24 MR. BROOKER: Indulge me just a second, Your Honor.

25 I may have no further questions. No further questions,

1 Your Honor.

2 THE COURT: All right. Cross examination.

3 CROSS EXAMINATION

4 BY MR. HOEFER:

5 Q. Can you read that okay?

6 A. Yes, sir.

7 Q. All right. As I understood your CV, you have a
8 bachelor's degree in pharmacy, correct?

9 A. Correct.

10 Q. And you then got a Ph.D. or a doctorate in
11 pharmacology?

12 A. Yes.

13 Q. What's the distinction between pharmacy and
14 pharmacology?

15 A. Well, pharmacology is the study of the effects of
16 drugs and chemicals on the body and how it can alter,
17 destruction and function of the body including the DNA.
18 Pharmacy is geared towards the eventual working in the field
19 of pharmacy whether it be counseling or working in a drugstore
20 or working in research and development which I did for many
21 years.

22 Q. You got that pharmacology doctorate in what year?

23 A. 1991.

24 Q. Prior to getting your doctorate, you actually were a
25 practicing pharmacist; is that correct?

1 A. Yeah.

2 Q. To do that were you licensed?

3 A. Yes.

4 Q. Through who?

5 A. Well, I passed the state boards through the South
6 Carolina Board of Pharmacy.

7 Q. And they issued you a license; is that correct?

8 A. Correct.

9 Q. And using that license you were able to prescribe
10 medications, drugs, things of that nature?

11 A. Not prescribe, just fill prescriptions.

12 Q. Thank you. I appreciate that. You filled
13 prescriptions that a medical doctor would prescribe,
14 correct?

15 A. Or anyone else authorized to prescribe
16 medications.

17 Q. Now, you no longer have an active pharmacy license,
18 do you?

19 A. Correct. I haven't filled a prescription in 25
20 years.

21 Q. So you're not a registered pharmacist or a licensed
22 pharmacist anymore; is that correct?

23 A. Well, I have a pharmacy license that's in good
24 standing. It's just in the inactive state because I don't
25 fill prescriptions anymore.

1 Q. An inactive state?

2 A. Correct.

3 Q. You voluntarily turned it in?

4 A. Right. Because to keep it active you would have to
5 take continuing education courses and filling prescriptions
6 and pay the fee each year to keep the license active and I did
7 that for a while but it seemed kind of foolish to continue to
8 do that if I knew that after achieving my doctorate degree
9 that I would never go back to filling prescriptions again.

10 Q. If you had an active license, you would be regulated
11 by the State of South Carolina, correct?

12 A. To fill prescriptions, yes.

13 Q. You would be regulated. They could monitor your
14 activities, requiring you to get education, that type of
15 thing, correct?

16 A. To fill prescriptions as a pharmacist, yes.

17 Q. And you ceased doing that when your license became
18 inactive and I believe you began doing drug tests for lack of
19 a better way to say it; is that true?

20 A. That's a humble beginning. Yes.

21 Q. And you were working for employers?

22 A. Most of the drug testing I did was for employees.
23 Yes.

24 Q. And what types of things did you test at the
25 outset?

1 A. Illegal drugs and some prescription drugs.

2 Q. How did you get a sample to test?

3 A. Well, there are a variety of samples that can be
4 used for drug testing. The most common is urine and hair.

5 Q. So you would collect hair?

6 A. I would collect urine and hair. Yes.

7 Q. Did you also collect blood?

8 A. Yes.

9 Q. And I believe, are you from Charleston, is that
10 it?

11 A. Yes, sir.

12 Q. Your office is in Charleston?

13 A. Yes, sir.

14 Q. Where is it located?

15 A. In the West Ashley section of Charleston. The
16 address is 4 Carriage Lane.

17 Q. Are you in practice by yourself or in business by
18 yourself?

19 A. Yes, sir.

20 Q. Do you have any employees?

21 A. An assistant.

22 Q. Do you draw the blood yourself or do you have
23 somebody else to do that?

24 A. Draw it myself.

25 Q. All right. So you're a one man show?

1 A. I do all the work myself. Yes. Other than the
2 administrative work which my assistant would do.

3 Q. Now, you do this drug testing for employers I
4 believe?

5 A. In the beginning I did. Yes.

6 Q. You don't do that anymore?

7 A. Very little.

8 Q. Were you licensed or certified by anybody to
9 practice that occupation?

10 A. Well, there is no license or certification to do
11 that so the answer is no.

12 Q. I could do it?

13 A. Yes, sir. You could. If you allow me to train you
14 to do it, you could do it very well.

15 Q. So I would simply obtain a sample whether it's blood
16 or hair or urine and I would do what, ship it to a lab
17 somewhere?

18 A. Have some sort of mechanism to perform the test,
19 yes, whether you did it yourself or had someone else do it.

20 Q. Well, which did you use?

21 A. Both.

22 Q. You did it yourself?

23 A. Yes, sir.

24 Q. Did you have the machinery and the equipment that
25 allowed you to test blood?

1 A. Yes. I did.

2 Q. Where was that located?

3 A. It was located in Charleston at a previous office I
4 had that was larger than the one I had. I actually had a
5 robotic analyzer for drug testing which I collected specimens
6 during the day and ran the analysis in the evening. I then
7 prepared the report the following day.

8 Q. Was that called a gas chromatograph?

9 A. Not specifically. It was - the actual name was a
10 Cobas Mira is the actual instrument name.

11 Q. I'm sorry. Say that again.

12 A. It's called Cobas C-o-b-a-s Mira M-i-r-a. It's a
13 robotic chemical analyzer that LabCorp uses, for example. I
14 believe it was the LabCorp representative that sold me the
15 instrument and set me up with the testing.

16 Q. When did you obtain that? When did you get that?

17 A. That was back in the mid '90s.

18 Q. You had it for how long?

19 A. About four or five years.

20 Q. Now, when you were asked to come here to testify,
21 did you do a report of any type?

22 A. No, sir.

23 Q. No report?

24 A. No, sir.

25 Q. What did you have to consider in terms of preparing

1 for your testimony today?

2 A. I evaluated State's Exhibit 8, the Richland County
3 Sheriff's forensic examination report.

4 Q. Did you make any notes?

5 A. No, sir.

6 Q. You didn't use a scratch pad or piece of paper to do
7 the calculations that you testified to today?

8 A. I probably did, but I just did it on a calculator.

9 Q. You did it on a calculator?

10 A. That's how you do calculations. Yes, sir.

11 Q. All right. Can you tell us when you did that?

12 A. I would say within the past couple of weeks. I
13 don't remember the exact date.

14 Q. And the figures that you recited 7.7 billion and
15 that type of thing, those are figures that you remembered in
16 your head without any notes or anything?

17 A. Oh, no. I looked it up online.

18 Q. When did you do that?

19 A. During the entire course of this evaluation. If I
20 needed a specific piece of information, I would look it up. I
21 confirmed just today that the population of the world was 7.7
22 billion.

23 Q. So if I understand your testimony everything you
24 have testified to today you were literally able to do with
25 just a quick glance at this report and a calculator?

1 A. Well, I wouldn't say it was a quick glance. I had
2 this for several weeks. I have been reviewing it in
3 preparation for today.

4 Q. Well, that's what I'm asking you about. So when you
5 were doing that review, did you make any notes so that you
6 remember it and have it fresh in your head?

7 A. Yes.

8 Q. Could we see those notes?

9 A. Sure. I think I have them with me.

10 Q. Okay.

11 A. It's my copy of State's Exhibit 8.

12 MR. BROOKER: Can I step up and see what he's asking
13 him?

14 THE COURT: Sure.

15 MR. HOEFER: All right. Sir, you have handed me a
16 document. I'm gonna mark this as a State's Exhibit.

17 (Whereupon, State's Exhibit #21 marked for
18 identification.)

19 BY MR. HOEFER:

20 Q. This item has ben marked as State's Exhibit 21. You
21 recognize that of course?

22 A. Yes, sir.

23 Q. All right. And that is, those are notes that you
24 prepared to testify in this hearing today?

25 A. Correct.

1 MR. HOEFER: Your Honor, I would move to introduce
2 State's 21 into evidence.

3 MR. BROOKER: May we approach, Your Honor.

4 THE COURT: Yes.

5 (side bar off the record.)

6 THE COURT: All right. Without objection?

7 MR. BROOKER: Without objection, Your Honor.

8 BY MR. HOEFER:

9 Q. All right. I'm going to place State's 8 and State's
10 21 on this thing. Now, it appears on here that you have
11 determined the population of Florence County would be 135,566,
12 correct?

13 A. I believe that's 138,566.

14 Q. My apologies. And then you have divided that by
15 1850?

16 A. Correct.

17 Q. Is that 1850 multiplier for the YSTR DNA?

18 A. Correct.

19 Q. And explain to us, if you will, why you divide by
20 that number or why you divided it by that number?

21 A. Because the statistical calculation shows that
22 there's a -- If I had the document, I could show you where
23 that YSTR data, that the chance of the DNA matching is one in
24 1850 so that's the number you use to divide by whatever
25 population database you're comparing it to to get the number

1 of potential matches.

2 Q. That's where I'm confused. Wouldn't the proper
3 thing be to multiply -- If you have a perfect -- If the
4 defendant matches perfectly on that Y chromosome, don't you
5 multiply it by a factor of 12,500?

6 A. No, sir.

7 MR. HOEFER: Are we back?

8 THE COURT: Do you need that for purposes of your
9 question or can you ask your question once the system
10 boots back up?

11 BY MR. HOEFER:

12 Q. While I'm waiting on that, would you mind telling us
13 what likelihood ratio is?

14 A. Sure. A likelihood ratio is the chance that
15 a certain event is occurring or not.

16 Q. All right. And if the defendant's DNA matches
17 perfectly to the Y chromosome which is the male chromosome,
18 correct?

19 A. Yes, sir.

20 Q. You don't believe that the likelihood ratio would be
21 multiplied by a factor of 12,500?

22 A. No, sir.

23 Q. Not at all?

24 A. Not at all.

25 Q. What's the random match frequency?

1 A. Could you repeat that please?

2 Q. What is the random match frequency?

3 A. Well, the comparison of whether or not a match
4 occurs is whether or not the person that you're comparing the
5 evidence DNA to is a likelihood match compared to a random
6 match. In other words, just a randomly drawn person in the
7 population database as opposed to a specific person that may
8 lend weight for the weight to that match such as a person in
9 the same court case or crime scene or event or location. A
10 random match is a completely random individual. Because it is
11 not random, then you fall outside being statistically valid
12 because there are other factors that could control the
13 likelihood of matching.

14 Q. Don't you have to take the general loci that are
15 matched to a particular contributor and then factor again if
16 the Y chromosome, because those genetics would be XY,
17 correct?

18 A. Correct.

19 Q. So if the Y chromosome is a perfect match, then you
20 multiply to account for that being in addition to the other
21 matches, correct?

22 A. I believe I understand your question at this point.
23 When a DNA profile is obtained, we don't look at just one
24 section on the DNA, one loci, we look at several and we can
25 look at, for example, the FBI 13, the CODIS 13 or we can go to

1 22, or 44 segments on the DNA and we can determine if there's
2 a exclusion meaning the loci allele lengths do not match at
3 that particular location on the DNA or whether there is a
4 match and if there is a match, then we can calculate a
5 likelihood of matching, a probability of matching.

6 Now, if we did that just for one DNA segment, there
7 could be a lot of people that have the same allele length on
8 that one DNA segment, but if we look at a second DNA segment
9 and that DNA segment also matches, then what are the chances
10 that a random person having both of these that matched, and
11 then you can do it for a third DNA segment and you needn't
12 keep going. So once you get a match for an individual segment
13 and a loci, then if you have a series of them, then to
14 calculate the probability of matching you take each individual
15 match of each segment of DNA and take that likelihood matching
16 and then multiply it by each other to get a likelihood ratio.
17 I believe that's what you're referring to with your question
18 as far as multiplying.

19 Q. Okay. Are you finished? And so it's your testimony
20 that you would divide -- I forgot the place, which one it was.
21 Which one did you divide by 1850?

22 A. The population of Florence County and the population
23 of the State of South Carolina.

24 Q. Okay. I got you.

25 THE COURT: Mr. Hoefer, I don't mean to interrupt

1 you, but I think we're back up if you want to use that
2 machine.

3 MR. HOEFER: Yes. We're back. Thank you.

4 BY MR HOEFER:

5 Q. Okay. You have designated this population and I see
6 on here 74.9, approximately 75 people, 32 black, 43 percent.
7 Can you tell us what that means?

8 A. Well, I looked at the population of Florence County
9 and was able to calculate that with this low of a probability
10 of matching that there could be 75 people that have the same
11 YSTR profile and then the database actually broke down the
12 population of Florence County to various ethnic groups and the
13 population of Florence County, I believe the 43 percent means
14 that 43 percent of the population of Florence County is
15 African American and so using that number I was able to
16 calculate that the number of African American males in
17 Florence County that could also potentially match this YSTR
18 profile are 32 African American males.

19 Q. Okay. So now that figure would change, of course,
20 if instead of dividing it among the African American
21 population, you divided it among male and female, correct?
22 Because if you exclude all the females from the five million
23 eight hundred thousand, you would have a much different figure
24 in the end, would you not?

25 A. I'm not quite sure what you're asking.

1 Q. Well, because there's a perfect match to
2 Mr. Williams on the Y chromosome, we know that the contributor
3 is a male, do we not?

4 A. We know it's a male. Yes.

5 Q. So if you're trying to calculate the probability of
6 this particular DNA being some random individual but you throw
7 females into that calculation, does that not skew the
8 results?

9 A. Well, if you take that it's approximately half male,
10 half female, then you would divide that number in half.

11 Q. But you did not do that, did you?

12 A. I don't recall.

13 Q. Doctor, you have been, you talked about where you
14 testified. You testified in court recently. Is that what you
15 do? Is that your living now? You testify in court on
16 alcohol, drug abuse, these types of things?

17 A. No, sir. Not just testifying. I do a lot of other
18 work as well. I mean, I still do quite a bit of testing, drug
19 testing, DNA testing. I have people that come to my office on
20 a regular basis for forensic services.

21 Q. All right. Sir, let me ask you this: You said you
22 do DNA testing. Do you actually have the apparatus to take a
23 sample and test it and develop the DNA?

24 A. When you say take a sample, I always take the DNA
25 samples myself.

1 Q. Yeah. We're mincing words here. Do you have the
2 ability to run the test yourself, the equipment in your shop
3 where you run the DNA test?

4 A. I have the ability but I don't have the equipment.

5 Q. So you don't have the ability then, right?

6 A. Well, I do have the ability. I can go to my
7 contract lab which I have done before, gone to the lab and run
8 the test myself. I have that ability. I just don't have the
9 capability in my office.

10 Q. So what you do is you send it to someone to have it
11 tested, is that fair?

12 A. That's typically what I do. Yes.

13 Q. Then you get, they somehow get you the results,
14 email, snail mail, whatever, they send you the results; is
15 that true?

16 A. Correct.

17 Q. Okay. And you simply interpret what the results
18 might be?

19 A. You use the word "simply." I'm not sure that any
20 one of these are simple or not. Every one is different. Some
21 are more complex than others so if you are asking do I
22 interpret the findings, yes. But I think the word simply is a
23 misnomer in this case.

24 Q. Let me ask you this way. How much of your income is
25 based on your service as an expert witness as opposed to the

1 drawing of blood, urine?

2 A. I haven't broken down the income by category. I'm
3 not an accountant so I don't have that answer right off the
4 top of my head.

5 Q. You have got an idea, don't you?

6 A. I could guesstimate. A third of my income.

7 Q. And ten years ago almost a hundred percent of your
8 income was based on the drug testing, alcohol testing and that
9 type of thing, was it not?

10 A. I don't know if the ten year time limit is accurate,
11 but in the past I started as doing drug testing for employees
12 in work related situations. That was the beginning back in
13 1991.

14 Q. Would it be fair to state that you're being paid for
15 your services here today; is that correct?

16 A. No, sir.

17 Q. You are here pro bono?

18 A. No, sir.

19 Q. Free of charge?

20 A. No, sir.

21 Q. Well, I don't understand the answer, sir.

22 A. You said am I paid for my services?

23 Q. Yes, sir.

24 A. No, sir. I'm not. I'm being paid for my time, not
25 my services.

1 Q. Oh. So you're a businessman who provides a service
2 but you don't get paid for the service, only for the time?

3 A. For this case, yes. That is correct.

4 Q. How much are you getting paid, sir?

5 A. I'm getting paid \$2850.00.

6 Q. \$2850.00?

7 A. Yes, sir.

8 Q. All right. How did you establish that amount?

9 A. If I'm going to work on a complicated case, I
10 typically ask for a \$2000.00, for lack of better word,
11 retainer up front which I got in this case, and if any
12 additional time is needed, then that time would be billed.
13 Being that I traveled from Charleston to Florence yesterday,
14 but did not testify and had to drive from Charleston to
15 Florence again today, there was additional time that
16 occurred.

17 Q. So you billed for that, but you haven't been paid?

18 A. I've been paid.

19 Q. You got paid today?

20 A. Yes, sir.

21 MR. HOEFER: Good deal. At least one of us did.

22 Mr. Bennett, I believe I'm all done. I have no further
23 questions, Judge.

24 THE COURT: All right. Thank you, sir. Anything on
25 redirect?

1 MR. BROOKER: Just very briefly.

2 REDIRECT EXAMINATION

3 BY MR. BROOKER:

4 Q. Mr. Bennett, you own your own business; is that
5 correct?

6 A. Correct.

7 Q. And, of course, is, is that people pay you for time
8 and services? Well, let me rephrase that question. And, of
9 course, I'm gonna try to help Mr. Hoefer out. When you say
10 you're being paid for your time, were you asked to perform any
11 DNA testing in connection with this case?

12 A. I was not.

13 Q. Okay. Is that what you mean when you said, the
14 reason why you said that you're not getting paid for service
15 is because you're not doing any testing?

16 A. Correct. I didn't provide any services for this
17 case, only my time.

18 Q. Okay. And then, of course, is, is that your time
19 was spent doing what?

20 A. Reviewing the forensic report and communicating
21 with you and doing research that I needed to do to prepare to
22 testify.

23 Q. Okay. And so just for analyzing the report that was
24 already put in evidence that is State's Exhibit 8?

25 A. Correct.

1 Q. And, of course, is, is that I think you previously
2 testified, but you correct me if I'm wrong is, is that the
3 method that they used to do the DNA analysis, that that is a
4 reliable and accurate method?

5 A. Yes, sir.

6 Q. Okay. All right. And, of course, is, is that I
7 think you testified also earlier that you studied
8 statistics?

9 A. Yes. Medical statistics at the Medical University
10 of South Carolina.

11 Q. Okay. And, of course, is, is that, does that -- Let
12 me ask it this way. Is that - is that training that gives you
13 --

14 MR. HOEFER: Judge, I believe he's asking questions
15 now that didn't come out on cross examination.

16 MR. BROOKER: I think he challenged his math.
17 That's the reason why I'm asking.

18 MR. HOEFER: I believe that was earlier, Judge.

19 MR. BROOKER: You challenged his math on the record.
20 I've only got the one question, but I think he challenged
21 his math and whether or not he was doing his math right.

22 THE COURT: I'll allow the question.

23 BY MR. BROOKER:

24 Q. Okay. It's just gonna be this one question, is that
25 that study in statistics, is that what you are relying on that

1 allows you to be able to do these, to be able to calculate the
2 calculations that you provided to the jury and the numbers
3 that you gave to the jury?

4 A. That course as well as the other courses in
5 mathematics that I have taken all the way through calculus.

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

7 MR. HOEFER: Nothing further, Your Honor.

8 THE COURT: Thank you very much.

9 THE WITNESS: I have a question. The item that was
10 retrieved from me and put in as an exhibit as State's 21
11 is my only copy. It's my business copy necessary for my
12 business files.

13 THE COURT: Sure. Is there any objection to us
14 making a copy of those notes and give Dr. Bennett back
15 his original and substituting a copy for the record?

16 MR. HOEFER: No objection. I'll see to it as soon
17 as we break.

18 THE COURT: Thank you very much. We'll do that,
19 sir.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you. Gentlemen, step up, if you
22 would please.

23 (Side bar off the record.)

24 MR. BROOKER: We call Kendrell Davis.

25 THE COURT: Ms. Davis, please step forward to be

1 sworn.

2 Thereupon,

3 KENDRELL DAVIS

4 after having been first duly sworn, testified as follows,

5 DIRECT EXAMINATION

6 BY MR. BROOKER:

7 Q. Ms. Davis, just a couple questions. Do you know
8 Royal Williams?

9 A. I do.

10 Q. What's your relationship to Mr. Williams?

11 A. That's my boyfriend.

12 Q. How long have you known Mr. Williams?

13 A. Five years.

14 Q. Okay. And I'm just gonna ask you to take a look at
15 these pictures and see if you can authenticate them for me.
16 Take a look at those pictures marked as State's Exhibit 3.

17 A. Yeah.

18 Q. Just flip through them all. I think there's
19 multiple pages.

20 A. (Witness complies.)

21 Q. And, Ms. Davis, are these an accurate, are these
22 photographs that have been identified as State's Exhibit 3,
23 are these an accurate depiction of what Mr. Williams looked
24 like on the dates that are identified in these photographs?

25 A. Yes, sir.

1 Q. Just one more question. I think you said that you
2 have known him for five years. For the five years that you
3 have known him has he always had a bald head?

4 A. Yes. He has.

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

6 THE COURT: All right. Cross.

7 CROSS EXAMINATION

8 BY MR. CLEMENTS:

9 Q. You said you have been dating Mr. Williams for five
10 years?

11 A. I've been knowing Mr. Williams for five years.

12 Q. Okay. How long have you been dating him?

13 A. Almost two years.

14 Q. Were you around him in January 2016?

15 A. No. I wasn't. But I know him January 2016.

16 Q. Okay. All right. You knew him in May of 2015; is
17 that correct?

18 A. Yes. I did.

19 Q. And in 2014 you knew him in December?

20 A. In 2014 in December?

21 Q. Yes, ma'am.

22 A. I didn't know him until 2015. 2015.

23 Q. You did or didn't know him?

24 A. I did.

25 Q. Okay. In December?

1 A. Yes. In December.

2 MR. CLEMENTS: And that's got the same date on it.
3 Thank you, Ms. Davis.

4 THE COURT: All right. Any objection to Ms. Davis
5 being excused from her subpoena?

6 MR. BROOKER: No objection, Your Honor.

7 MR. CLEMENTS: None, Your Honor.

8 THE COURT: Thank you very much, ma'am. You may
9 step down.

10 MR. BROOKER: We have no further witnesses to
11 present, Your Honor. The defense rests.

12 THE COURT: All right. Ladies and gentlemen, the
13 defense has rested their case and what typically occurs
14 now is that I'm required to take up motions at the close
15 of the defense's case and let me just go a little further
16 and tell you what we're looking at. So I need to take up
17 motions at the close of the defense's case, then I need
18 to talk with the attorneys regarding the charge that I'm
19 going to give you and then that would bring us to the
20 point of the trial where the defense, I mean, the State
21 and the defense would have the opportunity to address you
22 with what we call typically call closing arguments or
23 final summation and then at the close of that I will
24 charge you on the law that is applicable, and then you
25 would then have the case for your consideration and your

1 deliberations.

2 We were trying to get to the point that we could get
3 this case to you earlier. It just did not work out and
4 so I hate to do this to you but I'm gonna need to ask you
5 to be back in the morning. But here's what you can
6 expect in the morning. You can expect, because we'll
7 take care of all of our work this evening, so you can
8 expect when you get here we'll open up recognizing the
9 attorneys for their closing arguments, they will make
10 their closing arguments, I'll give you the charge on the
11 law and then you will have the case for your
12 consideration, okay? So tell your family, friends and
13 loved ones give you one more evening. I can tell you by
14 tomorrow I don't know when because I don't know how long
15 your deliberations will take, but I'm confident tomorrow
16 you will be able to tell them everything they want to
17 know, okay? So just continue for at least again this
18 evening to protect your ability to remain fair and
19 impartial. If you don't mind coming in at 9:00 like we
20 did this morning, let's do that. Let's go ahead and
21 we'll start at 9:00 with the attorneys closing arguments.
22 So everyone else please remain seated while the members
23 of the jury leave. Members of the jury we'll see you
24 back in the morning.

25 (Whereupon, the jury was released for the evening at

1 5:10 p.m.)

2 THE COURT: I'll take up motions at the close of the
3 defendant's case.

4 MR. BROOKER: Your Honor, I don't have anything
5 further. We just renew the motions for directed verdict
6 that we made before based upon the previous grounds that
7 we argued before.

8 THE COURT: All right. And I will also note
9 renewing all of your prior objections and exceptions.

10 MR. BROOKER: Absolutely, Your Honor. Absolutely.

11 THE COURT: All right. I don't think anything
12 changed regarding the directed verdict issue as far as I
13 can tell. I think it's a jury question. I think it's a
14 fact question that the jury is gonna have to resolve and
15 so I would respectfully deny that. But would note your
16 renewal of all your previous motions and objections.
17 Anything from the State?

18 MR. CLEMENTS: No, Your Honor.

19 THE COURT: Okay. Now, what we'll do is when we get
20 back in in the morning everybody should be ready to go
21 regarding closings and the way it works obviously y'all
22 understand the State will close in full, the defense will
23 then have the opportunity to close, and then the State
24 can rebut, save some time for rebuttal with the
25 understanding that that rebuttal must be in response to

1 the defense's arguments, okay?

2 Now, what I want to do is give everybody whatever
3 time they need to argue, but I'm not gonna leave it open
4 ended because we're not gonna have, you know, hours upon
5 hours of argument. Do you have a request that you would
6 like me to consider how much time you need? I'm open to
7 listening to any request that you might have. How long
8 do you think it will take? And, Solicitor, if you would,
9 and I know it's not easy when you have to save some time
10 for rebuttal, but kind of make your suggestion inclusive
11 of both your closing in full and your rebuttal.

12 MR. CLEMENTS: Your Honor, I'll make every effort
13 not to repeat myself unless it's necessary but this
14 case is almost all circumstantial evidence. It's been a
15 long case, taken a long time to get the witnesses and the
16 evidence in and that means it's gonna take a little while
17 for me to be able to address all those issues I need to
18 address and then that with rebuttal, I hate to ask for so
19 much but about an hour and 15 minutes between the two. I
20 think that's probably more than I need, but I don't want
21 to go over what I've asked for.

22 THE COURT: I understand. And let me say this. I
23 don't disagree with you that there's been a lot of
24 testimony, but I also believe, you know, when you're
25 presenting it and you're dealing with cross and all, it

1 takes longer, but I think an effective closing argument
2 is going to encapsulate that into an efficient, you know
3 --

4 MR. CLEMENTS: Absolutely.

5 THE COURT: So that appears reasonable. Mr.
6 Brooker, do you feel you need more than an hour?

7 MR. BROOKER: No, Your Honor, I don't. I was just
8 gonna tell you it's gonna be 45 minutes to an hour. I
9 don't think that I'm gonna go over an hour. It may be
10 even closer to 45 minutes.

11 THE COURT: Okay. So what I'll do is, is we'll do
12 that. As you develop your arguments this evening try to
13 look at it with that in mind. Now, I have here, these
14 are just proposed charges, okay? This is not a final
15 draft, but it is a draft. If there's anything that you
16 wish to add or delete or change, we can discuss that
17 tomorrow morning. I would ask though if you've got any
18 specific requested charge or anything of that nature, if
19 you could send it in an email. If you do that, if you
20 could send it in like a Word format, that's just a
21 proposed charge and anything that I need to, anything we
22 need to change or alter we'll do that. I would ask if
23 you would be back about 8:30 or something and then if we
24 have to discuss the charge further, we can do that, okay?

25 All right. And like I said, if you come up with

1 something that you want me to consider, if you will send
2 it via an email and send it both to me and to J.D., that
3 would be trussoj@scccourts.org.

4 MR. CLEMENTS: Your Honor, I want to thank you and
5 Mr. Brooker. I have not felt well during part of the
6 trial. You all were aware of that and I felt like y'all
7 made some allowances for me and I appreciate that.

8 THE COURT: Absolutely. I'm sorry you haven't felt
9 well. We'll certainly continue to accommodate that. Are
10 you on the back side of that do you think.

11 MR. CLEMENTS: I feel like it right now, but I
12 haven't eaten anything so I don't know.

13 THE COURT: Okay. All right. Folks, we'll then
14 reconvene at 8:30.

15 (Whereupon, court was adjourned for the day at 5:30
16 p.m.)
17
18
19
20
21
22
23
24
25

1 SEPTEMBER 14, 2019

2 THE COURT: Okay. Keep your seats. Good morning.
3 What have we got?

4 MR. BROOKER: Judge, I think the first paragraph
5 does not contain within your charge, and that paragraph
6 is the State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. The State is required
8 to prove every element of the charged offense by evidence
9 that would satisfy the jury beyond a reasonable doubt. I
10 don't think you have it in your language that they have
11 to prove every element of the offense beyond a reasonable
12 doubt, I don't believe, and so I would argue if you're
13 not gonna charge that definition, then that sort of
14 language has to be in there.

15 THE COURT: And I agree with you that that should be
16 in there.

17 MR. BROOKER: That paragraph should be in there and
18 also tells them that there's no burden shifting, that the
19 burden of proof always remains with the State throughout
20 the entire process. So that first paragraph I think has
21 to be in there.

22 MR. CLEMENTS: Which charge?

23 MR. BROOKER: Reasonable doubt charge.

24 THE COURT: Your requested charge number 2, the
25 definition of guilty and not guilty, I'm not gonna charge

1 because all that does is define the term using the term.
2 It basically says guilty on the verdict form means that
3 you the jury found the defendant guilty.

4 MR. BROOKER: I'll take 30 seconds to explain why I
5 asked for that, Your Honor, is, is that, and I always do
6 this every time I have a trial, and the reason why I do
7 that is that I'm more concerned about the definition of
8 not guilty. So when the jury looks at the jury form and
9 it says guilty or not guilty, of course, we know what
10 guilty means. Guilty means is, is that that you found
11 every element of the offense beyond a reasonable doubt.
12 What does not guilty mean? Jurors sometimes confuse that
13 not guilty means, you know, that the defendant is
14 innocent. That's not what not guilty means. What not
15 guilty means is, is that the State has failed to satisfy
16 the burden of proof beyond a reasonable doubt. If the
17 jury believes that not guilty means innocent then, of
18 course, the jury then will misunderstand at least what
19 the responsibility - excuse me - what the burden is.

20 The burden is always has the government prove his
21 guilt beyond a reasonable doubt. He can be guilty as
22 sin. You can have a defendant as guilty as sin but, of
23 course, according to the rules if the government has not
24 proved their burden of guilt beyond a reasonable doubt,
25 then that's what not guilty means. Not guilty has

1 nothing to do with innocence, but sometimes the way it's
2 crafted juries believe that, oh, I'll find him guilty or
3 I'll find him innocent and they substitute not guilty for
4 innocent and, of course, if they substitute not guilty
5 for innocent then, of course, is, is that they think that
6 he has been proven of innocence and the proof of
7 innocence plays no equation into a trial. There is no
8 requirement of proof of innocence, only as to whether or
9 not the government has proved its case of guilt beyond a
10 reasonable doubt.

11 That's why I usually ask that because I think the
12 jury gets confused between not guilty and innocent. So
13 anything to let them know that not guilty does not mean
14 innocent and that they're not supposed to evaluate
15 innocence, they are evaluating the burden of guilt beyond
16 a reasonable doubt whether or not that burden has been
17 satisfied. If it hasn't been satisfied, not guilty with
18 no consideration to innocence whatsoever.

19 THE COURT: Well, I would likely charge some version
20 of that, but I just don't think you define the term by
21 using the term so I would probably charge something along
22 these lines and I'll have to look at it more closely is
23 that in this case you will have a verdict form. There
24 are two options on the verdict form, guilty or not
25 guilty. If you find the defendant guilty, that means you

1 are saying that the State has proven each and every
2 element of the crime beyond a reasonable doubt. If you
3 find the defendant not guilty, that means that the State
4 has failed to prove each and every element of the crime
5 beyond a reasonable doubt.

6 MR. BROOKER: And that's fine, Your Honor. I think
7 that --

8 THE COURT: I just don't think it's effective to
9 define a term by just using the term and I'll give y'all
10 a chance to look at that before we go. Your charge
11 regarding payment of expert witnesses I think is
12 appropriate.

13 MR. BROOKER: Yeah. Because they raised the issue
14 about, on cross examination about he's getting paid, et
15 cetera, et cetera, and how much money.

16 MR. CLEMENTS: Your Honor.

17 THE COURT: Yes, sir.

18 MR. CLEMENTS: We have a problem with that charge
19 because I don't think it's truthful. It says when the
20 expert witness is called by either the State or the
21 defendant, he expects to be paid and should be paid. Our
22 expert witnesses are not paid to come to testify.

23 THE COURT: Let me go back to the charge because I
24 didn't mean that I would charge it exactly as written. I
25 do think there needs to be a charge regarding the payment

1 of expert witnesses. I would put when an expert witness
2 -- Let's see. You have heard testimony in this case
3 regarding the payment of an expert witness. You should
4 not take into consideration the fact that the witness has
5 been paid. I would do it that way.

6 MR. CLEMENTS: Yes, sir. And just further for the
7 record, we consider that to be a comment on the facts,
8 not on the law.

9 THE COURT: How is that a comment on the facts?

10 MR. CLEMENTS: It was a factual issue brought out on
11 cross examination but it doesn't have anything to do with
12 the law.

13 MR. HOEFER: Basically there's no testimony in the
14 record that the witness shouldn't be paid. That's why it
15 becomes a comment on the facts and it's certainly not the
16 law. There is no law that says a witness is entitled to
17 be paid.

18 THE COURT: This charge isn't about that. The
19 charge is about the fact that a witness has been paid
20 unless there is some evidence or circumstances appearing
21 from the evidence that the testimony has been influenced
22 because of that sum.

23 MR. HOEFER: Right. That's why you give a curative
24 instruction if a witness is impeached, y'all shouldn't
25 consider that impeachment. If the jury thinks that he's

1 a hired gun and he's been paid, they're entitled to think
2 that and this charge would seem to be the Court just
3 refusing him the ability to do that. That's how it's a
4 comment on the facts.

5 THE COURT: Go ahead, Mr. Brooker.

6 MR. BROOKER: Your Honor, if that's a comment on the
7 facts, then, of course, is, is that the rest of charge
8 when it comes to instructing the jury as to how they
9 should interpret the testimony by a lay witness would be
10 the same thing. The only purpose of that is, is that
11 that whenever a defendant - whenever an expert witness is
12 challenged on the grounds that he's receiving, been paid,
13 and the only thing that that does is tell the jury, you
14 know, that that information is not information to be used
15 per se to prejudice his testimony. Only if they believe,
16 and that covers what Rick is saying, only if they believe
17 that somehow that money that the expert is receiving
18 somehow taints their testimony and that's contained
19 within there. I didn't cut that off. So if they think
20 that, hey, this is a hired gun and he's in there to do
21 this, that charge basically says that if you make that
22 finding, then, of course, is, is that you can consider
23 that. So it's included within there. They are
24 protected. I'm not trying to cheat the jury out of being
25 able to reach that conclusion but being paid per se,

1 that's what that charge says, being paid per se, you
2 know, is not a fact that would prejudice the testimony of
3 an expert.

4 MR. HOEFER: Any party is entitled to impeach a
5 witness --

6 THE COURT: Sure.

7 MR. HOEFER: -- in any manner whatsoever. I'm
8 certain that I've never seen it, and I'll ask Mr. Brooker
9 if he's found any case law that says that would be a
10 proper charge without the Court actually telling the
11 jury, you know, if they pointed out something about this
12 particular witness, you shouldn't consider that because
13 the man is entitled to be paid. I still think that that
14 is the Court talking about the evidence that came from
15 that witness stand through the witness. He can argue
16 that. He certainly has every right to argue it. But by
17 you charging it, you're giving it the stamp of approval.
18 I don't know of any case law that says that's a proper
19 charge.

20 MR. BROOKER: But the only case law that Judge
21 Anderson referenced in his book, Anderson versus Campbell
22 Tile Company, and that's a 2002 South Carolina 54, 1943.
23 But, of course, in Federal and State court whenever
24 there's an expert witness in every Federal and State
25 court that I have been in, if there's an expert witness

1 is that either party has the right to request that charge
2 and that charge is always given. Say what you want to,
3 but that's why I just asked because it did become
4 relevant. If they had never raised the issue, hey,
5 you're a hired gun, then it wouldn't be relevant. But it
6 is relevant because Mr. Hoefer on direct examination
7 asked him how much are you getting paid? Have they paid
8 you yet? Yada yada yada. He went into it, made a big
9 deal about him getting paid and, of course, is, is that
10 he went into a big deal about that to seek to prejudice
11 the jury on the grounds that, hey, you know, this expert
12 should be looked at different, you know, than our expert
13 because this expert is getting paid. And, of course, is
14 that's an improper conclusion for the jury to draw unless
15 they think that being paid, unless there's some evidence
16 that says in the charge --

17 THE COURT: All right. We're gonna move on. I've
18 agreed. I'm gonna charge it and I note the State's
19 exception to that.

20 MR. CLEMENTS: Your Honor, are you gonna charge the
21 part about when the State calls the expert?

22 THE COURT: No. No. I'm gonna adapt it to -- Well,
23 let me find it again. There was evidence in the record
24 that an expert witness was paid. And now I don't even
25 know how to charge that because he had to play games with

1 words about he wasn't charging for his services, he was
2 charging for his time which was an idiotic statement
3 because typically I would charge that there is evidence
4 in the record that an expert witness was paid for his
5 services and then I would say the fact that the witness
6 was paid unless there is some evidence or circumstances
7 appearing from the evidence which would fully and
8 reasonably convince you that the testimony of the witness
9 has been influenced because of such payment, that is to
10 be considered by you as you consider any other evidence
11 in the case. So I'm gonna adapt it to something along
12 those lines, but I think you're entitled to it and I'm
13 gonna charge it.

14 Now, I don't know, I didn't set in the charge, I
15 didn't set it aside as a separate heading but I have a
16 paragraph in here regarding stricken testimony. Did you
17 not see it?

18 MR. BROOKER: I may have overlooked it, Your Honor.
19 Tell me where it is, I'll go take a look at it. Tell me
20 where it is, Your Honor.

21 THE COURT: It's the last paragraph under the
22 heading of the jury, finders of fact and credibility. I
23 can't tell you the page. It's page 4. I'm sorry. I do
24 have page numbers here. It's the last paragraph of that.
25 It's essentially what you have asked for.

1 MR. BROOKER: That's fine, Your Honor. Yeah.
2 That's fine. You already have it in there. I just
3 probably didn't see it so that's fine, Your Honor.

4 THE COURT: And I have not had an opportunity -- I'm
5 just going to have to -- I'll hear y'all's argument on it.
6 I haven't had an opportunity to read your charge on
7 identification because it's a book and I can assure you
8 I'm not gonna charge what you've written here because it
9 starts off very improperly. It starts off one of the
10 most important issues in this case is the identification
11 of the defendant as the perpetrator of the crime. That
12 clearly is making a comment on the evidence and the
13 issues and I'm not gonna do that. And I haven't had a
14 chance to read all of this.

15 MR. BROOKER: Your Honor, that's a charge
16 word-for-word comes out of the Telfair case.

17 THE COURT: You do understand it can be in a case.
18 I'm not required to charge it.

19 MR. BROOKER: I know you're not required to charge
20 it.

21 THE COURT: I think that's an improper opening
22 sentence for me to tell the jury what one of the most
23 important issues in this case is. You don't find that
24 offensive? Would you want me to emphasize some specific
25 area of the State's burden of proof?

1 MR. BROOKER: As it being important?

2 THE COURT: As it being the most important. That's
3 what it says, one of the most important issues.

4 MR. BROOKER: One of the most important issues.

5 THE COURT: Yeah. I think every burden they have is
6 important and I'm not ranking one over the other.

7 MR. BROOKER: Well, you can rephrase it however
8 you want to, Your Honor. I didn't choose those words. I
9 took that directly out of the Telfair case and, of
10 course, that charge is word-for-word and, of course,
11 following out of that, I think that's how Judge Anderson
12 gives it word-for-word out of that particular case where
13 identity is an issue.

14 THE COURT: And I agree with you. Listen, I love
15 Judge Anderson and I highly, highly respect that man, but
16 he's very wordy and very repetitive in a lot of the
17 charges that I see and I use his charges quite often, but
18 I pare them down and I take out the repetitiveness.

19 MR. BROOKER: Telfair is not his. He takes that
20 directly from the case.

21 THE COURT: Okay. Have y'all reviewed that charge?
22 Is there anything in there that is objectionable other
23 than it's too lengthy?

24 MR. CLEMENTS: I haven't been able to read it except
25 for the first page. I'm reading it right here last

1 moment. Can't get the second page to come up. I just
2 think it's incredibly redundant. It highlights one
3 aspect of the trial above other aspects of the trial
4 which I think is improper and I think unduly influences
5 the jury on that.

6 THE COURT: Mr. Brooker, with regard to request
7 number 6, I always charge the jury that statements of
8 counsel is not evidence.

9 MR. BROOKER: Your Honor, I know. I put it in there
10 because it was not in the charge that you gave to us
11 yesterday I don't believe. I didn't see it.

12 THE COURT: It wasn't in there. But the reason it's
13 not is because before you began your opening statements,
14 I made that charge to the jury and I always do it before
15 you do your closing arguments and I tell them that any
16 comments made by the attorneys is not evidence. They are
17 not under oath. They are not witnesses. The evidence in
18 this case for you to consider is the evidence of
19 witnesses from that witness stand and any exhibits that
20 came in during the trial.

21 MR. BROOKER: Well, then that takes care of number
22 6. The only reason why I put it in there is because I
23 was just looking at the charge we were handed yesterday
24 and it was not in there.

25 THE COURT: Yeah. But I do charge them that even

1 though it's not formally within the charge itself.

2 MR. BROOKER: Certainly. Back to number 5, Your
3 Honor, I understand that you said that you're not gonna
4 put that first word in there that emphasizes it but, of
5 course, is, is that some form of a Telfair charge has to
6 be given to the jury.

7 THE COURT: I told you I was gonna charge
8 identification. I just don't know what it's gonna look
9 like by the time -- I haven't had a chance to read it.
10 I'm going to and I'm gonna let y'all look at what I come
11 up with before we go any further.

12 MR. BROOKER: Good enough. Thank you, Your Honor.

13 THE COURT: Anything from the State? Was there
14 anything that y'all wanted or needed?

15 MR. CLEMENTS: Your Honor, we're fine with the
16 charge submitted to us.

17 THE COURT: All right. Then if y'all would, give me
18 a little bit of time. I'm gonna step back into the
19 office and see about incorporating the changes and then
20 we'll go back through them.

21 (Short break.)

22 THE COURT: Okay. J.D. should be emailing you a
23 copy of what I just did, but I'll go ahead and talk
24 with you. You can check your emails to see if you got it
25 yet. But I want to pull up, Mr. Brooker, I want to pull

1 up your request so that I can adjust each one. All
2 right. With regard to the reasonable doubt, what I've
3 done on the reasonable doubt charge, I've added the
4 language that the State is required to prove every
5 element of the charged offense by evidence which
6 satisfies you, the jury, of the guilt of the defendant
7 beyond a reasonable doubt.

8 Now, that's where I ended it as far as with the
9 reasonable doubt charge, but if you look further on that
10 first paragraph, Mr. Brooker, you have language that says
11 the defendant is not required to prove his innocence.
12 The burden always remains upon the State to prove guilt.
13 That is in my charge under the paragraph where you are
14 not to consider the fact that Mr. Williams did not
15 testify. If you look under that portion, I have, I
16 repeat, under your oath, you are to draw no conclusion
17 whatsoever from the fact Mr. Williams did not testify.
18 The fact that Mr. Williams did not testify should not
19 even be discussed in the jury room. The burden of proof,
20 as I have stated to you, is on the State. The defendant
21 is not required to prove his innocence. The burden of
22 proof remains on the State to prove guilt beyond a
23 reasonable doubt. So that is there under that heading.

24 Then number 2, I have put where I have a verdict
25 form has been prepared for your convenience. The guilty

1 on the verdict form means that the State has proven the
2 defendant guilty on each and every element of the offense
3 charged beyond a reasonable doubt. Not guilty on the
4 verdict form means that the State has failed to prove
5 that the defendant is guilty on each and every element of
6 the offense charged beyond a reasonable doubt.

7 Then 3, as far as payment of expert witness, I have
8 here there is evidence in the record of an expert witness
9 having been paid for their time. You should not take
10 into consideration the fact that the witness was paid
11 unless there is some evidence or circumstances appearing
12 from the evidence which would convince you that the
13 testimony of the witness has been influenced because of
14 the sum which he or she has been paid.

15 MR. BROOKER: The only thing that I would say, Your
16 Honor, is that there is evidence in the record that an
17 expert has been paid. Again, that is commenting
18 specifically on the record except, I guess, just putting
19 it in generic form.

20 THE COURT: I'm sorry. Do what now?

21 MR. BROOKER: Is that, I think you said on the
22 payment of expert witnesses, that your charge is that --

23 THE COURT: There is evidence in the record.

24 MR. BROOKER: Yeah. And I was just gonna say
25 instead of putting that there is evidence in the record

1 and commenting on the evidence in the record, that maybe
2 it should be done in more generic form just like in Judge
3 Anderson where it says, it doesn't specifically identify
4 what's in the record. I would just simply say that
5 expert witnesses are paid, that expert witnesses can be
6 paid for their time and just tell them they are not to, I
7 guess, go on to with what you said, you should not take
8 into consideration the fact that witnesses, that the
9 witness is paid, consideration of the fact that a witness
10 is paid, I guess finish that on out but I wouldn't start
11 it off as - it's my suggestion, and it's up to you, that
12 there is evidence in the record because that would be
13 kind of commenting on telling the jury what evidence is
14 in the record or commenting on the evidence so I would
15 suggest a more generic form. Other than that I don't --

16 THE COURT: I'm trying to figure out how to do that.
17 I mean, because it says here when an expert witness is
18 called by either the State or the defense, he expects to
19 be paid and should be paid. That's assuming every expert
20 witness is paid and they're not. Not every expert
21 witness charges a fee.

22 MR. BROOKER: I'm not saying that you use my
23 language.

24 THE COURT: Well, I mean, so give me another option.
25 How do I get into that sentence without saying -- I can

1 take out in the record, but there is evidence of an
2 expert witness having been paid for their time.

3 MR. BROOKER: I would just put expert witnesses are
4 sometimes --

5 THE COURT: There have been expert witnesses who
6 have testified during the course of this trial. I could
7 do that and just say you should not take into
8 consideration the fact that the witness was paid.

9 MR. BROOKER: I would just put expert witnesses are
10 sometimes --

11 MR. HOEFER: But they can take it into
12 consideration. That's the point.

13 THE COURT: That's not where it stops though, Mr.
14 Hoefer. It says you're not to take into consideration
15 that the expert witness was paid unless there is evidence
16 or circumstances appearing from the evidence which would
17 convince you that that testimony was influenced by the
18 payment. So it doesn't stop there. I agree with you.
19 And you can argue, you can absolutely argue that he's a
20 hired gun and he gets paid to do it, and I don't know, I
21 haven't looked at his CV, but if you look at his CV if
22 every one of his appearances were for the defense, you
23 can argue all of that.

24 MR. BROOKER: He couldn't argue that because it was
25 not asked of him. I think he can argue --

1 THE COURT: That wasn't - they didn't go over
2 that.

3 MR. BROOKER: They didn't go into that. That was
4 not testified to.

5 THE COURT: All right. But it certainly would have
6 been proper cross examination if he had done it. I'm
7 gonna fix it and just basically say --

8 MR. BROOKER: Expert witnesses are sometimes paid in
9 cases. Just as generic as possible.

10 THE COURT: No. I'm not gonna do that. I'll tell
11 you what I'm gonna say. There was expert witness
12 testimony during the course of this trial. Of course, I
13 think we discussed that the charge for striking testimony
14 is in there. So defense request 4 is in the charge.

15 Now, identification, I went back and looked and
16 found an identification charge from the charge book that
17 court administration has provided and this is what I have
18 come up with regarding the charge regarding
19 identification. An issue in this case is the
20 identification of the defendant as the person who
21 committed the crime charged. The State has the burden of
22 proving identity beyond a reasonable doubt. You must be
23 satisfied beyond a reasonable doubt of the accuracy of
24 the identification of the defendant before you may
25 convict the defendant. Identification testimony is an

1 expression of belief or impression by a witness. You may
2 consider whether the witness had an adequate opportunity
3 to observe the offender at the time of the offense. And
4 unless I'm mistaken, everything else is repetitive or
5 goes into great detail giving examples and other things.
6 It goes into detail me telling the jury, one, how to go
7 about appraising the witnesses. Do you have your
8 requested charge printed out?

9 MR. BROOKER: I have it printed out.

10 THE COURT: All right. What I'm gonna do is I'm
11 gonna print out each one of your requests and I'm gonna
12 make them a Court's Exhibit and then allow you to put
13 your objections on the record so that that is reviewable
14 in the future if it needs to be reviewed.

15 MR. BROOKER: Sure. Thank you, Your Honor.

16 THE COURT: Okay. And then I think number 6,
17 statements of counsel. I think I went over that that I
18 do charge them, that it's not within the formal charge
19 when I come down to give it, but it is instructions that
20 I give. All right. Now, of course, after y'all argue
21 and I send the jury out and I tell them not to begin
22 their deliberations, I'll then ask as to any objections
23 or exceptions by the State or the defense and that's
24 where I will note your position on these matters. If you
25 have one for when you make your argument and then one we

1 can put as our Court's Exhibit. Have you got two copies?

2 MR. BROOKER: Yes, sir. I have a copy for myself
3 and I can give you this copy so you don't have to go out
4 and print it.

5 THE COURT: All right. Good deal. All right. Is
6 the State ready to proceed?

7 MR. CLEMENTS: We are, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. BROOKER: We are, Your Honor.

10 THE COURT: Bring the jury out please.

11 (Whereupon, the jury entered the courtroom at 10:00
12 a.m.)

13 THE COURT: Mr. Hayes --

14 WILLIAM HAYES: We're both Hayes.

15 THE COURT: William Hayes. Just stand right there.
16 Sir, can I get you to step back. Mr. Hayes, I'm gonna
17 ask you to serve as the foreman of the jury for me.

18 WILLIAM HAYES: Okay.

19 THE COURT: I'll explain in a little bit more detail
20 what that entails. Just sit right there on the front and
21 I think you can raise or lower that chair because it
22 looks pretty low.

23 All right. Ladies and gentlemen, I appreciate your
24 patience. We are ready to get started. I have asked
25 Mr. Hayes to serve as the foreman of the jury for me and

1 let me explain briefly. Anytime, we've found that
2 anytime you have a group of folks gathered together and
3 you have to communicate back and forth, it's just better
4 or easier to have a person designated to be the
5 communicator between the jury panel and the Court. At
6 any time during the course of this trial or during the
7 course of your deliberations you have any questions or
8 anything of that nature for the Court, if you just let
9 Mr. Hayes know and he'll write that question out and send
10 it to me. Depending on your question I may just write my
11 response and send it back to you or I may bring you out
12 as a panel and respond to your question. But that is the
13 main role of the foreperson, he or she, in this case he,
14 is a liaison between the jury panel and the Court.

15 And I will tell you this: Every case tried in this
16 courtroom whether it's a criminal case or a civil case
17 the jury's verdict must be unanimous. And I tell you
18 that to say this: All of you are equal members of the
19 jury. No one person's vote or opinions or thoughts carry
20 any more weight than anyone else. You're all equal
21 members. I always encourage jurors to listen carefully
22 to each others thoughts and opinions as you go through
23 your deliberations and do that with an open mind. So the
24 foreperson's thoughts, voices or opinions carry no more
25 weight than anyone else. But Mr. Hayes is gonna serve as

1 the communicator between the panel and the Court during
2 your deliberations.

3 So I told you yesterday we have reached the portion
4 of this case where you will hear from the attorneys with
5 regard to their closing arguments and then I will give
6 you the charge on the law. The evidence in this case is
7 closed. The evidence that you will have to decide this
8 case will come from the testimony of the witnesses that
9 testified from that witness stand and were placed under
10 oath as well as any of the exhibits which came in during
11 the course of the trial which you will have back in the
12 jury room with you. This is the evidence in the case
13 from which you will make your decision. As I told you
14 with regards to their opening statements, I would repeat
15 that as to their closing remarks as well as anything said
16 during the course of the trial. What the lawyers tell
17 you or what the lawyers say is not evidence. They are
18 not under oath. They are not witnesses in this case.
19 This is going to be merely their opportunity to argue to
20 you what they believe.

21 Mr. Herman, I need those doors locked. No one comes
22 in or out. Mr. Herman, you got that? No one comes in or
23 out.

24 All right. What they share with you during their
25 time here is their beliefs or their opinions as to what

1 the evidence in the case has shown. But again, it is not
2 evidence, but even though it's not evidence it's
3 important that you listen carefully and give them your
4 undivided attention. Once they have concluded their
5 remarks to you, I will then charge you the law that is
6 applicable in this case. So the State has the burden of
7 proof so I would recognize the Solicitor on behalf of the
8 State.

9 MR. CLEMENTS: Thank you, Your Honor. Mr.
10 Brooker.

11 MR. BROOKER: Yes, sir.

12 MR. CLEMENTS: Good morning, ladies and gentlemen.
13 I know y'all are as glad as I am that we finally got to
14 this point. We're getting ready to give this case to
15 you. I told you at the beginning, it seems like weeks
16 ago, but really just, I guess, three or four days, this
17 was a case of who done it and that's what you're going to
18 decide. A murder occurred and its gonna be who done it.

19 Part of what I need to do in my closing statement is
20 to talk to you a little bit about the law. As I talk to
21 you a little bit about the law I want you to listen to
22 me, but then at the end the Judge is gonna charge you on
23 the law. If I say anything different from what the Judge
24 says, he is the right one on that. So to begin with as I
25 told you in our opening, Mr. Brooker's client, Mr.

1 Williams, is clothed with a cloak of righteousness, a
2 presumption of innocence, and it's my job as I represent
3 the State of South Carolina to take that cloak off of him
4 and take that presumption away and prove him guilty
5 beyond a reasonable doubt.

6 Now, proof beyond reasonable doubt leaves you firmly
7 convinced of the defendant's guilt. We don't have to
8 prove anything with absolute certainty. As a matter of
9 fact, in this world there are very few things we ever
10 know with absolute certainty. The law doesn't require
11 that. The law doesn't require that we prove something
12 beyond every possible doubt, just beyond a reasonable
13 doubt. The Judge is gonna charge you on that in more
14 detail.

15 Part of your duty is you are the finders of the
16 facts. The Judge is the Judge of the law. You are
17 actually the judges of the facts. You have listened to
18 the facts as we have been here. Now it's time for you to
19 weigh those facts and find out which facts you think are
20 most important or controlling and decide what the facts
21 show. Part of that is by what the witnesses have
22 testified to under oath. The evidence has come from that
23 witness stand. Part of your duty is to judge the
24 credibility of the witnesses and credibility is just
25 another word for believability. What did they look like

1 on the stand. What was their demeanor. Did they seem
2 shifty. Did they seem to be confident. What was it that
3 they looked at. Did they answer questions easily. Did
4 they try to avoid questions. Did they seem to have some
5 type of bias. All of that is things y'all consider when
6 you judge the believability and credibility of the
7 witnesses. You can believe a witness about one little
8 thing he said and don't believe the rest of it, or you
9 can believe everything he said, or you can believe none
10 of what he said. That is your choice as you see the
11 facts and you hear that testimony as to what you except
12 and give weight to.

13 I told you earlier in the week when we started this
14 that this was gonna be a case of circumstantial evidence,
15 a lot of circumstantial evidence. Direct evidence is
16 what a person claims to have actual knowledge of a fact
17 like they're an eyewitness. But this we have
18 circumstantial evidence and crimes can be proven by
19 circumstantial evidence and the law makes absolutely no
20 distinction between circumstantial evidence or direct
21 evidence. One is not better than the other but they're
22 just both types of evidence that you can consider. You
23 don't have to have a greater degree of certainly required
24 of circumstantial evidence over direct evidence. They
25 are weighed the same. Circumstances must be consistent

1 with each other when taken together point conclusively to
2 the guilt of the accused beyond a reasonable doubt and as
3 part of that circumstantial evidence you take that
4 evidence with every other fact and every other piece of
5 evidence. You don't take it solely on one thing.

6 You have heard expert witnesses in this case. You
7 can listen to an expert and you can treat them just like
8 every other witness. That's the way you're supposed to
9 treat them, like every other witness. You can believe
10 them or not believe them. You can decide that because
11 they're an expert that they're gonna be treated with the
12 same weight that a regular lay person is gonna testify.
13 You're not required to accept an expert's opinion, even
14 though it's not contradicted, you still don't have to
15 accept what they say.

16 What we're here for is simple but serious. We're
17 here for murder and murder is when you kill another
18 person with malice aforethought. Malice is ill will,
19 hatred, hostility towards another person. It's the
20 intentional doing of a wrongful act without a just cause
21 or excuse and with an intent to inflict an injury or
22 other circumstances that the law will infer an evil
23 intent. That's malice. Malice aforethought does not
24 require that malice exists for any particular time before
25 the act is committed, but malice must exist in the mind

1 of the defendant just before and at the time the act is
2 committed. There must be a combination of the evil
3 intent, a previous evil intent and the act that occurred.

4 There are a lot of circumstances that you can look
5 at and say, well, you can infer malice from that. If you
6 lay in wait for someone or you do other acts of
7 preparation to show that the deed was within the
8 defendant's mind would be express malice. I would submit
9 to you that in this case the fact that getting a gun and
10 wrapping it up in a comforter, in a pillow, and coming up
11 to somebody and shooting them in the head and using that
12 to muzzle the sound, I would say that's an act of
13 preparation and I would say that that shows malice and
14 shows malice aforethought in this case.

15 One of the issues here is identification and you
16 have to - we have to prove identification beyond a
17 reasonable doubt. So what evidence we put in as
18 identification you judge that and weigh it and see if we
19 have proved the identification beyond a reasonable doubt.

20 There are some other things I can tell you about the
21 law but I'm confident with the Judge so I'll let him tell
22 you what the law is. I want to talk to you a little bit
23 now about the facts.

24 The facts showed that Ms. Sherilyn Joseph worked at
25 Starbucks. They also show that she got off around 2:00

1 sometime that day and she came home and then at some
2 point in time communications to her were lost. People
3 calling her. She wouldn't respond. People texting her.
4 She wouldn't respond. So that was a period of time
5 there for several hours and then her mother got concerned
6 enough. She had not called to check on her child who had
7 been with the grandmother that night before and all day
8 while she worked, had not checked up on him so she was
9 very concerned so she went to her house. She got to her
10 house. Her car was there. The door was not locked. She
11 pulled her key out to go in but then found the door was
12 not locked, went in and stumbled across her daughter in
13 the dark and called 911.

14 And y'all have heard the descriptions from all the
15 witnesses that were there on the scene. She was shot in
16 the head with a small caliber weapon, shot right in the
17 head and left her dead where she lay. Her feet were in
18 her bedroom. She was laying across the hall and her head
19 was in her child's bedroom. You heard the testimony from
20 the coroner and from Andy Clendenin with forensics that
21 came and examined the body, examined the scene and the
22 coroner talked about the time of death. He talked about
23 livor mortis, rigor mortis, and algor mortis. He talked
24 about gravity and blood puddling and the way the blood
25 was puddled with her when she had not been moved from

1 where she fell most likely because gravity was pulling
2 the blood to the bottom of the body, to the back of the
3 body. He said that the body was cold to the touch. He
4 said the rigor mortis had started occurring in the
5 extremities, and he put an approximate, what they call
6 presumed time of death around 4:00.

7 Then you heard from the pathologist who got up and
8 did not agree with that - did not disagree with that.
9 She said when they find something that's contrary to the
10 coroner has stated as presumed time, they let them know
11 so a change can be made but she found nothing to disagree
12 with Bo Myers with regards to the time of death so
13 approximately around four. We're not saying exactly four
14 but sometime around 4:00. The pathologist said it could
15 go, you know, could be a variation of one to five hours
16 depending on what the varying factors were that might
17 affect the time of death. But she did not disagree with
18 Bo Myers.

19 So we have a dead body. It had been there a while.
20 It had been there several hours because of the physical
21 changes to the body as it laid there. When they looked
22 at the wound, there was no stippling, no soot, no gun
23 powder burns, nothing that normally would occur when that
24 appeared to be a very close wound or contact wound, but
25 those things did not appear and the answer to that

1 question is why. There was a pillow and there was a
2 comforter and there was gunshot residue on the comforter
3 and there was a hole through the comforter, a hole
4 through the pillow, and on the backside there was blood
5 in the exit where the perpetrator had the comforter and
6 had the pillow and standing in her bedroom stuck that to
7 her head and shot her dead.

8 Why would somebody use a comforter and a pillow? To
9 muffle the sound. There was other parties, it was a
10 duplex apartment, so nobody else would hear. And you've
11 got pictures here in evidence. I won't pull all these
12 out and go through them with you ad nauseam. You've had
13 enough of that, but check out the pictures and see what
14 they say, what they show you.

15 They took the body, took it for autopsy, gathered
16 blood, sent it off to SLED to be prepared for DNA
17 standard and then the investigators began to do their
18 work after forensics completed theirs. They looked
19 through, checked out the house. There was a trash can in
20 the bedroom where the shooting occurred and in what was
21 the adult's bedroom and there was a trash can there and
22 in that trash can was a used condom. And I'm gonna talk
23 a little bit further about that later on when I talk
24 about DNA, but that condom was collected and sent to be
25 examined forensically. It came back with some DNA from