

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jun 17 2022

Appeal from Lexington County

SC Court of Appeals

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMIEN LAVAR RITTER,

APPELLANT.

APPELLATE CASE NO. 2021-000710

RECORD ON APPEAL

ADAM SINCLAIR RUFFIN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3713

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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ASHLEY ALDRIDGE: CROSS-EXAMINATION

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1 A Looking back at those, it actually would appear that I
2 did speak with two different people on two different phone
3 calls.

4 Q Okay, but on the morning of July 9?

5 A Yes. And they would have been close in time.

6 Q Gosh, did you ever say hey guys, can y'all race out
7 there, call somebody at the annex in Estill and have them
8 seize that vehicle?

9 A No, I didn't ask that.

10 Q It never came up? Like, maybe there would be something
11 in the vehicle.

12 A Well, when I received the information, especially not
13 being the case agent, any time I receive something pertinent
14 I would pass it on to a senior agent, being my supervisor or
15 Investigator Daes. So, I wouldn't have taken the lead to
16 force them into that or ask them to grab that vehicle for
17 us.

18 Q You would not have done that?

19 A I would not.

20 Q But if they said Damien Ritter's out front washing a
21 red Tahoe in front of his house, would you have told them to
22 go pick him up?

23 A No, I would have told someone else who's the case agent
24 who would have made that decision regarding this case.

25 Q Okay, did you already have warrants for Mr. Ritter?

1 A At that point in time, I'm not a hundred percent sure.

2 I was just gathering information at that point.

3 Q But y'all had his name as the shooter.

4 A Yes, he was definitely developed as a person of

5 interest at the very least. My understanding is that there

6 were warrants out for him, then he was a fugitive. Had I

7 had information that he was there I probably would have

8 passed on information that he should probably be picked up,

9 but I didn't get that information.

10 Q And when you say there's a fair chance if the vehicle

11 was there that Mr. Ritter would have been there?

12 A It's a possibility.

13 Q It's his house, his car.

14 A That would definitely ---

15 Q I mean, I've got to be honest. Nine days? That's kind

16 of a long time to go see if he's there, isn't it?

17 A Six -- or is that -- how many is -- the 9th ---

18 Q Well, nine until the search warrant.

19 A Oh, okay.

20 Q I mean nine days with his car out front. With the guy

21 suspected of killing two people. I mean -- you know -- it's

22 just -- I mean, I'm just asking because it seems odd that

23 that would happen. Now, let me also tell you I am confused

24 about whether or not Singleton told you that the informant

25 told him the bullet holes or Solomon was advised by the CI

ASHLEY ALDRIDGE: CROSS-EXAMINATION

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1 at a different time? What your understanding on that?

2 A In listening to the previous testimony I believe
3 Detective Solomon himself said that he had spoken to
4 Singleton and they came up with the same information
5 regarding the same type of vehicle, so if I wrote down that
6 Solomon told me, then Solomon is the one that told me.

7 Q Okay, but you don't know that Solomon heard that
8 information himself?

9 A I don't. I just transponded what he told me at that
10 point in time.

11 Q Well, let me ask you that question. Do you have any
12 information that anyone told this information straight to
13 investigator Solomon?

14 A You're asking if -- say it one more time.

15 Q Yeah, did the informant talk to Solomon directly ever?
16 Did you ever -- do you have any information of that?

17 A No, I wouldn't know that. That would be between the
18 informant and Solomon.

19 MR. BROWN: I don't want to move the Solicitor's copy of
20 this note in. Judge, if we could -- however you want to do
21 it. I've got a copy too, but not a copy to be entered.

22 THE COURT: We can burn another copy and enter that.

23 MR. BROWN: If we could do that. Just this page right
24 here actually is the one I'm looking at.

25 MS. FULLER: It's already in.

ASHLEY ALDRIDGE: CROSS-EXAMINATION

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1 MR. BROWN: Nevermind.

2 THE COURT: It's already a Court's Exhibit.

3 Q Have you ever looked at that DVR?

4 A No.

5 Q And do you recall going down to Estill any time before
6 the 18th?

7 A I have never been to Estill.

8 Q Never been there. Okay. Do you recall whether anybody
9 else ever went down to Estill?

10 A I believe we sent a contingency of detectives down
11 there at some point.

12 Q Do you recall ever having any phone conversations about
13 having difficulties reaching Perry Singleton? Have you ever
14 asked Detective Solomon?

15 A I've never had issues reaching anyone.

16 Q Okay. You've never had a problem?

17 A No.

18 MR. BROWN: I don't have any further questions, Your
19 Honor.

20 MS. FULLER: Thank you, Your Honor. Briefly.

21 REDIRECT EXAMINATION

22 BY MS. FULLER:

23 Q Investigator Aldridge, on July 9, 2018 sometime after
24 8:56 AM, on that morning did you conspire with Investigator
25 Singleton to include a false statement in the July 18 search

ASHLEY ALDRIDGE: CROSS-EXAMINATION

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1 warrant?

2 A Did I conspire to issue a false statement? No, we did
3 not.

4 Q Okay. During the July 9, 2018 conversation when you
5 received the information, the tip about the Defendant's
6 whereabouts and the bullet holes in the vehicle, did y'all
7 have a discussion that you all should include this in the
8 search warrant later on?

9 A No.

10 Q During that conversation on July 9, 2018, did
11 investigator Perry Singleton say, hey, I want to swear out a
12 search warrant based on this to search his house?

13 A No.

14 Q On July 9, 2018 when this information was received, did
15 you have any idea that a search warrant would be obtained
16 later containing this information?

17 A I did not.

18 Q So the fact that there is some question whether or not
19 the contents may be truthful at the time that you received
20 the information they would've been included in the
21 affidavit, where they truthful to you?

22 A Yes, I had no reason to question any of the information
23 provided to me.

24 Q Thank you, and that's what *Franks* is concerned with.

25

RECROSS-EXAMINATION

1 BY MR. BROWN:

2 Q While we're at that, if it turned out that that DVR
3 shows that home and there's no truck in it, how do you
4 explain that except somebody's not telling the truth?

5 A It's pretty simple. The vehicle just could be out of
6 frame or anything ---

7 Q --- to say if it captured the house ---

8 MS. FULLER: Your Honor, objection. Let him ask the
9 question and ---

10 MR. BROWN: Well, he didn't answer my question, but I
11 appreciate ---

12 THE COURT: Overruled. Go ahead. Overruled. Go
13 ahead.

14 A I'm sorry. Give me the question one more time.

15 Q If the DVR video captures the home with the cars at it
16 and it's not on there, how do you explain that?

17 A Again, the vehicle could very simply be out of frame.
18 Anything mechanical is bound to fail eventually. The camera
19 may not have been working at that point in time. It's
20 several things I could assume.

21 Q It could be that on this day there is no vehicle, on
22 July 9.

23 A By which means? That ---

24 Q You mean that the DVR might not capture any video from
25 that day.

1 A I mean, you're asking me a possibility.

2 Q I did.

3 A Anything is a possibility.

4 Q And that's what you're saying ---

5 A Yeah, it's a possibility.

6 Q In fact, have you ever been told that they have a video
7 that's time stamped on July 9?

8 A No, I haven't spoken to anyone about a video.

9 Q Fair enough. Nobody said hey, we've got the video and
10 some bullet holes in a vehicle in it did they?

11 A No, my involvement is literally what we've talked about
12 today.

13 Q Thank you.

14 THE COURT: Sir, thank you very much. You can step
15 down. Thank you for coming. I understand that's the
16 State's last witness for today. Were there any witnesses --
17 I know that we're going to have to revisit this perhaps
18 again on Wednesday, but were there any additional people the
19 defense wanted to recall?

20 MR. BROWN: I don't want to recall -- I want to find
21 out if there are any records at the Sheriff's Department
22 from that file, and we've seen The Departed and there are
23 some files that Mark Wahlberg can't get into to find out who
24 the snitches are, and that way Matt Damon gets to run amok
25 and those kinds of things, and even though he's way up in

1 the police department he doesn't have access to this other
2 file that somebody else might have and I believe that that
3 could be a reason why we send a request and don't get a
4 response or there isn't one and we've heard that that might
5 be the possibility. And so my reluctance is to subpoena the
6 Sheriff, because he's too high up, or to subpoena the
7 custodian of records, which I did and she's too -- she
8 probably actually doesn't have access to the informant
9 files. I mean, if I was the Sheriff I wouldn't let the
10 custodian of records have those.

11 THE COURT: Well, you can only chase rabbits for so
12 long. Were going to have to kick this back to Wednesday
13 anyway for reasons that we've explained, or that we've
14 discussed in chambers. That initial question that I had
15 this morning, have y'all heard anything back from your
16 investigator about that question?

17 MS. FULLER: Yes, Your Honor.

18 THE COURT: You have? Where do things stand?

19 MS. FULLER: Your Honor, the exact email response is --
20 beg the Court's indulgence.

21 THE COURT: Sure.

22 MS. FULLER: Detective Perry Singleton was issued an
23 iPhone 7 plus. Per Captain ---

24 THE COURT: We can't hear you. We can't hear you. I'm
25 sorry. The AC is right here and my Court Reporter can't

1 hear you.

2 MS. FULLER: Perry Singleton was issued an iPhone 7
3 plus. Per Captain Anthony Drexill the phone is in
4 possession of the Investigative Division here at the
5 Sheriff's Office and the phone has been wiped.

6 THE COURT: Okay, so it's already been wiped?

7 MS. FULLER: (NO RESPONSE)

8 THE COURT: You did say that it's already been wiped?

9 MS. FULLER: The last sentence says, and the phone has
10 been wiped.

11 MR. BROWN: I'm going to let him argue about that.
12 Judge, the only other thing -- I mean, we can interpret it
13 many ways. We still don't have a source for whatever has
14 been encapsulated by the euphemism, "no CI". Whatever that
15 stands for. Here's where we are. We can't come in and say
16 the State said "X", because I don't have anybody's mouth to
17 put the statement in, but we know there was enough
18 discussion that Your Honor made that generalization in
19 dicta, to kind of paraphrase it, and it kind of handcuffs us
20 a little bit arguing now. I want the Court understand I am
21 not -- I am not going to get in the position of trying to
22 put Investigator Fuller --

23 MS. FULLER: (UNINTELLIGIBLE)

24 MR. BROWN: That's a joke. That was meant as a joke.

25 MS. FULLER: Not funny.

1 MR. BROWN: Because I'm not into that, and I told Mr.
2 Phillips every time I've ever been involved in a situation
3 where he got close to a lawyer, is like playing the game of
4 operation and I get buzzed when the little tweezers touch
5 the side, and that's what I'm trying -- I'm trying to get
6 the wishbone out without getting the buzzer to go off. We
7 don't mind if we can get a stipulation or an agreement with
8 them as to something, but we have no source except for a
9 letter.

10 MS. FULLER: Your Honor, if I can speak in terms of
11 that. Your Honor, looking at the transcript of November 19
12 -- let me make sure it's 2019. November 7, 2019, page 26
13 and 27. (READING) The Court. I thought I'd issued an order
14 previously in this case ordering the CI's name to be sealed
15 or something like that. We still don't know the CI is --
16 who the CI is, question mark. Your Honor, I can speak to
17 that. Mrs. Fuller is speaking there. So, you do recall
18 somewhat -- I was stuttering. Somewhat of that. So, back
19 in February this came up as a separate motion to compel the
20 DVR and at that hearing the investigator was present. I
21 even had an opportunity to ask him about it. I don't think
22 the two things were happening at the same time. So the
23 search warrant on the house -- and I didn't know the exact
24 date, but it wasn't close in time to the information
25 potentially of some person saying this to law enforcement.

1 That they saw Defendant's car with bullet holes in it. I
2 can't corroborate that. My investigator, who is out sick
3 today with a sick child, reached out before even the defense
4 requested. I wanted to know can that be substantiated and
5 there's nothing that I have. I don't know who the CI is. I
6 don't even know if it's really a CI. I'm not familiar with
7 Hampton County, but it just seems like, how we have in some
8 of our smaller counties people, just talking and somehow it
9 got to law enforcement. They said it on the phone to a West
10 Columbia officer. He typed it in his report. He tried to
11 substantiate that, that some CI saw this car come back there
12 that night with the bullet holes in it and that wasn't
13 substantiated and that's what I can represent to the Court
14 now.

15 We go on and we discuss it even further. Your Honor
16 even talked about his impression of what was said. You even
17 referenced it may just be a tipster. You gave a story about
18 what you did in Laurens, and it was left with the
19 understanding that when my investigator came back to the
20 office we would clarify this point. Then we had the
21 conversation about simply having Investigator Perry
22 Singleton clarify this point. We had a conversation with my
23 Investigator, James Sullivan, present on the phone. He
24 expressed to us what we all thought, this was just a snitch.
25 We told him just write that in the affidavit. The Court is

1 requesting it.

2 Then, you know, Investigator Sullivan comes to my
3 office kind of with his head like this, hands me the letter,
4 I look at it and I'm like, okay, that's a little different
5 than 20 minutes ago because it had all this additional
6 verbiage in it that we didn't discuss. I told him -- what
7 did I say? Turn it over. That's it. It was signed. It
8 was sworn. There is nothing I could do at that point. I've
9 been very candid and open, and I really really don't like --
10 and we have an official transcript, and my words are being
11 mis-characterized over and over and over again, and I think
12 at this point it just needs to stop, because that's not what
13 was said, or relayed, or expressed to this Court.

14 THE COURT: I understand your position. I understand
15 their position. None of us would be in this position,
16 obviously, had there been more precision and more
17 articulation in how this was communicated. And then, of
18 course, we have the additional question of the CI who
19 supposedly had had no contact with Singleton, or at least
20 that's what he's testified to. So, the waters have been
21 increasingly muddied. I understand, Solicitor, that's not
22 your fault, but if I were in their shoes, as I'm sure you
23 would appreciate if you were in their shoes, if you were
24 representing Mr. Ritter, or if co-counsel, Mr. Graham, were
25 representing Mr. Ritter, you would be making exactly the

1 same arguments based upon exactly what we have here.
2 Because I know, if I were representing him, I would be going
3 down this exact same route. That's them doing their jobs.
4 And, again, you didn't cause this confusion. Your office
5 didn't cause this confusion. It was a lack of artfulness,
6 perhaps, which I can understand in and of itself.

7 You wanted to say something, Mr. Phillips?

8 MR. PHILLIPS: Going specifically, we did have prior
9 hearings before that November court order -- November 11
10 court order, and there were prior hearings to that where we
11 were asking and discussing where I had filed a supplemental
12 motion of discovery, so it's not in a vacuum as to that
13 date. There are other discussions related to it. For us,
14 the bigger picture goes back to the preservation of evidence
15 that was requested, the supplemental motion of discovery.
16 And in light of this kind of 12th hour phone records from
17 Hampton County, it makes things even more, as Your Honor put
18 it, muddled when the lead investigator in the case didn't
19 know about it.

20 Now we have these phone records after we've already had
21 a hearing. This is the second part of the *Franks* hearing,
22 and so the whole timing of it, in addition to the
23 preservation of evidence when the phone is wiped, we are on
24 a slippery slope.

25 THE COURT: I'm with you a hundred percent. I'm

1 working through as you're speaking, in my mind, how I
2 address that or how that ultimately affects what this Court
3 does. Is it equivalent to a spoliation type charge in a
4 civil case where someone who has possession and custody of
5 the documents that are normally kept during the course of
6 business all of a sudden those documents don't exist. Are
7 you entitled to an adverse inference that those documents
8 would have contained information adverse to the State's
9 position. I really don't know.

10 MR. PHILLIPS: The law is not great for us in the
11 criminal context. That's ---

12 THE COURT: I'm sorry?

13 MR. PHILLIPS: The law is not great for us in the
14 criminal defense context, which is what makes it so
15 difficult.

16 MR. BROWN: It's gotten worse, because I don't think a
17 spoliation charge is allowed because they're comments on the
18 facts and I'll be honest, as an appellate lawyer I've tilted
19 that windmill as many times as I can, but it's a sword that
20 cuts both ways.

21 THE COURT: I understand and it probably is. I'm not
22 suggesting a spoliation charge to the jury. I'm suggesting
23 a spoliation charge to myself, because obviously to the jury
24 would be a commentary on the facts. Now, let's set all this
25 aside for the moment. I realize we've still got Wednesday

1 to deal with, but legally the process that the Court uses is
2 let's assume that you are one hundred percent right. That
3 the Court concludes that what the Hampton County
4 investigator made up was complete fiction and that he did it
5 in an effort to throw the Atkins guy under the bus because
6 he was resentful. Let's assume for a moment that I buy all
7 of that and that this is fabricated or was reckless.

8 So, it was either -- clearly it's immaterial. I think
9 the State would concede that the naming of a CI, that that's
10 immaterial, so we don't really need to worry about the
11 material aspect of it, but assuming that all of this should
12 be excluded, the process the Court then does is black out
13 the bad stuff and I look at what's left. You know, well,
14 I'm just going to reserve that comment for Wednesday. But
15 that's the process that I'm faced with. So, even if you
16 win, there's that second step where the Court has to assess,
17 independent of the bad stuff, is there enough good stuff
18 there. Can I trim away the rotten part of the apple and
19 I've still got enough to eat. That's the way I look at this
20 and that's really the way the law requires me to look at it,
21 so will just hesitate for the moment on any further rulings
22 on this and see what the future holds Wednesday.

23 The spoliation of evidence -- the preservation, rather,
24 of the cell phone, I do not know what to tell you. I don't
25 know how I'm going to address that or treat that, but

1 perhaps that's something you can be thinking about in the
2 next 36 hours. Anything else that we can reasonably expect
3 to get done today?

4 MR. BROWN: I can argue the *Pratt* motion. I think it's
5 almost on the law.

6 THE COURT: All right. Go ahead.

7 MR. BROWN: Succinctly, and I'll be honest, I read it
8 in a -- somebody had done some summaries of federal cases
9 and sent around to criminal defense associations and stuff.
10 Lo and behold, I'd never heard of the *Pratt* case, which is
11 incredible, though I'm not going to say off the wall. But
12 essentially, Mr. Pratt is a Columbia, South Carolina
13 defendant in a federal court case and the US Supreme Court
14 reverses the judge, the trial judge, and says that it is an
15 unreasonable execution of a search to hold the gentleman's
16 cell phone for 31 days before they get the order to search
17 it.

18 So, essentially, Your Honor, we would use that as an
19 analogy with the order Your Honor signed to search the Night
20 Owl DVR. I say that because, and this is just with my files
21 closed, it was obtained on July 18, 2018. Your Honor signed
22 an order in November 2019. That's not 31 days. That's like
23 17 times longer. We know that they weren't able to search
24 it without the court order. We know they tried to search it
25 on their own and weren't successful and gave up, and that's

1 the key is that without us even knowing anything about their
2 efforts they tried to get into it with a search warrant and
3 the Night Owl manufacturer said we can't take a search
4 warrant from South Carolina, and ironically they honored a
5 court order from South Carolina with the same jurisdictional
6 limits. So be it. And then they cracked the code, so to
7 speak. And we believe that's analogous to *Pratt*.

8 If there's more that we need to debate, but we've got
9 the text there and we've got the fact that the State -- it's
10 not like they didn't know it was there, Judge. They tried
11 to search it in 2018 unsuccessfully and then waited more
12 than a year to seek a subsequent court order, and we believe
13 that, like *Pratt* -- I mean, *Pratt* gets about as close to
14 home as you can. And, for what it's worth, and I will throw
15 it in there, we actually asked them to provide contents of
16 the video that they had seen. If they had written us back
17 and said we didn't get into it, that's one thing, but then
18 they moved for the order and we filed more than one
19 objection. One was the objection over the lack of cause to
20 get it.

21 We still believe that, should we win *Franks*, that the
22 Night Owl DVR is out anyway, but on the other hand, even if
23 Your Honor doesn't grant *Franks*, we believe that they have a
24 *Pratt* violation. Your Honor, it's worth pointing out that
25 it's not contraband. Neither was, at the time, Mr. Pratt's

1 phone. In other words, it's not contraband on its face per
2 se illegal, and that's what the *Pratt* court essentially says
3 is that you can't take a man's property and hold it. That's
4 unreasonable execution of a search. You can take it and
5 search it if you've got authority, but you can't take it and
6 just sit on it. I have this -- for what it's worth, there
7 are a lot of cases. I've got 34 months for SLED to come
8 back with an analysis. I've got a case in the A.G.'s office
9 right now we're arguing *Pratt*.

10 THE COURT: I'll be happy to confess I was unfamiliar
11 with *Pratt*.

12 MR. BROWN: I have a copy of it, Your Honor, and I have
13 copies for everyone else.

14 THE COURT: I'm looking at your motion. Can you
15 specify is this -- it's obviously a Fourth Amendment type
16 issue

17 MR. BROWN: Yes, sir. Let me put my mask on. I have
18 lots of copies of *Pratt*.

19 THE COURT: The portion you cite (READING) even though
20 lawful at its inception, a seizure can nonetheless violate
21 the Fourth Amendment because its manner of execution
22 unreasonably infringes upon possessory interests. Educate
23 me. Is *Pratt* a search case or is it a seizure case?

24 MR. BROWN: It's a search case, and this is what's
25 interesting, because 25 years -- and it says it's an

1 unreasonable manner of execution. We almost never see that.
2 Usually you see that with no knocks. That's when it came up
3 that you can't have a no knock without some cause. It can't
4 be a blanket no knock. Honestly, I've got to give it to
5 David Betts, because he won. I'm stunned. I mean, this
6 happens more often than it doesn't happen. I know they are
7 arguing in my other case that SLED is so backed up, and
8 actually *Pratt* talks about there may be a delay that would
9 justify it, but in this case they didn't seek an order from
10 you for over a year.

11 THE COURT: Well, if the State does not intend to use
12 anything from the DVR in their case, does this matter? I'm
13 hearing that the only thing that they've provided to you are
14 stills or portions from the DVR that apparently don't
15 contain any evidence.

16 MR. BROWN: We believe that they've sent us photos that
17 they intend to use. I will just characterize briefly as
18 some people, possibly my client, hobbling back into the
19 house. I mean, it's not a bullet riddled ---

20 THE COURT: Right or Snidely Whiplash --- ha ha ha.

21 MR. BROWN: So, we believe that they do intend to
22 introduce that.

23 THE COURT: Let me hear what the Solicitor wants to say
24 about that.

25 MS. FULLER: Thank you, Your Honor. I have quite a bit

1 to say. First, I disagree with the defense on quite a few
2 things. If you really read *Pratt*, *Pratt* is clearly a
3 seizure case to determine if the extended seizure violates
4 the Fourth Amendment. Because, like in *Pratt*, you seize the
5 device on an individual. *Pratt*, in this case, was not
6 incarcerated. So, they took the device and they held it and
7 did not act on it. They did not seek a search warrant. He
8 is correct in saying that I think it's 31 days. What's
9 different here in *US v Dorsey* -- I thought I wrote the cite
10 down, but *Dorsey* distinguishes *Pratt*. It talks about a
11 person who is free from police custody maintains a strong
12 possessory interest in a cell phone by objecting to a
13 seizure and refusing to consent to a search. *Sullivan* is
14 another federal case. Individuals who are incarcerated have
15 diminished possessory interest in their personal effects.
16 Then you have *U.S. v Christie* is a 2013 case, and I do have
17 that cite, 717 F.3d 1156. *U.S. v John* is a 1985 opinion
18 where the defendants never sought return of the property,
19 failed to identify how the delay in the search adversely
20 affected legitimate interest protected by the Fourth
21 Amendment.

22 What we have here, Your Honor, and they're not marked
23 but I'm going to jump right into it, is three search
24 warrants that I'll mark separately now. The first one is
25 July 19, 2018 and it's a search warrant for the Night Owl

1 device and that is Court's 15. Court's 16 would be December
2 5, 2019 search warrant for the device, and then December 11,
3 2019 the subsequent search warrant for the device to
4 actually clone it so we wouldn't have to obtain multiple
5 search warrants to keep going in it. And I'll hand those up
6 to the Court.

7 What's greatly distinguishable in *Pratt* is that here
8 the investigator, West Columbia Police Department, seized
9 the device on the 18th and immediately acted on it on July
10 19, 2018. It was sent to SLED and in the first hearing when
11 the motion to compel came up, a bunch of devices there we
12 were going to work on what we can to get the device
13 extracted. On July 11 -- I'm making a Court's exhibit an
14 email, Court's 18, an email sent to Mr. Phillips and Mr.
15 Brown on July -- on June 11, 2019. I apologize if I
16 misspoke. The relevant portion to this issue is, second
17 paragraph, also SLED computer crimes were not able to access
18 the Night Owl DVR and were not able to access two of the
19 cell phones seized from the residence. Please advise if you
20 would like your own expert to examine any of these items.
21 And that's on July 11, 2019. Even up until that point the
22 Defendant has not made any requests for the return of that
23 property and, in fact, I offered it to their experts to go
24 into since ours couldn't get into it.

25 Subsequently, on November 14, 2019, this is an email to

1 Your Honor, copying defense counsel and your chambers, with
2 an attachment with Night Owl's response. At the bottom of
3 the first page of Court's 19 I indicated to the Court that
4 back in June I did offer the defense the option to have
5 their own expert examine the DVR. I do not know if the
6 Defendant is simply willing to provide us with the account
7 password since the defense is interested in the contents of
8 the DVR. In any event, the case officer can be available
9 next week while your honor is in town to swear an affidavit
10 with a proposed court order to night owl. Normally an
11 investigative court order is obtained without knowledge to
12 the defense, however, given the status of the case and issue
13 this notification is simply a courtesy. This is an email to
14 the court on November 14, 2019. So, that's at least two
15 times of this discussion of providing it to them so they can
16 as officers of the court attempt to get into it. I'm sure
17 anything they discovered and it would've been turned over to
18 the state potentially but that is the major -- the court in
19 *Pratt* if you read it. It's really linking but they
20 acknowledge the cell phone. It's almost like a brain. It's
21 attached to the defendant. It contains any and everything
22 about their lives in this new age and honestly our old case
23 law as well as statutes don't count for the advances in
24 technology. But *Pratt* dives into that and explored it.
25 Were dealing with a home surveillance footage. I highly

1 doubt the court would put that in the same exact category as
2 a cell phone device as they detailed in *Pratt*, but
3 nonetheless we can still distinguish the situation because
4 immediately upon seizure it was acted upon and it was
5 actively -- I want to say I reached out to sled multiple
6 times at your orders and direction following hearings on the
7 status of the cell phone and the status of the DVR and
8 finally in June when I sent that email sled has determined
9 that they cannot access it. And so to say that there is say
10 long delay is really a mis-characterization. To say that we
11 waited 17 months to obtain a search warrant is also a mis-
12 characterization because based on the first search warrant,
13 Court's 15, you see the date there that the search warrant
14 was actually completed, Your Honor.

15 So, yes this is a purely legal argument but *Pratt* is
16 not the case to fall on and all the other cases you can
17 clearly distinguish it as well as the defendant's diminished
18 possessory interest in it, but again this is home
19 surveillance footage.

20 THE COURT: Your last argument is interesting about the
21 possessory interest, because that's what is necessary to
22 create a Fourth Amendment challenge. Is he the title owner
23 of the home? Obviously the State's theory is that he was
24 residing there. Did he install the system? Do we know?
25 Did his mother?

1 MS. FULLER: I believe we knew, based on the
2 investigation. His mother said it was his device.

3 THE COURT: Okay.

4 MR. BROWN: Your Honor, he was unable to protect his
5 home because he was not allowed out on bond, which gives a
6 surveillance video even more. You actually put surveillance
7 video to cover when you're not at your home. And he tried
8 to get back to his home. We tried a few times to get him
9 back home. Despite what the Court said, it's a little
10 disingenuous to use his incarceration without bond to
11 actually defeat his interest in having the surveillance keep
12 an eye on his home when he's not able to be there because of
13 his incarceration without bond.

14 THE COURT: All right.

15 MR. BROWN: We don't doubt the dates she's talked
16 about, the other search warrants. I mean, were not
17 disputing facts like that, but we will say, and I think they
18 said that his mother, Ms. Maxwell, says that that's his DVR.
19 She told the police that. And for what it is worth, the
20 *Pratt* case does talk about the fact that the police could've
21 just made a copy of the thing and turned it back over. And
22 I will say they do talk about cell phones not having
23 independent evidentiary Gary value on its face, which is
24 different than contraband or something. That's actually --
25 that's -- we're -- we fit that part. That's on page 6 of

1 the opinion I handed up. We declined to affirm on the
2 government's alternative argument that they could retain the
3 phone indefinitely because of an independent evidentiary
4 value on the murder weapon. And they found his phone
5 didn't, even though it possessed child pornography.
6 Likewise, Mr. Ritter's DVR, there's nothing on its face that
7 says that that's evidentiary. Because as Investigator
8 Aldridge says, it may not have captured the area where the
9 Tahoe was anyway.

10 THE COURT: One second everybody. Let me look at
11 something before anybody talks again.

12 MR. BROWN: And for what it's worth, Mr. Phillips
13 actually makes a good point.

14 MS. FULLER: He said one second.

15 MR. BROWN: I'm sorry.

16 THE COURT: Give me one second. (BRIEF PAUSE) One of
17 my questions is, if this opinion came out February 8, 2019
18 Fourth Circuit Court of Appeals, is there any chance that
19 the Supreme Court has granted cert on that? Anybody
20 Shepardize that?

21 MR. BROWN: I have not, Your Honor, but at the time I
22 pulled it it had not been granted at that point.

23 THE COURT: That's question number one. My initial
24 impression is what the Fourth Circuit Court of Appeals had
25 issue with was the fact that apparently the phone was seized

1 and essentially sat on. I'm looking at the search warrants
2 the state handed up, and it would not appear that the state
3 was necessarily sitting on this in the same sense that they
4 were sitting on the phone in *Pratt*, because it looks like
5 they attempted to search it. They attempted to access it,
6 but for various reasons they were simply unable to. I think
7 that's significant.

8 MS. FULLER: Judge, can I give you the citation for
9 Dorsey?

10 THE COURT: Sure.

11 MS. FULLER: At the time that I printed this it was 2019
12 Westlaw WL 3804113 and it was standing for when I made the
13 argument that the possessory interest. Part of Dorsey
14 indicated that Dorsey's inaction resulted in the abandonment
15 of this phone. Essentially Dorsey did not raise -- he
16 allowed his phone to stay in custody at the Baltimore police
17 for roughly a year without protest and despite having the
18 opportunity to seek its return. So, under the circumstances
19 the court said Dorsey's inactivity resulted in abandonment
20 and is not entitled to suppression for evidence obtained on
21 the phone. Your Honor, in the ---

22 THE COURT: In that case, was the phone seized by way
23 of a lawful warrant or did it simply find its way into the
24 possession of the police, because that would be two
25 different animals. If they found it was abandoned property

1 like garbage in a garbage can then that's one analysis
2 legally. If it was obtained by way of a warrant, that's a
3 completely separate one especially in light of *Pratt*. I
4 would assume factually in that case, and I haven't looked at
5 it, but I would assume factually they simply came into
6 possession of it and maybe just didn't look at it for a
7 period of time.

8 MS. FULLER: During the investigation in this case, the
9 opinion says, the FBI seized Dorsey's cell phone and
10 subsequently obtained a warrant from the magistrate judge to
11 search his contents. Baltimore police department had
12 originally seized the phone after state authorities arrested
13 him, the defendant, for drug trafficking and a handgun
14 violation. So it appears to have been seized at the time of
15 arrest. Throughout this time. The opinion says Dorsey's
16 cell phone remained in police custody. Although it is
17 undisputed that Dorsey was not in custody for at least --
18 the facts of when he got in and out are entertaining, for at
19 least some period between the initial seizure of his phone
20 and his later arrest. So it looks like the phone was seized
21 December 2015. It looks like he must have been released
22 from custody, did not make attempts to retrieve his phone,
23 and then was rearrested in August 2016. Then in November
24 2016 it appears the FBI learned that the phone remained in
25 custody, retrieved it, and then obtained a warrant from the

1 magistrate to search it. So a little janky there, but it
2 was seized on a lawful arrest, kept in custody, he never
3 made any efforts, and so the court viewed that as that as
4 abandoned property because he never made any attempts to
5 retrieve his phone that was seized from his original arrest.

6 THE COURT: That's an interesting opinion then because
7 that puts a person in a "damned if you do damned if you
8 don't" sort of a situation. If you request it back you're
9 giving the authorities a heads up that hey there something
10 on this phone that you probably need to look at or perhaps
11 contextually said it was seized as part of a drug deal and
12 then a gun thing. So if you ask for it back promptly,
13 you're probably telegraphing to the police that they need to
14 search it and if you don't ask for it back in the hopes that
15 they don't search it when you ultimately do ask for it back
16 years later is deemed abandoned. That's an interesting
17 result.

18 MR. BROWN: Your Honor, if I may hand up an email
19 thread. I'm going to mark it as Defendant's ---

20 THE COURT: Has anyone Shepardized *Pratt* to see ---

21 MR. BROWN: I did see that there is no history.

22 THE COURT: No history? No nothing?

23 MR. BROWN: No, sir. This is Defendant's 4, Your Honor.
24 If I may. I don't have another copy of it. I wasn't
25 intending on introducing it. It's an email thread from Ms.

1 Fuller to Your Honor on November 14, 2019 and it talks
2 about, among other things -- I'm just going to read it first
3 ---

4 MS. FULLER: I just read that.

5 THE COURT: I think that may be it.

6 MR. BROWN: Well, certainly -- it says in here that
7 they don't -- I mean, that they're not intending to take any
8 other efforts. I mean that's -- prior to that day. We
9 could not access it. It was not something I could pursue.

10 MS. FULLER: Flip the page.

11 MR. BROWN: Oh, I know. And then after that you're
12 pursuing it. July 18, 2018. Since we could not access it,
13 it was not something I could pursue. I mean, that's
14 abandoning pursuit of it. He had property at the jail, but
15 we haven't questioned her. She volunteered this.

16 THE COURT: Okay, well ---

17 MR. BROWN: I mean, she indicated that we asked what
18 they've gotten off it, which is legit. We hadn't gotten any
19 videos. What did you get off of it. And so she wanted to
20 make sure that -- I'll paraphrase it, that we weren't able
21 to say later they didn't look at it.

22 THE COURT: I understand. I don't know that that's
23 necessarily the question. It looks to me from the warrants
24 that were issued, the search warrants that were issued,
25 there was a desire to access this and but for hitting

1 firewalls or just technically being unable to access it --
2 it's not a *Pratt* situation where they seized it and sat on
3 it is what I'm saying. It's the sitting audit thing with
4 *Pratt*, because *Pratt* specifies that the cell phone itself is
5 not evidence it's the contents that are relevant and I could
6 see the fourth circuit taking issue with the fact that
7 apparently somebody is demanding the cell phone back and yet
8 there's all this inactivity on it to try to access it and
9 that's even though in *Pratt's* case factually he wouldn't
10 give them the password and so they were going to have to
11 attempt to break into it some other way. This case seems to
12 be a little bit distinguishable. The Ritter case, and that
13 at the very least law enforcement pursued tried to access it
14 in a reasonable timeframe or within a reasonable timeframe
15 even though perhaps solicitor Fuller was not interested in
16 using that as part of her case. Maybe. Having not looked at
17 Dorsey, having just looked at *Pratt*, I'll think about it. It
18 is 5 o'clock.

19 MR. BROWN: Yes, sir. I just thought that would be one
20 we could argue.

21 THE COURT: And you were correct. Thank you for that.

22 MR. BROWN: I want to mark this as 4.

23 THE COURT: We've still got Brady on person of interest.
24 Brewer concerning redacted jail calls. Is it Brewer or
25 Brewton?

1 MS. FULLER: Your Honor, what I've conveyed to Defense
2 counsel is My normal course is I don't even involve the
3 judge in that process. I go through and I know what can come
4 in and what can't. I send the defense usually a copy of the
5 exhibit in advance. They respond and say hey I still think
6 this should come out. I redact that if we disagree then I
7 bring the disagreement to the court so I would venture to
8 say I think we should table it and I usually send the court
9 a copy of it, the challenged portions, the week prior. If
10 you want it sooner than that if there's a challenge. I
11 don't anticipate there being a challenge because I know what
12 to redact.

13 MR. BROWN: For what it's worth we agree with that and that
14 was Judge Buckner's practice. It won't come to me until
15 y'all talk about it, and so essentially we were filing it to
16 get their response so we can then review it. We don't have
17 any calls they're talking about because we understand that
18 they are in the four digits, at least, so the only thing
19 about the week before is there may be a weeks worth of phone
20 calls. So if there are some she knows right now that would
21 be of some interest. That's what the Brewer motion is.
22 That's all it is.

23 MS. FULLER: I can tell you right now the portion that
24 I intend to clip are from may be four or five calls so far
25 and to listen to them total maybe two, three minutes, but

1 they're not -- and that's right now. I haven't listened to
2 everything.

3 MR. BROWN: And were not trying to handcuff them.

4 MS. FULLER: If there is a 15 minute call I'll let you
5 know.

6 MR. BROWN: Were not trying to handcuff them like that.

7 THE COURT: Just looking at these, before we break,
8 metadata from Hampton County Sheriff's office. That would
9 be you. We do have theoretically someone from Hampton
10 County coming on Wednesday. I doubt it is their computer
11 guru or their in-house computer person. Briefly, so that I
12 can be thinking about that, what are we looking for? We know
13 that the phone is now with the -- the phone issue is sort of
14 out there. What more do you want to ask?

15 MR. PHILLIPS: The telephone log records. Showed up
16 Friday we want to know what they've actually requested from
17 whoever did it what they actually requested from Verizon to
18 see whether text messages were available. As far as Hampton
19 County specifically, what we be looking at is - essentially-
20 again totally renewing the ESI would be anything that was
21 related to this case that was Investigator Singleton or
22 Singletary and I think now based on the notes of Aldrich
23 being put into evidence in his testimony today I think it
24 would be expanded in scope to investigator Solomon. Again,
25 there is conflicting testimony that was presented today

1 based on his notes. What was presented was that investigator
2 Aldrich was told by investigator Solomon some very specific
3 things that was contradictory to investigator Solomon's
4 testimony. So I think that widens the scope to investigator
5 Solomon as well since he denied having any direct knowledge
6 as to confidential informant and said that essentially I
7 think what was the rehabilitation on redirect from the state
8 was that anything that he would've known would've been told
9 to him from investigator Singletary, but that's not what was
10 specifically explained or discussed and asked of
11 investigator Aldrich, asking had he been used previously and
12 reliably and he said yes. I mean it was definitely unclear
13 from investigator Aldrich's point of view, at least from the
14 testimony I saw, that he didn't believe he was getting the
15 information secondhand from investigator Solomon, which
16 directly contradicts investigator Solomon's original
17 testimony. Rehabilitated testimony is a little different
18 obviously.

19 THE COURT: The problem with your request is pretty
20 simple. The feeling that I got from the witnesses today was
21 that Hampton County was really playing a very limited role
22 in assisting in this. I heard the investigator Daes
23 explained that he was the one that typed the warrant. He was
24 the one that filled in in. And it sounds to me like Hampton
25 basically, the deceased investigator, simply affixed his

1 name signed, swore, took it to the magistrate, and that was
2 it and off you go to the races. So, aside from the phone
3 which we've already talked about here ---

4 MR. PHILLIPS: I think the phone was the critical
5 piece. I mean, that's the linchpin of -- that's outside of
6 what you just acknowledged that he wasn't specifically
7 drafting reports. I think the phone was the linchpin that's
8 now wiped. And I think that makes it more difficult as
9 investigator Solomon's testimony that to his knowledge there
10 is pretty good reason to believe that there is no records.
11 And based on what we've been presented by Hampton County,
12 unless something changes, when we speak to investigator
13 Clapp.

14 THE COURT: Right, and that maybe we'll just sort of
15 need to see if this is something you can explore.

16 MR. PHILLIPS: I would like to, from a defense attorney
17 standpoint, nail down Daes. Really a -- when was it wiped.
18 What was requested. Who made the decision to request
19 investigator Singletary's Verizon records. What was that
20 specific request. In light of us making the supplemental
21 motions of discovery, in light of the preservation request,
22 and the specific request for these evidence, the timing
23 becomes very important, especially considering again not to
24 go full circle we had a -- part of the *Franks* initial burden
25 of the *Franks* hearing already and all we knew is that we had

1 Hampton County under subpoena. They didn't show up. They
2 didn't comply with the subpoena. They didn't send a letter
3 saying there's no records. We have different conflicting
4 testimony. I go back to your honor that that order you used
5 the thing that we don't have evidence unique situation. I
6 think this case is nothing but a unique situation. Again, as
7 we peel the onion we're having more and more
8 inconsistencies.

9 THE COURT: All right. They need to let us know when
10 they wiped the phone and who made that decision and they
11 need to let us know why it was made despite the order, the
12 preservation order.

13 MR. BROWN: Well, let me ask you this. Can we also
14 find out when they were told that there was a preservation
15 order and who it was told to? Because if we were to call
16 that person ---

17 THE COURT: I'm assuming the Solicitor can provide us
18 with that information since they would have been probably
19 the people to channel that, unless it was the investigator
20 from West Columbia.

21 MR. GRAHAM: And I think it came out at one point. I
22 think that investigator Sullivan had made that communication
23 maybe.

24 THE COURT: I'll let you check your records.

25 MR. PHILLIPS: To add, we now have this late discovery

1 of Investigator Singletary's Verizon records. Who put in
2 that request and what was the specific request.

3 THE COURT: I assume it was -- I thought we had
4 established this morning that it was the Solicitor's
5 Office's investigator or Ms. Fuller that made that specific
6 request. I think that was established this morning in
7 chambers.

8 MS. FULLER: That's correct, Your Honor. That's what I
9 expressed to you. It was last Thursday.

10 MR. PHILLIPS: Okay, sorry for the confusion. The
11 timeline of -- I don't know why that would've been done last
12 Thursday, is my question.

13 THE COURT: Because Ms. Fuller was trying to figure out
14 some way to otherwise impeach Mr. Atkins' statements that
15 he's got no idea who this guy is and he's never worked for
16 him, and she was prepping this for Monday. It's amazing how
17 my mental telepathy is all of a sudden after lunch been
18 restored. So that's what she's going to tell you. She was
19 prepping it and she thought about it and hey maybe they have
20 it. Maybe they don't. I guarantee you they don't have text
21 records.

22 MR. PHILLIPS: I guess that goes back to we've been
23 asking for this stuff and we didn't get it, and then now
24 that -- I mean, they've had Lamar Scott -- I mean John
25 Scott's. There were different names provided. They had

1 that number. The whole time his testimony was not the first
2 time they've had that number.

3 THE COURT: I understand. Assuming that there were
4 texts between Atkins and the deputy -- I had this come up
5 recently, but I cannot -- and by recently I mean the last
6 couple of years. Verizon usually keeps it only for how
7 long, the text messages? It's very ...

8 MS. FULLER: It really depends. So, within the first
9 14 days if you do a preservation ---

10 THE COURT: You can always get it within, yeah, two
11 weeks.

12 MS. FULLER: So, you can get up to 30 days. I haven't
13 been successful beyond 30 days. Maybe once.

14 THE COURT: Absent a record preservation order.

15 MS. FULLER: I think AT&T might be different, but all
16 of them are different. I'll check our notes. I'm sure we
17 told Hampton County to preserve it and to actually check if
18 there was communication and we relayed what we relayed, Your
19 Honor.

20 MR. BROWN: Have they checked his iCloud? Because
21 re-wiping the phone does not burn the iCloud.

22 MS. FULLER: I really don't even know if investigator
23 -- All due respect to him ---

24 MR. BROWN: Well, they have to have -- they have to
25 have an iPhone account. I've got a witness in one of my

1 cases who's been ordered in a civil case to go back to his
2 iCloud.

3 MS. FULLER: What I was beginning to say is that if you
4 don't swipe it on it won't back up to your iCloud, and all
5 due respect to Investigator Singleton, I don't know if he
6 backed up his stuff to the iCloud.

7 MR. PHILLIPS: It's not whether we know are not it's
8 whether we find out whether it exists.

9 THE COURT: Well, sometimes it's automatic. Mine is an
10 automatic backup. It will automatically, when it puts a new
11 -- y'all are talking to a judge that used to actually
12 communicate by mail. When it does its magic thing and a new
13 system gets transported from the heavens into the phone and
14 then you wake up in the morning and there's a little
15 notification there and it can't use the face ID thing. I
16 think doesn't that automatically back it up to the iCloud?

17 MS. FULLER: So, You have to actually back it up, so
18 your phone is actually probably set to automatic backup.
19 Not everyone -- mine hasn't backed up in a couple of days.

20 MR. PHILLIPS: The defense would specifically request
21 to find out whether investigator Singletary's iCloud back up
22 is available.

23 MS. FULLER: Your Honor, I'll just ask this one
24 question. Defense counsel is well within their right to
25 investigate this as well and have requested these records.

1 I just want that to be clear, because I did not. When we
2 had previous hearings if there was a request for us to
3 request the Verizon cell phone bill I would've requested it,
4 but they also can do that to by an order.

5 THE COURT: I understand that too. I don't disagree
6 with you. They have subpoena power as well.

7 MR. BROWN: Actually, Your Honor, if I may. This
8 Solicitor's office has specifically sent a memo that says do
9 not honor any subpoenas duces tecum come for records except
10 records being brought to trial. I have it. It signed by
11 Solicitor Hubbard.

12 MS. FULLER: Your Honor, to clarify that -- it's been
13 clarified that neither the State nor -- in criminal court
14 there isn't subpoena powers, so we no longer ---

15 MR. BROWN: That is not true.

16 MS. FULLER: --- There isn't subpoena power
17 investigated. There isn't a criminal subpoena power by the
18 state. That has been given us by guidance by the
19 prosecution commission and so we have ---

20 MR. BROWN: (NON-VERBAL RESPONSE)

21 MS. FULLER: --- just as an aside, several years ago I
22 personally thought I still had powers, serve debt and was
23 challenged with a rule saying that I was violating the rule
24 as well as our ethics for serving them.

25 MR. BROWN: I spoke at the public defenders conference

1 in the fall on this and said all that was not true.

2 MS. FULLER: but you do have -- you can request a court
3 order. That still an option.

4 THE COURT: The biggest problem with that is then you
5 have to potentially -- you have to choose to do it ex parte
6 day, which could be problematic and a violation of ethics or
7 you have to notify the Solicitor's office that you are
8 seeking that court order which, then again, you may as well
9 serve the Solicitor's office with a subpoena. I am no
10 longer chief administrative judge for criminal court of the
11 11th circuit. I was unaware that that was the policy. I
12 would be surprised if other circuits follow that policy, and
13 I will leave it at that. If what they say is true and they
14 are not going to get response from the subpoena that is
15 served directly on a law enforcement agency, then their only
16 option is to go through you and so basically that means it
17 falls to you guys to make sure it gets done. You're going
18 to be checking the iCloud to see what we can access from
19 this officer's cell phone and it will need to be done by
20 Wednesday because it sure policy, it's your office policy,
21 that they would not be in a position to do it themselves,
22 that they can't respond or that law enforcement shouldn't
23 respond to their independent investigations.

24 MS. FULLER: Your Honor, if I can clarify that. I
25 thought we were speaking generally what that indicates.

1 What that is in reference to his using subpoena powers to
2 circumvent the rules of discovery, and that's what's been
3 happening, so information has been requested as it relates
4 to the case file and being sent out unredacted. That's what
5 that is. In terms of investigating and serving 1/3 party
6 entity, however they accept service is them, but when it
7 comes to agencies here the discovery goes through us. And
8 that's well-settled. You can't use a subpoena to circumvent
9 discovery rules.

10 THE COURT: what if -- would that include for just a
11 witness that works with the police department that they
12 cannot independently serve that witness for trial?

13 MS. FULLER: They can do that. That has nothing to do
14 with it. It's when you're requesting -- people have been
15 sending subpoenas to request discovery from the law
16 enforcement agency. I'm not sure what they are referring
17 to, but that's what ---

18 THE COURT: Discovery is one thing.

19 MS. FULLER: That's what were talking about in terms of
20 the letter, the memo that the solicitor sent is that
21 discovery goes through us. If there is a general sessions
22 case we send out the discovery, not the officer

23 THE COURT: And I agree with that. The discovery
24 should go through you, but having received that discovery if
25 there is additional investigation that they need to

1 undertake, and they want to do that without your offices
2 involvement or without your offices knowledge they should be
3 able to do that regardless of whether it's John Q public or
4 Verizon wireless or the city of Columbia Police Department.
5 That's the problem I've got. I agree that discovery -- you
6 should not be able to do a run around rule five and Brady by
7 filing a FOIA request or by filing a subpoena. I agree with
8 that hundred percent. The question is what happens after
9 that. But, then again, I'm no longer in charge of the 11th
10 circuit so y'all can take that up with Judge McLeod.

11 Yes, sir?

12 MR. PHILLIPS: In our position is from a discovery point
13 that has never been, at least in my mind -- we've been
14 pretty unequivocal. We've wanted everything that Singleton
15 had electronically. I've been asking for the text messages,
16 the emails, that was part of the ESI request. We have
17 specifically said, "I want that".

18 THE COURT: Just like we were surprised this morning
19 that all of a sudden Verizon records turned up, maybe will
20 be pleasantly surprised that iCloud records will show up on
21 Wednesday, so we shall wait and see. I will enjoy seeing
22 you all again on Wednesday. Have a lovely evening and a
23 safe drive to whatever your ultimate destination is.

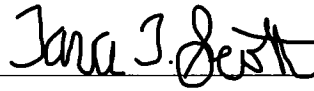
24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

CERTIFICATE OF REPORTER

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 12th day of April, 2021.

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

A handwritten signature in black ink, appearing to read "Tara T. Scott", is written over a horizontal line.

Tara T. Scott, CVR

Official Court Reporter

May 16, 2022

State of South Carolina
 County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2019-GS-32-02287
	)	2019-GS-32-02288
Damien Ritter	)	2019-GS-32-02289
	)	2019-GS-32-02290
<u>Defendant.</u>	)	2019-GS-32-02291

April 14, 2021
 Lexington, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Judge.

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

Sutania Fuller, Assistant Solicitor
 Attorney for the State

James Brown, Esquire
 Dayne Phillips, Esquire
 Attorneys for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

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P R O C E E D I N G S

* * *

THE COURT: We're going to go back on the record, if we may, concerning the State versus Damien Ritter. And, of course, this is a continuation from the hearings we began on Monday.

The parties will note that we do have a different court reporter today. Tara Scott, unfortunately, had a death in the family early this morning, and so we do have a different court reporter. You may want to take note of that in the event that a transcript is requested in the future.

We were, I think, involved in the Frank's hearing at the time that we broke on Monday. And I think that I had requested of the State -- there was an issue about possible information in the investigator's iCloud account with his cell phone. Possibly, the cell phone could have been backed up to an iCloud. It was, of course, wiped when he passed away. And we're taking about the investigator, of course, in Estill.

Have y'all heard anything additional on that or do you have any update on that question?

MS. FULLER: Yes, Your Honor. And we do have the lieutenant and sergeant here, and we're prepared

11:27:47 1 to put testimony up as to that. And I can -- it
11:27:50 2 looks like -- this morning, we actually had them
11:27:52 3 bring the physical phone here. What was the
11:27:55 4 understanding was they went and retrieved the phone
11:27:57 5 and all of their items from the spouse, Singleton's
11:28:01 6 spouse, and she told the captain that she attempted
11:28:04 7 to get in the passwords -- attempted many times to
11:28:07 8 get into the phone to get pictures off of the
11:28:11 9 grandkids. And it was under the impression that
11:28:13 10 it -- she had locked it and it was wiped because of
11:28:16 11 the setting.

11:28:17 12 I powered it on this morning and looked at it,
11:28:20 13 and it doesn't appear to be wiped because it didn't
11:28:21 14 say "welcome." It just said "enter passcode." And
11:28:24 15 so that's kind of where we are.

11:28:26 16 So -- but the understanding this whole time was
11:28:28 17 that she had entered the password, I think, ten
11:28:32 18 times, and it wipes the phone. But we -- I can't
11:28:35 19 stand here and say yes or no, it's gone. But we do
11:28:38 20 have the physical phone in the courtroom now. With
11:28:42 21 further direction of the Court, what you want to do
11:28:44 22 with it? We can't get into it without the password.

11:28:44 23 THE COURT: His wife didn't know the password
11:28:47 24 to the phone?

11:28:47 25 MS. FULLER: No. She thought she locked it and

11:28:50 1 wiped out. I know mine is -- you can set it ten
11:28:55 2 times failed attempts and it wipes your phone,
11:28:55 3 deletes your stuff. But I can't confirm that's been
11:28:57 4 done. We can't access the iCloud, according to the
11:29:01 5 Sheriff's Office. And we'll put that testimony in.
11:29:04 6 The iCloud is their personal account, so he couldn't
11:29:07 7 go in to log in. And so the only way to access the
11:29:10 8 iCloud would be service of process. And it's Apple,
11:29:13 9 so --

11:29:16 10 MR. BROWN: Your Honor, I can speak to that for
11:29:18 11 a sec.

11:29:18 12 THE COURT: Yeah. Go ahead, please.

11:29:19 13 MR. BROWN: So Apple will take a court order
11:29:21 14 served in Cupertino, California, or law enforcement
11:29:25 15 can get it.

11:29:25 16 THE COURT: Okay.

11:29:26 17 MR. BROWN: They are not equal opportunity.
11:29:30 18 They will not play ball with the defense.

11:29:33 19 THE COURT: Okay. I'm happy to either issue an
11:29:36 20 order or the State can undertake to have me issue an
11:29:42 21 order. I don't know. I would think an order would,
11:29:45 22 perhaps, carry, maybe, a little more. But I can't
11:29:49 23 speak to Apple's internal policies. What -- do
11:29:59 24 y'all have any thoughts on that or --

11:29:59 25 MS. FULLER: Your Honor, if you want us to

11:29:59 1 pursue that going further, it would probably be --
11:30:01 2 an order, in terms of us, we wouldn't have cause to
11:30:02 3 even issue a search warrant for a deceased officer's
11:30:07 4 Cloud information; especially wouldn't be able to
11:30:10 5 articulate -- it's Apple and Google, and those
11:30:14 6 entities require that you articulate that there's
11:30:16 7 knowledge of the information in there, especially
11:30:19 8 Google. I'm not sure. I haven't done Apple -- I
11:30:22 9 don't know if I've done Apple recently.

11:30:23 10 But they require that you articulate what
11:30:26 11 you're searching for and that there's a probability
11:30:30 12 of it being there. They're really strict on that,
11:30:33 13 Google especially. But that's where we are. But I
11:30:37 14 think a court order would be more appropriate,
11:30:37 15 because we wouldn't be able to articulate probable
11:30:40 16 cause for a search warrant.

11:30:40 17 THE COURT: Well, I'm just thinking that --

11:30:48 18 MS. FULLER: Before we make that decision, I
11:30:50 19 will say this: There is an option that we actually
11:30:53 20 attempt to do a targeted extraction on the device
11:30:57 21 with GrayKey. The thing is, it would run a series
11:30:58 22 of numbers to try to crack the code on the phone to
11:31:00 23 do a targeted extraction for July of 2018, if it's
11:31:05 24 there.

11:31:05 25 The problem with GrayKey, it will sit connected

11:31:08 1 and, depending on how simple the code is or
11:31:12 2 complicated the code is, it may crack in a day or
11:31:16 3 two or it may crack in a year or two. So that is a
11:31:18 4 possibility that we can do that by consent and
11:31:24 5 have -- we can reach out to our sheriff's office
11:31:26 6 here to see if they would attempt a GrayKey
11:31:31 7 extraction on the device.

11:31:32 8 THE COURT: The reason I think it would be
11:31:34 9 relevant and something worthwhile to pursue is that,
11:31:38 10 obviously, when we came in here Monday, the first
11:31:42 11 thing that we were presented with is the phone
11:31:45 12 records that you were able to obtain from his
11:31:49 13 telephone, indicating that, supposedly, there was
11:31:53 14 contact between the confidential informant and the
11:31:57 15 detective on the very day that we were talking
11:32:01 16 about, which is, obviously, May 10, to impeach the
11:32:09 17 testimony of the confidential informant, which was,
11:32:11 18 of course, previously offered last fall, and that
11:32:15 19 was new to me. That was new information to me.

11:32:18 20 And people communicate, not only by voice, but,
11:32:21 21 of course, by text. And it would be quite lovely to
11:32:24 22 know if, perhaps, some of those messages are, in
11:32:27 23 fact, preserved on the phone somewhere. And --
11:32:31 24 because we know we cannot get them from Verizon.
11:32:36 25 The only option we would have is maybe he didn't

11:32:39 1 delete them and maybe they would still be there,
11:32:41 2 which is why I was thinking that it would be very
11:32:41 3 beneficial to see that, particularly for your case.

11:32:45 4 But if you want to call the next witness,
11:32:49 5 that's perfectly fine, and we can go down that road.

11:32:54 6 MS. FULLER: Okay. Thank you, Your Honor.
11:32:54 7 And, Your Honor, just to let you know why we didn't
11:32:54 8 pursue -- this wouldn't have been presented in our
11:33:00 9 case in chief; it would just be what Your Honor
11:33:03 10 would want before ruling on Frank's.

11:33:07 11 THE COURT: No. I understand completely. But
11:33:07 12 with the Frank's issue hanging out there and, I'm
11:33:11 13 assuming that you're wanting to use, at trial, the
11:33:11 14 video and all the stuff that was seized from his
11:33:15 15 house, perhaps it would be beneficial and germane
11:33:22 16 and helpful if the State got a little bit curious
11:33:26 17 about that.

11:33:27 18 Does the defense need to say something or --

11:33:29 19 MR. PHILLIPS: So I guess, at first blush, we
11:33:30 20 don't concede, at this point, that we could possibly
11:33:33 21 pursue it at trial. The gatekeeper of admissibility
11:33:33 22 is the Judge --

11:33:33 23 THE COURT: Right.

11:33:37 24 MR. PHILLIPS: -- and so we'll start there.

11:33:38 25 Yesterday, I asked, but I'm going to

11:33:40 1 specifically request, that we wanted to expand our
11:33:44 2 scope of ESI to include Investigator Solomon. Based
11:33:49 3 on his testimony, specifically combined with
11:33:53 4 Investigator Aldridge's testimony and notes, he --
11:33:58 5 his cell phone records, his ESI text messages are
11:34:03 6 just as relevant as Singleton.

11:34:08 7 Investigator Aldridge testified yesterday,
11:34:12 8 specifically, that he received the information on
11:34:15 9 reliability regarding the informant from
11:34:17 10 investigator Solomon; that his notes fully support,
11:34:20 11 which were marked as a Court's Exhibit, that his
11:34:25 12 information regarding the CI really what -- part of
11:34:27 13 the heart of what we're dealing with in the Frank's
11:34:30 14 hearing and then the subsequent liability process
11:34:34 15 that we have to take up. That information came
11:34:37 16 directly from Solomon to Aldridge.

11:34:41 17 Now, there is dispute about whether Solomon
11:34:44 18 received information from Singleton. But --

11:34:52 19 THE COURT: Well, this is all --

11:34:53 20 MR. PHILLIPS: We would request to expand the
11:34:56 21 scope.

11:34:56 22 THE COURT: I understand you request to expand.
11:34:58 23 Here's my concern, and I'm just going to be --
11:34:58 24 forgive the pun -- frank with you, since we're
11:35:05 25 dealing with a Frank's hearing. But I only intend

11:35:06 1 to chase this rabbit for so long. And, again, I
11:35:09 2 articulated what the Court's obligation is in a
11:35:13 3 Frank's hearing on the record.

11:35:15 4 And assuming that there was something nefarious
11:35:19 5 with the manner in which the CI was referenced in
11:35:23 6 the affidavit supporting the search warrant, let's
11:35:27 7 assume that we get there or that we can get there
11:35:31 8 with sufficient evidence here. The question then
11:35:33 9 becomes: I extract that portion, the bad portion,
11:35:36 10 and what do we have left? I cut away the bad part
11:35:40 11 of the apple, and what good fruit do I have left to
11:35:45 12 work with?

11:35:47 13 So I hear your motion --

11:35:49 14 MR. PHILLIPS: And maybe I put the cart before
11:35:51 15 the horse, because the follow-up after that,
11:35:54 16 generally, is us -- at least especially in this
11:35:59 17 case, is dealing with the reliability aspect. And
11:36:01 18 so --

11:36:02 19 THE COURT: And that's kind of my point. If I
11:36:05 20 were to conclude that the person were not reliable
11:36:08 21 or there were some issues with the way the
11:36:11 22 reliability was characterized to the Magistrate who
11:36:15 23 testified Monday, et cetera, et cetera, and if that
11:36:17 24 is sufficiently fatal under the case law to warrant
11:36:22 25 exclusion of that portion of the affidavit. Then,

11:36:24 1 again, I look back to what we have. And what we
11:36:27 2 have is an eyewitness identification; what we have
11:36:32 3 is, you know, some measure of corroboration in the
11:36:36 4 search warrant, which, you know, you're not
11:36:38 5 attacking at this point.

11:36:39 6 So I understand that we're going to be dealing
11:36:41 7 with the identification issue a little bit later.
11:36:44 8 But if it was unduly suggested, that might -- that
11:36:48 9 might be a problem. But I'm assuming, for the
11:36:51 10 moment, that maybe it wasn't. Might be a big
11:36:55 11 assumption, but we'll see.

11:36:58 12 MR. PHILLIPS: I think you're right. We need
11:37:00 13 the ruling on the Frank's, and then I can address
11:37:05 14 the reliability aspect after that.

11:37:05 15 THE COURT: I just don't want to perpetually --
11:37:05 16 we're trying this in June, and I don't want to
11:37:07 17 perpetually be chasing an electronic discovery from
11:37:12 18 witness to witness to witness to witness. The --

11:37:15 19 MR. PHILLIPS: And the only reason is because
11:37:17 20 Detective Solomon specifically said he had no
11:37:20 21 interaction with his CI. And then the -- and then
11:37:22 22 there was rehabilitation testimony that, well, if a
11:37:26 23 West Columbia investigator was to testify that you
11:37:29 24 were the one that specifically told them that the CI
11:37:32 25 was reliable and then you previously -- would that

11:37:35 1 be true? But that's not what he originally
11:37:35 2 testified to. And Investigator Aldridge's notes,
11:37:38 3 all of that came directly from his conversation with
11:37:41 4 Solomon.

11:37:42 5 THE COURT: Okay. I don't know if the CI is
11:37:42 6 going to back with us or testifying or what, but let
11:37:42 7 the State go ahead and call its next witness, and
11:37:52 8 we'll move forward as quickly as we can, please.

11:37:53 9 MS. FULLER: Thank you, Your Honor.

11:37:53 10 MR. PHILLIPS: Thank you, Your Honor.

11:37:55 11 MS. FULLER: The State recalls Investigator
11:38:02 12 Matt Days.

11:38:03 13 THE COURT: And you're still under oath from
11:38:05 14 Monday, sir.

11:38:06 15 THE WITNESS: Yes, sir.

11:38:19 16 MATTHEW DAYS

11:38:19 17 BY MS. FULLER:

11:38:19 18 Q. Investigator Days, did you have an opportunity
11:38:22 19 to review the surveillance footage from the
11:38:26 20 defendant's home for July 8th and July 9th since the
11:38:29 21 hearing on Monday?

11:38:31 22 A. Yes, ma'am. I reviewed it yesterday.

11:38:32 23 Q. And I specifically asked about July 8th and
11:38:35 24 July 9th. Can you explain to the Court -- how did
11:38:37 25 you determine the actual date and time that you were

11:38:41 1 observing on the DVR footage?

11:38:44 2 A. So my key-in date and time that I use to
11:38:47 3 establish the equation to figure out what the DVR
11:38:52 4 time is versus true time is that I know that I wrote
11:38:54 5 down, at the time that the defendant's aunt showed
11:38:58 6 up at his residence for the execution of the search
11:39:02 7 warrant on July 18th, 2018, was at 10:30 a.m. So
11:39:07 8 knowing that time, I compared it to the time that's
11:39:09 9 present on the DVR.

11:39:10 10 The difference showed it to be -- the DVR to be
11:39:11 11 slow by 317 days, 12 hours, and 18 minutes. And I
11:39:15 12 used that conversion from there to convert all
11:39:19 13 times.

11:39:20 14 Q. Okay. I'm going to show you what's been marked
11:39:28 15 as Court's Exhibit 20. And it's two documents. If
11:39:32 16 you could, take a chance to look at those.

11:39:35 17 A. Yes, ma'am.

11:39:35 18 Q. Thank you.

11:39:39 19 MS. FULLER: And just let the record reflect
11:39:41 20 that Court's 20, it's just a date-time calculator of
11:39:48 21 the time that you just described as 317 days, 12
11:39:48 22 hours, and 18 minutes on your calculation. And they
11:39:52 23 still-shot from the surveillance footage of when you
11:39:56 24 described the aunt arrived; is that correct?

11:39:59 25 A. Yes.

11:40:02 1 Q. And I'll publish it for the Court to view as
11:40:04 2 well. So Court's 20 -- I know you've double-checked
11:40:09 3 it multiple ways. But does that fairly reflect that
11:40:14 4 when you -- when you're on the video -- on this --
11:40:15 5 captured on the video when you arrived to execute
11:40:17 6 the search warrant on July 18th, the DVR time was
11:40:22 7 September 23rd, 2017, 10:12 p.m.?

11:40:24 8 A. Yes, ma'am.

11:40:25 9 Q. And it was actually July 18th, 2018 at
11:40:29 10 10:30 a.m.?

11:40:31 11 A. That's correct.

11:40:32 12 Q. And looking at page 2 of Court's 20, this
11:40:36 13 photograph, can you describe to the Court who is in
11:40:39 14 this photograph and what he's actually looking at?

11:40:42 15 A. The person closest to the screened-in porch
11:40:47 16 with the blue shorts is Loretta Warren who is the
11:40:50 17 defendant's aunt.

11:40:50 18 Behind her and to the left, I believe, is
11:40:52 19 Investigator Brooker of the Hampton County Sheriff's
11:40:54 20 Department. The -- that is me with the black
11:40:58 21 suspenders and the blue shirt behind him, and
11:41:00 22 Investigator Brooker's vehicle that he drove up in.
11:41:03 23 Loretta Warren's vehicle that she drove up in is the
11:41:05 24 white vehicle. We were in the blue Crown Vic. And
11:41:09 25 then there's Investigator Singleton's truck behind

11:41:13 1 the tree.

11:41:14 2 Q. And do you know what kind of truck that is?

11:41:16 3 A. I believe that that is a Ford pickup truck.

11:41:19 4 Q. Okay. And that's what Investigator Singleton

11:41:24 5 was driving when you went to execute the search

11:41:27 6 warrant?

11:41:27 7 A. That's correct. The two came in separate

11:41:30 8 vehicles; him and then Investigator Brooker.

11:41:43 9 MS. FULLER: Beg the Court's indulgence. It

11:41:43 10 got out of focus for just a second. I apologize.

11:42:02 11 BY MS. FULLER:

11:42:02 12 Q. Now, can you explain to the Court your method

11:42:06 13 of yesterday of reviewing the DVR footage following

11:42:13 14 the court hearing?

11:42:13 15 A. I met with Investigator Page McCraw, who is our

11:42:14 16 evidence custodian at the City of West Columbia

11:42:17 17 Police Department. She had me sign a chain of

11:42:21 18 custody form giving the DVR for review. I took it

11:42:22 19 upstairs to our training room and I hooked it up

11:42:25 20 with the HDMI cable that was the original that came

11:42:29 21 with the device. And I put it onto the TV upstairs;

11:42:32 22 I put in the password, which is 12345678, and it

11:42:38 23 gave me access to the DVR.

11:42:41 24 Q. Okay. And when you refer to the DVR and

11:42:43 25 accessing the footage you watched, are you referring

11:42:45 1 to actually a cloned copy and not the original hard
11:42:48 2 drive?
11:42:48 3 A. That's correct.
11:42:48 4 Q. And so you didn't need a search warrant to go
11:42:51 5 into it since it was just a copy that you were
11:42:51 6 looking at?
11:42:54 7 A. That's correct.
11:42:55 8 Q. Okay. And then this morning, when you arrived,
11:42:57 9 did you bring the footage that you reviewed to our
11:43:00 10 office this morning on a flash drive?
11:43:03 11 A. Yes, ma'am.
11:43:03 12 Q. And were you present when it was transferred to
11:43:08 13 this disc for court?
11:43:09 14 A. Yes, ma'am.
11:43:10 15 Q. And so this has been marked as Court's 26.
11:43:34 16 And if you'll just take the Court through, and
11:43:36 17 I'll go with you, how you began your review and what
11:43:41 18 you saw.
11:43:41 19 A. So it's easily done to navigate to find -- if
11:43:45 20 you want to look at what was going on at a specific
11:43:48 21 time, to use the equation. So I did sit through and
11:43:51 22 watch from the day of the incident until the day
11:43:55 23 that I came and seized the DVR. But, beforehand, I
11:44:03 24 did go directly to the time in question about when
11:44:06 25 this call came in from the CI.

11:44:11 1 Q. Okay. So I'll open the first footage. And it
11:44:19 2 appears to be DVR time 8/25/2017 at 7:45 a.m. And
11:44:22 3 what did you observe at this time? See?

11:44:23 4 A. Just to confirm, that's August 25th, 2017, at
11:44:24 5 7:45 a.m. So that is true time at July 8th, 2018,
11:44:29 6 at 8:03 p.m., and that's an Estill PD patrol car
11:44:38 7 coming out in front of the defendant's house. In
11:44:40 8 fact, he comes in, not through Roberts Street, but
11:44:40 9 he had taken a cut path that appears -- behind the
11:44:47 10 house that appeared to me to sneak up on the area.

11:44:52 11 Q. Okay. I'm going to show you what's been marked
11:44:56 12 as Court's 21 -- this isn't the count days, but the
11:45:01 13 add days that you just testified to -- and ask if
11:45:06 14 you recognize it?

11:45:07 15 A. This is accurate.

11:45:09 16 Q. And this is what you just testified to. And
11:45:12 17 this is a still shot of what we see on the screen
11:45:15 18 there?

11:45:15 19 A. Yes, ma'am.

11:45:18 20 MS. FULLER: And, Judge, I'll hand this up to
11:45:21 21 you, Court's 21. You'll see the conversion.

11:45:39 22 THE COURT: Thank you.

11:45:39 23 MS. FULLER: And, Judge, I'm handing you
11:45:42 24 Court's 20 so you can see the count days, the
11:45:46 25 initial calculation.

11:45:46 1 BY MS. FULLER:

11:45:48 2 Q. And does this appear to be a local law

11:45:50 3 enforcement going by the defendant's home on July

11:45:53 4 8th of 2018?

11:45:55 5 A. Yes, ma'am.

11:45:56 6 Q. Going to the second footage that you prepared

11:46:04 7 for Court today. I apologize. And what time is

11:46:23 8 this footage?

11:46:24 9 A. The time on the DVR is August 25th, 2017 at

11:46:29 10 9:43 p.m.

11:46:30 11 Q. And what true time is this?

11:46:33 12 A. The true time is July 9th, 2018 at 10:01 a.m.

11:46:38 13 Q. In looking at Court's Exhibit 8 from the

11:47:03 14 previous hearing, there's previous testimony that

11:47:22 15 John Adkins' phone number is [REDACTED].

11:47:29 16 A. Yes, ma'am.

11:47:31 17 Q. And do you see calls close in time to the time

11:47:36 18 of this second footage?

11:47:39 19 A. Yes, ma'am, I see two. I see one on July 9th

11:47:43 20 at 9:05 a.m. and I see another at 9:21 a.m., which

11:47:45 21 is just -- exactly 40 -- the last one is exactly 40

11:47:49 22 minutes before this vehicle shows up.

11:47:51 23 Q. Okay. And do you see any calls after this

11:47:53 24 vehicle shows up?

11:47:55 25 A. Yes, ma'am. Eight minutes after that car shows

11:47:58 1 up, the CI's -- Mr. Adkins' phone number calls
11:48:06 2 again, and then again 11 minutes later.
11:48:08 3 Q. And for the record, that's 10:09 a.m. and
11:48:10 4 10:20 a.m.?
11:48:11 5 A. Yes, ma'am.
11:48:12 6 Q. And on the two TVs in the courtroom that's
11:48:14 7 displayed there, true time is 10:01 a.m.?
11:48:17 8 A. That's correct.
11:48:26 9 Q. And can you explain -- are you familiar with
11:48:29 10 the vehicle in this shot?
11:48:31 11 A. Yes, ma'am.
11:48:32 12 Q. And whose vehicle is that?
11:48:34 13 A. That's Investigator Singleton's vehicle, the
11:48:37 14 same vehicle that he drove to meet me at --
11:48:41 15 Q. On July 18th?
11:48:43 16 A. On July 18th, yes, ma'am.
11:48:45 17 Q. And I'm just going to play the -- it's a
11:48:49 18 36-second clip. I'll just play the whole thing.
11:48:54 19 (Video played for his Honor.)
11:48:59 20 BY MS. FULLER:
11:48:59 21 Q. And then, for the record, what physical address
11:49:03 22 is that, the home?
11:49:06 23 A. ■ Roberts Street.
11:49:08 24 Q. Okay. And that is who we know as the
11:49:11 25 defendant's residence?

11:49:13 1 A. That's correct.

11:49:23 2 Q. And while you were watching the surveillance
11:49:27 3 footage, can you describe to the Court what you
11:49:31 4 observed about the cameras, the positioning, and
11:49:33 5 whether -- explain whether or not they were
11:49:35 6 motion-censored?

11:49:36 7 A. Yes, ma'am. There are four channels hooked up
11:49:41 8 to this DVR. There are two in the front and two in
11:49:44 9 the back. The recording of it appears to be based
11:49:50 10 off of motion, because there are highlighted
11:49:53 11 portions on the play reel that will show when
11:49:55 12 there's footage. There are gaps of time that vary
11:49:59 13 throughout it where it appears that there's no
11:50:01 14 motion.

11:50:01 15 Q. And can you explain to the Court if there was
11:50:04 16 ever points, as you were watching the video, where
11:50:07 17 people or cars appeared closer to the home or in the
11:50:12 18 shot, but you don't see them actually arriving?

11:50:15 19 A. Yes, ma'am. There have been times when you see
11:50:18 20 someone come and leave. And then the next frame is
11:50:21 21 that same vehicle leaving again, but you never saw
11:50:25 22 them arrive.

11:50:40 23 Q. Okay. And did I actually show you Court's 22
11:50:44 24 yet, your conversion for this shot? I don't think I
11:50:44 25 did --

11:50:44 1 A. No, ma'am.

11:50:44 2 Q. -- because I didn't hand it to the Judge yet.

11:50:45 3 So I'll have you look at and confirm

11:50:54 4 Court's 22.

11:50:54 5 A. That time is correct.

11:50:56 6 Q. And the still shot accompanying it?

11:51:00 7 A. That's the same one.

11:51:02 8 Q. And that's Perry Singleton's vehicle?

11:51:03 9 A. Yes, ma'am.

11:51:04 10 Q. And just to confirm, this is at 10:01 a.m. on

11:51:08 11 July 9th?

11:51:09 12 A. Yes, ma'am.

11:51:10 13 Q. I want to display what's been marked as Court's

11:51:25 14 23. Is this also from the surveillance footage?

11:51:29 15 A. Yes, ma'am.

11:51:30 16 Q. And what time and day is this footage -- is

11:51:36 17 this still shot from?

11:51:37 18 A. The DVR time is August 25th, 2017 at 10:19 p.m.

11:51:43 19 Q. And real time?

11:51:51 20 A. August 25th, 2017 at 10:19 p.m. is actually

11:52:04 21 July 9th, 2018 at 10:34 p.m.

11:52:13 22 Q. I apologize that I made you --

11:52:15 23 A. I apologize. 10:34 a.m. I'm sorry.

11:52:17 24 Q. I apologize that I asked you to do the math on

11:52:20 25 the stand. So -- but thank you.

11:52:22 1 So this is July --

11:52:23 2 A. That's July 9th, 2018 at 10 --

11:52:28 3 MR. BROWN: And this is which exhibit number?

11:52:30 4 MS. FULLER: I apologize.

11:52:30 5 MR. BROWN: I apologize. We don't have copies.

11:52:34 6 MS. FULLER: Court's 23 is the still shot from

11:52:37 7 the DVR.

11:52:37 8 MR. BROWN: Okay. And then -- I hate to go

11:52:39 9 back. The conversions, the one where there's one

11:52:40 10 truck, that was at 10:09 and then 10:20. Is that

11:52:45 11 the actual time or the DVR time?

11:52:55 12 MS. FULLER: The testified time, 10:01 --

11:52:56 13 10:01 a.m.? Which one are you talking -- the one

11:52:56 14 when the truck came and stood in --

11:52:58 15 MR. BROWN: And it was one truck.

11:52:59 16 MS. FULLER: Uh-huh.

11:53:00 17 MR. BROWN: And that's 10:01. I thought there

11:53:03 18 were two times also. I apologize. But before I can

11:53:09 19 cross -- I don't want to stand up there and go

11:53:11 20 through all the documents.

11:53:13 21 THE COURT: Sure.

11:53:14 22 THE WITNESS: The official time of that is July

11:53:16 23 9th, 2018, at 10:37 a.m.

11:53:21 24 MR. BROWN: This was 10:37?

11:53:25 25 THE WITNESS: Yes, sir.

11:53:28 1 MR. BROWN: Okay. Then --

11:53:28 2 THE WITNESS: The 10:19 is.

11:53:29 3 MR. PHILLIPS: I think he testified --

11:53:31 4 MR. BROWN: Okay. But how about the previous

11:53:32 5 one?

11:53:32 6 THE COURT: Are you talking about --

11:53:34 7 MR. BROWN: This is Court's 23.

11:53:38 8 MR. PHILLIPS: This is the last one.

11:53:40 9 THE COURT: He's asking about Court's 22, that

11:53:44 10 one, involving the single truck.

11:53:46 11 THE WITNESS: The correct time conversion for

11:53:47 12 August 25th, 2017, at 9:43 p.m. --

11:53:47 13 MR. BROWN: Okay.

11:53:51 14 THE WITNESS: -- the true time on that is July

11:54:01 15 9th, 2018 at 10:01 a.m.

11:54:01 16 MR. BROWN: Okay. Thank you.

11:55:14 17 BY MS. FULLER:

11:55:14 18 Q. And in looking at Court's 23, can you -- you

11:55:24 19 might not be able to see those screens to tell me

11:55:28 20 which angle to go to.

11:55:31 21 A. No, ma'am.

11:55:31 22 Q. But 20- --

11:55:33 23 A. Are you trying to look for the next camera

11:55:36 24 angle or for the next clip?

11:55:39 25 Q. I think it would be 2217.

11:55:43 1 Okay. So this would be the camera angle,
11:55:52 2 channel 3, start time at 2216, it looks like, DVR
11:55:56 3 time.
11:56:01 4 A. Yep. The -- these two are the same?
11:56:10 5 Q. The two TVs are the same --
11:56:10 6 A. Yeah.
11:56:10 7 Q. -- and this is a document reader.
11:56:12 8 A. Are you asking the time of that?
11:56:12 9 (Brief pause in the proceedings.)
11:56:12 10 BY MS. FULLER:
11:56:37 11 Q. No. I was trying to find the footage for
11:56:44 12 what's displayed here. I can switch back, and you
11:56:46 13 can tell me which one they go to.
11:56:46 14 The doc- -- the computer -- the DVR time for
11:56:48 15 10:19.
11:56:53 16 A. So are you wanting to see a camera angle that
11:56:57 17 would show what's happening at DVR time 10:19?
11:57:02 18 Q. Yes.
11:57:03 19 A. So channel 4 here -- so this going to be the
11:57:06 20 channel. Then, under here, is the date, 2017; 08
11:57:07 21 being the month, the day being the 25th. And then
11:57:11 22 right here is that this is the clip length that it
11:57:13 23 starts at, DVR time 22:16:28, and goes through
11:57:19 24 22:18:11.
11:57:20 25 The next clip after that, the motion doesn't

11:57:23 1 activate, and it skips the 22:21:56 through
11:57:28 2 22:22:59.

11:57:29 3 Q. Okay. And so looking at Court's 23, which one
11:57:33 4 do I play for the Court to see this footage?

11:57:58 5 A. Okay. So does that say channel 3 in the upper
11:58:02 6 left, right here?

11:58:16 7 Q. And in watching this footage, who is that
11:58:21 8 walking in this footage?

11:58:21 9 A. The only person I recognize is Investigator
11:58:25 10 Singleton in the back.

11:58:26 11 Q. And the footage that's playing and what's
11:58:34 12 projected on the document reader, is this a still
11:58:37 13 shot of that?

11:58:37 14 A. Yes, ma'am.

11:58:37 15 Q. And that's the same vehicle that Investigator
11:58:40 16 Singleton arrived in?

11:58:41 17 A. That's correct.

11:58:42 18 Q. And this was, you testified, at 10:30 -- what
11:58:44 19 time did you say? 10:37?

11:58:45 20 A. If the time that we're talking is 10:19 p.m.,
11:58:49 21 the true time on July 9th was 10:37 a.m.

11:58:52 22 Q. Okay. And now looking at -- I'll show you
11:58:59 23 Court's 24. I'm going to ask you if you recognize
11:59:03 24 this.

11:59:08 25 A. Yes, ma'am.

11:59:09 1 Q. And what is -- what exactly is Court's 24?

11:59:13 2 A. This appears to be the -- that last clip that

11:59:19 3 you showed at 10:19, this appears to be the end of

11:59:23 4 these clips where it shows the two law enforcement

11:59:25 5 vehicles leaving.

11:59:26 6 Q. And what true time is this one?

11:59:29 7 A. And that one said 10:26, ma'am, at the time,

11:59:29 8 10:24? So let's see here. DVR time, August 25th

11:59:43 9 2017 at 10:24 p.m., and true time is July 9th, 2018

11:59:48 10 at 10:42 a.m.

11:59:52 11 Q. And then we'll play the last one.

12:00:16 12 And looking at the two TV screens, does that

12:00:19 13 appear to be what's displayed as Court's 24, still

12:00:24 14 shots of what footage is playing on two TV screens?

12:00:28 15 A. Yes, ma'am.

12:00:29 16 Q. And that would be Investigator Perry Singleton

12:00:34 17 leaving?

12:00:35 18 A. That's correct, ma'am.

12:00:36 19 Q. And that's at 10:42 a.m. on July 9th?

12:00:40 20 A. That's correct.

12:00:46 21 Q. Looking back at Court's 8, the redacted portion

12:00:53 22 of the bill, do you see those calls at 10:09, 10:20

12:00:58 23 and then, on the next page, you see other calls

12:01:01 24 to --

12:01:02 25 A. Yes, ma'am, at 11:19 a.m. on July 9th, as well

12:01:07 1 as two at 1:21 p.m., and two more at 1:48 p.m. and
12:01:13 2 1:56 p.m.

12:01:14 3 Q. Okay. So this appears that Investigator Perry
12:01:18 4 Singleton went to the home following -- or during
12:01:21 5 the time that he was communicating with John Adkins?

12:01:26 6 A. That's correct.

12:01:26 7 Q. And in your time watching the surveillance
12:01:27 8 footage, did you ever see the Tahoe that has not
12:01:33 9 been turned in or located in this case?

12:01:34 10 A. No, ma'am. The last time I saw it was before
12:01:34 11 the video shows it left for West Columbia -- left
12:01:41 12 for Columbia, and I never see it again.

12:01:53 13 Q. Okay. In looking at Court's 25, can you
12:02:00 14 describe to the Court what this is?

12:02:02 15 A. It's showing a bullet point on [REDACTED] Roberts
12:02:06 16 Street, which is the defendant's home and the
12:02:08 17 location where I served the search warrant on July
12:02:11 18 18th.

12:02:11 19 Q. And can you go ahead and describe to the
12:02:13 20 Court -- you can use the laser pointer here and I
12:02:16 21 can zoom in -- where the cameras are located and
12:02:21 22 roughly where you have seen people or vehicles
12:02:24 23 appear on camera or -- as if they're leaving, but
12:02:28 24 you never see them arriving?

12:02:30 25 A. Yes, ma'am. And so please note that I'm not

12:02:33 1 saying that these are the exact locations of the
12:02:36 2 cameras, but I am saying that these are the angles
12:02:39 3 that it shows. So I'll depict that for you.

12:02:42 4 There are four cameras. One appears to be
12:02:44 5 right here, the other right here; there are two more
12:02:47 6 in the back, one right here and one right here. The
12:02:49 7 one in the back points more towards -- and I'll make
12:02:53 8 a triangle in the area where it shows. And then
12:02:57 9 this one, there's a shed right here, and it points a
12:03:00 10 little bit more straight on. And I'll make a
12:03:02 11 triangle in the area where it shows.

12:03:06 12 This camera right here that showed the Estill
12:03:10 13 PD vehicle come in, it shoots pretty straight on.
12:03:11 14 And I'll make a triangle where the range is on it.
12:03:14 15 And then, lastly, this has a very wide angle. And
12:03:19 16 it can show when there's motion all the way down
12:03:22 17 towards the end of this street. And I'll make a
12:03:26 18 triangle on where it goes.

12:03:29 19 Q. Okay. And you described where the Estill PD
12:03:33 20 vehicle came from. Where did it come from?

12:03:36 21 A. So what I know is that vehicle came from right
12:03:36 22 here. It appears to me, since I don't see it coming
12:03:40 23 through this way, that it would have pulled in
12:03:43 24 somewhere in this area and somehow gotten to this
12:03:46 25 area and pulled through.

12:03:47 1 Q. And then did it appear -- that's not a road.
12:03:49 2 But did it appear, from watching the footage and
12:03:52 3 seeing the overhead from Google Earth, that that was
12:03:55 4 a traveled path?
12:03:57 5 A. Yeah. It looks like a good place that I would
12:04:00 6 use if I wanted to come up on this house and not be
12:04:05 7 seen coming up the road.
12:04:06 8 MR. BROWN: I would object. I mean, that's
12:04:11 9 gratuitous. I think she can say that, but he can't
12:04:15 10 testify to that.
12:04:16 11 THE COURT: Well, I mean, I -- I'll allow it.
12:04:19 12 He's been there and he's familiar with the area.
12:04:19 13 So --
12:04:21 14 BY MS. FULLER:
12:04:21 15 Q. And when you went to the home, and watching the
12:04:24 16 surveillance footage from 2018 -- and I think you've
12:04:26 17 gone there since then, I'm not sure -- does this
12:04:29 18 fairly and accurately look as the neighborhood that
12:04:32 19 you went to, to serve the search warrant?
12:04:34 20 A. Yes, ma'am.
12:04:35 21 Q. And when you were serving the search warrant,
12:04:39 22 did you, prior to seizing the DVR, actually observe
12:04:41 23 the cameras as well?
12:04:43 24 A. Yes, ma'am.
12:04:43 25 Q. And did you walk the property at all?

12:04:46 1 A. Yes, ma'am.

12:04:46 2 Q. And can you describe to the Court what's at the

12:04:50 3 back and the sides of the property?

12:04:52 4 A. There's a fairly tall wall right here. I

12:04:56 5 haven't seen much of these portions, but I saw the

12:05:00 6 portion here. There's a large tree right here.

12:05:03 7 Looking at the video, it appears that there are dogs

12:05:06 8 that are kept in this back area. There's a large

12:05:09 9 storage shed right here. And then the property has

12:05:11 10 some stairs leading up to a back door. And then

12:05:15 11 this is a screened-in porch.

12:05:22 12 MS. FULLER: Your Honor, I believe that's all

12:05:25 13 that I have.

12:05:48 14 THE COURT: Cross?

12:05:49 15 MR. BROWN: Yes, sir. May it please the Court?

12:05:53 16 THE COURT: Yes, sir.

12:05:53 17 CROSS-EXAMINATION

12:05:54 18 BY MR. BROWN:

12:05:54 19 Q. Investigator Days, let me ask you this: Can

12:05:55 20 you direct us to a clip that shows the vehicle that

12:05:58 21 just appears? Or is that the one you were talking

12:06:01 22 about with the police car?

12:06:05 23 A. Are you referring to the marked Estill police

12:06:08 24 car?

12:06:09 25 Q. Well, I mean, what I'm trying to find out is,

12:06:12 1 can you show Fall four cameras at that time to see
12:06:15 2 whether or not that car -- because you showed us one
12:06:18 3 that showed the car on it.
12:06:20 4 A. Yes, sir.
12:06:21 5 Q. All right. Can you show us something else that
12:06:23 6 shows the other camera?
12:06:24 7 A. I can show the -- so I only recorded the two
12:06:28 8 front cameras. Now, you have access to it; it's on
12:06:32 9 the DVR. But for purposes of what we have here
12:06:35 10 available right now, I should have -- so I can
12:06:40 11 answer this way: I don't think that she's going to
12:06:42 12 have a clip that shows that second camera that shows
12:06:46 13 the broader angle down towards the end of the
12:06:48 14 street. But the reason for that is there was no
12:06:50 15 motion -- there was no motion -- well, there should
12:06:53 16 be -- I apologize.
12:06:54 17 There should be motion showing that side of the
12:06:56 18 street for it leaving. So sorry for the confusing
12:07:01 19 answer. I have two angles, the front two cameras
12:07:04 20 from that time. And, yes, we can go to it.
12:07:08 21 Q. Okay. So if however I can access those clips
12:07:11 22 that we play on the VLC player as a different
12:07:15 23 player, you could show me the absence of a clip from
12:07:21 24 the other cameras that would have shown, maybe, how
12:07:25 25 that patrol car pulled through?

12:07:26 1 A. Are you referring to the two cameras in the
12:07:27 2 back?

12:07:27 3 Q. Well, I would like to know -- I would like to
12:07:31 4 be able to verify that there is a clip showing the
12:07:34 5 car on one camera, but that there is no other clips
12:07:38 6 from the other three. You testified to it, nothing
12:07:40 7 personal --

12:07:40 8 A. Sure.

12:07:41 9 Q. -- but Frank's said, trust, then verify --

12:07:41 10 A. Sure.

12:07:44 11 Q. -- and that's what I'm trying to do.

12:07:47 12 And so if we brought out all the contents of
12:07:49 13 that DVR, can you show us that?

12:07:52 14 A. Sure. If you bring the DVR, I'd be happy to
12:07:57 15 navigate it to show you.

12:07:58 16 Q. You got it. Let me see where my disc is. I
12:08:00 17 got a thumb drive. But I don't know how y'all want
12:08:05 18 me to play it.

12:08:05 19 MS. FULLER: There's a USB on the laptop.

12:08:05 20 MR. BROWN: Okay. And if I -- I just put
12:08:05 21 this -- this is -- we just burned it on there from
12:08:13 22 that very disc that we were given.

12:08:13 23 THE COURT: Could I just have him step down
12:08:16 24 there and have him --

12:08:18 25 MR. BROWN: Oh, please. That would make it

1 much easier. I'd rather not do it.

2 THE COURT: That way, you can sort of be the
3 director.

4 THE WITNESS: So what -- what exactly is --
5 BY MR. BROWN:

12:08:44 6 Q. Sure. So if you can -- and tell me, because I
12:08:47 7 just got this on a disc and my law clerk just
12:08:52 8 converted it. Does this have all of the clips that
12:08:55 9 were on there? Y'all extracted some clips --

12:09:00 10 A. Let me get my paper that I wrote that down on.

12:09:02 11 Q. Okay.

12:09:04 12 A. So instead of just recording a huge video, I
12:09:10 13 only recorded the relevant parts. So when I watched
12:09:14 14 the video, I noted the specific time that -- looks
12:09:17 15 like the clips with the motion where they came
12:09:18 16 through, so I just recorded those clips. So you're
12:09:22 17 not going to see a -- like say that -- this is just
12:09:25 18 for the sake of argument.

12:09:26 19 Let's say that a vehicle comes through at
12:09:28 20 10:45 a.m. on the DVR time. I didn't record from
12:09:32 21 10:00 a.m. until 12:30. I just reported that small
12:09:36 22 section of time just for the relevant facts.

12:09:39 23 And so I -- if what you're asking is, if you
12:09:39 24 show, like, the portion of time beforehand, does
12:09:45 25 that mean it established that it didn't come

12:09:46 1 through --

12:09:48 2 Q. I understand you're saying, that if there was

12:09:50 3 no motion, it wouldn't activate it --

12:09:50 4 A. Right.

12:09:52 5 Q. -- or if the camera didn't pick up the motion,

12:09:52 6 there wouldn't be a clip showing nothing on it

12:09:52 7 because it didn't pick it up --

12:09:52 8 A. But --

12:10:00 9 Q. But these are -- which time frame do we have

12:10:01 10 here?

12:10:01 11 Well, first, these have been selected. This is

12:10:05 12 not all of it for July 9th?

12:10:07 13 A. This is not all of it for July 9th.

12:10:09 14 Q. All right. Is this everything between -- and

12:10:12 15 I'd have to go back and look at these notes. But is

12:10:16 16 that everything between 8:56 on the 9th or, let me

12:10:22 17 look at this other record, between 7:48?

12:10:28 18 A. So for the purposes of the clips that I

12:10:33 19 recorded --

12:10:33 20 Q. Right.

12:10:34 21 A. -- I recorded events that were -- that I turned

12:10:38 22 over today that were from, true time, July 9th, 2018

12:10:46 23 from 10:01 to 10:44 a.m.

12:10:51 24 Q. Okay. And the reason I ask is, on the records

12:10:54 25 we were given, they purport to have a July 9th phone

12:10:59 1 call at 7:48 in the morning from the number
12:11:01 2 attributed to Mr. Adkins. And on the notes from
12:11:03 3 investigator Aldridge, it says that there was a call
12:11:06 4 at 8:56 in the morning; that there was a vehicle at
12:11:10 5 that location.

12:11:11 6 So it seems to me, we really want to see the
12:11:14 7 footage at 7:48 in the morning or 8:56; or 8:33 is
12:11:25 8 another phone call or 8:56 is a two-minute phone
12:11:25 9 call.

12:11:25 10 A. Well --

12:11:26 11 Q. Well, what was recorded during that time?

12:11:28 12 A. I don't -- I don't have an exact memory of
12:11:33 13 every single thing that happened on it. However, I
12:11:35 14 can say that I fast -- so from the day that you see
12:11:39 15 the defendant leave for Columbia, I fast-forwarded
12:11:43 16 from that time. I did a fast-forward all the way
12:11:45 17 through when I arrived to take the DVR. And I never
12:11:49 18 saw that Tahoe return. So that would lead me to say
12:11:53 19 that when I fast-forwarded it through the times to
12:11:56 20 which you're referring, I also did not see that
12:11:59 21 Tahoe. On that footage.

12:11:59 22 Q. Okay. So if take --

12:11:59 23 A. On the -- on the footage.

12:12:00 24 Q. So if we just take the time frame -- and I
12:12:02 25 appreciate that. And that's probably all I need --

12:12:02 1 A. Thank you.

12:12:05 2 Q. -- from you up here.

12:12:06 3 A. Yes, sir.

12:12:06 4 Q. So if we go to the phone records at 7:48 a.m.

12:12:11 5 on July 9th until we see the law enforcement

12:12:14 6 Investigator Singleton arrive, you don't see the

12:12:19 7 Tahoe? There's no clip of the Tahoe?

12:12:22 8 A. There are no clips of the Tahoe. That's

12:12:22 9 correct.

12:12:22 10 Q. And that's on any of the four cameras?

12:12:26 11 A. Right. From me fast-forwarding on all of the

12:12:29 12 cameras, I did not see the Tahoe.

12:12:32 13 Q. Okay. And if his Honor wants to see what clips

12:12:35 14 may have been activated, what's the best way for us

12:12:38 15 to give him -- because I was under the assumption

16 that it had all the clips from that day, because

17 that's actually why I put it on a thumb drive, so I

18 could give it to his Honor. But -- and introduce

19 it.

20 But it doesn't sound like -- I mean, I guess

12:12:48 21 what I'm getting at is, is there footage between

12:12:54 22 7:48 in the morning and 10:01?

12:12:57 23 A. I can't answer that now. But I can easily find

12:13:00 24 the answer for you.

12:13:02 25 Q. Okay. Because it would let us know -- I mean,

12:13:04 1 let's say the phone call is at 7:48, but at 8:15,
12:13:04 2 you know, we have a dog running down the street and
12:13:04 3 it flips it on. We'd know whether the Tahoe was
12:13:15 4 there, right?

12:13:15 5 A. I see what you're saying. If there was motion
12:13:18 6 on the camera, it would depict whatever it was in
12:13:21 7 view of at that time.

12:13:21 8 Q. Okay. Somebody picking up a newspaper, it
12:13:25 9 might pop up.

12:13:27 10 But it's your recollection that going through
12:13:28 11 though, you did go through that time frame?

12:13:30 12 A. I -- so I don't know how many days. It was
12:13:32 13 many days. It might be, what, 10 to 11 days that I
12:13:34 14 had to watch. And so I did a fast-forward through
12:13:37 15 and just watched it in the fast motion, and I never
12:13:40 16 saw that Tahoe return.

12:13:42 17 Q. Okay. And, again, the reason I say that is
12:13:44 18 we've got a July 9th phone call at 7:48 in the
12:13:47 19 morning that's attributed to Mr. Adkins. And you
12:13:50 20 didn't -- you looked -- you did look through that
12:13:52 21 time frame?

12:13:52 22 A. I purposely looked through that time, yes, sir.

12:13:52 23 Q. And you did not see any footage on any of the
12:13:57 24 four cameras of the Tahoe?

12:14:00 25 A. That's correct.

12:14:00 1 Q. Okay. And how about any footage on any of the
12:14:05 2 cameras in that time frame showing either Mr. Adkins
12:14:07 3 or his vehicle?

12:14:08 4 A. I can't say whether or not Adkins -- I can say
12:14:14 5 that I don't recall seeing anyone who looks like
12:14:18 6 Adkins. But I can't say he didn't come through in
12:14:21 7 his vehicle; I can't say what I don't know if I
12:14:21 8 don't know what type of vehicle he might have been
12:14:26 9 in.

12:14:26 10 Q. Y'all pulled some records on Adkins --

12:14:26 11 A. Pardon me?

12:14:27 12 Q. -- like a whole, whole bunch of records y'all
12:14:29 13 gave us in discovery on Adkins? Some secret -- that
12:14:32 14 database y'all got, you pull up a record that's got
12:14:36 15 a little silhouette photo and then a DMV records on
12:14:40 16 Adkins and --

12:14:40 17 A. I think I -- I can envision the paper that
12:14:42 18 you're referring to.

12:14:44 19 Q. All right. So y'all could easily find out what
12:14:47 20 vehicles are registered to him?

12:14:49 21 A. We can find out what vehicles are registered to
12:14:51 22 him. That doesn't mean that he is pigeonholed into
12:14:53 23 only being in that vehicle.

12:14:53 24 Q. Well, on the other hand, if there were some
12:14:55 25 other vehicles that we weren't able to identify, we

12:14:59 1 might be able to track down who owns those vehicles
12:15:00 2 to see if Mr. Adkins had them, right? I mean, I
12:15:03 3 know we're doing a lot of proving something by the
12:15:06 4 absence of something, but if we are trying to
12:15:10 5 eliminate Adkins being there, that would be somewhat
12:15:12 6 pertinent on whether he saw the Tahoe. If he wasn't
12:15:16 7 there, he didn't see a Tahoe. Fairly accurate?
12:15:19 8 Close?
12:15:20 9 A. Not necessarily.
12:15:21 10 Q. Well, how would he have seen it there if he
12:15:24 11 wasn't there?
12:15:25 12 A. So my -- in my answer to personal knowledge of
12:15:30 13 DVRs, I'm no expert.
12:15:32 14 Q. No, no, no, no. If Mr. Adkins wasn't there, he
12:15:37 15 couldn't have seen it there.
12:15:37 16 A. If he was not within field of view of --
12:15:40 17 Q. No, not whether he's captured. Metaphysically.
12:15:46 18 A. If you're not able to see something, you're not
12:15:49 19 able to see something.
12:15:49 20 Q. If you're not there to see it, you didn't see
12:15:50 21 it.
12:15:50 22 A. But that excludes the logic of the fact that
12:15:51 23 you may be within field of view of the house, but
12:15:54 24 not trigger the motion on the camera.
12:15:56 25 Q. Okay. So what we've got is Adkins appearing

12:16:00 1 there and not triggering the camera and the Tahoe
12:16:03 2 being there and not triggering the camera?
12:16:06 3 A. I'm not making either of those assertions.
12:16:09 4 Q. Okay. Fair enough. I mean, we're not either.
12:16:09 5 We disbelieve that.
12:16:09 6 A. Certainly.
12:16:11 7 Q. I mean, because that would be kind of like
12:16:15 8 lightning striking twice, right?
12:16:17 9 A. I've seen a lot in my career. I don't -- I
12:16:19 10 couldn't answer that.
12:16:20 11 Q. But what's on the video is -- and not this one.
12:16:23 12 But those are all the clips. And you didn't see
12:16:26 13 Adkins on it; is that right?
12:16:27 14 A. I do not -- as I'm sitting here, remembering
12:16:30 15 watching that footage yesterday, I do not recall
12:16:33 16 seeing Adkins on it, that's correct.
12:16:34 17 Q. Or a vehicle that you might attribute to
12:16:37 18 Adkins?
12:16:38 19 A. I can't answer that without --
12:16:39 20 Q. Well, did you see what you thought was Adkins?
12:16:42 21 A. So again, I -- like I said earlier, sir, I
12:16:45 22 don't recall everything that was there. I paid
12:16:47 23 attention to things. And when something jumped out
12:16:50 24 to me as being relevant to the facts that we
12:16:52 25 discussed on Monday, I made note of it.

12:16:54 1 Q. So you didn't see anything relevant to Adkins,
12:16:57 2 saying he was there?
12:16:58 3 A. I'm saying that I didn't -- that I only -- that
12:17:01 4 I only made notations of what was relevant to our
12:17:05 5 discussions on Monday.
12:17:06 6 Q. Right, which is whether Adkins saw the vehicle
12:17:11 7 there.
12:17:12 8 A. I'm --
12:17:13 9 Q. They asked you to check to see if you saw the
12:17:17 10 Tahoe.
12:17:17 11 A. Would you please repeat your last question?
12:17:20 12 Q. You were looking -- you're saying that you only
12:17:21 13 looked for the Tahoe.
12:17:23 14 A. No. That's not -- well, that was my -- so that
12:17:27 15 was my goal of the day. However, I would be remiss
12:17:31 16 not to pay attention to other things while I'm
12:17:33 17 watching.
12:17:34 18 Q. Right. And you did not see Adkins?
12:17:36 19 A. I do not recall seeing Adkins on there.
12:17:38 20 Q. And you didn't see a vehicle that you knew to
12:17:38 21 be attributable to Adkins?
12:17:41 22 MS. FULLER: Asked and answered.
12:17:41 23 A. I've asked that -- I've answered that question
12:17:42 24 before, sir.
12:17:43 25 MS. FULLER: He's answered.

12:17:43 1 MR. BROWN: I'm trying to get him to say no.

12:17:43 2 THE COURT: He --

12:17:43 3 MR. BROWN: He said he --

12:17:47 4 THE COURT: I take his answer as he did not see

12:17:50 5 the Tahoe.

12:17:51 6 MR. BROWN: Fair enough. We'll take it that

12:17:53 7 way. I'm just trying not to leave it too open

12:17:55 8 there.

12:17:58 9 BY MR. BROWN:

12:17:58 10 Q. And you didn't see Mr. Ritter there?

12:18:02 11 A. No, sir.

12:18:04 12 Q. Okay. Did you see anybody else --

12:18:07 13 A. Are you -- well, now, when you say there --

12:18:10 14 Q. I mean --

12:18:10 15 A. -- can you please detail which time you're

12:18:10 16 talking about?

12:18:13 17 Q. During this -- during July 9th between 7:48 and

12:18:15 18 10:01.

12:18:17 19 A. No, sir.

12:18:17 20 Q. Did you see anybody else in Mr. Ritter's yard

12:18:20 21 that we could call to the stand and see if he was

12:18:23 22 there during that time period?

12:18:23 23 A. Again, sir, I don't have a recollection right

12:18:25 24 now of everything that happened on it. I just have

12:18:28 25 a recollection of what I made note that was

12:18:31 1 pertinent to our discussions on Monday.

12:18:33 2 Q. All right. Well, let me ask you this: If you

12:18:34 3 would have seen his aunt there or his or mother

12:18:36 4 there during that two-hour time window, you probably

12:18:40 5 would have told them, the prosecutor's office, or

12:18:43 6 made note of it?

12:18:44 7 A. I wouldn't say that. It's their home. I would

12:18:48 8 say that it's common for them to be there and that

12:18:50 9 wouldn't be of particular interest to me.

12:18:50 10 Q. But then they could be called to the stand to

12:18:53 11 testify whether or not his vehicle was there,

12:18:55 12 because we could prove that they were there. That's

12:18:58 13 kind of a lead for you to chase down, right?

12:19:02 14 A. It is.

12:19:03 15 Q. And you didn't take any notes of anything

12:19:06 16 significant during that two-hour-and-13-minute time

12:19:10 17 frame between 7:48 and 10:01?

12:19:15 18 A. The only thing that struck me as noteworthy is,

12:19:19 19 during this time we're talking about is when law

12:19:21 20 enforcement showed up.

12:19:21 21 Q. And I assumed that -- gosh, I can't assume

12:19:26 22 anymore on this stuff, so I'm going to ask it again.

12:19:27 23 I know that we don't have anything that says

12:19:30 24 you talked to Investigator Singleton on the 9th;

12:19:34 25 that, instead, that call went to Aldridge. But I

12:19:37 1 would be remiss if I didn't confirm that

12:19:41 2 Investigator Singleton never called you and told you

12:19:45 3 that he tried to corroborate it, but was unable to

12:19:49 4 do so when he went out there at 10:01.

12:19:54 5 A. I never had any conversation with Investigator

12:19:55 6 Singleton on him July 9th.

12:19:56 7 Q. And specifically never had a conversation about

12:19:59 8 his fruitless attempt to corroborate?

12:20:03 9 A. I never had any discussion with him about it.

12:20:04 10 Q. When was the first time that you noticed that

12:20:05 11 Investigator Singleton went to the home on Roberts

12:20:09 12 Street on July 9th in the morning? When was the

12:20:13 13 first time you knew that?

12:20:15 14 A. So per my watching the video, in the vehicle

12:20:24 15 that I recognized as being the vehicle that he drove

12:20:28 16 commonly, the time I saw him first arrive at the

12:20:31 17 defendant's residence was on, true time, July 9th,

12:20:35 18 2018 at 10:01 a.m.

12:20:38 19 Q. When is the first time you noted that? Last

12:20:42 20 night? Yesterday?

12:20:44 21 A. I recall seeing that vehicle in the past. But

12:20:48 22 the first time that I really made note and was

12:20:54 23 paying special attention to it, for lack of a better

12:20:58 24 word, was yesterday.

12:20:59 25 Q. Okay. All right. Fair enough.

12:21:00 1 You had gone through the clips before, but you
12:21:00 2 didn't pay attention to the truck. Did you know
12:21:07 3 that was Investigator Singleton's truck before
12:21:07 4 yesterday?

12:21:07 5 A. I recognized that it was law enforcement. Yes.

12:21:11 6 Q. In the truck?

12:21:11 7 A. Well, then the other law enforcement pulls out
12:21:11 8 and you see, per the clip, that she shared -- or
12:21:11 9 that Assistant Solicitor Fuller shared that it shows
12:21:11 10 law enforcement getting out of the vehicle.

12:21:22 11 Q. Okay. So if you'd seen that before when you'd
12:21:25 12 gone through this video, what attempts did you or
12:21:27 13 anyone with your agency have with discussing that
12:21:31 14 with Investigator Singleton when he was alive, when
12:21:34 15 there was a controversy about whether it was a
12:21:38 16 tipster or an informant and whether he could
12:21:42 17 corroborate that the vehicle was there?

12:21:42 18 A. I didn't. There was no need. I believed him.

12:21:44 19 Q. Even back when there was a discrepancy about
12:21:50 20 tipster versus informant?

12:21:52 21 A. I -- my -- my faith in Investigator Singleton
12:21:55 22 never did and still isn't wavered.

12:21:58 23 Q. Are you aware of anybody else calling him up
12:22:02 24 and asking him, hey, did you go out there; what did
12:22:05 25 you see?

12:22:06 1 A. I don't have any personal knowledge of anyone
12:22:08 2 asking about that.

12:22:09 3 Q. What kind of records were you given about the
12:22:12 4 response call for the marked vehicle?

12:22:12 5 A. I --

12:22:16 6 Q. Did the Hampton Sheriff's Department ever have
12:22:19 7 the, you know, call out, assist,
12:22:21 8 assist-investigations type of report or a call
12:22:23 9 sheet?

12:22:23 10 A. I've never been given any information.

12:22:26 11 Q. And you never had Investigator Singleton or
12:22:32 12 Investigator Solomon tell you that they did go out
12:22:35 13 there? They never said, hey, we went out there, but
12:22:40 14 we couldn't confirm it?

12:22:41 15 A. No, sir. I don't remember that ever being
12:22:43 16 said.

12:22:43 17 Q. Nobody ever asked and nobody ever said anything
12:22:45 18 about it, that you're aware of?

12:22:47 19 A. There was no need. We just believe them.

12:22:58 20 MR. BROWN: I don't have any other questions,
12:23:00 21 Your Honor. I would suggest -- and I don't know the
12:23:02 22 best way to do it -- but whatever cloned clip he
12:23:04 23 viewed, that would be viewable more easily, such as
12:23:07 24 just on a regular player. Somehow or another,
12:23:12 25 another copy of it needs to be put into the record.

12:23:17 1 THE COURT: I would agree.

12:23:18 2 You don't have any additional questions of him,

12:23:21 3 do you?

12:23:29 4 MS. FULLER: No, Your Honor.

12:23:30 5 THE COURT: All right. Let's -- we can simply

12:23:34 6 mark and make the DVD, or whatever it is that you're

12:23:39 7 comfortable using, a Court's Exhibit at some later

12:23:49 8 point in time. Let's just remember to do that. And

12:23:52 9 then --

12:23:52 10 MS. FULLER: This one is a Court's Exhibit

12:23:54 11 already.

12:23:55 12 THE COURT: All right. Very good.

12:23:57 13 Call your next witness then.

12:23:58 14 MS. FULLER: Defense is requesting all the

12:24:00 15 other hours, I guess, of time be made at a later

12:24:04 16 point. But --

12:24:04 17 THE COURT: Well --

12:24:05 18 MS. FULLER: But I don't know if that's

12:24:06 19 necessary for this hearing. But --

12:24:08 20 MR. BROWN: Your Honor, we're not -- I mean,

12:24:11 21 let me go back.

12:24:13 22 I'll accept the answers at face value at this

12:24:17 23 point. But I think, for the record, that we need --

12:24:20 24 because they actually help, sort of. They don't

12:24:23 25 show Adkins there either. But I do think it needs

12:24:27 1 to be available for Your Honor's purview and for
12:24:32 2 posterity's sake that we need it for -- I doubt that
12:24:36 3 an appellate court is going to go out and buy a
12:24:41 4 Night Owl video. And I assume there'd be a footnote
12:24:44 5 that they were unable to view it. That would be all
12:24:45 6 we'd hear. I mean, it would be held against the
12:24:49 7 appealing party, there's no question.

12:24:51 8 MS. FULLER: Your Honor, may we approach?

12:24:53 9 THE COURT: Sure. Maybe there's a simple
12:24:55 10 solution to this.

12:28:09 11 (Sidebar conference.)

12:28:09 12 MS. FULLER: I'd call Sergeant Justin Edwards.

12:28:27 13 JUSTIN EDWARDS

12:28:27 14 being first duly sworn, testified as follows:

12:28:27 15 THE WITNESS: I do.

12:28:29 16 THE CLERK: Once you're seated, sir, you can
12:28:31 17 remove your mask. State your full name, spelling
12:28:35 18 your last, please.

12:28:40 19 THE WITNESS: Justin Edwards. Last name
12:28:44 20 E-D-W-A-R-D-S.

12:28:44 21 DIRECT EXAMINATION

12:28:47 22 BY MS. FULLER:

12:28:47 23 Q. Thank you, Sergeant Edwards. And where are you
12:28:48 24 currently employed?

12:28:49 25 A. Hampton County Sheriff's Office.

12:28:53 1 Q. And how long have you been employed there?

12:28:53 2 A. 19 years.

12:28:54 3 Q. And what is your current role and

12:28:56 4 responsibilities?

12:28:57 5 A. Admin sergeant. I work in the office. I

12:29:00 6 oversee the office staff, the budget, phones, pretty

12:29:06 7 much anything dealing with the day-to-day operations

12:29:10 8 of the office.

12:29:11 9 Q. So when it came to our office, the 11th

12:29:15 10 Circuit, needing information about an investigator's

12:29:20 11 cell phone, were you the point of contact?

12:29:21 12 A. Yes. Yes. I'm one of the point of contacts.

12:29:24 13 Yes.

12:29:24 14 Q. And as the -- one of the administrators -- is

12:29:24 15 that safe to say?

12:29:24 16 A. Yes.

12:29:27 17 Q. Would you have access to the Verizon account?

12:29:30 18 A. Yes.

12:29:30 19 Q. And I didn't lay the foundation.

12:29:31 20 What cell phone provider do you have?

12:29:33 21 A. Verizon Wireless.

12:29:36 22 Q. And, as administrator, would you have access to

12:29:40 23 the Verizon account?

12:29:41 24 A. I do.

12:29:41 25 Q. And when you were contacted by our office, as

12:29:44 1 it relates to this case, do you recall what the
12:29:46 2 request specifically was?
12:29:49 3 A. Yes. The request was for Perry Singleton's
12:29:53 4 phone records from July 9th at, I think it was like,
12:29:56 5 7:48 a.m. I logged on our Verizon Wireless account
12:30:01 6 to attempt to go back and get those records because,
12:30:05 7 normally, that's not something we'd do on a daily
12:30:08 8 basis. And I was only allowed to go back to one
12:30:12 9 year to look at phone records.

12:30:14 10 So I called the legal team at Verizon and they
12:30:16 11 told me that I couldn't get it electronically,
12:30:19 12 they'll mail them to me in the mail. So I then
12:30:23 13 contacted back the Solicitor's Office. And, from
12:30:26 14 there, a letter was drafted up to the legal team,
12:30:30 15 and I sent it back to the Solicitor's Office. They,
12:30:33 16 in turn, sent it up to the appropriate people, and I
12:30:39 17 received a secure link with Perry Singleton's phone
12:30:43 18 records for the month of July 2018.

12:30:46 19 Q. Okay. So, initially, you attempted to access
12:30:47 20 it. Then they were going to be placed in the mail.

12:30:51 21 And I'll hand you -- you said you drafted
12:30:54 22 something. I'll hand you what's been premarked as
12:30:58 23 Court's 28 and have you recognize it.

12:31:01 24 A. Yes, I do.

12:31:03 25 Q. And what do you recognize this to be?

12:31:05 1 A. This is a letter from the Hampton County
12:31:08 2 Sheriff's Office to Verizon Wireless -- well, to
12:31:12 3 whom it may concern, concerning Perry Singleton's
12:31:15 4 phone number, our Verizon account number, and our
12:31:18 5 Hampton County tax ID, and in reference to July
12:31:23 6 2018.

12:31:23 7 Q. And what was Perry Singleton's phone number?

12:31:24 8 A. [REDACTED].

12:31:26 9 Q. You just called that out by memory. So you
12:31:30 10 didn't have to look it up when our office called
12:31:33 11 you?

12:31:33 12 A. Correct. That's correct.

12:31:34 13 Q. Okay. And that would be the number and records
12:31:36 14 you requested from Verizon?

12:31:38 15 A. That's correct.

12:31:39 16 Q. And did you ultimately receive those records in
12:31:42 17 the mail?

12:31:42 18 A. Yeah. I got them today -- yesterday.

12:31:44 19 Q. But you were able to receive it via e-mail
12:31:47 20 after sending this letter in?

12:31:49 21 A. Correct.

12:31:50 22 Q. Or submitting this letter to our office?

12:31:55 23 A. That's correct.

12:31:55 24 Q. And you received a secured e-mail from --

12:31:57 25 A. Verizon Wireless.

12:32:00 1 Q. Okay.

12:32:00 2 MS. FULLER: And, Your Honor, I'm going to hand

12:32:01 3 this up since it has information on it.

12:32:05 4 BY MS. FULLER:

12:32:05 5 Q. And I'm going to hand you what's been marked as

12:32:08 6 Court's 8 and see if you recognize this.

12:32:12 7 A. Yes, I do.

12:32:13 8 Q. And what do you recognize that to be?

12:32:16 9 A. This is a detailed call log from Verizon

12:32:20 10 Wireless for Perry Singleton with our account number

12:32:23 11 and Perry Singleton's phone number.

12:32:25 12 Q. And what's the -- is Perry Singleton's name on

12:32:27 13 those records?

12:32:28 14 A. Yes, it is.

12:32:29 15 Q. And is a phone number listed as well?

12:32:32 16 A. Yes.

12:32:33 17 Q. And what is the phone number?

12:32:33 18 A. [REDACTED].

12:32:38 19 Q. And the Court's 8 that you're looking at, is

12:32:43 20 that a redacted portion of the records you received?

12:32:47 21 A. That's correct.

12:32:47 22 Q. And those are the records you forwarded to our

12:32:50 23 office Friday evening?

12:32:52 24 A. That's correct.

12:32:53 25 Q. And let the record reflect that I'm publishing

12:33:15 1 the records that you just referenced, the redacted
12:33:18 2 portion.

12:33:18 3 And you know these to be the actual accurate
12:33:21 4 records -- or portions of the records that you
12:33:23 5 received via e-mail through that secured link?

12:33:26 6 A. That's correct.

12:33:26 7 Q. And I will ask you if they appear to be altered
12:33:30 8 in any way. But outside of what's -- other
12:33:33 9 information that's redacted, as it's unrelated to
12:33:37 10 this case, as we -- what's relevant to this case is
12:33:39 11 left here to what's been at issue. Does it appear
12:33:43 12 to be a true and accurate copy, outside of the
12:33:50 13 redactions?

12:33:50 14 A. That's correct.

12:33:51 15 Q. And we've had -- were you in the courtroom when
12:33:54 16 we published some DVR footage from Estill at the
12:33:59 17 defendant's home?

12:34:00 18 A. That's correct.

12:34:00 19 Q. And did you have an opportunity to see an
12:34:02 20 investigator walking around; also, a vehicle that
12:34:04 21 appears to be a Ford pickup truck?

12:34:07 22 A. Yes.

12:34:07 23 Q. And whose vehicle is that?

12:34:09 24 A. That's Lieutenant Perry Singleton's Hampton
12:34:14 25 County-issued police vehicle.

12:34:16 1 Q. And I'm going to publish Court's 23. Do you
12:34:21 2 see that vehicle here?
12:34:22 3 A. Yes, I do.
12:34:23 4 Q. And I know the color is a little off on the
12:34:26 5 projector. But you had opportunity to watch the
12:34:29 6 video as well while in the courtroom. Who did you
12:34:32 7 recognize as walking in this video?
12:34:35 8 A. Lieutenant Perry Singleton.
12:34:40 9 Q. Have you known him your entire time working at
12:34:44 10 the Hampton County Sheriff's Office?
12:34:46 11 A. Yes. I've known Lieutenant Perry Singleton all
12:34:47 12 of my life.
12:34:49 13 Q. When did you meet Lieutenant Perry Singleton?
12:34:53 14 A. I met him in law enforcement when I was a kid.
12:34:57 15 He lived down the street from my parents. So --
12:35:00 16 Q. Okay.
12:35:01 17 A. -- I've known him.
12:35:03 18 Q. And during that time period, have you had any
12:35:07 19 reason to ever question, while working and in
12:35:09 20 personal, his truthfulness while he was on the job?
12:35:11 21 A. No, ma'am.
12:35:12 22 Q. And you trusted Perry Singleton?
12:35:16 23 A. That's correct.
12:35:16 24 MS. FULLER: No further questions, Your Honor.
12:35:16 25 MR. BROWN: May it please the Court, Your

12:35:16 1 Honor?

12:35:16 2 CROSS-EXAMINATION

12:35:46 3 BY MR. BROWN:

12:35:46 4 Q. Let me just ask you, Sergeant Edwards, do you

12:35:49 5 have anything to do with CI records?

12:35:51 6 A. CI records?

12:35:53 7 Q. Yes, sir.

12:35:54 8 A. No, sir.

12:35:55 9 Q. Okay. Do you know where detective division CI

12:35:59 10 records would be kept?

12:36:00 11 A. No, sir. I have no knowledge of that.

12:36:02 12 Q. Okay. And help me, because I've got that

12:36:05 13 you're the admin sergeant, who is the person who

12:36:11 14 handles sensitive records?

12:36:18 15 A. Be specific by sensitive records.

12:36:22 16 Q. Well, confidential informant records.

12:36:25 17 A. It would be the investigations division, if

12:36:27 18 they have any. It would be either Lieutenant Marty

12:36:29 19 Clapp or Captain Russell.

12:36:31 20 Q. Okay.

12:36:31 21 MS. FULLER: And, Your Honor, not to interrupt,

12:36:32 22 but, for the record, that's our next witness. So if

12:36:34 23 he wants to wait --

12:36:34 24 MR. BROWN: Right. I just wanted to make sure.

12:36:38 25 All right.

12:36:38 1 BY MR. BROWN:

12:36:38 2 Q. And who handles the IT stuff for the Sheriff's

12:36:43 3 Department?

12:36:43 4 A. Robert Chassis was employed directly for the

12:36:51 5 Sheriff's Office as an IT person. But the County

12:36:56 6 has an IT person, Wilson Holland.

12:36:58 7 Q. So on December 4th of 2019, who was handling IT

12:37:03 8 for the Sheriff's Department?

12:37:09 9 A. Robert Chassis.

12:37:12 10 Q. And who did he work with?

12:37:14 11 A. He worked for the Hampton County Sheriff's

12:37:16 12 Office.

12:37:16 13 Q. Do you know where he is now?

12:37:19 14 A. Yes. He still works for Hampton County.

12:37:25 15 Q. Does he still do IT work?

12:37:28 16 A. Yes, he does.

12:37:29 17 Q. Okay. Somebody else at the County has now been

12:37:31 18 assigned to do that?

12:37:32 19 A. Well, no. He was -- Robert Chassis was

12:37:35 20 Sheriff's Office personal IT person who was paid out

12:37:39 21 of the Hampton County Sheriff's Office budget.

12:37:39 22 Q. Yes, sir.

12:37:41 23 A. He moved over to the County, so he's the whole

12:37:43 24 County IT person.

12:37:44 25 Q. Okay. But who actually comes out to do the

12:37:48 1 work at the sheriff's department now?

12:37:51 2 A. Robert Chassis or Wilson Holland.

12:38:00 3 Q. Okay. And what was your relationship to the

12:38:02 4 cell phone accounts?

12:38:04 5 A. My relationship to it?

12:38:07 6 Q. Yeah. You mentioned that -- you testified,

12:38:10 7 simply, that you were the one that was able to get

12:38:13 8 the records.

12:38:13 9 A. Yeah.

12:38:14 10 Q. Somebody put you in charge of it?

12:38:14 11 A. Yes, sir.

12:38:14 12 Q. And that's what I'm trying to find out. So you

12:38:17 13 were only in charge of getting paper records for

12:38:22 14 this request -- or, generally speaking, did you?

12:38:24 15 A. No. I get the cell phone records monthly so we

12:38:27 16 can pay the bill.

12:38:28 17 Q. You got -- okay. All right.

12:38:28 18 But you don't do anything else with the cell

12:38:31 19 phones?

12:38:32 20 A. No. I issue the cell phones out. Everybody

12:38:39 21 sets their own iCloud up. That's personal

12:38:41 22 information. But I issue the cell phones out.

12:38:41 23 Q. That was actually one of my questions.

12:38:41 24 A. Yes, sir.

12:38:42 25 Q. So the iCloud account --

12:38:44 1 A. Is personal.

12:38:45 2 Q. You mean, through Investigator Singleton's

12:38:51 3 personal wallet?

12:38:53 4 A. iCloud accounts --

12:38:55 5 Q. It's my recollection you have to set up a

12:38:57 6 credit card, right, in iCloud.

12:38:58 7 A. No, sir. You don't have to. You could be

12:39:00 8 free. You don't have to use a credit card for an

12:39:04 9 iCloud account.

12:39:05 10 Q. But they set it up on their own credentials?

12:39:09 11 A. Yes. Yes, sir.

12:39:09 12 Q. And do y'all have to get a copy of those

12:39:13 13 credentials?

12:39:14 14 A. No, sir.

12:39:14 15 Q. All right. Then what do you know about an

12:39:18 16 order to preserve electronic information such as

12:39:22 17 e-mails or messages? When were you made aware that

12:39:27 18 this Court had ordered Hampton County to preserve

12:39:31 19 that information?

12:39:32 20 A. Thursday.

12:39:33 21 Q. Thursday of what year?

12:39:35 22 A. Last week.

12:39:36 23 Q. Okay. All right. That's April 8th?

12:39:45 24 A. Correct.

12:39:46 25 Q. Let me ask you briefly, because I may not have

12:39:56 1 any other questions, but are you familiar with
12:39:59 2 Investigator Singleton's sister?
12:40:06 3 A. Yes. I know her.
12:40:08 4 Q. Okay. Are you familiar with her relationship
12:40:10 5 with Mr. John Adkins?
12:40:11 6 A. Her relationship? I'm not sure what kind of
12:40:16 7 relationship. But I know John Adkins and Perry's
12:40:19 8 sister.
12:40:20 9 Q. Okay. Are you -- had you ever heard that
12:40:22 10 Mr. Adkins had been alleged to have pulled a gun and
12:40:28 11 pointed it at Loretta Singleton's face --
12:40:32 12 A. No, sir.
12:40:33 13 Q. -- in October of 2015?
12:40:37 14 A. Not to my knowledge, sir.
12:40:39 15 Q. I don't have any other questions for you.
12:40:42 16 Thank you.
12:40:42 17 THE COURT: Thank you, sir. You can step down.
12:40:46 18 Next witness?
12:40:48 19 MR. GRAHAM: State calls Lieutenant Marty
12:40:55 20 Clapp.
12:40:56 21 MARTY CLAPP
12:41:38 22 being first duly sworn, testified as follows:
12:41:38 23 THE WITNESS: I do.
12:41:39 24 THE CLERK: Have a seat, sir. Once you're
12:41:41 25 seated, you can remove your mask. Please state your

12:41:45 1 full name, spelling your last.

12:41:48 2 THE WITNESS: My name is Marty Clapp. Last

12:41:55 3 name is spelled C-L-A-P-P.

12:41:55 4 DIRECT EXAMINATION

12:41:58 5 BY MR. GRAHAM:

12:41:58 6 Q. Lieutenant Clapp; is that correct?

12:42:01 7 A. Correct.

12:42:02 8 Q. Where are you employed?

12:42:03 9 A. Hampton County Sheriff's Office.

12:42:05 10 Q. And how long have you been in law enforcement?

12:42:07 11 A. A little over 30 years.

12:42:10 12 Q. And how long of that time was with Hampton

12:42:15 13 County Sheriff's Department?

12:42:15 14 A. I came back to Hampton County in 2016. I

12:42:19 15 previously worked in Hampton County for the

12:42:23 16 sheriff's office, I believe it was, '95 through

12:42:27 17 2000.

12:42:27 18 Q. And what did you do between 2000 and 2016 in

12:42:32 19 law enforcement?

12:42:32 20 A. I was a forensic crime scene investigator for

12:42:37 21 Greenville County Sheriff's Office and worked for

12:42:39 22 Furman University Police Department as well.

12:42:43 23 Q. How long have you known -- or did you know

12:42:46 24 Perry Singleton?

12:42:48 25 A. I've known Perry since I really started in law

12:42:54 1 enforcement. I didn't work with him until I came to
12:42:57 2 Hampton County in '95, directly worked with him.

12:43:01 3 Q. So you worked with him from '95 to 2000, and
12:43:04 4 then 2016 until his death?

12:43:07 5 A. It was '95 to 1999, I believe. And then when I
12:43:10 6 moved back to Hampton County in 2016, I began
12:43:15 7 working with him again.

12:43:16 8 Q. So about eight years that you worked with him.
12:43:19 9 And you knew him for many more?

12:43:21 10 A. Yes. Correct.

12:43:22 11 Q. During that time, did you have the opportunity
12:43:27 12 to understand what his reputation with the sheriff's
12:43:34 13 department or with the community was for
12:43:36 14 truthfulness?

12:43:37 15 A. I've always known Perry to have a good
12:43:40 16 relationship with the community. I've never known
12:43:43 17 anything other than truthfulness from him.

12:43:45 18 Q. So he had the reputation for truthfulness. And
12:43:49 19 then you, personally, your opinion, is that --

12:43:53 20 A. Everything -- everything I've ever observed,
12:43:57 21 working with Perry or knowing Perry, I never saw
12:44:01 22 anything to indicate otherwise that he was a
12:44:06 23 truthful, good person.

12:44:07 24 Q. What -- you're a lieutenant with the Hampton
12:44:09 25 County Sheriff's Department now. What are your

12:44:12 1 responsibilities? What are you a lieutenant over.

12:44:12 2 A. I am lieutenant over the investigations

12:44:21 3 division, the criminal investigations unit. I

12:44:21 4 oversee day-to-day operation of the investigators

12:44:25 5 and conducting investigations myself.

12:44:28 6 Q. So is that the position that Lieutenant

12:44:31 7 Singleton had before his death?

12:44:34 8 A. That's correct.

12:44:34 9 Q. Were you working for him or did you transfer

12:44:34 10 over to another department with the sheriff's

12:44:38 11 department?

12:44:38 12 A. I worked for him when I came back.

12:44:41 13 Q. So the investigation division, under Lieutenant

12:44:47 14 Singleton and under you, what type of crimes are

12:44:50 15 you-all responsible for investigating?

12:44:52 16 A. We work everything from petty larcenies

12:44:57 17 sometimes to homicide.

12:44:59 18 Q. Had you ever worked narcotics in your career?

12:45:05 19 A. Yes, briefly.

12:45:07 20 Q. Are you familiar with a confidential informant

12:45:14 21 file and the type of paperwork that would be

12:45:16 22 included in that?

12:45:17 23 A. I'm vaguely familiar. It's been 25 years ago

12:45:20 24 since I did anything in narcotics.

12:45:22 25 Q. In general terms, what kind of information

12:45:24 1 would be in that file --

12:45:24 2 A. Um --

12:45:26 3 Q. -- to the best of your memory?

12:45:27 4 A. To the best of my memory, a record of the
12:45:32 5 informant's information, any information pertaining
12:45:39 6 to what you were using the informant for, and any
12:45:45 7 interactions that you had whenever the informant had
12:45:49 8 been used.

12:45:50 9 Q. All right. Do you personally as a lieutenant,
12:45:55 10 or does the Hampton County Sheriff's Office, with
12:45:59 11 you being their lieutenant in investigations, does
12:46:00 12 investigations maintain any type of confidential
12:46:03 13 informant agreements or files?

12:46:05 14 A. No, sir, we do not, not on the criminal
12:46:08 15 investigations side of it.

12:46:10 16 Q. When you took over from Lieutenant Singleton
12:46:16 17 upon his death, did you have an opportunity to go
12:46:20 18 through his desk and his files?

12:46:22 19 A. Yes. After his passing, myself and other
12:46:27 20 investigators -- we're a small unit, small county --
12:46:30 21 we had the opportunity to collect his belongings,
12:46:38 22 because we all have personal items. We cleared out
12:46:42 23 his desk. Any files that he had, we retained in a
12:46:46 24 file cabinet, which is still in his office.

12:46:49 25 Q. Do you remember seeing or are you aware if

12:46:49 1 there was anything related to the case up here in
12:46:59 2 Lexington County against Mr. Ritter?
12:47:00 3 A. No. I didn't see anything in his files or --
12:47:04 4 and I looked through his file cabinet, the files
12:47:07 5 that were left. It's only old case files. I
12:47:11 6 searched through that yesterday and looked for any
12:47:15 7 information that might pertain to this case or any
12:47:17 8 persons involved in this case, and I was unable to
12:47:21 9 locate anything.
12:47:21 10 Q. So nothing on Damien Ritter?
12:47:24 11 A. No, sir.
12:47:24 12 Q. Nothing on John Adkins?
12:47:27 13 A. No, sir.
12:47:27 14 Q. And nothing about any kind of confidential
12:47:30 15 informants?
12:47:33 16 A. No, sir.
12:47:40 17 Q. Did you have an opportunity to look at some of
12:47:43 18 the photographs, specifically Court's 23 that they
12:47:47 19 put on the overhead earlier?
12:47:48 20 A. I did.
12:47:48 21 Q. And what do you recognize? I'm going to pass
12:47:51 22 it up to you. There's two vehicles in there and
12:47:53 23 some people. Do you recognize those vehicles or
12:47:56 24 either of those people?
12:47:57 25 A. I recognize Perry Singleton and the vehicle --

12:48:02 1 his pickup truck. I recognize his truck.

12:48:06 2 Q. How about the other individual in there? Do

12:48:08 3 you know who that is?

12:48:08 4 A. I really can't tell from this photograph who

12:48:14 5 that is. I'm really not sure.

12:48:16 6 Q. Okay. Thank you, Lieutenant.

12:48:27 7 So, today, did you actually bring Perry

12:48:31 8 Singleton's phone with you?

12:48:32 9 A. I did.

12:48:33 10 Q. So you do have that in your possession right

12:48:35 11 now?

12:48:36 12 A. Yes, I do.

12:48:36 13 Q. And where -- what's your understanding of where

12:48:38 14 it came from?

12:48:39 15 A. After he passed, Captain Russell and I went to

12:48:44 16 his home to collect items that were property of the

12:48:48 17 Hampton County Sheriff's Office. Among those items

12:48:52 18 was his cell phone, several firearms, ID badge,

12:48:59 19 items of that nature. And his wife did have the

12:49:02 20 cell phone, and she turned it over to Captain

12:49:07 21 Russell at that time.

12:49:08 22 Q. And, to your understanding, that's the phone

12:49:09 23 that you have with you today?

12:49:11 24 A. Yes.

12:49:11 25 Q. And this morning, prior to coming into Court,

12:49:14 1 just for the record, it was able to be powered on;
12:49:18 2 is that correct?
12:49:18 3 A. Correct.
12:49:19 4 Q. And it appears that it still has -- it didn't
12:49:24 5 come up in a -- like a default setting from a new
12:49:27 6 box; it appears that there's the ability to enter a
12:49:31 7 passcode today; is that correct?
12:49:33 8 A. Yes. It appears that you have to enter a
12:49:38 9 passcode.
12:49:38 10 Q. And, as far as you know, you personally or no
12:49:41 11 one else knows the passcode to be able to get into
12:49:43 12 it?
12:49:43 13 A. That's correct. We do not know the passcode.
12:49:48 14 Q. Yesterday, prior to coming up here, did you get
12:49:51 15 a request to go look and to see if you could
12:49:57 16 establish some records of the Hampton County
12:49:59 17 Sheriff's Department of any type of connection
12:50:02 18 between Lieutenant Singleton and John Adkins?
12:50:08 19 A. I did.
12:50:09 20 Q. And you actually brought some documents up
12:50:14 21 today; is that correct?
12:50:15 22 A. That's correct.
12:50:16 23 Q. Let me show you what's been marked as Court's
12:50:23 24 27 and ask if you recognize that.
12:50:25 25 A. Yes, I recognize. These are the documents that

12:50:28 1 I brought.

12:50:30 2 MR. GRAHAM: Your Honor, for the record and for
12:50:31 3 the Court's attention, we'd ask that this be put
12:50:34 4 under a seal. There is some identifying personal
12:50:40 5 information that has not yet been redacted out in
12:50:40 6 the records, or we can redact it out at some point
12:50:42 7 further. But that is -- I just didn't want to
12:50:46 8 forget that issue.

12:50:47 9 MR. BROWN: Without objection from us.

12:50:50 10 THE COURT: Okay. So we'll simply either
12:50:50 11 redact it or put it under seal. Your choice. It
12:50:50 12 may be safer to simply just redact these in case
12:50:52 13 there are any socials or dates or anything. That
12:50:54 14 might be a better way to go.

12:50:57 15 MR. GRAHAM: Thank you, Judge.

12:50:58 16 BY MR. GRAHAM:

12:50:58 17 Q. Lieutenant, what -- so what were you asked to
12:51:01 18 do regarding Lieutenant Singleton and John Adkins,
12:51:07 19 as it relates to records or reports?

12:51:08 20 A. In reference to this, I was asked to go through
12:51:11 21 our system, our computer -- our -- we call it
12:51:16 22 LawTrac, that's the program we use for all of our
12:51:20 23 reports -- and see if there were any interactions,
12:51:25 24 if -- that Perry Singleton had been involved in with
12:51:29 25 John Adkins.

12:51:31 1 Upon searching through the master file of
12:51:35 2 Mr. Adkins, I went through every complaint. And I
12:51:40 3 believe it starts here in 2006, may be some earlier
12:51:46 4 than that. '04 is on here. But then, up until
12:51:52 5 Lieutenant Singleton's passing.

12:51:54 6 And the only indication of any interaction
12:52:01 7 between those two, as far as a complainant or victim
12:52:05 8 report, I made a copy of those and printed those,
12:52:08 9 which are contained here.

12:52:10 10 Q. So let's back up into the beginning. So,
12:52:13 11 first, LawTrac is the name of your system?

12:52:17 12 A. Yes.

12:52:17 13 Q. Okay. You went into LawTrac and you put John
12:52:21 14 Adkins' name in?

12:52:21 15 A. Correct.

12:52:22 16 Q. And it pulled up any time that he had either
12:52:24 17 been a complainant, a suspect, or a victim?

12:52:26 18 A. That's correct.

12:52:27 19 Q. So how many times did John Adkins appear in
12:52:30 20 LawTrac?

12:52:57 21 A. Appears to be approximately 40 records.

12:53:00 22 Q. Okay. And then the next thing you did was to
12:53:03 23 look and see if any of those involved Perry
12:53:05 24 Singleton; is that correct?

12:53:07 25 A. That's correct. What I did was I went into the

12:53:10 1 section that pertains to our warrants, and looked up
12:53:15 2 Mr. Adkins to see what warrants had been brought
12:53:19 3 against him. And I found no warrants from
12:53:23 4 Lieutenant Perry Singleton. The ones that I did
12:53:27 5 find were from other officers within the sheriff's
12:53:31 6 office. I don't recall which officers, but --
12:53:33 7 Q. Okay. So you never saw where Perry Singleton
12:53:37 8 obtained an arrest warrant for John Adkins?
12:53:41 9 A. No, I did not.
12:53:42 10 Q. How about as far as reviewing the cases that
12:53:45 11 you saw? Were you able to determine whether Perry
12:53:48 12 Singleton had any involvement with John Adkins?
12:53:54 13 A. The only case where I saw Lieutenant Perry
12:53:58 14 Singleton's name mentioned in an official capacity
12:54:01 15 was from a report of a theft incident involving
12:54:04 16 other individuals as well as Mr. Adkins.
12:54:08 17 Per this report, it stated that the individuals
12:54:13 18 were stopped in a vehicle. I believe two were
12:54:19 19 arrested: Mr. Adkins, who was in the vehicle where
12:54:23 20 they had recovered some stolen property. Per what
12:54:27 21 the report says, Mr. Adkins was released at the
12:54:31 22 scene at that time.
12:54:31 23 Q. What was the date of that incident?
12:54:52 24 A. The date of this incident was January 13th of
12:54:56 25 2012.

12:54:57 1 Q. So January 13th, 2012. And that report -- is
12:55:02 2 that a report written by Lieutenant Singleton or
12:55:06 3 Perry Singleton?

12:55:07 4 A. No, sir. It was written by a Deputy Bennett
12:55:11 5 and a Deputy Pope, were the officers.

12:55:14 6 Q. So reviewing the file, what was Perry
12:55:18 7 Singleton's involvement in that case?

12:55:20 8 A. This was a -- I'm familiar with the individual.
12:55:29 9 Mr. Housey, he owns like a tow/scrap-yard-type
12:55:37 10 place. He was a friend of Lieutenant Singleton's.
12:55:40 11 And I knew this per our interaction over the years.
12:55:43 12 And, apparently, by the way this report reads, is
12:55:46 13 that the victim, which was Mr. John C. Housey --
12:55:50 14 everyone calls him JC -- had called Lieutenant
12:55:56 15 Singleton regarding the incident of the theft.

12:56:03 16 Q. And then the other deputies stopped the pickup
12:56:07 17 truck with the three people involved?

12:56:16 18 A. Yes. The other -- the other deputies, along
12:56:19 19 with Singleton, were able to make contact with the
12:56:24 20 suspects at the intersection of Highway 321 and
12:56:28 21 Luway Highway in Hampton.

12:56:29 22 Q. So Lieutenant Singleton was there during the
12:56:34 23 traffic stop?

12:56:35 24 A. That's what it appears on the report.

12:56:37 25 Q. And there were three people in the car -- or

12:56:39 1 the truck. Mr. Adkins was one of them. He was
12:56:44 2 released from the scene; is that right?
12:56:46 3 A. It appears that four people were in the
12:56:48 4 vehicle, and then John Adkins being one of them.
12:56:53 5 And --
12:56:53 6 Q. Were some people arrested?
12:56:55 7 A. It says -- there's two -- two suspects were
12:57:07 8 arrested on unrelated charges to the incident, and
12:57:14 9 that Sanders subject and John Adkins were released
12:57:22 10 at the scene.
12:57:23 11 Q. In addition to that incident, were there any
12:57:28 12 other incidents where you saw a link or a connection
12:57:31 13 between Perry Singleton and John Adkins?
12:57:40 14 A. Yes.
12:57:45 15 Q. Can you tell me about that one?
12:57:47 16 A. Yes. This one is from October 16th, 2015, an
12:57:54 17 incident where Mr. Adkins came to a residence and,
12:58:13 18 it states in the report, kicked in the front door
12:58:15 19 and found his girlfriend Singleton with another
12:58:19 20 subject in the bedroom together; looks like a small
12:58:30 21 altercation broke out between the two males and, at
12:58:39 22 some point, the -- Singleton, the girlfriend of
12:58:46 23 Mr. Adkins, and another individual, Williams
12:58:50 24 subject, left the residence and were pursued, it
12:58:54 25 looks like, by Mr. Adkins.

12:58:56 1 And, at some point, he ended up in front of
12:59:02 2 their vehicle with his and they ran into the back of
12:59:06 3 his vehicle. They drove around him at this point
12:59:14 4 and pulled into Lieutenant Perry Singleton's yard
12:59:19 5 where parties awaited the arrival of law
12:59:22 6 enforcement.

12:59:24 7 Q. So the female in that incident, is that -- that
12:59:28 8 was Perry's sister? Or do you know?

12:59:32 9 A. I do not personally know his sister.

12:59:35 10 Q. All right.

12:59:37 11 A. But it's listed as -- actually, she's not
12:59:46 12 listed in the report other than -- well, it is.
12:59:51 13 Loretta Singleton. I believe that's his sister.

12:59:58 14 Q. So do you know whether Perry Singleton -- what
01:00:06 15 his involvement was? What happened once they pulled
01:00:08 16 into the house?

01:00:09 17 A. I do not. Based on the information in the
01:00:16 18 report...

01:00:23 19 Q. So what charges, if any, resulted from that
01:00:28 20 incident? Look on the last page of that incident
01:00:56 21 report at the very bottom.

01:01:02 22 A. Said Adkins was issued a citation for malicious
01:01:09 23 damage to personal property, and Williams was issued
01:01:14 24 a citation for following too closely.

01:01:18 25 Q. Does the report indicate whether Perry

01:01:21 1 Singleton was at home and whether he had any
01:01:25 2 involvement with this case at all?
01:01:26 3 A. I do not see where it -- that it said he had
01:01:30 4 any involvement other than they stopped at his
01:01:34 5 house.
01:01:38 6 Q. So if you'd read the very last line that starts
01:01:41 7 Singleton further. So we're talking about the
01:01:43 8 sister --
01:01:44 9 A. Yes.
01:01:45 10 Q. Where it says: Singleton further stated. If
01:01:45 11 you would just read that out loud for us.
01:01:47 12 A. Singleton further stated that they turned
01:01:48 13 around and went into Lieutenant Perry Singleton's
01:01:51 14 yard and waited for law enforcement to arrive.
01:01:53 15 Q. And was there a third incident report that
01:01:58 16 showed any kind of connection between Perry
01:02:01 17 Singleton and John Adkins?
01:02:04 18 A. Yes.
01:02:06 19 Q. What was the date of that?
01:02:08 20 A. It was January 5th of 2016.
01:02:10 21 Q. And would you describe that incident and
01:02:23 22 what --
01:02:24 23 A. In this incident, John Adkins was the -- was
01:02:30 24 reported as the victim. He had a dispute with
01:02:34 25 another subject. Deputy Newbanks, Corporal Bridges,

01:02:40 1 and Deputy Singleton went to the incident location
01:02:45 2 in reference to a dispute. It says while they were
01:02:52 3 traveling to the location, was flagged down by the
01:02:55 4 victim, which was John Adkins, and it appeared to be
01:03:05 5 a dispute with a girlfriend and a cell phone and an
01:03:22 6 individual that was listed as the suspect.

01:03:28 7 During this altercation, Mr. Adkins appears to
01:03:33 8 have alleged that the suspect came out and
01:03:36 9 discharged a firearm at his vehicle and that the
01:03:47 10 complainant subject fired one time and struck his
01:03:51 11 vehicle in the front passenger's side window and
01:03:55 12 exited.

01:03:56 13 Q. So were there any charges -- if you go to
01:04:02 14 page -- I guess the next page. What was the result
01:04:07 15 of this incident, as far as charges?

01:04:11 16 A. It says that the incident documented law
01:04:27 17 enforcement will pursue warrants on the subject --
01:04:33 18 on the subject -- suspect for malicious damage and
01:04:37 19 aggravated assault.

01:04:38 20 Q. And other than those three cases, did you see
01:04:47 21 any connection between Perry Singleton and John
01:04:59 22 Adkins documented and logged in LawTrac?

01:04:59 23 A. I'm sorry. Could you ask that again?

01:04:59 24 Q. Other than these three pages, LawTrac didn't
01:04:59 25 have any other connection showing them together?

01:04:59 1 A. No. No, they did not.

01:05:00 2 Q. Are you aware of -- do you know who John Adkins

01:05:05 3 is?

01:05:06 4 A. I'm aware of the name, but I do not know him

01:05:09 5 personally.

01:05:09 6 Q. Did Perry Singleton ever talk to you about John

01:05:14 7 Adkins?

01:05:15 8 A. I've heard him mention the name, but not -- we

01:05:20 9 hear a lot of names.

01:05:21 10 Q. Anything about this case or being a

01:05:25 11 confidential informant?

01:05:28 12 A. After the fact, after -- he did discuss it with

01:05:32 13 me, limited discussions after the fact. I knew he

01:05:37 14 was trying to keep his source of information

01:05:40 15 confidential, so I didn't know who it was at that

01:05:45 16 time. It wasn't until after he was in -- his name

01:05:50 17 was -- came out that he actually mentioned anything

01:05:54 18 about it.

01:05:54 19 Q. And that conversation would have been as a

01:05:58 20 result of -- if I'm wrong, correct me -- when the

01:06:00 21 Judge was telling him that he needed to reveal his

01:06:05 22 source's name?

01:06:06 23 A. That's correct.

01:06:06 24 MR. GRAHAM: Just one second, Your Honor.

01:06:06 25

01:06:23 1 BY MR. GRAHAM:

01:06:23 2 Q. During those conversations that he had with you

01:06:28 3 after the Judge asked him to reveal his source's

01:06:31 4 name, you said that Lieutenant Singleton was sacred.

01:06:38 5 Did I use the right word? Or what word did you use?

01:06:42 6 A. No. I --

01:06:45 7 Q. What was his conversation with you about any

01:06:49 8 reluctance on turning over those names?

01:06:53 9 A. He stated to me that the whole -- it's not just

01:07:01 10 this case in particular. But any time you have a

01:07:05 11 confidential source providing information, you're

01:07:09 12 very reluctant to give over that information to

01:07:12 13 expose that person. Or in different cases, witness

01:07:17 14 intimidation, fear of your life from -- it just

01:07:22 15 depends on the case.

01:07:23 16 But knowing this case, what he told me was that

01:07:30 17 he was in fear of harm coming to the person who gave

01:07:37 18 him information, if it got out who it was being a

01:07:42 19 snitch.

01:07:45 20 MR. GRAHAM: Thank you, Lieutenant.

01:07:46 21 THE COURT: All right. I assume that the cross

01:07:47 22 is going to last a little bit. So we'll go ahead

01:07:52 23 and take a lunch break and resume at about 2:30, I

01:07:57 24 guess. Let's shoot for 2:20, because I imagine we

01:08:03 25 still have a lot of road to cover. And I need to

01:08:04 1 leave a little bit early, if at all possible.
01:08:08 2 Don't discuss your testimony with anybody while
01:08:08 3 we're on break. Sorry I couldn't get you out of
01:08:12 4 here and back to Hampton before lunch. But they're
01:08:13 5 going to treat you to lunch. The Solicitor's Office
01:08:16 6 or the investigators here in Lexington will take you
01:08:17 7 to a really nice restaurant for lunch, maybe the
01:08:21 8 Italian place down the street. And we'll reconvene
01:08:24 9 at about 20 after 2:00. All right? See y'all then.
01:08:28 10 Thanks.

02:26:43 11 (Luncheon recess 1:08 PM - 2:26 PM.)

02:26:43 12 THE COURT: We'll go back on the record.

02:26:45 13 Lieutenant Clapp, you want to come back up,
02:26:49 14 please. And if you will know you're still under
02:26:54 15 oath.

02:26:54 16 THE WITNESS: Yes, sir.

02:26:55 17 THE COURT: Cross of Lieutenant Clapp?

02:26:59 18 MR. BROWN: Yes, sir. May it please the Court?

02:27:00 19 THE COURT: Yes, sir.

02:27:00 20 CROSS-EXAMINATION

02:27:02 21 BY MR. BROWN:

02:27:02 22 Q. I want to go back through and ask you about a
02:27:05 23 few things. What I want to start and ask you about
02:27:07 24 is two of the reports that you had mentioned
02:27:12 25 regarding Mr. Adkins and Mr. -- or Lieutenant

02:27:20 1 Singleton.

02:27:22 2 And one report involves the larceny charge.

02:27:27 3 And I think I've got that whole packet listed as

02:27:32 4 Court's 27. Do you have that packet there before

02:27:35 5 you?

02:27:36 6 A. Yes, I do.

02:27:45 7 Q. Okay. And if I got my numbering right,

02:27:45 8 somewhere on the back of that are these reports,

02:27:49 9 police reports. Do you see that on there? It's got

02:27:52 10 an S.O. number. I don't know if you want that or

02:27:55 11 just the date. It's Deputy Bennett's report.

02:27:55 12 A. Okay.

02:27:58 13 Q. It's dated January 13th, 2012.

02:28:00 14 A. Yes.

02:28:00 15 Q. Okay. And that is attached to Court's 27,

02:28:04 16 correct?

02:28:05 17 A. It is.

02:28:05 18 Q. Okay. Just trying to keep the record straight

02:28:09 19 here. All right. And you had mentioned that -- or

02:28:11 20 there was a discussion about Mr. Adkins being

02:28:14 21 released and, I guess, not being charged on this.

02:28:18 22 There's two things I want to ask you about: At the

02:28:21 23 bottom, what's the difference between an

02:28:24 24 investigation that's closed and one that's active?

02:28:34 25 A. Well, the active investigation check would

02:28:37 1 indicate that the case is still open and under
02:28:40 2 investigation.

02:28:41 3 Q. Okay. So they could actually still go back and
02:28:44 4 charge Mr. Adkins with this larceny?

02:28:47 5 A. In 2012, I'm unsure if -- for the petit
02:28:52 6 larceny, if they'd go back to 2012. I don't know
02:28:56 7 the answer if they could or not. But I would assume
02:28:59 8 they wouldn't.

02:29:00 9 Q. They being you or your agency?

02:29:02 10 A. Yes, sir.

02:29:02 11 Q. Okay. But you don't know any impediment to
02:29:07 12 bringing that charge, do you?

02:29:07 13 A. What's that? I'm sorry.

02:29:08 14 Q. You don't know of any legal impediment, do you?

02:29:14 15 A. No, I do not.

02:29:15 16 Q. Okay. And then the second part I want to ask
02:29:17 17 you about, if you'll take a look at this second page
02:29:20 18 of that report, do you see the -- I guess it's the
02:29:30 19 first full sentence -- excuse me, second full
02:29:33 20 sentence. Begins with suspects.

02:29:37 21 A. Yes.

02:29:37 22 Q. Okay. And he actually -- you say he was
02:29:41 23 released at the scene?

02:29:42 24 A. Correct. That's what the report states.

02:29:44 25 Q. Okay. And help me with this: Did Investigator

02:29:49 1 Singleton -- do you know whether he had any role in
02:29:52 2 that release?
02:29:53 3 A. I do not.
02:29:54 4 Q. All right. But what does it mean when you're
02:29:59 5 released? If you weren't released, what would that
02:30:03 6 be?
02:30:03 7 A. If he wasn't released, he would have been taken
02:30:07 8 into custody and placed under arrested.
02:30:08 9 Q. All right. And isn't it, in fact, kind of
02:30:12 10 short for being released from a seizure?
02:30:14 11 A. I'm sorry. Can you repeat that? It's kind of
02:30:15 12 hard to hear.
02:30:15 13 Q. Sure. Sure. And let me -- sometimes that
02:30:17 14 happens with me. I'll speak up.
02:30:20 15 He had to be seized by Lieutenant Singleton to
02:30:24 16 later be released, right?
02:30:26 17 A. I wouldn't call it a seizure. I'd call it a
02:30:30 18 stop.
02:30:30 19 Q. Okay. Was he free to leave?
02:30:32 20 A. I --
02:30:36 21 Q. If he had to be released, was he free to leave?
02:30:41 22 A. If he was released, yes, he was free to leave.
02:30:45 23 Q. At the time of the -- before he was released,
02:30:46 24 was he free to leave? Between the time of the stop
02:30:47 25 and the time of the release, was he free?

02:30:50 1 A. All I can testify to is what's in this report.
02:30:53 2 I do not know that the -- the amount of detention
02:30:57 3 that they had placed upon him at that time. I have
02:31:00 4 no idea.

02:31:01 5 Q. Okay. Fair enough. But it would appear that,
02:31:04 6 at some point in time, he was there at some type of
02:31:08 7 request by Lieutenant Singleton to stay at the
02:31:12 8 scene?

02:31:12 9 A. Or it could have been any of the other officers
02:31:16 10 that was listed on this report. I'm not sure who
02:31:19 11 detained them or, you know, which one or how long or
02:31:22 12 any of that.

02:31:23 13 Q. You got it. And not to beat a dead horse, but
02:31:27 14 of the rank on the officers that are listed here, he
02:31:30 15 is the highest ranking officer?

02:31:30 16 A. Yes, that's correct.

02:31:32 17 Q. Fair enough.

02:31:32 18 And if the other deputy said we want to keep
02:31:32 19 him, Singleton says let him go, Singleton -- he
02:31:34 20 makes the call, right?

02:31:34 21 A. It would -- I would have to assume so, since he
02:31:34 22 is the ranking officer.

02:31:34 23 Q. And, likewise, he could order him kept as well,
24 as the ranking officer?

25 A. He -- I don't know that he would order him

1 kept. He could recommend that he be kept. But that
2 would be up to the individual officer to make that
3 call, whether he has enough probable cause to detain
02:32:11 4 and arrest him.

02:32:11 5 Q. But, nonetheless, the ranking officer who could
02:32:15 6 pull rank would be Singleton?

02:32:18 7 A. Yes. He would be the ranking officer in that
02:32:18 8 situation.

02:32:18 9 Q. You got it.

02:32:23 10 All right. Now let's take a look at the next
02:32:25 11 report that's dated 2015. And it's got domestic
02:32:38 12 dispute at the top.

02:32:40 13 A. Correct.

02:32:41 14 Q. All right. And, tell me again, your role
02:32:46 15 currently is in criminal investigations?

02:32:49 16 A. I'm lieutenant over the investigations
02:32:52 17 division.

02:32:53 18 Q. Okay. And assaults with a weapon, or
02:32:57 19 especially a deadly weapon, would that go over to
02:33:02 20 somebody like Investigator Solomon in narcotics or
02:33:04 21 go to you?

02:33:04 22 A. Not necessarily. Responding officers could
02:33:07 23 make the charges. We don't -- usually, in
02:33:11 24 investigations, do not deal with domestic disputes.

02:33:14 25 Q. Okay. How about pointing a firearm at

02:33:18 1 somebody's face?

02:33:20 2 A. That typically is charges -- if charges would

02:33:25 3 be made, would be made by the investigating deputies

02:33:29 4 or road patrol officers, whoever responded.

02:33:33 5 Q. Okay. And on a level of severity, where would

02:33:36 6 you put a charge like pointing and presenting?

02:33:39 7 A. I would consider that very severe and serious.

02:33:42 8 Q. Okay. And do you believe, assuming the facts

02:33:44 9 of this police report are true, that there could

02:33:49 10 have been a charge made against Mr. Adkins for the

02:33:53 11 line that says Loretta Singleton stated Adkins came

02:33:57 12 into their residence and pointed a firearm at her

02:34:00 13 face and pulled the trigger?

02:34:02 14 A. It -- reading the report, on face value, I

02:34:04 15 would have to say yes. I would assume that a charge

02:34:07 16 could have been brought against him for that.

02:34:09 17 Q. Okay. And have you ever heard of being

02:34:14 18 pistol-whipped?

02:34:15 19 A. Yes, I have.

02:34:16 20 Q. And does that also look like it occurred in

02:34:17 21 there too?

02:34:49 22 A. I see in the report where it says she was

02:34:52 23 struck with the weapon.

02:35:22 24 Q. Oh, I'm sorry. I didn't know if you had

02:35:25 25 anything else to add.

02:35:26 1 A. No. No. That's it.

02:35:27 2 Q. But it does look more than malicious injury to

02:35:31 3 property, doesn't it, the allegation is?

02:35:33 4 A. Yes. The allegation is more than the malicious

02:35:36 5 injury.

02:35:36 6 Q. Okay. Fair enough. Do y'all have any internal

02:35:42 7 rules regarding conflicts, such as maybe your agency

02:35:48 8 shouldn't investigate the pointing and presenting to

02:35:51 9 another detective's -- or another detective's sister

02:35:54 10 is the victim?

02:35:56 11 A. I don't know that we have -- in this situation,

02:36:01 12 I'm not familiar with anything that would prohibit

02:36:04 13 us from investigating matters of this nature. But I

02:36:09 14 understand and I would have to agree that more

02:36:11 15 serious matters are -- would definitely be a

02:36:17 16 conflict of interest to have another agency look

02:36:20 17 into it. But this matter in particular is not one

02:36:24 18 that I would consider one that would have to have a

02:36:26 19 different agency.

02:36:27 20 Q. I was about to get to that.

02:36:27 21 But if the bullet would have left the gun and

02:36:29 22 hit her in the face, it would have been?

02:36:32 23 A. Yes.

02:36:33 24 Q. Okay. All right. Now, in your work in

02:36:36 25 criminal investigations, have you or any member of

the Hampton County Sheriff's Department

Investigators Division ever utilized a confidential informant?

A. The term confidential informant, as I understand it, is an individual that provides information who wishes to keep his or her name anonymous and confidential and not to be made public. We have used individuals -- or I say used.

We have received information from many individuals over the course of investigations that we would call confidential informants, based upon them not wanting to be made public. So in that aspect, yes, we've used confidential informants.

Q. Okay. And that -- so y'all used the phrase -- y'all being the Sheriff's Department used the phrase confidential informant loose enough to cover mere tipsters?

A. Yes. I would say that that would encompass tipsters, is what --

Q. Okay. And how about just sources?

A. Sources as well. And I would -- I would term anyone who was providing information who wanted to remain confidential as a confidential informant.

Q. Okay. And is there ever a point where somebody becomes a formal confidential informant?

02:38:25 1 A. The level at which confidential informants,
02:38:27 2 which I believe that you're referring to, is more
02:38:31 3 reserved for the narcotics investigations, where
02:38:33 4 that takes place.

02:38:34 5 Q. You got it.

02:38:36 6 And it's more formal in the sense that you need
02:38:38 7 to document things like -- and I want to get this
02:38:45 8 straight here -- the name of the person used, what
02:38:48 9 they were used for, and the interactions when they
02:38:53 10 were used. I think that was some of the testimony
02:38:56 11 that you gave in the beginning.

02:38:57 12 A. Correct.

02:38:57 13 Q. And that's why that has to be documented in the
02:39:01 14 files such as the ones that Investigator Solomon
02:39:04 15 would use?

02:39:04 16 A. Yes, that, and the fact they're dealing with
02:39:08 17 narcotics. And, you know, that's part of the things
02:39:11 18 they have to keep track of during the investigation.
02:39:15 19 They do a lot more video recording. We don't
02:39:18 20 typically do that until we conduct the interviews.

02:39:22 21 Q. All right. And y'all don't do that because
02:39:25 22 y'all not as worried about those details?

02:39:29 23 A. It's not so much we're not worried about the
02:39:32 24 details. We receive information from different
02:39:36 25 persons throughout the community or wherever, and we

02:39:39 1 try and go out and corroborate said information and
02:39:43 2 go from there.

02:39:43 3 Q. Is it your understanding that Mr. Adkins was at
02:39:47 4 least in some ways a source or a tipster for the
02:39:52 5 Hampton County Sheriff's Department?

02:39:54 6 A. My understanding is Mr. Adkins provided
02:39:59 7 information to Lieutenant Singleton. He's never
02:40:02 8 provided information to me. Like I said, we're a
02:40:05 9 small department, a small division. So to my
02:40:07 10 knowledge, I don't know who else he's provided
02:40:10 11 information to. But I just knew about Lieutenant
02:40:13 12 Singleton.

02:40:13 13 Q. All right. And now that Lieutenant Singleton
02:40:15 14 has passed on, if information was provided to you by
02:40:22 15 Mr. Adkins and you were asked about his reliability
02:40:27 16 in the past, how would you respond to that?

02:40:31 17 A. Asked about Mr. Adkins' reliability?

02:40:34 18 Q. If a magistrate judge asked you to give
02:40:37 19 information about Mr. Adkins' reliability in the
02:40:40 20 past, how would you answer that question?

02:40:43 21 A. Based on what I know prior to --
02:40:52 22 post-Lieutenant Singleton in this case about
02:40:54 23 Mr. Adkins?

02:40:55 24 Q. If you got a call tomorrow and said -- and the
02:40:57 25 person says I'm John Adkins and I know where Jimmy

02:41:01 1 Hoffa's body is and you were going to go dig it up
02:41:05 2 out in the -- let's say the Hampton County High
02:41:09 3 School football field end zone, instead of the New
02:41:15 4 Jersey --
02:41:15 5 A. I would take his information on face value and
02:41:19 6 I would try to corroborate his information. I would
02:41:24 7 look into it and see if they could corroborate it.
02:41:27 8 And, if so, then I'd have to say he's believable in
02:41:30 9 the information that he gave me.
02:41:31 10 Q. Okay. And you would have no other way to check
02:41:34 11 his reliability besides corroborating; is what
02:41:38 12 you're saying?
02:41:38 13 A. His reliability on information up until this
02:41:44 14 case and, you know, based on this case, I would have
02:41:48 15 had to say that I would have taken his information
02:41:50 16 and taken it as truthful until I was able to prove
02:41:55 17 otherwise.
02:41:56 18 Q. Okay. So he's reliable because you presume
02:42:00 19 he's reliable, unless you can find something
02:42:04 20 otherwise?
02:42:04 21 A. Correct.
02:42:04 22 Q. Okay. No other sources of determining
02:42:08 23 reliability within the criminal investigations
02:42:10 24 division except word of mouth, corroboration, or
02:42:14 25 assuming it's true?

02:42:16 1 A. Well, like I say, as a community member, prior
02:42:27 2 to and since things I've heard about since this case
02:42:28 3 has come about with Mr. Adkins, it would make me
02:42:32 4 question whether or not he would continue to be
02:42:34 5 reliable when he needed to be reliable. But if he
02:42:38 6 provided me information, I would still go out and
02:42:41 7 investigate it and pass it on, if it needed to be
02:42:45 8 passed on.

02:42:59 9 Q. Now let me ask you this: Were you working at
02:43:03 10 Hampton County -- and I know you've answered it,
02:43:07 11 but just -- on December 4th, 2019?

02:43:10 12 A. December 4th, 2019, I was employed by the
02:43:15 13 Sheriff's Office at that time.

02:43:16 14 Q. At Hampton County.

02:43:18 15 And what was your role then?

02:43:19 16 A. 2019, I was a sergeant in investigations.

02:43:23 17 Q. And who -- and where did Lieutenant Singleton
02:43:26 18 fall in your chain?

02:43:27 19 A. He was my direct supervisor.

02:43:29 20 Q. Okay. And did y'all have some kind of
02:43:32 21 memorandum or meeting or anything saying for y'all
02:43:37 22 to preserve all the electronic metadata, e-mails,
02:43:44 23 text messages, or anything like that?

02:43:45 24 A. Not that I recall.

02:43:46 25 Q. Okay. And did Lieutenant Singleton ever have

02:43:49 1 access to the computer or did he just type his
02:43:51 2 reports off of a cell phone?
02:43:54 3 A. He had access to his computer.
02:43:56 4 Q. Okay. And it was actually like a desktop or a
02:43:59 5 laptop or --
02:44:00 6 A. I believe his may have been a laptop that's
02:44:03 7 connected in such a manner that it appears to be a
02:44:07 8 desktop.
02:44:08 9 Q. Okay. So it's actually connected to the
02:44:11 10 Sheriff's Department network?
02:44:12 11 A. That's correct.
02:44:13 12 Q. Okay. And you had a similar device?
02:44:15 13 A. I do.
02:44:17 14 Q. Okay. And the files that he types into the
02:44:21 15 system, can you access those files too?
02:44:24 16 A. I can. I can see his reports.
02:44:26 17 Q. Okay. Is there anything that you can hide from
02:44:30 18 another employee or they can hide from you?
02:44:33 19 A. Not to my knowledge.
02:44:33 20 Q. So y'all all -- it's a team, and it's
02:44:37 21 collective knowledge, you know, the common officer
02:44:40 22 rule?
02:44:40 23 A. I correct that. There are ways to protect
02:44:44 24 reports in our system so that it's not visible,
02:44:47 25 which is typical in, like, juvenile cases,

02:44:51 1 children's cases.

02:44:51 2 Q. And, tell me, y'all put a password on it?

02:44:56 3 A. It's a protected function. And I can't sit

02:44:59 4 here and explain how it works, but you can protect

02:45:02 5 the report so it's not visible to everyone's eyes.

02:45:05 6 Q. You got it.

02:45:07 7 And who keeps that -- the key to that? The

02:45:12 8 officer who enters it?

02:45:14 9 A. The officer that enters it can unlock it or

02:45:19 10 unprotect it. The -- whoever the administrator

02:45:27 11 is -- I think Sergeant Edwards is one of the

02:45:31 12 administrators that can unlock that.

02:45:38 13 Q. Who else would you think? The IT person --

02:45:41 14 A. I'm not sure if Bob -- we call him Bob --

02:45:44 15 Robert Chassis [phonetic]. I'm not sure if he has

02:45:49 16 that capability. I would assume so since he was our

02:45:53 17 IT person that had to maintain all these functions.

02:45:59 18 So I would assume him or Captain Russell.

02:46:02 19 Q. Is Captain Russell still there?

02:46:06 20 A. Yes.

02:46:13 21 Q. When y'all take field notes, do y'all put them,

02:46:18 22 like, in a little notebook or pad or --

02:46:21 23 A. It may be a notebook or a pad, a legal pad or

02:46:25 24 notebook, something of that nature.

02:46:27 25 Q. Where are those kept?

02:46:29 1 A. Usually, every officer is responsible for their
02:46:34 2 field notes. You can have them on your desk or
02:46:37 3 vehicle or your file cabinet.

02:46:39 4 Q. Do you know whether or not those field notes
02:46:42 5 from Lieutenant Singleton were collected?

02:46:44 6 A. I don't know that he collected any field notes
02:46:47 7 regarding this incident. And, per my search, I
02:46:50 8 searched his cabinet as of yesterday, and I saw
02:46:54 9 field notes on different cases, but none pertaining
02:46:58 10 to this case or persons involved that I knew.

02:47:01 11 Q. Did you see the video with Lieutenant
02:47:01 12 Singleton's truck and the car? I think they asked
02:47:12 13 you about identifying that.

02:47:12 14 A. Yes.

02:47:14 15 Q. Okay. What would be the best way to identify
02:47:17 16 who was issued that car that morning?

02:47:20 17 A. The -- as far as the -- Lieutenant Singleton's
02:47:21 18 vehicle?

02:47:22 19 Q. Yes, sir, the marked vehicle.

02:47:24 20 A. They're not issued out every day. It's your
02:47:27 21 car. As a matter of fact, that vehicle is my
02:47:30 22 vehicle now. I drove it here today.

02:47:32 23 Q. Oh, okay. Well, who was issued that vehicle
02:47:36 24 back on July 9th of 2018?

02:47:38 25 A. Lieutenant Singleton.

02:47:39 1 Q. Was issued the marked car?

02:47:41 2 A. No, no, no, not the marked car; the pickup, the

02:47:42 3 silver truck.

02:47:44 4 Q. All right. How would we identify, ultimately,

02:47:47 5 the driver of the marked car?

02:47:50 6 A. The only marked car I recall seeing was an

02:47:54 7 Estill PD cruiser that came by. If you're referring

02:47:58 8 to the car with Lieutenant Singleton --

02:47:58 9 Q. Yes.

02:48:00 10 A. Maybe if you were able to enlarge the image or

02:48:03 11 something -- I'm not sure. It didn't look like any

02:48:06 12 of our personnel. Maybe SLED. I don't know. I

02:48:10 13 have no idea.

02:48:10 14 Q. In that black marked car?

02:48:12 15 A. No, not the marked car. That would have been

02:48:14 16 Estill Police.

02:48:15 17 Q. Okay. How many officers do they usually have

02:48:20 18 on patrol per shift?

02:48:22 19 A. I'm unsure. They're a very small department.

02:48:26 20 And a lot has changed since the date of this

02:48:28 21 incident, so I'm not really sure how many. But it's

02:48:32 22 not -- I think there are probably less than 15 or

02:48:35 23 20, if that, in personnel.

02:48:38 24 Q. Total. Okay. Does that include the people who

02:48:41 25 don't drive marked cars?

02:48:43 1 A. I'm not aware of how many marked cars or
02:48:47 2 unmarks that they have.

02:48:48 3 Q. And about how far is Estill Police Department
02:48:55 4 from Roberts Street, that location?

02:48:59 5 A. I'd really have to -- I'm not exactly sure. I
02:49:03 6 saw on the maps where I think, I believe, it would
02:49:05 7 be located. And so you're looking at a quarter,
02:49:09 8 half a mile maybe.

02:49:10 9 Q. A half mile. Okay.

02:49:11 10 A. If Roberts Street is where I think I -- where I
02:49:15 11 believe it is.

02:49:15 12 Q. Okay. So about 2,500 feet?

02:49:19 13 A. And that's a rough estimate. I'm not really
02:49:22 14 sure. It's not far. The whole town is not very
02:49:26 15 big.

02:49:26 16 Q. All right. And being that familiar, is that
02:49:28 17 wall about ten feet tall? The wall that runs along
02:49:33 18 the side of the house we were looking at. Remember,
02:49:35 19 there was a reference to a wall that Investigator
02:49:39 20 Days --

02:49:40 21 A. I did not see that wall.

02:49:41 22 Q. Okay. I didn't know if you were familiar with
02:49:44 23 the wall that ran along -- that blocks the end of
02:49:48 24 Roberts Street.

02:49:49 25 A. Yeah. I'm not familiar.

02:49:52 1 MR. BROWN: I don't have any other questions,
02:49:54 2 Your Honor.
02:49:56 3 MR. GRAHAM: Just one, Your Honor.
02:49:57 4 THE COURT: Okay.
02:49:57 5 REDIRECT EXAMINATION
02:50:01 6 BY MR. GRAHAM:
02:50:01 7 Q. Lieutenant, do you know whether -- other than
02:50:04 8 this case, do you have any information about John
02:50:08 9 Adkins providing information, either as a
02:50:11 10 confidential informant or source or a tipster, to
02:50:17 11 Perry Singleton prior to this case?
02:50:18 12 A. No, I do not.
02:50:18 13 Q. You can't say yes; you can't say no?
02:50:21 14 A. No, I cannot.
02:50:24 15 Q. Thank you.
02:50:24 16 THE COURT: All right, sir. Thank you so much.
02:50:27 17 Thank you for coming. You're free to go. Again,
02:50:30 18 thank you for coming.
02:50:34 19 Any additional witnesses from the State?
02:50:38 20 MS. FULLER: Beg the Court's indulgence.
02:50:41 21 THE COURT: Sure.
02:52:58 22 MR. GRAHAM: No, Your Honor. That's all the
02:53:00 23 witnesses from the State, Your Honor.
02:53:02 24 THE COURT: All right.
02:53:03 25 Did y'all want to call anyone?

02:53:06 1 MR. BROWN: We don't want to call anyone, Your
02:53:08 2 Honor. We do think, for the record, that the -- at
02:53:12 3 least the dates in question of -- that the cars,
02:53:15 4 specifically Mr. Adkins' car and the Tahoe, that
02:53:20 5 needs to be presented to Your Honor and preserved on
02:53:26 6 the record.

02:53:27 7 I've got a -- we've got a copy of what can't be
02:53:29 8 played. And, I guess, if we can play it -- the
02:53:33 9 Court can play it. But we don't mind hearing that.
02:53:41 10 I think it's at Mr. Phillips' office in the whole
02:53:49 11 hard drive.

02:53:50 12 THE COURT: Okay. And I'm --

02:53:50 13 MR. BROWN: We can't copy it because we can't
02:53:50 14 do anything with it.

02:53:50 15 THE COURT: Okay. I'm fine with you doing that
02:53:52 16 or -- with the State or with somebody, whoever wants
02:53:55 17 to introduce a copy of the entire video from the
02:54:00 18 defendant's residence.

02:54:02 19 Let's assume for the moment that that completed
02:54:09 20 video doesn't change anything in terms of the
02:54:11 21 testimony or what we've heard. Where does that --
02:54:13 22 I'm assuming y'all are prepared to move forward with
02:54:19 23 argument on the Frank's --

02:54:23 24 MR. BROWN: Right now, yes, sir.

02:54:23 25 THE COURT: Yeah.

02:54:24 1 MR. BROWN: I have an outline on my --

02:54:24 2 THE COURT: Sure. Go ahead and let me hear

02:54:25 3 what your thoughts are.

02:54:25 4 MR. BROWN: Yes, sir.

02:54:26 5 And the only other thing I'd say is that we

02:54:30 6 have that extraction stuff. But, likewise, we

02:54:31 7 assume -- we're going to argue assuming we get

02:54:35 8 nothing.

02:54:35 9 THE COURT: Right.

02:54:37 10 MR. BROWN: And so let me walk over here and

02:54:37 11 take this.

02:54:41 12 And, Your Honor, I'm going to mark one as

02:54:44 13 Defendant's --

14 THE COURT: If it's just argument, you can

15 probably just file it with the court, and we'll be

16 okay.

17 MR. BROWN: Well, it's just an outline of --

18 THE COURT: Sure.

19 MR. BROWN: -- what I'm kind of going to argue

20 through.

21 THE COURT: That's fine. I'll make sure it

22 gets made part of the file somewhere.

02:55:01 23 MR. BROWN: And this was done before today's

02:55:03 24 testimony. But not much has changed. And I'm going

02:55:06 25 to just kind of start -- and I just -- right there

02:55:11 1 so I can see it. And I think there's two things
02:55:11 2 we're looking at: One is whether there's false
02:55:15 3 statements, and one is whether there's omissions.
02:55:15 4 Let me see if I can get it all on one page.

02:55:28 5 And, Your Honor, for purposes of arguing, I'm
02:55:31 6 going to step back so I can take my mask off. We
02:55:35 7 believe what we've listed there are false statements
02:55:38 8 and not omissions. And, of course, Frank supplies,
02:55:42 9 to both, omissions have to be material; omissions --
02:55:46 10 of course, obviously, false stuff has to gut the
02:55:49 11 thing, so it's got the same materiality standard
02:55:54 12 anyway.

02:55:55 13 But what we've got is, it's a false statement
02:55:55 14 that Adkins told them that the vehicle was in
02:55:59 15 Estill. Adkins said that. Now, we understand that
02:56:02 16 Adkins might have presented Your Honor with some
02:56:08 17 information that, itself, was not truthful. He also
02:56:11 18 said that -- some truthful stuff about Investigator
02:56:18 19 Singleton trying to put a larceny charge on him.

02:56:20 20 Now, that's a street parlance phrase. But we
02:56:24 21 got a report where he was stopped by a Lieutenant
02:56:27 22 Singleton and investigated for a larceny charge.
02:56:29 23 And it wasn't cleared. It's still an active report.
02:56:33 24 So there is some corroboration with what he did say;
02:56:38 25 he mentioned that he had been involved with Loretta

Singleton, who was Investigator Singleton's sister;
he mentioned there were difficulties that
Investigator Singleton was mad about.

And, lo and behold, these reports show that
very thing: Involvement, romantic involvement,
because it appears that the motivation for the
alleged assault was jealousy. And so it would be
that it was a romantic relationship. And then,
likewise, I'm going to call it, you know, enough
reason for Singleton to be mad about him. If
somebody did that and pulled a gun on their sister
and pulled the trigger, that's probably a reason to
he can be mad at him.

So we do have evidence from Adkins that that
was a lie; we also have evidence that the magistrate
was told he was a CI; but, Your Honor, we have
evidence that he is a tipster. And the tipster's
status -- and this was written this morning -- was
confirmed by Solomon. Okay? Solomon details all of
the documentation as to role and limitations as
required for a CI.

We don't have any of that. We've asked
repeatedly. Lieutenant Clapp just confirmed it.
And while CI is a term of art within their
department, they use the phrase CI colloquially to

02:58:03 1 mean a person who wants to remain confidential and
02:58:08 2 has brought it up enough to include tipster and
02:58:08 3 source.

02:58:09 4 And he mentioned the difference is -- this is
02:58:12 5 Lieutenant Clapp -- that a CI requires extra
02:58:16 6 documentation, which is exactly the way Investigator
02:58:22 7 Solomon described these CIs that are used by the
02:58:27 8 narcotics versus what would be a source. So we
02:58:31 9 would characterize that as a lie.

02:58:34 10 And we also have, again, no records. And
02:58:37 11 that's in the affidavit from Singleton and in the
02:58:40 12 letter, Your Honor, that we have produced from the
02:58:42 13 records custodian at the Sheriff's Department. All
02:58:42 14 right?

02:58:46 15 I point that out because the two cases we've
02:58:50 16 cited before, State v. Jones and State v. Robinson,
02:58:53 17 both revolve around the same type of
02:58:56 18 misrepresentation. And it's interesting because
02:58:58 19 they're not identical themselves, and neither is
02:59:01 20 identical to this case. But it almost gives you a
02:59:04 21 trifecta, Your Honor, because what we've got is --
02:59:07 22 in the Jones case, we've got the question about
02:59:10 23 whether it's an undercover officer or a CI, a real
02:59:15 24 CI.

02:59:16 25 And justice -- then-Justice Pleicones says,

when he writes the opinion, that that alone is enough to kill the entire affidavit because of the difference in credibility between an undercover police officer and a CI. And so he's saying, even if it's true that it's a CI, the fact that they misled the Judge into believing it was a police officer, in precedent, it's a Frank's violation.

Likewise, in Robinson, which cites Jones, they find that it's false when the affidavit says that the CI did the buy when, in fact, it was a third-party tipster who rode along with the CI went inside without the officer and without the CI.

And they said, on both of those cases, that that mischaracterization alone was enough to find a Frank's violation, which ultimately led to expression in both of those cases, Your Honor. And so one is an officer versus CI; one is a CI verses tipster; and here, we have CI versus some type of source.

And, Your Honor -- and my co-counsel has pointed it out. I hate to look over at him. But he's indicated that in Officer Singleton's affidavit -- and I hate to fumble and argue at the same time. But when I looked through here, there's an affidavit he provided. And in it he indicates

03:00:52 1 that -- understanding -- and I'm going to let my
03:00:54 2 co-counsel find it -- but that he knows the
03:00:56 3 difference between the two.

03:01:01 4 And it's important. And I understand that, for
03:01:04 5 the confidentiality part, they're all treated the
03:01:07 6 same. And I've got to tell you, Your Honor, you
03:01:10 7 know, I'd taken all the law school classes on
03:01:14 8 criminal procedure and substantive criminal law.
03:01:17 9 None of that ever comes up. That's not something
03:01:21 10 you pick up in a law school textbook.

03:01:24 11 But it is a term of art when it comes to the
03:01:29 12 court system, because, just like Jones talks about,
03:01:31 13 there's a difference in level of reliability of
03:01:34 14 information if it comes -- in that case, it came
03:01:36 15 from an officer versus coming from a CI.

03:01:39 16 And the reliability is important. And my
03:01:43 17 co-counsel -- I'm sorry. And, in fact, I stand
03:01:48 18 corrected on what it was, that the end of the
03:01:50 19 November 14th affidavit, Lieutenant Singleton
03:01:53 20 referred to Adkins as a source. And that appears
03:01:59 21 about mid-sentence. The line starts: During the
03:02:03 22 time that I was assisting the West Columbia Police
03:02:06 23 Department. And that affidavit was entered again
03:02:10 24 yesterday as a Defense Exhibit, Your Honor.

03:02:14 25 But he says: I've known this source for eight

1 years. That's a quote. That's the second time he
2 uses the word source. And by the phone calls from
3 the source, next sentence: I've got recorded
4 conversations with the source.

5 Next sentence: I've not used the source; I
6 have not used the source as a witness; I do not have
7 any records of this source. That's in the affidavit
8 correcting or clarifying that.

9 And, Your Honor, that's important because this
10 affidavit was used to deal with the issue there is
11 no CI, because that no-CI order came out just three
12 days, I believe, before that affidavit was done.
13 And that is different than what's actually in the
14 search warrant affidavit which says CI. So he knew
15 the difference.

16 In fact, I would assume, since somebody told
17 him to do the affidavit, that somebody told him that
18 the no-CI issue that was in the order three days
19 earlier, that that was a big issue, whether it was a
20 CI or a source, Your Honor.

21 And we point that out. As my co-counsel -- as
22 he's talked to me about and is addressed a little
23 bit in State v. Robinson, there's an interplay
24 between reliability of an informant, which is a
25 different challenge, but there's an issue that

03:03:33 1 overplays into Frank's when the false statement
03:03:37 2 deals with the reliability of the information
03:03:40 3 itself. Because you can have a reliability problem
03:03:43 4 and it be truthful.

03:03:45 5 Somebody could say, hey, a guy off the street
03:03:49 6 we don't know, don't know anything about him, he
03:03:53 7 gave us information. And that may be true and not
03:03:57 8 be reliable. So you can have a non-Frank's
03:03:59 9 situation with a reliability problem, but you can
03:04:02 10 also have a Frank's situation without the
03:04:05 11 reliability. And, Your Honor, that's the thrust of
03:04:07 12 we're arguing here on our Frank's motion.

03:04:12 13 And so then we go to omissions. And these are
03:04:14 14 important too, because we've got both. And most of
03:04:15 15 the time it deals with a false statement or an
03:04:19 16 omission. But he admitted that he was a tipster and
03:04:22 17 acknowledged the flip-side of it. But he didn't say
03:04:24 18 he's just a tipster and not a registered informant
03:04:28 19 cite.

03:04:28 20 I cite Jones again: Known him eight years
03:04:33 21 versus 16 months. And, Your Honor, that's
03:04:36 22 important. And I've got it listed further down, but
03:04:39 23 we believe that's important because the judge
03:04:41 24 herself said: If I would have known about that
03:04:44 25 discrepancy, I would not have signed the warrant

03:04:47 1 until he explained the reason it said eight years
03:04:53 2 versus 16 months.

03:04:56 3 THE COURT: But that's a subjective standard.
03:04:59 4 I think I need to objectively assess this as the
03:05:03 5 standard.

03:05:03 6 MR. PHILLIPS: Yes, sir.

03:05:04 7 THE COURT: But I do understand your point
03:05:05 8 though.

03:05:06 9 MR. BROWN: We agree that the judge's
03:05:07 10 characterization of whether she would have still
03:05:09 11 signed the warrant has no legal bearing on your
03:05:11 12 determination. And they put her up there to say she
03:05:16 13 would still sign it with an excise.

03:05:20 14 So, likewise, we agree that has no bearing on
03:05:22 15 your ruling, whether she would have signed it absent
03:05:26 16 the information we believe is what was false. We
03:05:26 17 agree with that, Your Honor. But we do point out
03:05:28 18 that she did find it significant and seemed
03:05:29 19 genuinely surprised about that.

03:05:32 20 Tipster CI's relationship with the sister
03:05:37 21 Loretta. And before today, I didn't know that she
03:05:40 22 had been pistol-whipped and had a gun pointed at her
03:05:45 23 face and it clicked. I mean, that's even more
03:05:48 24 reason that it should have been said.

03:05:50 25 I mean, he doesn't like Mr. Adkins. And he's

03:05:53 1 going to turn around and vouch for his credibility?
03:05:57 2 I mean, that's a bit unbelievable. At minimum
03:06:01 3 though, it's an omission. It's a material omission.
03:06:05 4 No CI file for Adkins; that was not told to her,
03:06:08 5 because she asked about reliability. No facts
03:06:10 6 concerning reliability were presented.

03:06:14 7 Now, this is important, and it will dovetail
03:06:14 8 back into the presentation that I believe you're
03:06:17 9 going to hear from my co-counsel, Mr. Phillips, at
03:06:19 10 the time we deal with reliability.

03:06:20 11 But it's important because she asked Singleton
03:06:25 12 is he reliable. But, Judge, it is the Judicial
03:06:30 13 Branch's job, under the Fourth Amendment, to
03:06:32 14 determine reliability. It's not the Judicial
03:06:37 15 Branch's job to delegate the reliability and
03:06:39 16 determination to the Executive Branch for them to
03:06:42 17 make a conclusory statement that he's reliable and
03:06:47 18 that he's been fruitful in the past.

03:06:47 19 And fruitful in the past and being reliable, I
03:06:57 20 mean, that's a flip side of the same coin. They
03:06:57 21 can't just take someone else's conclusion for it.
03:07:01 22 And how much detail, I don't know. But that's no
03:07:03 23 detail. And I did ask her about the detail that was
03:07:06 24 presented. They omitted any specifics on what he
03:07:09 25 had done previously. Omitted that no corroboration

03:07:11 1 was never attempted by law enforcement. Judge, I
03:07:14 2 wrote that this morning. They actually did try to
03:07:18 3 corroborate. So you can actually strike that out of
03:07:23 4 my outline and say they omitted that they drove out
03:07:28 5 there and didn't see the Tahoe and no evidence that
03:07:32 6 Adkins had been there; that they didn't see the
03:07:32 7 video at that time; but they did go out there, more
03:07:40 8 than one car. And that's important.

03:07:42 9 That is important, because what we just heard
03:07:44 10 from Lieutenant Clapp was, to determine reliability,
03:07:50 11 he'd try to corroborate; that's what he would do in
03:07:50 12 a CI situation, which is what most people would do.
03:07:54 13 If you can corroborate some of it, if you hear that
03:07:58 14 the guy in the striped pants at the corner has a gun
03:08:03 15 on him in one of these anonymous cases or the car in
03:08:05 16 Illinois he gave would be driving back from Florida
03:08:07 17 and going to the house in Chicago, that's the type
03:08:12 18 of corroboration that makes those anonymous sources
03:08:15 19 more credible, especially if it's predictive
03:08:19 20 behavior.

03:08:20 21 But, in this case, you've actually got an
03:08:20 22 informant, a person they know, and is -- but an
03:08:25 23 attempt to corroborate, and it's not there.

03:08:27 24 Omitted explanation for nine-day delay. Now,
03:08:27 25 the nine-day delay will come up in a later motion

03:08:35 1 that was filed, I believe, this morning by
03:08:36 2 Mr. Phillips -- well, excuse me, marked as a Court's
03:08:39 3 Exhibit this morning.

03:08:41 4 But, short version, they didn't tell her, you
03:08:44 5 know, we got this nine days later and we went out
03:08:47 6 and couldn't find it one hour later. I mean, 8:56,
03:08:54 7 I believe, is when the call about the car being
03:08:56 8 there, and then it goes to -- well, there's a call
03:09:00 9 to Singleton and then supposedly a call to Aldridge.
03:09:04 10 And at 10:01, one hour and five minutes later,
03:09:08 11 they're sitting out there, and then don't go see the
03:09:11 12 magistrate for nine days.

03:09:13 13 And she may have been able to divine that from
03:09:17 14 there, but they never told her that. And, Your
03:09:20 15 Honor, that's important when we talk about whether
03:09:23 16 the statement is true, because it's going to be
03:09:25 17 harder to prove false when there's a nine-day delay
03:09:29 18 also.

03:09:29 19 Now, Judge, what I want to do next -- and those
03:09:32 20 are the -- this is the summary. You've heard the
03:09:35 21 proof. But this is the summary we're offering
03:09:38 22 regarding the lie and the omission.

03:09:40 23 But what we're going to do next is show you how
03:09:43 24 this other information addresses some of the other
03:09:46 25 things, because it's not just a false statement.

03:09:50 1 Judge, I mean, you could ask me if I have any money
03:09:52 2 in my pocket and -- or, you know, five dollars in my
03:09:52 3 pocket, and I could say, no, I have six dollars in
03:09:59 4 my pocket and it turns out that I have five. And I
03:10:01 5 may not be lying, but it's just false.

03:10:05 6 But what we've got is a reckless disregard for
03:10:08 7 the truth of these other things. He refers to him
03:10:09 8 in the notes that we get as John Scott and John
03:10:12 9 Lavar. And so we have this evolving name for him.
03:10:16 10 The phone is wiped clean. Yeah. Maybe it's not
03:10:20 11 wiped clean, and we'll come back to that.

03:10:23 12 And, again, this was done this morning. Did
03:10:31 13 not document efforts to seize the Tahoe or the
03:10:34 14 defendant. Well, at the time, I didn't know they
03:10:34 15 actually tried. But they didn't document it.

03:10:35 16 And that's important because we, in this case,
03:10:38 17 Judge, have police reports from the Hampton County
03:10:43 18 Sheriff's Department going with a team from
03:10:45 19 Lexington last month and conducting in-depth
03:10:53 20 interviews.

03:10:53 21 And there's assisting agency reports from
03:10:53 22 Hampton County. They do them; a lot of agencies do
03:10:57 23 them. Do they do them every time when they're
03:11:00 24 called to drive by? Probably not. This is not a
03:11:04 25 call to drive by; this is a double murder

03:11:07 1 investigation with a search. I mean, this is an
03:11:09 2 active be-on-the-look-out for an alleged double
03:11:13 3 murderer. And so this is one that you document in
03:11:16 4 an assisting-agency report.

03:11:19 5 All right. They made no attempt to seize the
03:11:22 6 Tahoe. Kind of take that out, they did go out there
03:11:26 7 an hour and five minutes later, but it actually
03:11:31 8 buttresses the line above it.

03:11:32 9 Reluctance to speak with the Solicitor's
03:11:34 10 Office. Now, Judge, the Solicitor's Office knows
03:11:39 11 how to protect sources, as far as the law allows
03:11:42 12 them to do it. So it's a little strange that
03:11:45 13 they're going to work making cases that they turn
03:11:52 14 over to the prosecutors, but they don't trust the
03:11:53 15 prosecutor to have equal concern for the safety of
03:11:54 16 the informant.

03:11:54 17 And if Investigator Singleton wanted to come
03:11:58 18 and present some extra-special reason why it
03:12:02 19 shouldn't be revealed, there's a process to do that.
03:12:06 20 It's the court process. It's not disobeying the
03:12:11 21 directive to talk to the prosecutor about the
03:12:13 22 tipster. He was reluctant. That is a fact that --
03:12:14 23 well, that's a conclusion, but a conclusion given to
03:12:16 24 us by the State.

03:12:18 25 Next, that the affiant told the Solicitor's

Office that he had known him for 16 months. But he told Your Honor in a sworn affidavit that he knew him for eight years. He told you eight years; he told somebody else 16 months.

Tahoe is not actually at the home. Now, that's not part of the factor on whether or not there's still cause left. That's not a factor that you can necessarily go into on the front end. But, coupled with the fact that there was an unsuccessful effort to corroborate information, that demonstrates a reckless disregard for the truth. And, again, no report about that.

All right. Calls left if excised, Your Honor. There's a Tahoe registered to our client and our client lived in that home. What we don't have is a nexus between the home and the killing, and no evidence. In that affidavit, the defendant returned to the home after the killing. And what Your Honor would be left with is that there's a suspect who's been identified as involved in a crime and, in this case, a crime I'll ballpark 100 miles away, and he lives in a house somewhere.

And under that view, Your Honor, if somebody is arrested for a crime, then the police can get a warrant to search their house every single time that

03:13:54 1 that crime might have evidence somewhere else. And
03:13:58 2 I don't believe that's the law, Your Honor. There's
03:14:04 3 certainly cases that get somewhat close, but I have
03:14:08 4 get to be able to find a case that says you can
03:14:11 5 search a suspect's home because he was arrested
03:14:14 6 somewhere else.

03:14:15 7 THE COURT: I hear in California this morning
03:14:17 8 they executed a search warrant on that missing girl
03:14:20 9 who's been missing for 25 years, and the person who
03:14:23 10 walked her home is the one that they ultimately
03:14:26 11 arrested. But I guess that's an issue for the
03:14:30 12 California courts.

03:14:31 13 MR. BROWN: When they searched his home when he
03:14:33 14 was arrested?

03:14:33 15 THE COURT: Apparently they searched his home
03:14:34 16 and his father's home looking for evidence from an
03:14:35 17 abduction and homicide that took place 25 years ago.
03:14:37 18 And that's pretty interesting. But I just throw
03:14:40 19 that out there as food for thought because you kind
03:14:44 20 of brought it up. But --

03:14:47 21 MR. BROWN: Well, and -- and I will just guess
03:14:48 22 at this: I'm going to guess that somewhere in 25
03:14:51 23 years, he returned back to that home.

03:14:51 24 THE COURT: Probably did.

03:14:53 25 MR. BROWN: And they probably had some

03:14:56 1 information about that. And, here, we did not. And
03:14:59 2 they want it to be, because that's actually the very
03:15:00 3 thing that the informant supposedly says, is that
03:15:03 4 that Tahoe, in parentheses, and Mr. Ritter, returned
03:15:11 5 back to the home on July 9th. That's what is cut
03:15:12 6 out, is that there was some ability to conceal
03:15:15 7 evidence back in that home.

03:15:20 8 Not saving Bob Royal's oral supplementation.
03:15:22 9 Jones, very clear, and this is, again, then-Justice
03:15:25 10 Pleicones: Oral information may only be used in an
03:15:29 11 affidavit which was not knowingly, intentionally, or
03:15:29 12 recklessly supplied. If you do that, you can't
03:15:34 13 supplement, period.

03:15:35 14 And so -- and, last, we heard about good faith
03:15:41 15 yesterday. Can't have good faith in a Frank's
03:15:46 16 violation, the very nature. And, Your Honor that's
03:15:49 17 in summary. There's a lot of facts we could go
03:15:53 18 through, but Your Honor has heard it.

03:15:56 19 I do want to briefly just talk about the video.

03:15:59 20 THE COURT: Sure.

03:16:00 21 MR. BROWN: Motion action cameras or however
03:16:03 22 they work. But we now are led to believe that it
03:16:07 23 captures the officer from Estill and Lieutenant
03:16:13 24 Singleton, but it doesn't capture a Tahoe because
03:16:17 25 it's parked somewhere not at his house. Because

03:16:20 1 they're saying it's parked across the street.

03:16:22 2 Now, what's interesting is, if it's parked

03:16:23 3 across the street in the cut, then we know that

03:16:27 4 Adkins couldn't have driven through the cut at the

03:16:33 5 same time that the Tahoe was parked in the cut,

03:16:33 6 which means Adkins would have had to drive down the

03:16:37 7 dead-end road with a wall that Investigator Days

03:16:39 8 said was a tall wall.

03:16:40 9 So we're assuming that neither the Tahoe nor

03:16:43 10 Adkins drove over the wall. I guess Adkins could

03:16:48 11 have hopped the wall. But we're kind of lucky

03:16:50 12 because we have one entire wall -- and, Your Honor,

03:16:53 13 the other videos will show you a little bit about

03:16:56 14 the wall and rest of the area. There is one road in

03:17:00 15 and out of there if somebody is in that cut.

03:17:03 16 And, supposedly, this is a situation where,

03:17:07 17 fortuitously, it didn't capture the Tahoe and didn't

03:17:13 18 capture Adkins and didn't capture the movement of

03:17:15 19 anybody getting out of the Tahoe to go into the

03:17:20 20 house.

03:17:20 21 And so, Your Honor, I just point that out there

03:17:23 22 because proving a negative is hard to do, but

03:17:26 23 they're trying to ask you to make an inferential

03:17:31 24 leap which is -- we want to use Occam's Razor, the

03:17:33 25 simpler explanation, there is no video of Adkins or

the Tahoe because that didn't happen, not that the camera failed two significant times within that short time period, Your Honor.

And I appreciate your time. Certainly, this has been a very long Frank's hearing. But we do suggest that that's some smoke, at the minimum, is the amount of time it took to wade through, essentially, one line in a search warrant. Thank you.

THE COURT: And since she's going to bring it up, I'm going to cut to the chase and let you respond to what she's about to bring up so that she doesn't have to bring it up so that she knows I'm already thinking about it. The previous hearing with Adkins and the confidential informant and everything, okay, so he testifies and it's like Mr. Singleton who?

And I wasn't a CI; I never worked for him; don't talk to the man; he doesn't like me; I don't like him, et cetera, et cetera, et cetera, and the last thing that I did was finger Mr. Ritter.

We got the records Monday, the Verizon records. Whatever credibility Mr. Adkins may have had in terms of being on the stand has, shall we say, been eroded somewhat by those records and --

03:18:58 1 MR. BROWN: Yes, sir.

03:19:00 2 THE COURT: -- that's a problem for you. And if

03:19:06 3 you want to deal with it now --

03:19:08 4 MR. BROWN: Yes, sir.

03:19:09 5 THE COURT: -- that's fine. But, you know,

03:19:09 6 the --

03:19:09 7 MR. BROWN: Yes, sir.

03:19:09 8 THE COURT: A lot of this, if I'm -- if I'm

03:19:14 9 faced with a choice between someone who apparently

03:19:17 10 has been caught in a fabrication, who is living, and

03:19:19 11 an officer who, apparently, has a reputation for

03:19:23 12 truth and veracity who is not living, I may very

03:19:26 13 well be inclined, perhaps, to go with the officer as

03:19:32 14 opposed to someone who says Singleton who.

03:19:36 15 MR. BROWN: Yes, sir. Right back at ya.

03:19:40 16 So I think the best way to do it is, we put

03:19:41 17 this back up here, and we then take this out. And

03:19:44 18 there we are. And that's still a Frank's violation.

03:19:44 19 THE COURT: Okay.

03:19:49 20 MR. BROWN: Remember, Jones and Robinson didn't

03:19:52 21 deal with -- they never said that the buys didn't

03:19:54 22 happen that were described. In fact, that's

03:19:56 23 actually one of the things -- it's not whether they

03:20:01 24 happened or not; it's because we're relying upon

03:20:05 25 these different people to believe they happened. So

03:20:09 1 we don't need to go in and find out whether in
03:20:09 2 Jones, this CI, was the one who went and made the
03:20:11 3 buy or, in Robinson, the CI actually recruited
03:20:16 4 somebody else to go in, which was quite clever of
03:20:19 5 him, and he passes it on down the line.

03:20:23 6 But, Judge, they never talk about whether the
03:20:26 7 buys actually happen. My understanding is, from
03:20:28 8 reading the short facts of the case, they come back
03:20:32 9 with drugs. I mean, somebody sends them out to make
03:20:34 10 a buy and they come back with drugs; ergo, somebody
03:20:34 11 bought drugs somewhere at some time, why not at the
03:20:37 12 time that it went in there?

03:20:39 13 And then we have the omissions which do
03:20:42 14 primarily deal with, still, the characterization
03:20:46 15 that, remember, you can have a reliability problem
03:20:49 16 and it be truthful, or you can have a reliability
03:20:55 17 problem based on a false statement or an omission.
03:20:58 18 And we believe we have both.

03:20:59 19 There's a reliability problem with Adkins
03:21:04 20 because he's a liar, as Your Honor has indicated,
03:21:05 21 and we have a different problem that he has been
03:21:08 22 falsely characterized or, through omission, there's
03:21:12 23 been at least a false implication about his
03:21:14 24 positions there.

03:21:16 25 THE COURT: I understand your point. But, at

03:21:19 1 the same time, we're dealing with the question of --
03:21:22 2 and, you know, it's the evidentiary parallel of
03:21:26 3 before the witness' relation to the cause here,
03:21:31 4 okay, to a certain extent. Because at the moment
03:21:33 5 the information was conveyed to Investigator Dees
03:21:38 6 about the CI and the CI having observed the Tahoe
03:21:45 7 there, there really was no motive to fabricate.

03:21:48 8 And, again, we're dealing with a sister agency
03:21:51 9 that's simply trying to help out the West
03:21:55 10 Columbia -- Cayce -- they're trying to help out
03:21:57 11 somebody in Lexington with a homicide investigation.
03:22:01 12 So, technically, they don't have a dog in this fight
03:22:07 13 and it's outside their jurisdiction. So you already
03:22:12 14 got that reduced motive to embellish or exaggerate
03:22:17 15 than perhaps you would have if it were a local
03:22:20 16 somebody going to their magistrate.

03:22:22 17 And then you've got, of course, the
03:22:26 18 communications between Adkins and Singleton taking
03:22:30 19 place the morning of. We've got confirmation that,
03:22:35 20 apparently, Singleton at least did his due
03:22:37 21 diligence. What he saw when we drove out there, we
03:22:41 22 don't know. I think he probably didn't see a Tahoe
03:22:45 23 because that, I think, would have been relayed to
03:22:49 24 Dees as, hey, I went out there and verified it.

03:22:52 25 So if he -- we know he went out there; we know

03:22:57 1 he looked at it; we know he didn't see it because if
03:22:59 2 he had have -- if he would have seen it, he would
03:22:59 3 have told Dees about that and that would have made
03:23:03 4 its way into the affidavit, more likely than not.

03:23:05 5 And, again, at the time that this search
03:23:08 6 warrant is issued, nobody has any reason or any
03:23:12 7 motive to fabricate or to try to pin this, as I can
03:23:17 8 see, on Mr. Ritter.

03:23:22 9 So if you want to respond to that, I promise
03:23:25 10 you, Ms. Fuller, you'll have two or three minutes.

03:23:29 11 MS. FULLER: You're stealing everything.

03:23:31 12 THE COURT: Yeah. So if you want to respond
03:23:32 13 that. And then let's also deal with the issue of
03:23:37 14 what happens if, assuming for the moment you're
03:23:41 15 right, I pull all the stuff out about the
03:23:44 16 confidential informant from the affidavit.

03:23:46 17 And I -- you know, I checked off -- I'm looking
03:23:50 18 at potentially ten different facts; not conclusory
03:23:55 19 statements, but facts that, at least in my mind,
03:23:58 20 would give additional probable cause or would
03:24:02 21 support a finding of probable cause to issue that
03:24:05 22 search warrant, namely -- you know, your client was
03:24:08 23 identified by one of the people who were shot. His
03:24:12 24 identity was established through subsequent phone
03:24:15 25 calls to another witness' relative and then, I

03:24:21 1 think, potentially to your client's mother or aunt.

03:24:23 2 There was confirmation through the DMV that he

03:24:29 3 drives a Tahoe that matches the description.

03:24:32 4 Confirmation from his mother, I believe, or a

03:24:35 5 relative that he did reside at that house in Estill.

03:24:39 6 We got a lineup. I think two people picked him

03:24:45 7 out -- two or one? Two people picked him out or...

03:24:47 8 MS. FULLER: The eyewitness and then the --

03:24:47 9 THE COURT: Somebody else. Right.

03:24:50 10 MS. FULLER: -- girlfriend.

03:24:50 11 MR. PHILLIPS: And Chris Webber.

03:24:52 12 THE COURT: Okay. So we kind of got all that.

03:24:55 13 That seems pretty good. You've got identification.

03:24:58 14 And then, I guess, the question then becomes, is

03:25:02 15 that sufficient to warrant a search of this

03:25:04 16 dwelling? Is that --

03:25:06 17 MR. PHILLIPS: Well, here's what I got: He was

03:25:08 18 identified; his identity was corroborated so he was

03:25:13 19 extra-identified; he was identified as the person

03:25:17 20 with the car, further identifying him as the

03:25:20 21 perpetrator.

03:25:20 22 THE COURT: Right.

03:25:20 23 MR. BROWN: We have that he resided at the

03:25:23 24 house and that he was identified in two lineups. So

03:25:25 25 we've identified, identified, identified,

03:25:27 1 identified, and lived in the house, which is what I
03:25:31 2 just said before, and no nexus back to the house
03:25:33 3 after the killing. Because it's probable cause that
03:25:36 4 the information being sought or items being sought
03:25:39 5 will be found in the location that they are.

03:25:42 6 And so we know what they're looking for. And
03:25:46 7 by the way, Judge, this is the impetus, and I'm just
03:25:46 8 going to say it, the impetus to fudge on, if nothing
03:25:46 9 else, whether he's actually a CI is to get inside
03:25:51 10 the home. And I'm going to be honest, we've got
03:26:02 11 Supreme Court cases going decades about pretext
03:26:07 12 traffic stops.

03:26:08 13 And, make no bones about it, Mr. Phillips and I
03:26:12 14 will make a career on this, but I would suggest to
03:26:14 15 you, about 95 percent of traffic stops end up with
03:26:16 16 questions about drugs in the car. And is it -- am I
03:26:20 17 really to believe that they pulled that one car out
03:26:23 18 of the 20 cars speeding on 95 so they can look into
03:26:28 19 it? Yes, absolutely.

03:26:28 20 That's why they pulled the guy with the
03:26:33 21 out-of-state plates or the guy who looked like the
03:26:37 22 courier. And that's what law enforcement does for a
03:26:38 23 living. And we're glad because if they had kind of
03:26:39 24 turned a blind eye to it, we would have more
03:26:39 25 lawlessness in society.

03:26:41 1 But, Your Honor, the Fourth Amendment is there
03:26:44 2 because we're not just here to capture guilty
03:26:48 3 people, otherwise, we would just have general
03:26:51 4 warrants. I think those are one of the things that
03:26:53 5 we fought the ground over.

03:26:55 6 And so, Your Honor, it really is -- you've got
03:26:58 7 this omission about how weak Mr. Adkins is. And you
03:27:04 8 hardly got to lie about it. I've used him a whole
03:27:07 9 bunch before as an informant. That may not be
03:27:07 10 stated explicitly, but that's clearly the way she
03:27:10 11 took it and that's the way the warrant reads. He's
03:27:15 12 an informant and we've used the confidential
03:27:16 13 informant -- not a source -- and we've used him in
03:27:17 14 the past. And that's in that and that was told to
03:27:22 15 Judge Williams. And so that's -- that's real.

03:27:25 16 And, I mean, so what, they fudge a little, get
03:27:28 17 to the home and find nothing; they didn't kick the
03:27:31 18 door down or shoot Grandma or a child; no harm no
03:27:36 19 foul. I mean, we've got qualified immunity. We've
03:27:41 20 got clearly established rights law.

03:27:42 21 I mean, you cannot win a lawsuit against law
03:27:51 22 enforcement for a search. We've seen an entire
03:27:51 23 protest movement over how unaccountable they are
03:27:54 24 when they do things like that. And so it's just as
03:27:54 25 easy to fudge on it as it is to be restrained. And

03:27:59 1 it's sad, but true.

03:28:02 2 THE COURT: At least this wasn't a no-knock at
03:28:04 3 night.

03:28:05 4 All right. I'm assuming you want to comment
03:28:10 5 briefly, Ms. Fuller. Of course, I'm familiar with
03:28:10 6 the standard that I'm faced with is immaterial. I
03:28:15 7 think we can all agree that the reference would
03:28:18 8 constitute a material statement. And, obviously, is
03:28:20 9 it either knowingly and intentionally false or with
03:28:26 10 recklessness regard for the truth? And you've got
03:28:26 11 the floor for anything you need to tell me.

03:28:29 12 MS. FULLER: Thank you, Your Honor. And, Your
03:28:31 13 Honor, for the record, if at any moment that I
14 believed that the defendant's constitutional rights
15 were violated, we wouldn't even be standing here
16 arguing these motions. I just want that to be also
17 clear.

18 Your Honor, what's important in this case is
03:28:46 19 kind of what you hit on. And I've prepared -- I
03:28:46 20 believe it's up there because it was marked
03:28:48 21 previously -- a timeline, because what the defense
03:28:52 22 is asking is their burden -- so I'm not asking you
03:28:55 23 to do anything because it's their burden to meet --
03:28:58 24 is the facts. And we cannot ignore them.

03:29:02 25 This was an assisting agency. And what a

03:29:05 1 ruling granting their motion was essentially tell --
03:29:13 2 essentially be is that from July 9th of 2018, that a
03:29:21 3 conspiracy began on that day to plant information in
03:29:26 4 a search warrant, and that Investigator Singleton,
03:29:30 5 on the 9th, one, had to know that this information
03:29:30 6 was going to be included in a search warrant to
03:29:39 7 intentionally mislead the magistrate, recklessly
03:29:41 8 described to mislead the magistrate. That's what
03:29:41 9 we're dealing with, what the magistrate knew on July
03:29:47 10 18th, 2018.

03:29:49 11 So on July 9th, based on what they're saying,
03:29:51 12 is that Perry Singleton decided on this day, I don't
03:29:54 13 like Damien Ritter; I'm going to do whatever I can
03:29:57 14 to violate his constitutional rights. That's what
03:30:01 15 their argument is saying. And so from there -- one
03:30:05 16 attorney, one motion.

03:30:06 17 So from there, on the 18th, you have testimony
03:30:09 18 from Investigator Days. When he filled out the
03:30:13 19 affidavit, filled out the search warrant, drafted
03:30:15 20 it, he left the affiant blank. And that's important
03:30:20 21 in this case, because if it wasn't Perry Singleton
03:30:23 22 who signed it, it would have been anyone signing
03:30:26 23 that.

03:30:26 24 In fact, we put in the July 23rd search warrant
03:30:26 25 with that same language that's not being challenged

1 here that Investigator Days swore out, because at
2 the time -- and I know Your Honor is familiar with
3 the standard. Some of my argument is for the
4 record, not just you, Your Honor.

5 But the courts have made it clear, when we talk
6 about truthful, in looking at, I believe, it's
7 U.S. v. Tate, when they held in Frank's on the
8 principle that probable cause under the Fourth
9 Amendment must be demonstrated by a truthful
10 showing, but pointed out immediately that a truthful
11 showing must be understood in the practical context
12 of procuring a search warrant, referring to Frank's.

13 The Court recognized that this did not mean
14 truthful in the sense that every fact recited in the
15 affidavit is necessarily correct, for probable cause
16 may be founded upon hearsay. That's also quoting
17 Frank's.

18 The court pointed out that it is to be truthful
19 in the sense that the information put forth is
20 believed or appropriately accepted by the affiant as
21 true.

22 You had heard testimony from that when he --
23 Investigator Days, when he swore -- when he drafted
24 that affidavit. He had no reason to question that
25 sentence he included in there. He had no reason to.

03:31:45 1 Part of the sentence includes that a call came in.
03:31:49 2 That's truthful. Part of the sentence included the
03:31:52 3 vehicle. That's truthful. There's records that
03:31:53 4 prove it. Bullet holes, inevitable discovery, he
03:31:57 5 discovered other witnesses who saw bullet holes in
03:32:00 6 the car.

03:32:01 7 It doesn't matter that, on that day, when law
03:32:04 8 enforcement went there, the car wasn't there and the
03:32:07 9 defendant wasn't there. It really doesn't matter
03:32:08 10 for what the officers received information, included
03:32:10 11 it in the search warrant, and presented it to the
03:32:13 12 magistrate. What they would have had to have known
03:32:18 13 on July 9th is that the vehicle would never have
03:32:23 14 been recovered.

03:32:24 15 For this to be an intentional lie that they
03:32:30 16 couldn't prove it, is that they couldn't prove or
03:32:31 17 disprove it, we're going to lie to the magistrate;
03:32:32 18 we're going to start on the 9th to create this
03:32:39 19 conspiracy. Then, even on the 18th when they swore
03:32:39 20 it out, they would have had to know that they would
03:32:39 21 never have recovered the vehicle.

03:32:45 22 It's just putting too much on an assisting
03:32:47 23 agency to think that they frankly care that much
03:32:49 24 about what we're prosecuting up here. And to
03:32:52 25 tarnish a decorated officer's character for a

03:32:56 1 sentence for a phone call --

03:32:58 2 MR. BROWN: I object.

03:32:58 3 MS. FULLER: -- that he --

03:32:59 4 MR. BROWN: That's just my job.

03:32:59 5 MS. FULLER: That he --

03:33:01 6 MR. BROWN: So I hear something coming about --

03:33:03 7 for me to tarnish it is something wrong, that's not

03:33:07 8 what Your Honor is supposed to be looking at. So I

03:33:11 9 object.

03:33:11 10 THE COURT: The objection is noted.

03:33:15 11 MS. FULLER: Your Honor, what's important is

03:33:18 12 that on the 9th, Damien Ritter was still a fugitive.

03:33:25 13 All of the information that was coming in primarily

03:33:28 14 was where is he? Can we arrest him? When he turned

03:33:33 15 himself in on the 13th, great. He fled and then he

03:33:37 16 came back.

03:33:37 17 The courts look at the common-sense reading of

03:33:43 18 a search warrant. There was an example that I

03:33:50 19 submitted where -- the courts in the motel case

03:33:51 20 where the main concern of the court there was law

03:33:54 21 enforcement left out in the affidavit the why; how

03:33:57 22 do we know that this person was the suspect for

03:34:01 23 items to be recovered in the room?

03:34:06 24 We're not dealing with a drug case where the

03:34:09 25 confidential informant would be the only witness to

03:34:11 1 the crime. That's not what we're dealing with here.
03:34:16 2 We have eyewitness and other evidence that's
03:34:16 3 detailed in the affidavit to support the reason why
03:34:19 4 law enforcement believed he was a suspect.

03:34:20 5 This isn't a drug buy where you have to rely on
03:34:24 6 one person who may or may not be wired, who
03:34:27 7 conducted a drug transaction. We're not dealing
03:34:30 8 with an individual who witnessed the homicides on
03:34:34 9 July 5th. We're dealing with a tip: You guys are
03:34:37 10 looking for Ritter; you guys want to arrest him; was
03:34:42 11 or saw him at his house. It was just a tip that
03:34:44 12 came in.

03:34:44 13 And, Your Honor, I know you already stated the
03:34:47 14 factors from Frank's, and I know you have reviewed
03:34:51 15 my outline of the cases that cover it, but I think
03:34:55 16 it's important to stress that just a negligence or a
03:34:59 17 mistake in listing the person as a confidential
03:35:03 18 informant versus listing his name, so reducing his
03:35:05 19 credibility needed to support him, not maybe
03:35:06 20 referring to him as a tipster, Frank's doesn't
03:35:11 21 punish innocent mistakes or just mere negligence.

03:35:17 22 We're looking at intentional behavior of law
03:35:19 23 enforcement, intending to deceive the issue in
03:35:22 24 magistrate. And we simply don't have that here. I
03:35:23 25 don't believe the defense has met their burden by, I

1 believe it's preponderance of the evidence, that
2 there was a Frank's violation.

3 And setting aside, let's just say -- which I
4 don't believe that's the case -- that we separate
5 that statement. There's still sufficient probable
6 cause in there as to why law enforcement suspected
7 him, why there's a connection that he lived there.
8 And common sense, naturally, evidence of the crime
9 would potentially be at his home.

10 In terms of responding to -- not that I believe
11 it matters -- the -- just certain misstatements, I'm
12 sure may be unintentional, but in Defendants, when
13 they're presenting -- there has been never an issue
14 with Investigator Singleton wanting to speak to us.
15 He answered; he responded.

16 The reluctance, which is clear in the letter
17 that I wrote, was to provide the name of the
18 individual. And you've heard testimony that he was
19 concerned that if he revealed the person's name,
20 that there would be retaliation. His exact words
21 were, I'm going to have another murder on my hands.

22 And so it's not reluctance to speak to our
23 office, it was reluctance and hesitation to turn
24 over the name of the person. He wanted to ensure
25 that that individual would be protected and not be

03:36:39 1 killed as a result of this mere tip information that
03:36:40 2 he provided to law enforcement.

03:36:50 3 Then, in his affidavit, Your Honor, fully
03:36:53 4 acknowledging -- it didn't flat-out just say it's
03:36:58 5 just a snitch, which is what it really should have
03:37:02 6 just -- really what he should have just wrote. But
03:37:05 7 what he did include is that this person has given me
03:37:09 8 reliable information in the past.

03:37:11 9 You've received testimony from Lieutenant Clapp
03:37:14 10 that we're talking about sources that provide random
03:37:18 11 information. We don't know, obviously, if
03:37:20 12 Mr. Adkins -- as I expressed in previous hearings,
03:37:23 13 would probably not come up here and admit the truth.
03:37:26 14 That was kind of fear -- you know, because of his
03:37:27 15 fear. We knew that. Like, I went into this not
03:37:27 16 even expecting it and not even concerned about it
03:37:31 17 because I did not expect him to come in here and say
03:37:34 18 that he snitched. I don't expect snitches to do
03:37:38 19 that.

03:37:38 20 But it doesn't mean that Perry Singleton's
03:37:43 21 affidavit is untruthful, because I don't believe it
03:37:45 22 is. Because Adkins could have simply been a person
03:37:50 23 that simply says John, I don't know, Q from 2016 is
03:37:54 24 around the corner; he called him; he goes around the
03:37:57 25 corner, and he finds him. It's simple as that. And

03:38:00 1 that's literally how basic and common sense I
03:38:00 2 interpret his affidavit to be. But this is someone
03:38:05 3 who is randomly, I need to find someone, John Adkins
03:38:10 4 had the information. That's literally how I read
03:38:13 5 it.

03:38:13 6 And I understand that, in the formal sense, he
03:38:17 7 wasn't in narcotics. And you've had testimony that,
03:38:20 8 in criminal investigations, they don't document or
03:38:22 9 pull files. They're not paid; they're just people
03:38:22 10 who give information who don't want to be named.
03:38:32 11 It's a small town. We have small towns here in the
03:38:32 12 Eleventh Circuit. It happens all the time, all the
03:38:35 13 time.

03:38:43 14 THE COURT: All right.

03:38:44 15 MS. FULLER: And, Your Honor, that --
03:38:47 16 co-counsel made a good point too: If Singleton
03:38:52 17 believed it was a lie, so that included the search
03:38:57 18 warrant, he wouldn't have driven to the house that
03:38:57 19 day. He relied on the information he was receiving.

03:39:03 20 And one other thing. I'm not sure if Your
03:39:04 21 Honor had the opportunity to look through -- and I
03:39:04 22 just thought about it because I forgot to mention
03:39:05 23 it. In Court's 8, and you can check my math later,
03:39:11 24 but in the month of July alone, there are 25 phone
03:39:15 25 calls on the 7th; you have the 9th -- throughout the

03:39:23 1 day of the 9th; on the 11th; on the 13th, three
03:39:30 2 calls. And the 13th is when Ritter was arrested.
03:39:36 3 Flipping through, calls on the 18th, the day of
03:39:42 4 the search warrant and at the end of the month.
03:39:52 5 Twenty-five calls in the month of July for a witness
03:39:54 6 who they put up to recant. And just because he's
03:39:58 7 recanting now because of fear of being killed does
03:40:01 8 not negate the probable cause that law enforcement
03:40:05 9 would have had back then. It just wouldn't.
03:40:09 10 At the time, law enforcement believed it to be
03:40:11 11 truthful and they relied on it. And I stand on all
03:40:14 12 of the cases. And the five-page memo that I
03:40:18 13 submitted to the Court is marked as Court's Exhibit,
03:40:21 14 I believe, 13. And it's up there already, Your
03:40:25 15 Honor, but you have it in your e-mail. If you want
03:40:28 16 me to --
03:40:28 17 THE COURT: I have it in my e-mail and I have
03:40:33 18 been looking at it while you've been talking. So I
03:40:34 19 think we're good. And I did review it, I think,
03:40:37 20 last Friday or Saturday, whenever you sent it.
03:40:37 21 MS. FULLER: Thank you, Your Honor.
03:40:40 22 THE COURT: Any brief reply? You've got burden
03:40:42 23 of proof, so you get the last word.
03:40:42 24 MR. PHILLIPS: Very briefly, Your Honor. In
03:40:44 25 the reluctance memo, Defense Counsel's eyes only,

1 after all of the reluctance, Investigator Singleton
2 calls him John Scott again. I mean, this is after
3 we've -- I mean, this is 2020. I mean, this is less
4 than two months before the time we're going to trial
5 before COVID, and he's got him as a different name.

6 And, Your Honor, apart from whether there was a
7 false statement made by Adkins or Singleton, we're
8 still, you're still, looking at the question of 51
9 percent versus 49 that there was a tipster without
10 corroboration that was referred to as a CI.

11 And before anybody says that was Investigator
12 Days that just typed those words wrong, he says he
13 typed what was told to him by Lieutenant Singleton.
14 And so, again, Your Honor, I don't know how else to
15 distinguish. We've asked and asked for the CI
16 files. CIs are documented for Brady purposes;
17 they're documented for reliability purposes in the
18 future; they're documented. You can't have a
19 reliability determination for somebody that's only a
20 word-of-mouth street source, because when they pass
21 away, someone like Lieutenant Clapp can't use or
22 rely upon any of the otherwise undocumented but
23 maybe reliable informants. And it's just not the
24 reality. They know how to document it, when it's a
25 real informant. And when it's a street source, it

03:42:29 1 might be helpful.

03:42:31 2 My roommate in law school and I talked about it
03:42:33 3 years ago: You can look on the street and see the
03:42:35 4 cars that you can probably put money on that have
03:42:39 5 drugs in them. That's not probable cause. It has
03:42:42 6 to be based on some articulable fact.

03:42:47 7 And the idea that Mr. Ritter lives at that home
03:42:51 8 and has been identified as a murder suspect, that
03:42:54 9 alone is no more than that same hunch; that there's
03:43:01 10 something in there supporting the murder. And
03:43:03 11 that's -- that's really why there's too much of an
03:43:08 12 inferential leap on that last part, that striking
03:43:08 13 this still leaves cause that Ritter lives at that
03:43:11 14 house. Thank you, Your Honor.

03:43:12 15 MS. FULLER: And, Judge, if I can just briefly,
03:43:15 16 at the last hearing, I didn't think to bring it up
03:43:20 17 again, but John Scott, in that same letter, when he
03:43:24 18 gave that name, Scott is the father's last name and
03:43:26 19 he assumed it was the same. But the phone he gave
03:43:30 20 belongs to -- and John Adkins answered the phone to
03:43:34 21 the phone number that he gave. And I believe that
03:43:36 22 was cleared up in October's testimony.

03:43:39 23 THE COURT: Right. I think -- yes. It was
03:43:40 24 either in October or -- it was sometime. But I
03:43:43 25 remember.

03:43:43 1 MS. FULLER: In October.

03:43:44 2 THE COURT: It would be reflected in the
03:43:47 3 transcript that's in front of you. You may be right
03:43:50 4 that it was October. I thought it was some other
03:43:52 5 time. But --

03:43:52 6 MS. FULLER: It was October, Your Honor.

03:43:52 7 THE COURT: Okay. Let's go with October.

03:43:54 8 MS. FULLER: And it was clarified in -- when
03:43:56 9 Investigator Days went on the stand. And the phone
03:44:00 10 number that was provided by Investigator Singleton
03:44:01 11 was the same number that he confirmed was his phone
03:44:05 12 number as well.

03:44:08 13 THE COURT: Okay. Good enough.

03:44:17 14 Let me take a brief break, then I'll be back in
03:44:17 15 about ten minutes with my ruling. I don't think we
03:44:17 16 have any time today for anything else, to tell you
03:44:24 17 the truth. So we'll be breaking after I rule
03:44:24 18 because we're going to be at 4:00 or 4:05. So
03:44:29 19 you're going to need to check your calendars.

03:44:35 20 MR. BROWN: We do have some housekeeping
03:44:37 21 matters related to this preservation that we would
03:44:44 22 like to at least put forth to Your Honor, like, when
03:44:44 23 will we get the cell phone extraction; can we
03:44:49 24 revisit your ruling if it's got something important
03:44:49 25 on it?

03:44:50 1 And then the other part is, we still don't know
03:44:52 2 when the preservation order was sent to Hampton
03:44:57 3 County, who received it, and how they received it.

03:45:00 4 THE COURT: Well -- and I'll let you have that
03:45:02 5 conversation with them here in just a moment. It's
03:45:05 6 going to go down one of two ways here: Either I'm
03:45:09 7 going to rule for you or I'm going to rule for the
03:45:12 8 State.

03:45:13 9 Once I do that, Hampton County is kind of out
03:45:18 10 of this, absent something that comes up, as I see
03:45:22 11 it. Because most of your issues take -- most of
03:45:26 12 your issues with the preservation thing out in
03:45:26 13 Hampton County relate to this very issue that I'm
03:45:33 14 deciding. Am I wrong?

03:45:34 15 MR. PHILLIPS: Well, Your Honor, we've asked
03:45:35 16 for all of the information, and we've gotten zero,
03:45:40 17 none, not a single stitch of information that you've
03:45:44 18 ordered preserved. I mean, I can't see it flaunted
03:45:48 19 anymore.

03:45:48 20 THE COURT: Well --

03:45:48 21 MR. BROWN: I mean, nothing. There's nothing
03:45:50 22 to get. I mean, we don't know, because we can't
03:45:53 23 look.

03:45:54 24 THE COURT: Yeah. And y'all can talk about
03:45:56 25 that. And maybe we'll put that on the record when I

03:45:57 1 come back and maybe I won't.

03:45:57 2 MR. BROWN: I'll feel better if I knew that

03:45:59 3 somebody actually told them to preserve it.

03:46:02 4 MS. FULLER: Yes. The order was sent to

03:46:07 5 Hampton County.

03:46:08 6 MR. BROWN: All right. Then if they got it --

03:46:08 7 THE COURT: So y'all can talk about that while

03:46:10 8 I'm reflecting, seriously, on this issue. And we'll

03:46:13 9 put something on the record later, maybe, when I

03:46:16 10 return and I rule.

03:46:18 11 But I understand your position. The phone, I'm

03:46:22 12 assuming, they're going to check; after-discovered

03:46:26 13 evidence, you can always move to reopen the

03:46:29 14 question. I think this would be a textbook example:

03:46:33 15 It's a locked phone, nobody knows the combo, and if

03:46:33 16 it can be cracked and that information can be

03:46:39 17 accessed and, all of a sudden, relevant material

03:46:42 18 evidence becomes privy to the parties, then that is

03:46:46 19 the, I think, textbook example of after-discovered

03:46:48 20 evidence where the issue might be able to be

03:46:49 21 revisited. But for purposes of this hearing --

03:46:54 22 MR. BROWN: We did just hear it was e-mailed to

03:46:59 23 Singleton.

03:46:59 24 THE COURT: Sorry?

03:46:59 25 MR. BROWN: The preservation order was e-mailed

03:47:00 1 to Singleton. And we don't have that e-mail because
03:47:02 2 they have no records of this case, is what we were
03:47:06 3 told.

03:47:06 4 MS. FULLER: Oh, okay.

03:47:07 5 MR. BROWN: So I guess he deleted the e-mail
03:47:10 6 that said keep all your e-mails.

03:47:11 7 THE COURT: Okay. We're going off the record.
03:47:13 8 Y'all have a nice ten minutes in here talking about
03:47:14 9 this. Enjoy yourselves. Thank you.

03:47:14 10 MS. FULLER: Thank you.

04:03:43 11 (Brief recess.)

04:03:43 12 MR. BROWN: Judge, it's worth saying, my client
04:03:48 13 said he didn't know and nobody told him to stand up
04:03:51 14 when you came in. I apologize that I didn't tell
04:03:54 15 him that.

04:03:54 16 THE COURT: I take no offense.

04:03:54 17 MR. BROWN: He actually pointed that out to me.

04:04:05 18 THE COURT: I take no offense.

04:04:05 19 All right. I think here's where we are on
04:04:09 20 this: First, the legal standard. It's been
04:04:12 21 announced several times what the Court is asked to
04:04:16 22 decide and what the standard is in a case such as
04:04:19 23 this. The question of materiality doesn't seem to
04:04:19 24 be an issue. I think both sides agree that the
04:04:30 25 challenged portion of the affidavit would be

04:04:31 1 material and it's not just fluff. The question is
04:04:36 2 whether the information there was knowingly and
04:04:41 3 intentionally false or was entered with reckless
04:04:47 4 disregard for the truth.

04:04:48 5 And I've reviewed the line of cases previously
04:04:53 6 that have been submitted by both the State and the
04:04:56 7 Defense. And it goes without saying that, of
04:04:58 8 course, the Defense bears the burden of proving
04:05:03 9 relief under Frank's by a preponderance of the
04:05:05 10 evidence.

04:05:06 11 The Court, at the last hearing, certainly did
04:05:12 12 consider, in light of the peculiar nature of
04:05:15 13 everything, that perhaps the informant, Adkins, may
04:05:22 14 have been telling the truth. And the Court had some
04:05:25 15 concerns at that point in time, just because of
04:05:28 16 the -- what -- up until that time, it seemed like a
04:05:35 17 somewhat erratic or hesitant behavior or
04:05:40 18 characterization of Adkins by Singleton. The Court
04:05:46 19 did have some concerns, which is precisely why the
04:05:49 20 Court ordered that this hearing go forward today.

04:05:52 21 Viewing the record as a whole, the Court finds
04:05:55 22 that the Defense has not met its burden of proving
04:06:00 23 that the challenged portion of the affidavit was
04:06:03 24 either intentionally falsified, knowingly falsified,
04:06:10 25 or otherwise recklessly falsified.

04:06:13 1 The Court concludes that, especially in light
04:06:15 2 of the telephone records from Verizon, it would
04:06:19 3 appear that the confidential informant Adkins'
04:06:24 4 testimony is, to say the very least, quite suspect
04:06:28 5 at this particular point in time.

04:06:30 6 And, based upon everything that has been
04:06:34 7 presented to me, although there may be some issues
04:06:44 8 the Defense has raised which, if Singleton were
04:06:48 9 alive, we could address those in greater detail, but
04:06:52 10 the Court cannot find that those discrepancies or
04:06:56 11 the issue of the relationship between Adkins and
04:07:01 12 Mr. Singleton's sister or the discrepancies about
04:07:09 13 how long the two have known each other or perhaps
04:07:13 14 the colloquial way that Singleton referred to Adkins
04:07:24 15 as a confidential informant.

04:07:28 16 If anything, the Court finds that it's
04:07:30 17 extremely likely that Investigator Singleton meant
04:07:34 18 that in a layman's parlance and not in the legal
04:07:39 19 sense of the word "confidential informant." I think
04:07:44 20 he considered it as a tip; I think he acted on that
04:07:47 21 tip. Based upon the video, it looks like he drove
04:07:51 22 out there. Obviously, the car was not there. The
04:07:53 23 Tahoe was likely not there because he, otherwise,
04:07:56 24 didn't put it in the affidavit that it was there at
04:08:01 25 the time that he drove out there on July 9th. Does

that mean that Adkins did not see it there previously? Of course not. Cars move. By definition, that's what they're supposed to do.

Adkins very well could have seen it and probably did see at some point earlier in the day. By the 25 calls, it's clear that the two individuals had a relationship; Adkins and Singleton had a relationship and they did communicate frequently, particularly on the day that is in question, July the 9th.

So for those reasons, the Court would find that the challenged portion -- the Defense has not met its burden of proving by the preponderance of evidence that the challenged portion applies by way of Frank's or should be excluded by way of Frank's.

The Court also notes that if I were to find for the Defense, if I had found that the Defense had met their burden by the preponderance of evidence proving that that portion should be excised from the affidavit, there are still, at least by my count, numerous accurate and uncontested grounds which would support a magistrate granting probable cause to search the dwelling where the defendant lived or was known to live. I've outlined several of those. But, of course, the affidavit speaks for itself.

04:09:29 1 As far as the allegation or contention that
04:09:33 2 there was insufficient evidence linking the
04:09:36 3 defendant to this particular residence, based upon
04:09:39 4 what has been presented, based upon the statement in
04:09:42 5 the affidavit from the defendant's mother that he
04:09:49 6 lived there at that address, what we do have is an
04:09:57 7 individual who is on the run; the Tahoe hadn't been
04:10:00 8 located; still, of course, has not been located to
04:10:02 9 this day; he's identified by the surviving victim as
04:10:07 10 the person who shot the two other individuals and
04:10:11 11 the surviving victim.

04:10:13 12 He is, of course, on the run. And it stands to
04:10:17 13 reason that the police would have probable cause to
04:10:20 14 try to find some fruits of the crime at the only
04:10:24 15 residence or at the only address that they know of
04:10:27 16 as belonging to the defendant.

04:10:29 17 So, for those reasons, even if the Court were
04:10:33 18 to exclude the challenged portion from the affidavit
04:10:37 19 in support of the search warrant, there would still
04:10:40 20 be sufficient independent grounds to provide
04:10:42 21 probable cause to the issuing magistrate to issue
04:10:45 22 the warrant.

04:10:49 23 I do wish to note that I find the testimony of
04:10:51 24 the investigators and the individuals who appeared
04:10:57 25 today and, I believe, on Monday from Hampton to be

04:11:02 1 very credible. And their characterization of
04:11:07 2 Mr. Singleton's professionalism, I think, is
04:11:11 3 something that the Court should consider and has
04:11:14 4 considered. And that, of course, does play into the
04:11:18 5 Court's decision here today. So that will be the
04:11:22 6 Court's ruling on that.

04:11:23 7 And I assume that y'all have had a chance to
04:11:28 8 trade notes. And I know that there's a number of
04:11:32 9 other things that we were looking at or hoping to
04:11:35 10 look at addressing today. The -- I think the
04:11:39 11 Biggers hearing and a Denno hearing. I assume that
04:11:42 12 there was a statement taken from the defendant then.
04:11:46 13 I had not heard about that.

04:11:48 14 MS. FULLER: I hadn't either, Your Honor.

04:11:51 15 THE COURT: Oh, okay.

04:11:51 16 MR. PHILLIPS: The Denno can be scratched. We
04:11:54 17 talked the other day, and that is -- that motion
04:11:54 18 that I filed was a placeholder for last-minute, kind
04:11:58 19 of week-before-trial statements that somehow pop up.
04:11:58 20 And I've had a couple of trials where that's
04:12:05 21 happened. And it's to ensure that I can make the
04:12:07 22 argument that it should be suppressed, if it
04:12:07 23 miraculously appears.

04:12:10 24 THE COURT: Do we still need a Neil v. Biggers
04:12:15 25 on the, I guess, photo lineup?

04:12:17 1 MS. FULLER: We would need it for the
04:12:18 2 eyewitness, Your Honor.

04:12:19 3 THE COURT: Okay.

04:12:19 4 MR. BROWN: I think there were two photo
04:12:19 5 lineups.

04:12:19 6 THE COURT: There was one with the --

04:12:20 7 MR. BROWN: Maybe three, actually.

04:12:22 8 MS. FULLER: There are three photo lineups, but
04:12:23 9 there's only one of the actual crimes. I don't
04:12:26 10 believe Neil vs. Biggers applies to identifying who
04:12:29 11 you're referring to.

04:12:30 12 THE COURT: Okay. What were the other two
04:12:32 13 then?

04:12:33 14 MS. FULLER: The other two was the -- one of
04:12:34 15 the victims' girlfriends identified who she referred
04:12:34 16 to as the cousin --

04:12:34 17 THE COURT: Right.

04:12:34 18 MS. FULLER: -- on prior occasions. But she
04:12:41 19 didn't witness the homicide. And the other person
04:12:41 20 was someone across the street, I believe, who saw
04:12:44 21 the defendant there on prior occasions, but not a
04:12:47 22 witness to the actual murders.

04:12:49 23 MR. BROWN: No, no, no. The across-the-street
04:12:52 24 guy says he identified him as getting in the Tahoe.

04:12:55 25 MS. FULLER: On the same day as the homicide?

04:12:55 1 No, not at all.

04:12:55 2 MR. BROWN: If Your Honor gives me a second,

04:13:01 3 I'll have my law clerk find those real quick.

04:13:01 4 MS. FULLER: I mean, if you find it, let me

04:13:03 5 know; I'd love to use it. I'd love to use it, so

04:13:08 6 please find it.

04:13:09 7 MR. BROWN: I mean, I said we'd get it out now.

04:13:14 8 MS. FULLER: The -- my understanding of, I

04:13:15 9 believe it's Chris Webber, he, on prior occasions,

04:13:17 10 saw the Tahoe there and identified the person who he

04:13:21 11 saw, on prior occasions, driving the Tahoe to be the

04:13:23 12 defendant. But in terms of witnessing the crime, if

04:13:23 13 there's another eyewitness, I would love to know.

04:13:28 14 Not driving it, but next to it. So that was

04:13:31 15 just done -- but that that's not anything to do with

04:13:33 16 an eyewitness. And Neil vs. Biggers has to do with

04:13:38 17 eyewitness to the actual crime, is my understanding.

04:13:41 18 THE COURT: We're obviously going to need to

04:13:41 19 reconvene on this because I think we're trying -- I

04:13:41 20 asked my clerk while we were on break, and I think

04:13:43 21 it's the 14th of June that we're looking at trying

04:13:50 22 this.

04:13:50 23 MS. FULLER: No, the 21st.

04:14:03 24 MR. BROWN: The day after Father's Day.

04:14:03 25 MS. FULLER: I know you're definitely

04:14:05 1 unavailable for the week of 7th, Your Honor. I'm
04:14:05 2 not sure about the week of the 14th. You may have
04:14:14 3 been assigned to --

04:14:14 4 THE COURT: The week of the 28th, what's going
04:14:17 5 on that week in Lexington?

04:14:17 6 MS. FULLER: Of what month?

04:14:19 7 THE COURT: June. And I'm just trying -- if I
04:14:24 8 try this the 21st, I'm beginning to harbor some
04:14:25 9 concerns that we may bleed over into the second
04:14:26 10 week.

04:14:27 11 MS. FULLER: There might be common pleas. I
04:14:27 12 can pull up the calendar quickly.

04:14:39 13 THE COURT: Okay. So --

04:14:39 14 MS. FULLER: I anticipate a bleed-over, so we'd
04:14:39 15 be prepared for that, Your Honor.

04:14:39 16 THE COURT: And I'm kind of thinking down the
04:14:41 17 line. A lot of people have vacations that time of
04:14:46 18 year because it's July 4th, sort of. And I'm seeing
04:14:50 19 Mr. Brown raise his hand. First rule of the
04:14:53 20 practice of law is you never screw with another
04:14:56 21 lawyer's vacations and you make every effort not to
04:15:01 22 screw with the judge's vacation.

04:15:05 23 MR. BROWN: We predict the bleed-over. But I
04:15:05 24 will tell you, I have a vacation home that we rented
04:15:09 25 at Fripp --

04:15:09 1 THE COURT: Okay.

04:15:09 2 MR. BROWN: -- for that week. We did predict

04:15:13 3 that it would be a bleed-over. But I have other

04:15:14 4 family, so I did intend to use it --

04:15:14 5 THE CLERK: You said the week of June 28th,

04:15:14 6 Your Honor?

04:15:14 7 THE COURT: Yes.

04:15:58 8 THE CLERK: We have PCRs non-jury and we have

9 common pleas non-jury.

10 THE COURT: Okay.

11 MS. FULLER: And, Your Honor, just looking at

12 the calendar, it looks like you are assigned a

13 digital court reporter for the trial.

14 (Off-the-record discussions.)

04:15:59 15 THE COURT: All right. My secretary will be in

04:16:01 16 touch. We can coordinate and discuss when we can do

04:16:06 17 these other issues and address any other

04:16:09 18 housekeeping issues which are going to be arising in

04:16:13 19 the interim, particularly the question of the cell

04:16:16 20 phone extraction, et cetera, that, obviously, I

04:16:18 21 assume, Mr. Phillips is still wanting to pursue.

04:16:22 22 And I'm not hearing he doesn't want to pursue it,

04:16:26 23 so --

04:16:26 24 MS. FULLER: Your Honor, we've already called

04:16:30 25 in a favor. They've picked up the phone. I gave

04:16:36 1 them a targeted range from July 5th to July 18th,
04:16:39 2 the defendant's name search, John Adkins, the phone
04:16:43 3 number, Tahoe, bullet holes. And that would be the
04:16:47 4 report that we're requesting, because I don't
04:16:50 5 believe it's appropriate to do an entire extraction
04:16:56 6 beyond what's relevant here.

04:16:56 7 THE COURT: Correct. And I don't want to
04:16:59 8 stumble upon information we don't need to be privy
04:17:01 9 to anyway.

04:17:01 10 MS. FULLER: And, Your Honor, just a couple of
04:17:02 11 other things: We've kind of addressed -- we viewed
04:17:03 12 one motion as a motion in limine that we would have
04:17:08 13 with something similar. We've agreed that prior to
04:17:11 14 testimony from either side, that we would alert the
04:17:14 15 Court. And we'll just handle that in-camera because
04:17:16 16 it doesn't -- until you're privy to all the facts in
04:17:22 17 the case, some of those motions wouldn't be
04:17:22 18 appropriate for you to rule on pre-trial.

04:17:23 19 MR. BROWN: But I'd like to be heard on that.
04:17:26 20 We filed a 404(b) --

04:17:26 21 MS. FULLER: Right.

04:17:28 22 MR. BROWN: -- and we talked about it.
04:17:30 23 Primarily, our concern, as my client has no prior
04:17:30 24 record, is that there would be potentially
04:17:34 25 information that might be considered an overt act,

as it says, or bad act that's not subject to a conviction which must be proven by clear and convincing evidence. And my other law clerk, Frank Draper, otherwise known as Pee Wee Gaskin's last lawyer --

THE COURT: Right.

MR. BROWN: And we always called those trials within trials. So --

THE COURT: Right. I don't know if the State was planning on going there.

Is that something y'all were looking at exploring, bad acts not subject to a conviction?

MS. FULLER: Well, Your Honor, the specific, if I read his motion correctly, was about drug activity. What we discussed here was calling him a drug dealer versus the day of the crime. You can't ignore drugs the day of. And so it's time and technicality, and there are going to be some things back and forth. But I think it would be more appropriate -- but I agree not to call him that, if it's not relevant, until it's relevant, if at all.

THE COURT: I think drug issues are kind of permeating throughout and percolating throughout this. And it's -- I think, correct me if I'm wrong, there are aspects of that perhaps attributable to

04:18:43 1 both the State's case and the Defense case.

04:18:46 2 MR. BROWN: But the 404(b) applies differently
3 for State's witnesses or victims.

4 THE COURT: No, no. That goes without saying.

5 MR. BROWN: Yes, sir.

6 THE COURT: There's no way that we are going to
7 be able to scrub the involvement of drugs from this
8 case.

04:19:01 9 MR. BROWN: Let me give you an example:
04:19:01 10 There's -- one of the people who's not there says
04:19:05 11 that one of the deceased had been involved in drug
04:19:07 12 dealing with our client in the past. Well, besides
04:19:13 13 in hearsay, they have to prove by clear and
04:19:14 14 convincing evidence if that's going to come in,
04:19:17 15 which would probably be difficult if it's hearsay,
04:19:20 16 Your Honor. And that is the main one.

04:19:20 17 We don't know what other crimes they might try.
04:19:23 18 But that's the one -- we agree. I mean, there's
04:19:24 19 drugs all in the house, there are drugs all in the
04:19:26 20 house. Res gestae is different than 404, Your
04:19:32 21 Honor. But we just -- before we get into a trial
04:19:35 22 within a trial on the day of trial --

04:19:36 23 THE COURT: Let me close this down and try to
04:19:39 24 wrap this up instead of us continuing to talk about
04:19:43 25 what may or may not come up.

04:19:43 1 MR. BROWN: Yes, sir.

04:19:45 2 THE COURT: Mr. Phillips, the phone extraction,
04:19:51 3 are we good or do we need more?

04:19:51 4 MR. PHILLIPS: So with the ESI, I think, right
04:19:53 5 now, we're at the position where the Solicitor's
04:19:53 6 Office did show us that there was an e-mail sent to
04:19:59 7 Investigator Singleton. We do not have a copy of
04:20:00 8 that. You know, my issue was, since he's deceased
04:20:04 9 and there was a preservation order, kind of where
04:20:08 10 was the next layer to ensure things were not --

04:20:13 11 MR. BROWN: We'd like a copy of that, I think,
04:20:13 12 Judge. I mean, we don't want their e-mails, we want
04:20:21 13 to show that the Sheriff's Department got the
04:20:21 14 e-mails that say that.

04:20:23 15 THE COURT: Okay.

04:20:23 16 MS. FULLER: And, Your Honor, there may be --
04:20:25 17 so the motion was as to July 18th -- July 5th to
04:20:33 18 July 18th, 2018. They want a record of us sending
04:20:37 19 the motion. I don't know how that -- maybe that's
04:20:40 20 up for further argument, I guess. But --

04:20:44 21 MR. BROWN: But in Kyle, it says that we can
04:20:46 22 impeach the quality of the investigation. And if
04:20:48 23 they didn't preserve it, in spite of a court order,
04:20:50 24 that might have bearing. And that's --

04:20:54 25 THE COURT: It's one thing to say that it's --

04:20:56 1 it's one thing to argue Kyle in the context of the
04:20:59 2 underlying investigation which led to your client's
04:21:04 3 arrest. I think it's a little bit of a stretch to
04:21:07 4 extend Kyle to the legal jockeying and the
04:21:12 5 back-and-forth and the sending of things like that.
04:21:14 6 And I would probably rule at trial that that kind of
04:21:17 7 thing may very well be trivial.

04:21:20 8 You may have a right without a remedy here, is
04:21:22 9 what I'm telling you. I don't know. They know what
04:21:23 10 you want; they know what you want to see. And I'm
04:21:26 11 certain that the solicitor would be more than happy
04:21:29 12 to extend the courtesy of providing you with
04:21:32 13 whatever it is she can provide you that will
04:21:36 14 alleviate your concerns.

04:21:37 15 And perhaps the phone extraction will allay
04:21:43 16 those concerns further. I do not know. That is a
04:21:46 17 matter for another day. When that day happens --

04:21:50 18 You have exactly ten seconds.

04:21:52 19 MS. FULLER: Don't close the record yet, Judge.
04:21:53 20 You said you were going to rule on Pratt today.

04:21:57 21 THE COURT: I said I was going to rule on
04:21:59 22 Pratt. I haven't had a hard chance to look at your
04:22:00 23 case. It was really weird yesterday. I had a -- I
04:22:02 24 know you sent it to me the other day. But Monday
04:22:06 25 was bad; yesterday, a 15-minute auto hearing done by

04:22:13 1 Webex took an hour-plus, and then I had all sorts of
04:22:13 2 other stuff, including one homicide plea and a whole
04:22:17 3 bunch of things. So I was covered up a little bit
04:22:20 4 in Abbeville, regrettably. So I am not going to
04:22:25 5 rule on Pratt. I'll let you --

04:22:27 6 MR. BROWN: May we submit a memo on Pratt?
04:22:31 7 Because we were prepared to argue it today.

04:22:35 8 THE COURT: You may send me a memo. If y'all
04:22:35 9 want to sit down and submit it just on written
04:22:36 10 brief, that -- I see no reason why we can't do that.

04:22:36 11 MR. BROWN: Yes, sir.

04:22:38 12 THE COURT: I feel like I -- that may be a
04:22:43 13 waste of your time. I feel like I can get from --

04:22:46 14 MR. BROWN: I can give you the short version:
04:22:48 15 Possessory interest deals with the use of property.
04:22:51 16 You use surveillance when you're not at your home;
04:22:56 17 you don't use a cell phone or laptop. And I can get
04:22:58 18 into the cases that talk about it. Not all the
04:22:59 19 cases that Dorsey cites actually address cell
04:23:04 20 phones, and not all of them actually agree with the
04:23:07 21 government.

04:23:08 22 THE COURT: If you're going to send me
04:23:11 23 something on that, feel free to do that. Just, if
04:23:12 24 you could, do it by a week from Friday --

04:23:12 25 MR. BROWN: Yes, sir.

04:23:14 1 THE COURT: -- so that I have a chance to look
04:23:16 2 at it. And maybe next weekend while my wife is in
04:23:17 3 Florida and I am not, that will give me something to
04:23:21 4 do.

04:23:22 5 MR. BROWN: Yes, sir.

04:23:23 6 THE COURT: And with that, it's been a pleasure
04:23:25 7 seeing you-all again. And, God, I love Lexington
04:23:28 8 County. Can't wait to return. See y'all in the
04:23:30 9 coming weeks. Let me know when we're going to do
04:23:32 10 this again. Coordinate with Freda, and I'll be
11 there.

12 -- END OF TRANSCRIPT OF RECORD --

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Bethanie K. Creppon, Circuit
7 Court Reporter for the Second Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Lexington County, South Carolina, on the
14 14th of April, 2021.

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

17

18

May 17, 2022

19

20

s/Bethanie K. Creppon

21

22

Bethanie K. Creppon
Circuit Court Reporter

23

24

25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

2019-GS-32-02887-2893

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) June 21, 2021 - Vol 1 of 5

Damien Lavar Ritter)

) Lexington, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Judge

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

Sutania A. Fuller, Esquire
Shawn Graham, Esquire
Attorneys for the State

Jim Brown, Esquire
Dayne Phillips, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Photo Lineup	200	
D-1	Witness List	6	
D-2	Motion for Voir Dire	6	
D-3	Motion to Suppress	6	
D-4	Motion to Suppress	6	
D-5	Motion to Quash	6	
D-6	Motion to Exclude Witnesses	6	
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D-9	Notice	6	

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1 (Defendant's Exhibits 1 through 9 were marked for
2 identification.)

3 THE COURT: Good morning. Thank you.
4 Please have a seat. Ladies and gentlemen who are
5 assigned for jury service this morning, good morning.
6 My name is Frank Addy, and I'm a circuit judge,
7 and I am going to be holding court here this week.
8 This is a term of general sessions, otherwise known
9 as criminal court.

10 I reside in Greenwood, but I will tell you
11 that in 2019 -- sorry, yeah, 2019, last year, I was
12 appointed as chief administrative judge on the criminal
13 side of things for the 11th circuit. The 11th circuit
14 is comprised of, of course, Lexington, Edgefield, Saluda
15 and McCormick Counties. And so I came to know your area
16 and your community here in Lexington quite intimately,
17 and I will tell you that I genuinely enjoy those two
18 years of being able to travel throughout those four
19 counties. And so it's a pleasure for me to be back
20 this week in order to hold criminal court once again
21 here in Lexington County.

22 I will tell you what you probably already
23 know. Because of the pandemic last year things started
24 shutting down in terms of the court system back in
25 March, early April. And it was a very, very

1 challenging, very challenging time for us.

2 As a result of the restrictions that we were
3 under through DHEC and through the governor, we were
4 not able to try many cases until the fall of last year.
5 And even then that was only a three-month break that
6 we got before, of course, COVID reared its ugly head
7 and reappeared and showed itself again. We had to shut
8 things down again until roughly March of this year.

9 So as you probably well understand, we have
10 a number of cases that are on the docket, a number of
11 cases that we will have to try and work through in the
12 coming months and years before we get caught up.

13 One point of praise that I did want to give
14 to the 11th circuit is the solicitor's office here, the
15 attorneys in the county of Lexington and Richland County
16 and the public defender's office here did an excellent
17 job of promptly transitioning to online court. I think
18 we were one of the first ones to do that and to
19 accomplish that.

20 And there's an assistant solicitor named
21 Todd Wagner, who I really am going to just go ahead
22 and give credit where credit is due. He was the one who
23 kind of engineered the whole thing, and we were holding
24 -- we were holding proceedings online by remote video
25 conferencing sooner than any other circuit in this

1 state, and that is a point of pride.

2 And in terms of what the solicitor's office
3 was able to accomplish in terms of moving cases last
4 year, we only slid -- in the 11th circuit, we only slid
5 by ten percent from the point we were coming into the
6 whole COVID epidemic. So that's incredible when you
7 consider that other counties, like Spartanburg, that
8 had been leaders of the pack, they slid 21 percent.
9 And I think other counties around the state that had
10 a lot more resources than the 11th circuit, they slid
11 19 percent.

12 We only lost around by about ten percent,
13 and that's something that -- give credit where credit
14 is due. That's something that your solicitor's office
15 here and everybody who was involved, the private bar,
16 et cetera, that's due to their dedication. And, of
17 course, we still have a number of cases that we do need
18 to work through, that we do need to try.

19 We do have a case that is on the docket
20 we're going to be selecting a jury on shortly. We have
21 one panel, you're the first panel that's coming in.
22 We have a second panel that's appearing later today.
23 And what we're going to do is qualify you, do initial
24 jury selection on the questions that are specific to
25 this case.

1 Then, we're going to select a number of you
2 who will be coming back at a later point in time this
3 afternoon, probably maybe 3:30 or 3:45. We're going
4 to combine the two panels because of space limitations
5 here. We'll combine the two panels, and then we'll
6 select from the jury. We'll select the jury for the
7 trial of this case this afternoon, all right.

8 Now our purpose this morning, ladies
9 and gentlemen, is to determine your qualification
10 and eligibility to serve as jurors. Jury qualification
11 is done in several stages, the first of which is known
12 as the roll call stage.

13 In a moment, the clerk is going to call
14 the roll of everyone who was summoned for jury duty
15 this morning. And when your name is called, what I need
16 you to do is stand and give us the information that
17 was on that little slip of paper that you were provided,
18 or you should have been provided, when you came to the
19 courthouse this morning, okay?

20 She will ask you to restate your name,
21 let us know what it is that you do for a living, where
22 it is that you work. If you're retired, unemployed or
23 disabled, let us know what your last job was. If you're
24 married, please give us your spouse's name and let us
25 know what they do for a living. Similarly, if they are

1 retired, unemployed or disabled, let us know what their
2 last job was. And do you ask for age too? We don't ask
3 for age here. That's good. Also give us your mileage
4 from your house to here.

5 THE CLERK: We've already got the milage.

6 THE COURT: You already got that, okay?
7 For example, if I were summoned for jury duty, when
8 my name was called, I would stand up. I would say,
9 I'm Frank Addy. I'm a circuit judge; I'm employed
10 by the judicial branch of South Carolina. I'm married
11 to Kelly Addy. She's a nurse practitioner who works
12 in the emergency room at Self Regional Hospital in
13 Greenwood, and I live about, oh, 70 miles from here.
14 But, again, we don't need your mileage.

15 So with that, I'm going to ask that you
16 all stand and raise your right hand. The clerk is going
17 to give you a very brief oath so that we can be sure
18 that the answers that you give to us are accurate.
19 Madam Clerk, if you would administer that oath, please.

20 THE CLERK: Yes, sir. Raise your right
21 hand, please.

22 (Whereupon, the jury panel was duly sworn.)

23 THE CLERK: Be seated, please. Is there
24 anyone in the venire not able to take the oath, please
25 stand. All are under oath, Your Honor.

1 THE COURT: Very good. If you would call
2 the roll, please.

3 THE CLERK: Yes, sir. Number 9.

4 THE JUROR: Debra Barnes. I'm employed
5 by Lexington I as a teacher. I'm number nine.

6 THE CLERK: I got you. That's all right,
7 Ms. Barnes.

8 THE JUROR: My husband is retired from Blue
9 Cross/Blue Shields. He's a database administrator.

10 THE CLERK: Thank you, ma'am.

11 THE COURT: And, if you could, feel free to
12 lower your -- I don't know how you all have experienced
13 during this pandemic, but sometimes I have difficulty --
14 I read lips sometimes. So when you're speaking, if you
15 want to lower your mask so that maybe we can hear you
16 a little bit better, please feel free to do that, okay?
17 We have sufficient space in here that you can lower your
18 mask and speak when your name is called. Madam Clerk.

19 THE CLERK: Number 12, McKenzie Berndt.

20 THE JUROR: I'm McKenzie Berndt. I work
21 for Lexington I School District as a resource teacher.
22 My husband works in the Army, and he is now employed
23 by Lexington I as a coach.

24 THE CLERK: Thank you, ma'am. Excuse me
25 just a moment, Your Honor. Number 13, Sandra Bidinger.

1 THE JUROR: I'm Sandra Bidinger. I am
2 a pharmaceutical rep. I am married. My husband,
3 Robert, is retired from Blue Cross/Blue Shield
4 as a project manager in their IT department.

5 THE CLERK: Thank you, ma'am. Number 15,
6 Tammy Black.

7 THE JUROR: I'm Tammy Black, and I'm
8 currently unemployed. My last employment was with
9 Nephron Pharmaceuticals, and I am not married.

10 THE CLERK: Thank you, ma'am. Number 33,
11 Michael Bush.

12 THE JUROR: Michael Bush, number 33.
13 I'm employed by Dominion Energy. My wife, she's
14 employed by a law firm. She is a paralegal.

15 THE CLERK: Thank you, sir. Number 36,
16 Jennifer Carnes.

17 THE JUROR: I'm Jennifer Carnes. I work
18 at Benefit First as an account manager. My husband
19 works at Dominion Energy.

20 THE CLERK: Thank you, ma'am. Number 40,
21 James Channell.

22 THE JUROR: My name is James Channell.
23 I work for Yearbooks, and my wife is retired.

24 THE CLERK: Thank you, sir. Forty-seven,
25 Johnny Cooley.

1 THE JUROR: My name is Johnny Cooley.
2 I'm employed by Lexington-Richland School District 5
3 as a middle school science teacher. My wife also
4 works for Lexington-Richland School District 5.
5 She's a school counsel.

6 THE CLERK: Thank you, sir. Forty-eight,
7 Sarah Cotham.

8 THE JUROR: I'm Sarah Cotham. I work for
9 Aiken County Public School. I'm a speech pathologist.
10 My husband works for USD [ph.]; he's a dentist.

11 THE CLERK: Thank you, ma'am. Number 53,
12 Kenneth Dantzler.

13 THE JUROR: I'm Kenneth Dantzler.
14 I'm an engineer at Dominion Energy. My wife is a nurse
15 practitioner.

16 THE CLERK: Thank you, sir. Fifty-six,
17 Brandi Davis.

18 THE JUROR: Brandi Davis. I work for Boyd
19 Management Company, and I'm single.

20 THE CLERK: Thank you, ma'am. Fifty-seven,
21 Mary Davis.

22 THE JUROR: Mary Davis. I'm a housekeeper
23 at Lexington I. My husband works as a truck driver.

24 THE CLERK: Thank you, ma'am. Number 60,
25 Jennifer Duke.

1 THE JUROR: I'm Jennifer Duke. I'm employed
2 by Lexington District I as a pre-school teacher, and my
3 husband owns Convenient Auto Repair in West Columbia.

4 THE CLERK: Thank you, ma'am. Sixty-one,
5 Donna Heck [ph.].

6 THE JUROR: My name is Donna Heck.
7 I'm employed at Hickory Tavern in Columbia,
8 and I'm a waitress, and I am not married.

9 THE CLERK: Thank you, ma'am. Sixty-three,
10 Wanda Evans.

11 THE JUROR: Wanda Evans. I'm employed by
12 Richland County Sheriff's Department as an operations
13 specialist. My husband is also employed by Richland
14 County Sheriff's Department. He's an instructor
15 and a training coordinator.

16 THE CLERK: Thank you, ma'am. Sixty-five,
17 Martha Ford.

18 THE JUROR: I'm Martha Ford. I'm employed
19 by RW Ford Company, Inc, in the accounting department.
20 My husband is the owner of RW Ford Company.

21 THE CLERK: Thank you, ma'am. Sixty-seven,
22 Melissa Frederick.

23 THE JUROR: I work at Synovus Bank as an
24 executive assistant. My husband, Paul, is a design
25 draftsman.

1 THE CLERK: Thank you, ma'am. Number 70,
2 Rebecca Gauntt.

3 THE JUROR: Rebecca Gauntt. I work for
4 Lexington Health as a nurse. My husband, George,
5 works for Nephron Pharmaceuticals as the security.

6 THE CLERK: Thank you, ma'am. Seventy-one,
7 Elizabeth Gause.

8 THE JUROR: I'm Elizabeth Gause.
9 I'm employed as a teaching assistant. And my husband,
10 Kevin, works in biotech.

11 THE CLERK: Thank you, ma'am. Seventy-five,
12 Lisa Halter.

13 THE JUROR: Lisa Halter. Wil Lou Gray
14 Opportunity School, special education teacher,
15 and I am not married.

16 THE CLERK: Thank you, ma'am. Seventy-six,
17 Pamela Hamilton.

18 THE JUROR: My name is Pamela Hamilton,
19 number 76. I'm an instructional assistant with
20 Lexington-Richland School District 5. I'm married
21 to Daniel Hamilton. He is...

22 THE CLERK: Thank you, ma'am. Seventy-nine,
23 Charles Hart.

24 THE JUROR: Charles Hart, and I work
25 as a sales rep. And my wife is Karen Hart, and she's

1 a pre-school director.

2 THE CLERK: Thank you, sir. Eighty,
3 Charlotte Hatchell.

4 THE JUROR: Charlotte Hatchell. I work at
5 Twilite Manor Rest Home as a caregiver, and my husband
6 is deceased.

7 THE CLERK: Thank you, ma'am. Eighty-four,
8 Amanda Henson.

9 THE JUROR: Amanda Henson, number 84.
10 I'm employed by Prisma Health as a registered nurse.
11 My husband, Billy Henson, is a pest control technician.

12 THE CLERK: Thank you, ma'am. Eighty-eight,
13 James Hook.

14 THE JUROR: James Hook, retired, employed
15 by Lexington County Recreation and Aging Commission
16 as a leisure services director. My wife is also retired
17 with University of South Carolina as a business manager
18 in the exercise science department.

19 THE CLERK: Thank you, sir. Ninety-one,
20 Shanta Jackson.

21 THE JUROR: Hi. Shanta Jackson.
22 I'm an assistant for the South Carolina Department
23 of Education, and I'm not married.

24 THE CLERK: Thank you, ma'am. Ninety-two,
25 Varsel Jacobs.

25 THE CLERK: Thank you, ma'am. Anyone else

1 here for jury duty whose name I did not call, if you'll
2 please stand. Roll call complete, Your Honor.

3 THE COURT: Ladies and gentlemen -- before
4 I do that. Ladies and gentlemen, I now have certain
5 questions that I need to ask you in order to determine
6 your qualification and your eligibility to serve as
7 jurors. And please understand that state law requires
8 that I ask these questions of you.

9 In my experience, sometimes these questions
10 may touch on something that's perhaps a little bit
11 personal, or something that maybe you're not comfortable
12 disclosing in open court. The procedure that I'll use
13 is if a question applies to you, and you're comfortable
14 doing so, I'll ask that you simply stand up and give
15 me your response to the question after I ask it.

16 If, however, that question causes you any
17 embarrassment, that's fine. You don't have to stand
18 up at that point in time because at the conclusion
19 of the questioning process what I'll do is give you
20 a chance to come forward and speak privately down here
21 next to my court reporter, okay?

22 Again, I do not want to cause anyone any
23 undue embarrassment. So if any question I ask
24 embarrasses you in even the slightest degree, that's
25 fine, you don't have to stand up. Just be sure to make

1 a mental note of that question because it's absolutely
2 essential that we have accurate informing concerning
3 all our jurors, okay?

4 Here are the questions regarding
5 qualifications to serve as jurors. First, is there
6 any member of the jury panel who's not a United States
7 citizen? If so, please stand. No one is standing.
8 Is there any member of the jury panel who is not
9 a resident and citizen of Lexington County, South
10 Carolina? If so, please stand. No one is standing.

11 Is there any member of the jury panel who's
12 unable to read, write, speak or understand the English
13 language? If so, please stand. No one is standing.
14 Is there any member of the jury panel who has less than
15 a sixth grade education, or its equivalent? If so,
16 please stand. No one is standing.

17 Does any member of the jury panel suffer
18 from any physical or mental infirmity which would affect
19 your ability to render efficient jury service? And I'll
20 tell you there's not a lot of heavy lifting involved
21 with jury duty, okay? Basically, you would need to be
22 able to sit, usually about 45 minutes, maybe an hour
23 between breaks. You need to be able to hear the
24 testimony of the witnesses. That's really all that's
25 required of you. Yes, ma'am. What's your name?

1 THE JUROR: Hi. I wear a hearing aid.
2 But with masks on, it is a little difficult for me
3 to hear.

4 THE COURT: Okay. Have you been -- what's
5 your name, please, ma'am?

6 THE JUROR: Martha Ford, 65.

7 THE COURT: All right. Typically, ma'am --
8 have you been able to hear me when I'm speaking?

9 THE JUROR: Yes, sir.

10 THE COURT: Okay. Witnesses will be allowed
11 to remove masks, and the lawyers will be able to remove
12 them too when they're questioning witnesses. So that
13 should not pose a problem for you, okay, ma'am.
14 But thank you for that information. Anyone else?
15 No one is standing.

16 Is there any member of the jury panel whose
17 been convicted by a guilty plea or a trial in a state
18 or federal court of crimes punishable by imprisonment
19 for more than a year, and your civil rights have not
20 been restored by a grant, a pardon or amnesty? Now,
21 I'm not asking you if you've actually done a year in
22 prison. What this question is asking is if you've been
23 convicted of any crime that carries the possible penalty
24 of more than a year in prison.

25 Good rule of thumb, if you've been on

1 probation before, this question might apply to you.

2 Any member of the jury panel who thinks this may apply
3 to them? If so, please stand. No one is standing.

4 I don't think this applies, but I'll just
5 double check. Is there any member of the jury panel who
6 is a clerk or deputy clerk of court, constable, sheriff,
7 or other commissioned law enforcement officer, probate
8 judge, county commissioner, magistrate, or other county
9 officer, or is employed within the walls of any
10 courthouse? If so, please stand. No one is standing.

11 I doubt this applies, but we'll check.
12 Is there any member of the jury panel who has previously
13 served on jury duty in circuit court during this
14 calendar year? If so, please stand. No one is
15 standing. Is there any member of the jury panel who has
16 previously served as a member of the Lexington County
17 grand jury during the past several years? If so, please
18 stand. No one is standing.

19 Now, ladies and gentlemen, we now move to
20 jury exemptions, and state law does provide for several
21 exemptions to jury service. The way an exemption works
22 is if an exemption applies to you, it means that you
23 have the right to say, Judge, I really appreciate the
24 invitation, but I choose not to serve. It doesn't mean
25 that you're disqualified. It just means that you have

1 the right to say I choose not to service.

2 Now, I will let you know, ladies and
3 gentlemen, that there are 31 -- the clerk tells me that
4 there are 31 individuals who are out there, and for
5 the afternoon group, 33 individuals sent in returns.
6 So we're already at about 64, and I don't know how
7 many people we're going to lose when we do jury
8 qualifications, all right.

9 I also want to emphasize that the case
10 that we are going to be selecting a jury on, ladies
11 and gentlemen, has been postponed a couple of times,
12 and it's one that I've kind of been handling for some
13 period of time, and it's absolutely necessary that
14 we try to get it resolved this week, okay?

15 So, if you are incline to stay with us,
16 we really, really need you, all right. But at the
17 same time, these exemptions are matters of right.
18 If you choose to take them, or accept them, that's your
19 business entirely. I'm not going to look down on you
20 if you choose to take it.

21 But we're already running a little bit short
22 of the number of jurors that I would prefer to have,
23 all right. So just kind of keep that in the back
24 of your mind and understand that your jury service this
25 week would sincerely be appreciated, and it's something

1 that I desperately need, okay?

2 Now, the first exemption deals with those
3 of you who are 65 years of age or older. State law does
4 provide an exemption to jury service if you've made it
5 to 65. Is there any member of the jury panel who is 65
6 years of age or older who would like to claim that
7 exemption? If so, please stand. No one is standing.

8 Another exemption concerns prior jury
9 service. No one is required to serve as a juror more
10 often than once every three calendar years. So if there
11 is any member of the jury panel who has previously been
12 summoned for jury duty in circuit court, that means the
13 court of general sessions, or the court of common pleas,
14 you had to come to this courthouse, probably sit in this
15 courtroom during the last three years, I can exempt you
16 from jury service. Any member of the jury panel who has
17 previously served on jury duty in the last three years,
18 and would like to claim it, please stand. No one is
19 standing.

20 Persons who have served as grand jurors
21 in the last five years can also be exempted from jury
22 service. Is there any member of the jury panel who has
23 served on any grand jury, state or federal, in the last
24 five years who would like to claim the exemption?
25 If so, please stand. No one is standing.

1 Now, the next exemption deals with those
2 of you who have small children. I need you to listen
3 carefully. This exemption has three parts, all of which
4 have to apply to you in order for me to exempt you on
5 this basis. I can exempt you from jury service this
6 week if you have a small child or small children who are
7 under the age of seven, you have primary responsibility
8 for taking care of the child or children, and you can't
9 make alternative arrangements for childcare while you're
10 here at the courthouse. Any member of the jury panel
11 who feels all three of those may apply to them? If so,
12 please stand. All right. No one is standing.

13 Next exemption deals with those of you who
14 are attending school, or maybe working in some capacity
15 with a school. I know that we had a number of teachers
16 and administrators out there, and perhaps your jury
17 service was transferred to this week, and hopefully,
18 nobody is having to do summer school or anything like
19 that. If there is any member of the jury panel who
20 is employed with a school or attending school part time,
21 what I'll do is transfer your jury service to sometime
22 in July, at a time that hopefully won't conflict with
23 your school obligations.

24 So is there any member of the jury panel
25 who is a full-time teacher, full-time student,

1 administrator, or works in any capacity with a school,
2 who's unable to serve on jury duty this week as a result
3 of that school obligation? If so, please stand. No one
4 is standing.

5 I don't think this applies, but let me just
6 double check. Is there any member of the jury panel
7 who works at the department of corrections, at a prison,
8 and you would like to be exempted? If so, please stand.
9 No one is standing.

10 Is there any juror who performs services for
11 a business, commercial or agricultural enterprise, which
12 is so essential to the operation of that enterprise that
13 if you had to perform jury duty, the enterprise would
14 have to close or stop functioning? Folks, that's
15 a complex way to ask a simple question. If you are
16 self-employed, you have nobody that works with you,
17 and because you're having to perform jury duty,
18 your business is basically 100 percent shut down.
19 That's what this question is getting at.

20 The example I typically use is a plumber.
21 He works off his cell phone, out of his truck, he goes
22 from plumping call to plumping call throughout the day.
23 And because he has nobody that works with him, and
24 because he's having to perform jury duty, his business
25 is 100 percent shut down, at a total standstill. That's

1 what this is getting at. Any member of the jury panel
2 who feels that question may apply? If so, please stand.
3 No one is standing.

4 Last question, ladies and gentlemen, is
5 there any juror who's the primary caretaker of someone
6 who's severely disabled, who do not care for themselves,
7 or be left unattended, or is there any juror who's the
8 primary caretaker of somebody 65 years of age or older?
9 If so, please stand. No one is standing. Fantastic.
10 All right.

11 Now, ladies and gentlemen, that does
12 conclude the list of statutory qualifications and
13 exemptions for jury service. And it may be that you're
14 qualified to serve as a juror, but jury service this
15 week would constitute an extreme hardship on you for
16 some particular reason. Now, I do understand how this
17 is inconvenient for you, folks. I understand that 100
18 percent. What I need you to understand though is that
19 the law does not permit me to excuse a juror who's
20 otherwise qualified to serve. I can't permanently
21 excuse you.

22 What I can do though is, under compelling
23 or extreme circumstances, I can transfer your jury
24 service to another term of court sometime later this
25 year, at a time that hopefully won't conflict with

1 whatever logistical issue that's come up.

2 Now, ladies and gentlemen, I will tell you
3 that I do anticipate that this case will take the entire
4 week. I'm hopeful that we can finish it this week.
5 I cannot guarantee that, but hope springs eternal.
6 But as they say, man plans, God laughs, all right.

7 My intention is to work hard on this case,
8 start early and go late, a little bit late in the day.
9 I just mention that because I want you to be aware that
10 there is the possibility that it could bleed over into
11 next week, if things do not go as efficiently as I hope
12 that they will.

13 What I'm going to do is, in a moment,
14 if you need to speak to me about any sort of logistical
15 concern, what I'll do is invite you to form a line at
16 the swinging double doors down here, try and stay about
17 six feet apart. And one by one, you can come forward
18 and speak with me privately down here next to my court
19 reporter, okay?

20 I don't -- again, any questions that I ask
21 that cause you any embarrassment, this is also a chance
22 for you to come forward and speak with me. So if there
23 is a logistical issue, a problem that you have this
24 week, maybe it's a doctor's appointment that you're
25 concerned you can't get rescheduled, maybe it's vacation

1 plans, you're flying to Tahiti or -- I don't know some
2 place tropical; Tahiti is tropical.

3 If you're flying to Tahiti on Friday,
4 for example, okay? And you've had that trip planned
5 for a while, I need to know that, all right. So if
6 there are any logistical issues, or if you need to speak
7 privately down here with me about any concern
8 whatsoever, form a line right there, and we'll talk down
9 here.

10 THE BAILIFF: Number 36.

11 THE COURT: Yes, ma'am, come on up.

12 THE JUROR: I have a doctor's appointment.

13 THE COURT: Okay. What day is it?

14 THE JUROR: It's tomorrow.

15 THE COURT: At what time?

16 THE JUROR: It's at 8:45.

17 THE COURT: 8:45, okay. That shouldn't be
18 a problem. How long would you anticipate it would take?
19 Is it just a checkup?

20 THE JUROR: It's a 16-week ---

21 THE COURT: Oh, congratulations. Okay.
22 I should have noticed, but even have I noticed I was
23 not going to say anything because I can easily get
24 in trouble by doing that. So that's fantastic.
25 Probably an ultrasound and everything?

1 THE JUROR: It's just a regular.

2 THE COURT: Yeah, okay, that's fine.

3 You'll be okay. If we start tomorrow morning, it will
4 probably be around 9:30.

5 THE JUROR: Okay.

6 THE COURT: Somewhere in there, okay?

7 THE JUROR: Okay.

8 THE COURT: Thank you.

9 THE BAILIFF: Number 80, Your Honor.

10 THE JUROR: I do third shift, caregiver
11 at a rest home, and I just -- I don't think I can stay
12 awake all day.

13 THE COURT: Okay. I gotcha.

14 THE JUROR: There's no one else that could
15 work the shift in there. I'm the only third-shift
16 caregiver they've got. Only off on Wednesday.

17 THE COURT: Okay. I understand,
18 Ms. Hatchell. That happens to a lot of people.
19 You're free to go. Thank you.

20 THE JUROR: Thank you, sir.

21 THE COURT: Eighty is excused.

22 THE BAILIFF: Number 92.

23 THE COURT: Yes, sir, Mr. Jacobs.

24 THE JUROR: I'm the owner and operator
25 of two businesses.

1 THE COURT: Okay.

2 THE JUROR: My business won't be at 100
3 percent stop, but it will be 90 percent.

4 THE COURT: Okay. You've got folks that
5 work for you?

6 THE JUROR: I've got two.

7 THE COURT: Two. I'd love to be able
8 to help you, Mr. Jacobs. The law probably doesn't let
9 me though, is the only problem, and even then -- the
10 best I could do would be to transfer you to some other
11 term. If I did that, then we're looking at ---

12 THE JUROR: That would be fine with me.

13 THE COURT: That would work better?

14 THE JUROR: Later after the summer,
15 summer months.

16 THE COURT: That makes sense. If I sent --
17 like October?

18 THE JUROR: Yes, sir.

19 THE COURT: October, all right. Very good.
20 Ninety-two, Mr. Jacobs, I'm going to transfer him to
21 some term in October.

22 THE BAILIFF: Number 71.

23 THE COURT: Ms. Gause, yes, ma'am.

24 THE JUROR: My family is on vacation this
25 week ---

1 THE COURT: Okay.

2 THE JUROR: --- in Cherry Grove. I came
3 back yesterday.

4 THE COURT: Cherry Grove. Goodness.
5 And that's running through Friday?

6 THE JUROR: It'll be until next Saturday.

7 THE COURT: Next Saturday. So you drove
8 down Saturday, and you drove back yesterday just for
9 this?

10 THE JUROR: Yes, sir.

11 THE COURT: Ms. Gause -- all right.
12 Transfer her. Ms. Gause actually drove back from
13 vacation last night in order to show up here, and her
14 whole family is down at Cherry Grove, so y'all transfer
15 Ms. Gause to a term with -- you work as a teacher?

16 THE JUROR: Yes, sir, a teacher's assistant.

17 THE COURT: She's a teaching assistant,
18 so maybe some time in July, okay? Add her to one
19 of the July rosters.

20 THE JUROR: Thank you.

21 THE BAILIFF: Number 48.

22 THE JUROR: Sarah Cotham.

23 THE COURT: Yes, ma'am, Ms. Cotham.

24 THE JUROR: Yeah, my family is scheduled to
25 leave on vacation next Sunday. If it's just this week,

1 it's probably fine.

2 THE COURT: Okay. A week from yesterday?

3 THE JUROR: Yes.

4 THE COURT: Okay. Where y'all going?

5 THE JUROR: Holden Beach, North Carolina.

6 THE COURT: Holden Beach. Very nice. Okay.

7 I'm going to be optimistic that we can get it done.

8 THE JUROR: Okay.

9 THE COURT: Okay.

10 THE JUROR: Also sometimes I get a little
11 bit claustrophobic.

12 THE COURT: Okay.

13 THE JUROR: And if I can sit on the end
14 of the row, that'll be fine.

15 THE COURT: Not a problem. We'll make that
16 work for you, okay, Ms. Cotham.

17 THE JUROR: Okay.

18 THE COURT: All right, 48 is fine.

19 THE CLERK: Yes, sir.

20 THE BAILIFF: Number 61.

21 THE COURT: Ms. Heck?

22 THE JUROR: Yeah.

23 THE COURT: Yes, ma'am.

24 THE JUROR: I'm in the process of buying
25 a house, and my closing date is at noon on Friday,

1 and my lease ends this month, so I have to close.

2 THE COURT: Congratulations on
3 homeownership.

4 THE JUROR: Thank you.

5 THE COURT: That's fantastic. Noon Friday.
6 What we'll do is if you're picked on the jury, I'll make
7 a point of -- are you closing in Lexington, or are you
8 closing in Richland?

9 THE JUROR: I'm closing in Columbia.

10 THE COURT: It's a lawyer in Columbia that's
11 doing it for you?

12 THE JUROR: Yeah, Mike Whaley.

13 THE COURT: Whaley, all right. What we'll
14 do is if we are -- I anticipate still being in trial on
15 Friday, but if you're picked on the jury, we'll give you
16 about a 15-minute window to get over there. That should
17 be about right, right?

18 THE JUROR: It's, like, 25.

19 THE COURT: Twenty-five.

20 THE JUROR: Yeah, because it's, like,
21 25 from my house.

22 THE COURT: All right. Let's do this.
23 Very often a lawyer can push it back maybe 30 minutes
24 or so. We'll figure it out, but we'll make that work,
25 okay?

1 THE JUROR: Okay.

2 THE COURT: If it doesn't fall through.
3 My experience when I was doing real estate, they very
4 often ---

5 THE JUROR: It should not.

6 THE COURT: I know.

7 THE JUROR: It should not.

8 THE COURT: I know.

9 THE JUROR: Otherwise, I'm screwed.

10 THE COURT: You'll be fine.

11 THE JUROR: Okay.

12 THE COURT: You can always sublet from
13 my son. He's got an apartment, so there you go.
14 So, I'll protect you for that, okay?

15 THE JUROR: Okay. Thank you.

16 THE COURT: No worries. Yes, sir.

17 THE BAILIFF: Juror 47.

18 THE COURT: Mr. Cooley.

19 THE JUROR: Yes, sir. This coming Wednesday
20 morning, we leave for the summer to work at a summer
21 camp in the upstate. Also, we're moving to Richland
22 County this coming Monday too.

23 THE COURT: Monday, Richland. Okay.
24 So you're -- okay. You've got a summer camp that
25 you're ---

1 THE JUROR: One of the directors of the
2 camp, yeah, in the upstate, so we move our whole family
3 up there this Wednesday.

4 THE COURT: Okay. In that case, I've got
5 to excuse you. Have a nice day.

6 THE JUROR: My apologies.

7 THE COURT: Not a problem. I'll let the
8 clerk in Richland know. They'll get you up there, okay?
9 No worries. Take care. Mr. Cooley is excused, 47.

10 THE BAILIFF: Juror 109.

11 THE COURT: Yes, sir, Mr. Krantz.

12 THE JUROR: Had open heart surgery.

13 THE COURT: Okay.

14 THE JUROR: And I'm related to that guy over
15 there.

16 THE COURT: Okay. Fine man. How are you
17 related to Dave?

18 THE JUROR: My wife's family. I grew up
19 with his son.

20 THE COURT: Oh, okay.

21 THE JUROR: I coach baseball.

22 THE COURT: I gotcha. What we'll do,
23 Mr. Krantz -- the heart surgery, tell me about that.

24 THE JUROR: Triple bypass.

25 THE COURT: All right.

1 THE JUROR: Still adjusting medicines.

2 THE COURT: Okay.

3 THE JUROR: Doing some different things
4 there.

5 THE COURT: If I kick your service down
6 to, maybe, October will you be okay to do it then,
7 or are you concerned that ---

8 THE JUROR: You can try. We'll see how
9 I feel then.

10 THE COURT: All right. Maybe November?

11 THE JUROR: We'll see what happens,
12 how I feel. I think I can do it.

13 THE COURT: Sure. Okay. Transfer 109 to
14 some time in November, if you could, please. Step right
15 over there, Mr. Krantz. They'll hook you up, okay?
16 Yes, ma'am.

17 THE BAILIFF: Juror 91.

18 THE JUROR: I do have a simple question.

19 THE COURT: Yes, Ms. Jackson.

20 THE JUROR: What are the hours -- are they
21 just typical court hours?

22 THE COURT: It's going to be -- I'm going to
23 be wanting to start maybe 9, 9:30, somewhere in there,
24 maybe go to six o'clock, 6:15 at the latest.

25 THE JUROR: I have children.

1 THE COURT: What time do they -- what time
2 do you need to be out of here?

3 THE JUROR: At least before six because
4 I have to pick my little one up from daycare.

5 THE COURT: Okay. What time does daycare
6 close?

7 THE JUROR: At six.

8 THE COURT: They close at six. How far away
9 is that?

10 THE JUROR: The daycare from here is about
11 maybe 10, 15 minutes.

12 THE COURT: 10 to 15 minutes. Okay.
13 Is there anybody -- are there any days this week that
14 you can get somebody maybe to pick your baby up?

15 THE JUROR: I can call grandparents because
16 she has to go to the doctor tomorrow.

17 THE COURT: Okay.

18 THE JUROR: But I can call and see maybe.

19 THE COURT: Yeah. If you get picked,
20 I'll try and help you 100 percent, if I can.

21 THE JUROR: Okay.

22 THE COURT: And maybe you can ask the
23 grandparents to spend some quality time with them
24 or something like that, okay?

25 THE JUROR: Yes. Okay.

1 THE COURT: Cool. Thank you, Ms. Jackson.

2 THE JUROR: All right. Thank you.

3 THE COURT: Appreciate it. Yes, ma'am.

4 THE BAILIFF: Juror 60.

5 THE COURT: Ms. Duke, yes, ma'am.

6 THE JUROR: Yeah, I also have a closing this
7 week.

8 THE COURT: Okay.

9 THE JUROR: And they know I have jury duty,
10 and I told them to try and make it as late as possible.

11 THE COURT: Okay.

12 THE JUROR: But when you said we were going
13 to go really late, I thought I better come up here and
14 say something.

15 THE COURT: Which day is it?

16 THE JUROR: That, I don't know. They're
17 supposed to let me know today.

18 THE COURT: Okay.

19 THE JUROR: It's supposed to be on or before
20 June 24th, which is Thursday, so. And it's already been
21 backed up once.

22 THE COURT: Okay. All right.

23 THE JUROR: Now, I heard you say something
24 about we won't start until 9 or 9:30.

25 THE COURT: Typically, yeah.

1 THE JUROR: I might just send them a text
2 this morning, and say if we could do it at eight.

3 THE COURT: Sure.

4 THE JUROR: Then, I can -- I should know by
5 today one way or the other.

6 THE COURT: Sure.

7 THE JUROR: And then my other thing is that
8 if we go into next week, I'm the lead teacher at bible
9 school next week.

10 THE COURT: Okay.

11 THE JUROR: But, I mean, again, if it's not
12 going all week, I can probably work out a day or two.

13 THE COURT: I'm hoping that if we do go into
14 next week, it would just be a day or two.

15 THE JUROR: Okay.

16 THE COURT: Not the entire week.

17 THE JUROR: Okay.

18 THE COURT: Because I've got a trial that
19 I've got to do in Greenwood too. So, I think you'll
20 be okay. Just let me know when you know something about
21 the closing. If you're picked on the jury just let us
22 know, okay?

23 THE JUROR: Okay. So, if I come back this
24 afternoon, then I can let y'all know then?

25 THE COURT: Yeah, exactly. That'll be fine.

1 I'll make a note of that, Ms. Duke, and we'll be okay,
2 all right.

3 THE JUROR: All right. Thank you.

4 THE COURT: Yes, ma'am.

5 THE BAILIFF: Number 84.

6 THE COURT: Yes. Ms. Henson?

7 THE JUROR: Yeah.

8 THE COURT: Yes, ma'am.

9 THE JUROR: My baby's high school graduation
10 is on Thursday.

11 THE COURT: Thursday. And what time is
12 that?

13 THE JUROR: At 11.

14 THE COURT: Eleven. Okay. They kicked that
15 back a bit, but usually, they do it -- is it, I guess,
16 a private school or something?

17 THE JUROR: Chester County.

18 THE COURT: Oh, it's in Chester County.

19 THE JUROR: Um-huh.

20 THE COURT: Oh, gosh. Okay.

21 THE JUROR: They just finished school last
22 week.

23 THE COURT: All right. I can transfer
24 you to another term, Ms. Henson. That's probably what
25 I'm going to be able to do.

1 THE JUROR: Yeah.

2 THE COURT: Maybe sometime in July. Would
3 that be better?

4 THE JUROR: Yeah, that's fine.

5 THE COURT: All right. Transfer juror
6 number 84 to sometime in July, if you could, or August,
7 whatever works for her.

8 THE BAILIFF: Juror 33.

9 THE COURT: Thirty-three, Mr. Bush.

10 THE JUROR: Yes, sir.

11 THE COURT: Yes, sir.

12 THE JUROR: I just wanted to let you know
13 that I had back surgery a little over a year ago, which
14 I still require pain medication for. I didn't know if
15 that would make any kind of problem.

16 THE COURT: What kind of pain?

17 THE JUROR: Hydrocodone.

18 THE COURT: Oxycodone. All right. You're
19 taking it as prescribed though?

20 THE JUROR: Yes, sir.

21 THE COURT: You're otherwise alert, you're
22 able to work on your job and everything?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. That won't be
25 a problem.

1 THE JUROR: Okay.

2 THE COURT: If the back starts bothering
3 you, jurors are allowed to kind of stand up and shuffle
4 their feet and that sort of thing, okay? So, you'll be
5 all right. Thank you, Mr. Bush. Thirty-three is fine.

6 THE BAILIFF: Juror number 12.

7 THE COURT: Twelve. Yes, ma'am.

8 THE JUROR: I'm flying out on Friday to take
9 care of my parents. My mom had open heart surgery so --
10 I teach so I was able to fly on the first week she had
11 it.

12 THE COURT: Okay.

13 THE JUROR: But I could only take that week
14 off. So, I'm flying back out to help them.

15 THE COURT: What time are you flying out?

16 THE JUROR: Eight in the morning.

17 THE COURT: 8:00 a.m.

18 THE JUROR: Um-huh.

19 THE COURT: Okay.

20 THE JUROR: So, I mean, I'll be back
21 in July, the end of July, and I have a week where
22 I'm teaching a student one on one.

23 THE COURT: Okay.

24 THE JUROR: Do you think I would be okay?

25 THE COURT: Is there any chance -- I don't

1 think there's a chance we can have this done by Friday
2 or by Thursday.

3 MS. FULLER: I would love to.

4 THE COURT: All right. Let's transfer
5 you then, Ms. Berndt to a term -- transfer Ms. Berndt
6 to -- she's also a teacher, so we need to get the July
7 term as well, sometime sooner in July, okay?

8 THE JUROR: I won't be back until July,
9 and then I teach.

10 THE COURT: Right.

11 THE JUROR: Okay.

12 THE COURT: They should have a term that
13 will work. Step over there, and they'll see what they
14 can do. Yes, sir.

15 THE BAILIFF: Juror 79.

16 THE COURT: Seventy-nine. Mr. Hart, yes,
17 sir.

18 THE JUROR: So the only conflict that I was
19 thinking of was should I be selected, my family is also
20 at the -- and I'm going to pick them up, which, of
21 course, I could do -- I'm supposed to take Friday off,
22 go Friday. But my problem would be getting the dogs
23 to the kennel because even if I left Saturday, even
24 if I was here through Friday, I have to get the dogs
25 to the kennel.

1 THE COURT: Gotcha. Okay. So you're okay
2 to serve, just so long as we can get you down there
3 Saturday at the latest, but the problem is going to be
4 the dogs.

5 THE JUROR: Yeah.

6 THE COURT: How long does it take to drop
7 the dogs off?

8 THE JUROR: It would probably take an hour
9 roundtrip.

10 THE COURT: Okay. We'll figure that out.
11 If worst comes to worst, and you're still serving
12 Friday, and we're still in trial, and you're a juror,
13 maybe you could like -- we'll start at 9:30, you can
14 drop them off at 8:30 or something. Would that be cool?

15 THE JUROR: Yeah, that's fine.

16 THE COURT: All right.

17 THE JUROR: That's fine. That was the only
18 conflict that I was worried about.

19 THE COURT: Good deal. Thank you, Mr. Hart.
20 I really appreciate it. Ladies and gentlemen, what
21 we're going to do is before we move forward with the
22 qualification on the case we're going to try, I'm going
23 to give you a little bit of a break. I know a number
24 of you have been in here since before the appointed
25 start time of 9:30.

1 So, if you want, we'll go ahead and take
2 a very brief break while I get the voir dire questions
3 and witness lists from the lawyers. And what I'll do
4 is ask that you just, you know, step outside, use the
5 facilities. We'll be at ease for about 15 minutes.
6 I also need to go to my car and grab something out
7 of there that I forgot this morning.

8 So, we'll go by that clock back here.
9 Be back in here, please, at 10:30. Yeah, that's pretty
10 much on time, at least by my watch. Be back in here
11 at 10:35. At 10:35, be back in the jury room. Take
12 a moment to refresh yourselves, and then we'll move
13 forward with qualifications on the case that we're going
14 to try, okay? So see y'all shortly.

15 (Recess taken.)

16 (Back on the record.)

17 THE COURT: Ladies and gentlemen who are
18 summoned for jury service, I did neglect to ask a couple
19 of questions of you that are COVID specific. Same
20 routine as before. Is there any member of the jury
21 panel, who since the last questionnaire was sent out
22 to you, has knowingly either contracted COVID or been
23 exposed to a close family member, or someone who you
24 reside with who is positive for COVID? If so, please
25 stand. No one is standing.

1 Is there any member of the jury panel who
2 is, or believes that they may currently be suffering
3 from any of the symptoms commonly associated with COVID?
4 I'm not going to go through those symptoms. If you
5 don't know what they are, you've been living under
6 a rock. No one. Okay. Very good.

7 Ladies and gentlemen, in speaking to the
8 attorneys, I think the better course of action, what
9 I'm going to do, we have 33 jurors who returned their
10 questionnaire this afternoon. They're going to be
11 reporting at 1:30. And so what I'm going to do is
12 instead of moving forward with qualification, because
13 qualification could be fairly lengthy or fairly
14 extensive, I want to do it only once, and I'm assured
15 that we've got sufficient space here to accommodate the
16 roughly 50 jurors that I anticipate being here around
17 2:30.

18 So after I qualify the second panel, they'll
19 simply stick around. What I'm going to do is I'm going
20 to ask all of you to simply please report back at 2:30,
21 okay? There were a few of you, like juror number 60,
22 who needed to check on a scheduling matter. You could
23 do that maybe in the interim, and bring me up to speed
24 on that. So, if you would, please, do be back here
25 at 2:30.

1 Again, ladies and gentlemen, I do apologize
2 for this inconvenience to you. I'm telling you that
3 this is absolutely necessary. We've got a lot of work
4 to do. The court system has a lot of catching up to do,
5 and I desperately need you, and I definitely need you
6 back at 2:30, so don't get lost, okay? Be back here
7 at the courthouse at 2:30. At that point in time,
8 we'll be moving forward with jury selection.

9 If I did it with you guys at this point
10 in time, it'll probably eat up about an hour, an hour
11 and 15 minutes. I would much rather do it efficiently
12 with both panels at the same time. So be back at 2:30.
13 Enjoy your morning. Have a nice lunch. I'll be
14 continuing to work, but you guys get on out of here.
15 Take care of yourselves. Thank you. See you at 2:30.

16 (The jury panel exits the courtroom at 10:39 a.m.)

17 THE COURT: You need to speak with me,
18 ma'am? Yes, ma'am.

19 THE JUROR: I do have a cough.

20 THE COURT: You have a cough?

21 THE JUROR: Um-huh.

22 THE COURT: What's your name, ma'am?
23 Can you give me your name?

24 THE JUROR: Mary Davis.

25 THE COURT: Davis. Okay. Ms. Davis, you're

1 feeling -- you've got a fever, or it's just the cough?

2 THE JUROR: Just a cough.

3 THE COURT: Could it be allergies or
4 anything?

5 THE JUROR: Possible.

6 THE COURT: How long have you had it?

7 THE JUROR: A couple of days.

8 THE COURT: A couple of days now. Okay.
9 Have you been to the doctor or anything?

10 THE JUROR: No.

11 THE COURT: No. All right. Ms. Davis,
12 I'm going to let you go then, okay?

13 THE CLERK: Which Davis are you, Brandi
14 or Mary?

15 THE JUROR: Mary.

16 THE COURT: Mary Davis. All right.

17 Ms. Davis, you're free to go, okay? Take care of
18 yourself. Let's go on the record here so that we can
19 address a few housekeeping matters. I've gotten the --
20 and, of course, the record will reflect we're going on
21 the record ---

22 MS. FULLER: Excuse me, Judge. I can't hear
23 you.

24 THE COURT: Okay. I'm sorry.

25 THE CLERK: Hold on, Judge. Hold on. There

1 you are. You're live.

2 THE COURT: I'm live. All right. Going on
3 the record in the case of the State of Damien -- the
4 State v. Damien Ritter, 2019-GS-32-2887 through 2893.
5 And I want to just address some housekeeping matters
6 before we take a break about an hour or so from now.

7 The Court has received a couple of motions
8 from the defense, and has also received the State's
9 witness list and requested voir dire from both parties.
10 I want to remind the attorneys that we're currently at
11 23 remaining jurors. And by my calculation, we've got
12 33 jurors who sent returns in for this afternoon.

13 Maybe we'll luck out and get another three
14 or four who didn't get returns in. But it looks like
15 we're going to need at least 27 jurors to select just
16 12. And with two alternates, we'll need another eight,
17 so we're going to need basically 35. So, we're going
18 to be very tight.

19 Solicitor, you may want to -- I noticed
20 a number of names here from West Columbia Police
21 Department, 108 names. My concern is that I really
22 don't know which of those are genuinely thinking about
23 testifying, or which ones you're genuinely believing are
24 necessary to your case. But if we lose jurors because
25 they're related or they've got friendships with the

1 witnesses, in all likelihood, not going to get called,
2 we may be in a position of not being able to move
3 forward with this case this week.

4 So that's just a point of concern. To the
5 extent, I know that you've already tightened up the
6 witness list once, but if you're able to do it a little
7 bit more, that could be beneficial.

8 MS. FULLER: And, Judge, I mean, what I have
9 done in previous cases when it got really tight in
10 Edgefield, what we did was if they call out a certain
11 person, we brought them up, and I made -- likelihood
12 or not likelihood of that person. But at this time,
13 there's just no way of telling depending on how the
14 evidence moves.

15 THE COURT: I understand. We'll just see
16 how it goes, and if we don't have enough, we don't have
17 enough. I do have a couple of motions from the defense.
18 Did y'all want to go ahead and start addressing those,
19 Mr. Brown?

20 MR. BROWN: I would, Your Honor. I would
21 be remiss if I didn't bring up an issue with a person
22 that the defense subpoenaed, who called us last week.
23 And I'm not sure if he is here for Neil v. Biggers.
24 It's Kris Webber; it's Kris with a K -- served by
25 the sheriff's department on behalf of the defense.

1 Mr. Webber has spoken to my office, and
2 there was a concern expressed about the number of times
3 that West Columbia Police Department, and I don't want
4 to put words in his mouth, but one word that came out
5 was harassment. And he asked if I would represent
6 him on that, and, of course, I told him that would be
7 a problem with me representing Mr. Ritter. But I told
8 him I would bring it up with Your Honor.

9 Now, ironically, he's actually here under
10 my subpoena right now, so his presence is based upon
11 what I've done. But he is out in the hall. We have
12 spoken with him. We are willing to release him.
13 We told him that last week, and he said he would be
14 here because he wanted that concern about the harassment
15 addressed. I told him I would bring it up with Your
16 Honor. And beyond that, Your Honor, it was a very short
17 conversation on the phone. I do think he wanted to make
18 some statement about the number of times that West
19 Columbia Police have knocked on his door.

20 THE COURT: How is he tied to this case?

21 MR. BROWN: He lived across the street.

22 THE COURT: Okay.

23 MR. BROWN: And he actually says he heard --
24 spoke to a person, and he did pick -- well, picked
25 a person out of a six-photo array.

1 THE COURT: Okay. Solicitor, do you know
2 anything about all this, or Mr. Webber, or who he is?

3 MS. FULLER: Regarding the who they are,
4 I'm not sure about the harassment.

5 THE COURT: Okay. But I'm scanning down
6 your witness list.

7 MS. FULLER: Oh, yeah.

8 THE COURT: Was he a witness of yours,
9 or do you know ---

10 MS. FULLER: He is listed as a potential
11 witness on the case, Your Honor. I have not spoken
12 with them recently. So, I'm not sure anything about
13 the harassment allegation.

14 THE COURT: Okay. He's number 87 on your
15 list, apparently.

16 MS. FULLER: That's correct, Your Honor.
17 Law enforcement did speak with him. So if anything
18 comes up, then, we will potentially call the individual.

19 THE COURT: Okay.

20 MR. BROWN: And we wanted to put him
21 on standby. We told him that last week as well.

22 THE COURT: Well, if he's waiting for us.

23 MR. BROWN: He's not here for a motion.

24 THE COURT: Right. Well, y'all had him
25 under subpoena then as well, Ms. Fuller?

1 MS. FULLER: No, Your Honor.

2 THE COURT: You don't? Ask him to come
3 on in, I guess.

4 MS. FULLER: Jim, if we could approach for
5 a second?

6 (Off-the-record conversation held at sidebar.)

7 (Back on the record.)

8 MR. BROWN: I assume you would like to call
9 him to the stand.

10 THE COURT: Well, I just want to address
11 some concerns. You're Kris Webber?

12 MR. WEBBER: Yes, sir.

13 THE COURT: All right. Is it okay if I call
14 you Kris?

15 MR. WEBBER: Yes.

16 THE COURT: All right. Kris, I understand
17 that -- before you came in here, Mr. Bryan [sic.]
18 indicated that he had placed you under subpoena. And in
19 discussions with the attorneys, I don't anticipate the
20 State is going to call you to testify. But the defense
21 does kind of want you sort of on standby. Mr. Bryan did
22 indicate that ---

23 MR. BROWN: Brown.

24 THE COURT: Brown. Sorry. Mr. Brown, did
25 indicate that you were -- you kind of felt like members

1 of the West Columbia Police Department have been
2 harassing you, or coming to your house a good bit.
3 Is that a correct statement?

4 MR. WEBBER: Yes, sir.

5 THE COURT: And how many times have they
6 paid you a visit?

7 MR. WEBBER: It was 10 to 12 times.

8 THE COURT: 10 to 12 over how much -- over
9 how much time period?

10 MR. WEBBER: Like a ten-month period.

11 THE COURT: Within a ten-month period
12 recently.

13 MR. WEBBER: Right when it happened,
14 COVID had started, and got cut off.

15 THE COURT: Okay. But no issues recently
16 or anything that you're complaining about, Kris?

17 MR. WEBBER: I got a phone call. I don't
18 remember how long ago ---

19 THE COURT: Okay. Well, the good news,
20 Kris, is I'm hearing that you may not be called as
21 a witness in this case, all right. I really can't --
22 I don't know that I have any authority to do anything
23 about claims of harassment. If you feel like you were
24 harassed or something, what I would suggest is that,
25 perhaps, you speak -- you ask for an appointment with

1 the chief of police for the West Columbia Police
2 Department.

3 And -- I don't know how they are in
4 Lexington County or West Columbia, but in Greenwood
5 if you ask to meet the chief of police or the sheriff,
6 they'll set up a time, and they can hear your concerns,
7 okay? I suggest you start there, and maybe talk to
8 the chief of police about it personally, just, you know,
9 one on one, and see where that goes.

10 And if that doesn't satisfy you, I really
11 don't know what you could do, maybe call down to the
12 criminal justice academy. I'm not sure what the
13 mechanism is to file some formal complaint, but I'm sure
14 there's some kind of channels that you could follow,
15 okay?

16 But I suggest that really you keep it
17 informal first and just talk to the chief and address
18 your concerns with him. If you're a citizen of West
19 Columbia, I promise you they want to try and earn
20 support of the police department -- earn your support.

21 MR. WEBBER: They were waiting on me as
22 I came home.

23 THE COURT: Yeah, that's kind of an
24 unpleasant experience. I'll tell you, my wife got sued
25 for a traffic accident some years ago, and the person

1 who was serving her was kind of hiding in the shrubbery.
2 It took her by surprise when they gave her the subpoena.
3 So, I understand how that could be very unnerving.

4 But I really suggest, Kris, that you just
5 start off talking to the chief of police there in West
6 Columbia and see where that conversation goes, okay?
7 I don't know if I'm going to see you later. It sounds
8 like you're not going to be called as a witness on
9 this case. You are technically still under subpoena.
10 So, if the defense needs you to come, I'm sure they've
11 got some way to get in touch with you, okay?

12 MR. BROWN: As long as it's that same phone
13 number that we've got.

14 MR. WEBBER: Yes.

15 MR. BROWN: Thank you.

16 THE COURT: Good deal. Take care of
17 yourself, all right. Have a great week. Thank you.
18 It was good to meet you.

19 MR. BROWN: Thank you.

20 THE COURT: Okay. Next.

21 MR. BROWN: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. BROWN: We've got a motion to quash the
24 armed robbery indictment, Your Honor. And that motion
25 is marked as Defense No. 5, and there is an exhibit that

1 has been provided. One was mailed to the court clerk,
2 and I've got one for the prosecution. And if I may
3 approach? There's one marked in here as No. 5.

4 And the simple version, Your Honor, is that
5 the armed robbery indictment provides a -- the RES,
6 the property that is the subject of the robbery,
7 lists a safe and personal items. And, Your Honor,
8 it's a little different than what the arrest warrant
9 had, and the arrest warrant had a little bit more detail
10 about some items, and those are now omitted from the
11 indictment. And we don't know what personal items means
12 enough to defend against it.

13 And it's interesting because the best case
14 language I could find was in a case involving a warrant.
15 And, therefore, it didn't deal with any particulars
16 on the indictment process. It dealt strictly with due
17 process notice, which I think makes it easier to apply
18 an argument here.

19 It's not whether there's a missing element;
20 it's not that. It's that it's too vague for us to
21 defend. And in the case that I referenced, Your Honor,
22 which is in my motion as well, is the Randolph case.
23 The person was charged with breach of peace, and the
24 court said that wasn't good enough. They didn't --
25 there were "No facts constituting the offense.

1 No particularity given as to the crime contemplated."

2 And simply put, in that case, the Randolph
3 case, they didn't say what the person did to breach
4 the peace, and it's very similar, Judge. I don't know
5 if we try to prove somebody else stole personal items,
6 that they weren't, in fact, stolen, or whatever other
7 type thing because we don't know what those items are,
8 Your Honor. And, to me, that's pretty straightforward.

9 Now, I will say this. It may be that should
10 Your Honor find that language is surplus and strike it,
11 then the indictment would remain as armed robbery with
12 the second. But again in the indictment -- it's
13 indictment ending in 2890, and it just says that there
14 were items taken at the residence of Samir Atkins and/or
15 Elzie Mack and/or Rodney Furtick by means of force,
16 threat or intimidation. Goods or monies being described
17 as follows: A safe and other personal items.

18 THE COURT: Okay. Well, correct me if I'm
19 wrong, Solicitor, I do think that the gravamen of the
20 State's theory of this crime is that the safe containing
21 money was taken, that's the big stuff that was taken.
22 Was there anything else taken that y'all plan on...

23 MS. FULLER: Well, yes, Your Honor.
24 So, the State has contents that we just know generally
25 -- we just know it had money in it, or items in it,

1 as well as the Defendant's -- surviving victim's cell
2 phone was removed as well from the scene.

3 THE COURT: Okay.

4 MS. FULLER: But our argument is the
5 indictment is sufficient and put on notice that armed
6 robbery occurred, and discovery does lay that out as
7 well.

8 THE COURT: Okay. But it's been fairly
9 consistent since the warrant was issued that the safe
10 and its contents, whatever those contents were,
11 presumably, I think you're going to elicit testimony
12 that a good sum of cash was taken -- was in the safe.
13 That, a cell phone, and the safe itself.

14 MS. FULLER: That's correct, Your Honor.

15 THE COURT: All right.

16 MR. BROWN: But, Your Honor, if I may argue
17 against that. In the warrants, they were specific,
18 and it's not cell phone in the warrant for armed
19 robbery, Your Honor, which was the one that my client
20 was arrested on. It says that he did rob -- what Damien
21 Ritter did while armed with a handgun, robbed the
22 victims, Samir Atkins, Elzie Mack, and Rodney Furtick
23 of cell phones, with an S, a safe containing
24 approximately \$5,000, and other items.

25 And, again, that language has been narrowed.

1 But of equal importance on this description is that
2 the grand larceny charge, which was not indicted,
3 and probably because it might constitute a lesser
4 included, especially when the property at issue was
5 the allegation that Damien Lavar Ritter did take,
6 steal, or carry away a safe containing \$5,000 in cash.
7 And then the indictment just says the safe.

8 THE COURT: Okay.

9 MR. BROWN: And it makes it a difference
10 before we start the case that what we're trying to
11 defend -- we would agreed that it's 2,600 pages of
12 discovery. In theory, we can divine what their theory
13 is going to be. But, Judge, it's not quite that simple
14 because I don't mind throwing this fact out there,
15 the cell phone that they list belonging to Mr. Atkins
16 and Mr. Mack are in evidence.

17 THE COURT: Okay.

18 MR. BROWN: And so that -- I don't think
19 is an accident.

20 THE COURT: I appreciate the motion.
21 An indictment is nothing more than a notice document,
22 the primary purpose of which is to put the Defendant
23 on notice for what charges he needs to answer for.
24 And it's also, of course, to -- so that double jeopardy
25 can attach. And if they had changed safe, and the

1 indictment referenced -- instead of a safe and money,
2 it referenced a basset hound, and, I don't know, a Shih
3 Tzu puppy, then maybe I would grant your motion.
4 But I think everybody knows what we're talking about
5 here. Appreciate your position. I'll deny the motion
6 to quash.

7 MR. BROWN: And let me ask you, so it is --
8 we're defending against a safe and personal items
9 or money?

10 THE COURT: Sounds like a safe, money,
11 cell phone.

12 MR. BROWN: A cell phone?

13 THE COURT: Sounds like one cell phone, so.

14 MR. BROWN: Is that based on mine --
15 or theirs?

16 THE COURT: I don't know. We'll see what
17 the witnesses say. That's what you're defending
18 against. You're defending against the armed robbery
19 that took place on a date certain in West Columbia.
20 That's what you're defending against. The actual item
21 stolen. If they had noted that it was a Rolex watch
22 that was stolen, and it turns out it was a knockoff,
23 it's still a watch. You're still defending against the
24 safe, the contents of that safe, approximately \$5,000,
25 and we know the date that this took place on. I think

1 that's sufficient for double jeopardy and for notice
2 purposes. Appreciate your motion.

3 MR. BROWN: Amend the indictment to include
4 the \$5,000?

5 THE COURT: They're not required to do so.
6 I'm not quashing ---

7 MR. BROWN: Can we hold ---

8 THE COURT: I'm not quashing the indictment.
9 I've made my ruling. What's your next motion, please?

10 MR. BROWN: Yes, sir. Can we hold them to
11 that statement?

12 THE COURT: I'm going to try the case and
13 get this evidence from witnesses. So if some problem
14 arises on down the road, we'll deal with it then. But
15 as far as quashing the indictment, I'm not going to do
16 that. It's a notice document, and I presume it has the
17 correct date of the incident. I presume that it spells
18 out the elements of armed robbery, the code, and that,
19 and a reasonable description of the property is
20 sufficient.

21 MR. BROWN: We, obviously, object to any
22 other items, besides the ones that have been listed.
23 If they come up later and say a watch, we didn't...

24 THE COURT: Well, we shall see what they
25 say. I don't know that the specifics of the property

1 stolen is germane, or would be germane, to the main
2 charges, and that is the homicide. But let's keep
3 moving. What's your next motion?

4 MR. BROWN: Yes, sir. And it may become
5 important in terms of a felony murder question.

6 THE COURT: Well, we don't have a felony
7 murder rule in South Carolina, so that's not a problem.

8 MR. BROWN: Okay. Thank you.

9 THE COURT: What's next?

10 MR. BROWN: We have a motion to exclude
11 witnesses for whom Brady material has not yet been
12 provided, and it's pretty straightforward. Number 6,
13 Your Honor, and I did put these other ones up here,
14 and it's right there.

15 And, essentially, Your Honor, we've had
16 1,071 days between the time of my client's arrest and
17 Friday when I filed this motion. And we just -- we ask
18 that Your Honor bar any witnesses for whom we have not
19 received Brady material that might be something they
20 decided to provide now.

21 THE COURT: Aren't witnesses that they
22 provide information ---

23 MR. BROWN: If they haven't given us the
24 Brady material, then we ask that you don't let them put
25 the witness up.

1 THE COURT: But if the witness has the
2 material that would ---

3 MR. BROWN: It's just too late. There's
4 got to be a sanction for not giving it to us on the
5 morning of trial.

6 THE COURT: Right.

7 MR. BROWN: Especially since it's been
8 scheduled twice before.

9 THE COURT: I'm trying to understand why
10 you're wanting to make the motion. If the witness
11 is going to exonerate your client from testimony that
12 hasn't been provided to you, I'm assuming you would want
13 the witness to testify, right?

14 MR. BROWN: Brady material that's
15 inculpatory, then we'll probably have a different --
16 we're assuming they're going to give us some impeachment
17 information for a witness, that we would then not have
18 a chance to use that in preparations. And I can't
19 imagine that any of the witnesses that would have Brady
20 material would have been just become known to them in
21 the last little bit.

22 THE COURT: Okay. Well, Solicitor,
23 discovery has been completed. Any Brady material,
24 any Rule 5 material that's germane to this case has
25 been provided to the defense; is that correct?

1 MS. FULLER: Your Honor, the bulk of this --
2 yes, in general, yeah. We did meet with a witness last
3 week that should they testify -- but we're still going
4 to turn over the statement. It's pretty consistent
5 with the discovery. I don't want to say we have
6 something, but we just got the final -- I think we got
7 it this morning. We met with the witness last week.

8 But, other than that, Your Honor, if it
9 comes up later in the trial, I don't have anything,
10 but we could definitely address it at the appropriate
11 time, but I turned over discovery.

12 THE COURT: All right. The witnesses -- the
13 witness that you spoke to last week who is it, and what
14 are they going to talk about?

15 MS. FULLER: We don't know yet, but it's
16 not, like, an additional statement. I just always
17 document and turn it over should the ---

18 THE COURT: Okay. What's the witness's
19 name? You've got 100 witnesses on the list.

20 MS. FULLER: The witness's name is Tyrone
21 Davis.

22 THE COURT: Tyrone Davis. Okay. Tyrone
23 Davis. All right. Here's what we're doing. We're not
24 going to play gotcha. If you've got a statement from
25 Mr. Davis that they should be entitled to, either under

1 Rule 5 or Brady, you've got to give it to them, and it
2 has to happen now.

3 MR. BROWN: I understand he may have
4 a rap sheet, and that would be a lot of Brady material.
5 This is exactly -- now, we have to go home and do
6 research all in the background of Mr. Davis.

7 MS. FULLER: His rap sheet has already been
8 turned over.

9 MR. BROWN: It's not just a rap sheet.
10 There's items contained within the police reports.
11 The rap sheet might have bearing on impeachment value,
12 other than just the conviction of the crime.

13 MS. FULLER: Okay. Just so I'm clear,
14 it's been documented for the last two and a half years.
15 This was just another witness meeting, Judge. I've done
16 this before. I turned over the -- I just had the
17 officer do it, and it came in this morning. It's
18 nothing out of the norm or anything, and they've been
19 on notice of this person since the case began.

20 THE COURT: Sure. If you have a summary,
21 I know it's customary for y'all to do summaries.

22 MS. FULLER: Right.

23 THE COURT: I assume that y'all will be
24 turning that over. If you anticipate that Mr. Davis may
25 be called as a witness, you need to go ahead and give

1 that to them, okay? If you're not going to call him
2 as a witness, then you don't have to give it to them,
3 unless it's exculpatory or Brady.

4 MS. FULLER: That's correct, Your Honor.

5 THE COURT: So that's where we are.

6 MS. FULLER: Thank you, Judge.

7 THE COURT: So if he is going to be called,
8 or if you anticipate the likelihood of him being called,
9 go ahead and give them the statement that he gave to you
10 last week.

11 MS. FULLER: And, Judge -- we just came in
12 the courtroom. We literally just got the e-mail this
13 morning. So, it will be turned over today. It's not
14 an issue.

15 THE COURT: Very good. All right.
16 Next motion.

17 MR. BROWN: Your Honor, the next motion
18 I would have is a motion to reveal any offers, deals
19 or immunity between the State and its perspective
20 witness, and that is Defendant's No. 7, Your Honor.
21 And that has not been filed, but I have a copy for
22 the clerk right here.

23 But, essentially, we understand that they're
24 going to put up a perspective witness named Rodney
25 Furtick. Mr. Furtick is actually listed as the first

1 witness on their witness list. According to the
2 evidence that we have reviewed and been put on notice
3 about, the elements of the case that we might need to
4 defend, et cetera, it becomes about that there's -- it's
5 estimated by law enforcement to be 30 grams of cocaine
6 and an assault rifle and assault-type ammunition in the
7 home where Mr. Furtick and his personal items were
8 found.

9 We believe using Justice Hughes's [ph.]
10 analysis under the Williams case that just came out
11 recently, that might subject him to some liability under
12 18 USC 924(c) for possessing a firearm during the
13 furtherance or drug trafficking felony.

14 And also, potentially, he would be exposed
15 to a mutual combat charge because he said, at some point
16 in the report, that he pursued a red Tahoe and fired
17 shots at it. Now, there are different versions of what
18 happened, but either of those scenarios, State v. Young
19 says mutual combat, you can even have a transferred
20 intent for mutual combat on the other side, somebody
21 who killed somebody, and that creates criminal liability
22 of the person being shot at during the combat if a third
23 person is killed.

24 And so, Your Honor, we only put a reference
25 to one case, the Hanson case. But, essentially, in

1 the Hanson case, they should have -- because there was
2 a strong suggestion -- there was an undisclosed promise
3 based upon what happened later.

4 Now, we don't know if Mr. Furtick has
5 ever been charged. But at some point in time, Judge,
6 there are a lot of guns and drugs in the home in which
7 Mr. Furtick is found. Some of the assault rifle
8 ammunition is found in his car, some inside the house,
9 assault rifle under the girl's bed in the house,
10 and trafficking with cocaine, some smaller amount
11 of marijuana, and then that statement about him chasing
12 a vehicle down the street and shooting at it.

13 And, Your Honor, we just say if they
14 promised him immunity or told him he's immune, or told
15 him not to worry about it, we believe we're entitled
16 to that information.

17 THE COURT: Mr. Graham.

18 MR. GRAHAM: Your Honor, the State has
19 never considered charging Mr. Furtick with anything.
20 It wasn't his house, whatever white powder was found
21 wasn't tested, and none of the arms that were in there
22 were illegal. It wasn't even his apartment. His story
23 is that his friend was shot and killed and another
24 person came in, was shot and killed, he struggled
25 with Mr. Ritter, and he ended up shooting at the vehicle

1 Mr. Ritter fled in. Nobody has come forward from that
2 vehicle and said that they've been harmed. So there's
3 been no discussion of charges. There's no charges
4 to be had, and he's not been promised immunity.

5 THE COURT: There we have it.

6 MR. BROWN: Well, Your Honor, I mean, I want
7 to make sure I understand it. So, he did not have
8 liability for mutual combat for pursuing them and
9 shooting at them?

10 THE COURT: I'm hearing that the State does
11 not and never had intended to charge Mr. Furtick with
12 any kind of a crime.

13 MR. BROWN: That's, like, a wink-wink.

14 THE COURT: I'm sorry?

15 MR. BROWN: That's what I would refer to as
16 a wink-wink deal.

17 THE COURT: Well, I -- is he the one that
18 was shot that was in the hospital?

19 MR. BROWN: Yes.

20 MR. GRAHAM: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. GRAHAM: If Mr. Brown wants to cross him
23 about that, he can.

24 MR. BROWN: Was there ---

25 MR. GRAHAM: The question was he given

1 immunity. We have not given him any type of immunity.

2 MR. BROWN: Or deal.

3 MR. GRAHAM: There's no deal; there's no
4 charge. Nobody has brought charges.

5 THE COURT: Okay. You're treating him
6 as a witness, then, simply as a witness?

7 MS. FULLER: A victim.

8 MR. BROWN: Treating him as a victim.

9 THE COURT: Then, apparently, no deals have
10 been made, no assurances have been made. If you want
11 to explore that with Mr. Furtick, you'll be free to
12 do so. And should something come to light later,
13 then, obviously, everybody is familiar with the case
14 law, so that's where we are.

15 MR. BROWN: And, your Honor, my only concern
16 is if we get into this, and they later claim that there
17 was some mutual combat, then that would be a deal.
18 I know they conveyed, but then they didn't charge him
19 with it.

20 THE COURT: It does not sound like the
21 State's theory of the case is mutual combat.

22 MR. BROWN: And if there was, why he didn't
23 get charged.

24 THE COURT: Their theory of the case is that
25 your client broke into the house, shot three people;

1 two died, one survived. And he took a safe with money
2 in it. I don't think that there's any allegation
3 of gunplay taking place inside the house in the context
4 of a mutual combat sort of situation, but you're free
5 to ask Mr. Furtick any questions that are relevant.
6 What's the next motion?

7 MR. BROWN: Yes, sir. The next motion is
8 for a hearing to determine the reliability of a witness,
9 particularly Ms. Beverly McGruder, and that's listed as
10 Defendant's No. 8. And, essentially, Your Honor, very
11 similar to Dr. Marti Loring, who was a social worker in
12 the Jerry Buck Inman trial in Greenville, Ms. McGruder
13 was the subject of an out-of-state subpoena, and then
14 compelled to come.

15 Dr. Loring is a little different.
16 She asserted the Fifth Amendment through a lawyer..
17 I think in the motion that the State filed for
18 a pre-trial detention order as a material witness,
19 they just referred to her as having a probation agent,
20 I think. But she indicated that she didn't want to
21 cooperate.

22 And the most important part of the motion,
23 which was adopted in Judge McLeod's order of detention,
24 the State said that they sought the order, and this
25 is, in part, because Ms. McGruder did not wish to

1 voluntarily speak with that office. And that's in their
2 reason to request that she be arrested, that she didn't
3 agree to voluntarily speak.

4 Now, I cite the Michaels case as the primary
5 case. Michaels has been favorably cited in the Adams
6 case, which is, unfortunately, the case I lost. But
7 the Michaels case was the Wee Care Daycare, or something
8 like that, in New Jersey. And they found that the
9 children had been -- their in-court testimony was
10 tainted by the interview process pre-trial.

11 And State v. Adams favorably quoted
12 Michaels, but found that the video statute, the factors
13 in the video interview statute -- to get the topics
14 of the Michaels case. But short version, Judge,
15 you treat it just as you would reliability on Neil v.
16 Biggers, or reliability with the other -- and I cited
17 the cases. Jackson v. Denno is in there.

18 And the reason I point that out is if a
19 Defendant was arrested because he would not voluntarily
20 speak, and he later spoke, I would suggest that would
21 render that statement involuntary. And that's the
22 quote, is that they would not voluntarily speak with the
23 office, and then they ask that she be held until after
24 her testimony.

25 I don't know what happened with that.

1 That was 15 months, 9 days ago yesterday, 15 months 10
2 days -- I don't know whether Ms. McGruder was in jail.
3 There's no order lifting that arrest order.

4 THE COURT: Solicitor, I am assuming,
5 because I haven't heard Ms. McGruder's name previously,
6 that she has not been in jail since March 12th of 2020.

7 MS. FULLER: That's correct, Your Honor.
8 The order -- I think it was issued March 12th, and then
9 we got shut down March 16th. So then -- I didn't pull
10 out my order, but there was an order rescinding that
11 order for detainment that was done almost -- as soon
12 as we got word that we were continued last March.

13 So the order was never really served.
14 I want to say it was probably out there for, if
15 I remember, three days -- two, three days. It never
16 was acted upon because COVID shut us down right there,
17 and then I did an order rescinding, and it was served
18 and filed. So the order is not out there or active
19 in South Carolina or Georgia.

20 THE COURT: Okay. Is Ms. McGruder going to
21 testify?

22 MS. FULLER: Your Honor, it depends on how
23 the case unfolds.

24 THE COURT: Okay. What is she -- she has
25 been served with a subpoena then? Y'all have spoken

1 to her? Somebody has spoken to her?

2 MS. FULLER: Yeah, she was served, and she
3 waived a hearing. She accepted service of the subpoena.

4 THE COURT: Okay. And that was fairly
5 recently, I guess, in the last couple of months?

6 MS. FULLER: Within the last week or two.
7 I'm not sure. I don't want to misspeak. It was
8 recently. A new order -- a new out-of-state subpoena
9 was issued recently, and it was served upon her.

10 THE COURT: The order that was issued
11 to apparently take her into custody, or whatever,
12 by Judge McLeod, you say it was rescinded roughly three
13 days later. Did Ms. McGruder ever get wind of that
14 order, or did she ever learn ---

15 MS. FULLER: I don't think law enforcement
16 in Georgia ever found her to even make her aware
17 of the order. I don't have the binder in front of me.
18 It's in the conference room. I can look at the exact
19 date to put it on the record of when the order was
20 actually filed. But my understanding is the agency
21 that was assisting in Georgia could not locate her.
22 So, I don't know. I know I spoke with the probation
23 agent during that time period. But I don't know if
24 she was ever aware that an actual order for detainment
25 was issued.

1 THE COURT: Okay.

2 MR. BROWN: The department of probation
3 in Georgia was referenced in the motion itself as
4 the person who told the State that she was not going
5 to come.

6 MS. FULLER: Correct.

7 MR. BROWN: So, I do think that there's
8 still the potential that she knew about it. And I don't
9 know what other ramifications because I'm assuming
10 if she didn't want to comply with a certificated court
11 order that actually might violate her probation in
12 Georgia. And so we've still got this uncertainty,
13 Your Honor. So, I accept what they said so far,
14 but I still think that's not resolved yet.

15 THE COURT: Let me ask it this way. What's
16 the likelihood, Ms. Fuller, what do you think the
17 statistical likelihood that Ms. McGruder will be called
18 to testify, 10 percent, 50 percent, 75 percent, if you
19 just had to give it a guess?

20 MS. FULLER: If I had to give it a guess,
21 it's closer to the higher side. It just depends on how
22 the testimony unfolds.

23 THE COURT: Okay. Well, what we'll do
24 is if you do call her to testify, perhaps I'll give
25 the jury a brief break, I'll do a little bit of voir

1 dire with her initially to see, perhaps, what she knows
2 about it, or what she may have been told about it,
3 and we'll take it from there. I'm not necessarily --
4 but I'm not going to take up time right now addressing
5 the possibility that the witness may or may not -- may
6 testify rather.

7 MS. FULLER: Thank you, Your Honor.

8 THE COURT: Additional motions?

9 MR. BROWN: Yes, sir. We do have a notice
10 that I want to provide, and it's just a notice.
11 And I'm doing it because I'm trying to avoid some
12 howling objections later, and it's what's marked as
13 No. 9, Judge. And it's a notice that we be allowed,
14 the defense, to comment on the Hampton County Sheriff's
15 Office's violation of the preservation order.

16 And I'll give you the short version.
17 They had to preserve electronic data -- I'm going
18 to paraphrase it, and we don't even have a copy of the
19 receipt of their preservation order. We have nothing,
20 which is not -- I would characterize that as the
21 opposite of preservation. And it may be just they have
22 no records. I don't know.

23 But -- and, Your Honor, that's a great
24 segue. I've never been in a case where -- I'm not going
25 to call it exculpatory yet -- evidence related to the

1 Frank's hearing, or a hearing, because it's still not
2 been analyzed completely. But it's my understanding
3 that the cell phone in this case, that they're
4 attempting an extraction on from the investigator,
5 that that's still being extracted.

6 And I don't know any other way to say it,
7 but that's just -- and we need somehow the Court to keep
8 that extraction going, I guess. And I don't know if
9 it'll come up in a Rule 29 motion should something
10 positive for the defense come out of it after a
11 conviction or what. But that is kind of part and parcel
12 of this because we would assume that those cell phone
13 information, that we have the cell phone records, would
14 be electronic data contained on that cell phone.

15 And, Your Honor, the preservation order had
16 to mean something. I mean, to me, otherwise -- I mean,
17 that's just -- that's disrespect to the Court.

18 THE COURT: The cell phone, let's deal with
19 these.

20 MR. BROWN: Yes, sir.

21 THE COURT: The cell phone that they're
22 saying is still being extracted, whose cell phone is it,
23 what's he talking about?

24 MS. FULLER: Yes, Your Honor. If you
25 remember at the Franks hearing, the deceased

1 investigator, Singleton, I believe was the captain.
2 I'm not sure. He brought his actual cell phone device,
3 and we gave it to Lexington County Sheriff's Department
4 Intelligence, Mike Phipps, to see if he can extract
5 the device. I think we agreed on the date, time,
6 Defendant's name, all that, the time period to be done.

7 We did -- I think when defense counsel
8 e-mailed us a couple of weeks ago, might be a month
9 by now, I'm not sure, we checked on the status of it.
10 It's still running scenarios. We called again this
11 morning once we saw the e-mail of this particular
12 motion. And I think the information is it's got two
13 months, one week left of running different combinations,
14 and then after that it will start another thing,
15 and that can take up to 16 years.

16 MR. GRAHAM: Common strategies -- attempting
17 to break the code, and they're saying they have two
18 months and a week left before they run out of their
19 common attacks. So after that, it starts, I guess,
20 at 0000, and works through all the numbers, and it
21 can take 16 years. So they have not done extractions.

22 MS. FULLER: It will run until it's done.

23 THE COURT: Okay. As it relates to the
24 other issue, I think in prior hearings you indicated
25 that you did, in fact, forward the preservation order

1 to someone down in Hampton.

2 MS. FULLER: That's correct, Your Honor.
3 We did send the preservation request as it relates to,
4 I guess -- whatever the order was, Your Honor, the copy
5 of the order itself was forwarded to Hampton County.
6 The -- in terms of e-mail or anything from their side,
7 I don't think we have -- their side have not provided
8 it to us. I don't know if it was actually still ---

9 In terms of the information they have,
10 they've provided us with all the charges and information
11 they had on John Adkins, and that was turned over,
12 either during or -- I think the day of the Franks
13 hearing. Other than that, we don't have anything else
14 from them.

15 But in term of the motion, Your Honor,
16 I just have a couple of concerns. I'm not sure if
17 it's actually relevant to the charges here of murder,
18 here in Lexington County. If you recall at the Franks
19 hearing, Hampton County Sheriff's Office was simply
20 assisting us because that's where Damien Ritter resided.
21 Also, a concern is how far do we go with this. We know
22 the germane issue there was that you ruled upon where
23 the statement included in the search warrant that there
24 were bullet holes in Damien Ritter's Tahoe.

25 And so if the defense intends to comment on

1 them not preserving, it triggers how the jury will know
2 what are we talking about. Like, how do we -- how far
3 down the line do we go, and they're just going to
4 hear that an agency two hours away did not comply with
5 a preservation order. Period. How is that relevant
6 to our case, and how is it going to be made relevant?
7 It's just my concern/question.

8 MR. BROWN: Or an agency that was involved.
9 A common trial tactic of defense lawyers is to discredit
10 the caliber of the investigation.

11 THE COURT: I understand. It would seem
12 that the preservation order though is specific to
13 the issue in the Franks hearing, which was an issue for
14 the Court, and not for the jury. The Franks hearing ---

15 MS. FULLER: The ---

16 THE COURT: Let me just speak out loud
17 and work my way through this, and I'll let you comment.
18 But the Franks hearing addressed the sufficiency of the
19 affidavit. And if I'm remembering correctly, the order
20 that I issued stated that even assuming for a moment
21 that the information concerning the informant was
22 manufactured, or otherwise given with reckless
23 disregard, assuming for the moment that's true,
24 there was still sufficient information in that affidavit
25 to support the search warrant.

1 So it would seem to me that whatever error
2 preservation issues -- well, we've got perhaps -- not
3 error preservation. Whatever preservation issues
4 that we have concerning that order could fall into
5 one of two categories. If it's related to the Franks
6 hearing, that's water under the bridge because the Court
7 has already ruled on that, and that's a matter for the
8 Court.

9 If it's a situation where you're talking
10 about Rule 29 evidence ultimately being discovered,
11 I can't make the world turn any faster than it's already
12 turning. And if it takes 16 years to ultimately crack
13 the cell phone, it takes 16 years to ultimately crack
14 the cell phone. And, obviously, at that point in time
15 your client would be entitled to a new trial for
16 discovered evidence. But that would presuppose that the
17 investigator's cell phone has some relevant information
18 on it, which is germane to a material fact in this
19 particular case.

20 I'm hearing -- I appreciate and understand
21 the concern with Hampton County, and I do appreciate
22 the defense's concern that perhaps an order was not
23 followed as closely as it should have been. But if most
24 of the material information that was gathered in this
25 case came out of West Columbia, and we are talking about

1 really the execution of a search warrant down in Hampton
2 County where, I guess, they recovered the gun down
3 there. What did they get down there?

4 MS. FULLER: No, Your Honor. The murder
5 weapon was never recovered.

6 THE COURT: That's right.

7 MS. FULLER: It was the DVR.

8 THE COURT: It was the DVR.

9 MR. BROWN: They're going to bring it in.

10 THE COURT: Right, right. But, I mean,
11 that's going to be a piece, I assume, of circumstantial
12 evidence, not direct evidence.

13 MR. BROWN: That's what we would like to
14 circumstantially argue, be able to argue, that they
15 had -- at first, Your Honor, they did make a statement,
16 and we don't believe everything in that sworn statement
17 by Singleton is true. That comes back to later that
18 Your Honor has ruled on Franks, but I do need to renew
19 that.

20 But the short version, we know everything
21 in there. He says confidential informant, and it turned
22 out he was a tipster. Not one person came up, took
23 a stand, and said he was actually a confidential
24 informant.

25 And Your Honor parroted that in your ruling,

1 that that was a reckless disregard. But nonetheless,
2 that's factually fair game that a person made some
3 overrepresentation. We just want to be able to make
4 a correlated argument because, Your Honor, it's worth
5 pointing out the preservation order was issued following
6 Mr. Phillips's motion to receive some electronic mega
7 data.

8 That was one of the earliest motions
9 we filed. But it came -- it was honed in and put
10 into writing when it was a question of the identity
11 of the informant, which is before the Franks came up,
12 Your Honor signed that preservation order. So it's not
13 directly Franks related.

14 THE COURT: I understand, but we ultimately
15 did learn who the informant or tipster, however he's
16 characterized, was. Mr. Adkins. So, I really think
17 that what you're seeking to do is, at best, collateral.
18 I agree that you could attack the -- you could attack
19 the quality of the investigation, and that is your
20 right to do so as it relates to, well, investigator
21 so and so, when you arrived at the scene, did you
22 consider this possibility, did you do this, did you
23 do that. But if we're talking about a purely legal...

24 MR. BROWN: Let me just suggest possibly
25 developing this way. If I ask Investigator Deas to give

1 us all the information -- all the documents he received
2 from Hampton County Sheriff's Department involving this
3 investigation, we're assuming he's going to say none
4 related to this investigation because Hampton County
5 gave him none.

6 I subpoenaed them, if you recall.
7 They stood by my subpoena and never came to this court,
8 and never even sent any that Your Honor -- asking for
9 excuse. They faxed something to my office and said the
10 lady on the subpoena had the day off. And I appreciate
11 that they told me that. But, Your Honor, if I ask him
12 that he's going to, I assume, say nothing. And then
13 I'm going to say weren't they ordered to keep
14 everything? And those are fact questions.

15 And then if he says, yes, and I'm assuming
16 he knows that, because he's heard in court then --
17 because they got an order to preserve all their stuff,
18 and they didn't do it.

19 THE COURT: But again that relates
20 to a legal issue as opposed to a factual issue.

21 MR. BROWN: They did not provide -- I think
22 I can comment. They don't have one lick -- a scratch
23 of sheet of paper about their involvement in this case.
24 That's a fair question.

25 THE COURT: That may be a fair question.

1 MR. BROWN: And then I think the correlator
2 could be weren't they actually ordered to keep it?

3 THE COURT: All right. That might be a fair
4 question to ask. We'll just put a pin in that and take
5 care of it when we have to.

6 MR. BROWN: And that segues into,
7 essentially, Mr. Phillips, I need to renew my Franks
8 motion, and I assume I'll get the same ruling, which,
9 Your Honor, you did not put that in writing, but you
10 said it on the record. And it's our understanding that,
11 essentially, while he may have been a tipster and not
12 an informant, there was a conversation, or there was no
13 falsity about there being a conversation, and that there
14 was not a reckless disregard. That's the short version
15 of the way I recall Your Honor's ruling. And we just
16 need to renew that motion.

17 We do believe -- and, Your Honor, I've got
18 some more specific things that I think I do need to put
19 on the record that we believe should just preserve what
20 our argument is.

21 First, we believe the investigator lied
22 about him being a tipster, or intentionally misled about
23 that. Secondly, that he never told the truth about him
24 never being a CI, but that Mr. Adkins did. And then,
25 of course, we've got Mr. Adkins lied about never being

1 a tipster. And then we have some omissions that we
2 believe are material, and one is that Singleton says
3 he's known him for eight years verses 16 months,
4 that there was a relationship with a sister, Greta.
5 And it's very important because that also involved
6 some pistol whipping and other domestic violence that
7 Mr. Adkins was alleged to have committed against Greta
8 Singleton. All that was omitted. There was never
9 a CI for Adkins; that was omitted from telling the
10 magistrate that.

11 There was never any specific information
12 about the previous work, never any information about
13 attempt to confirm the red Tahoe was present, and we
14 do know from the DVR, which, Your Honor, at some point
15 we're going to put as an exhibit. We're going to put
16 the original as an exhibit; the original hard drive
17 and the original apparatus it was taken out of.

18 I don't know what the Court can do with
19 it. Maybe Supreme Court has got an IT person that can
20 put it back together and play it. We've been told we
21 will not be allowed to play that video. For the record,
22 we've never been allowed to play that video. We were
23 provided a clone copy of a hard drive, but we were told
24 -- but, essentially, we know this much. There's no
25 corroboration at 8:56 when that tip went in. And

1 there's an attempted corroboration at approximately
2 ten o'clock, and that was not included. We don't know
3 whether there was an attempt at 8:56, we just don't have
4 the evidence for that.

5 And so, Your Honor, we need to renew that we
6 believe all those grounds were sufficient to get us past
7 the Franks proof to suppress, sounds to me like only the
8 DVR video. I think that's the only thing they attempt
9 to bring in. I don't know that we would get any more
10 relief than that anyway. So for what it's worth, we are
11 down to, I think, one item. There are some other items
12 they took, but they have indicated elsewhere that they
13 were non-probative.

14 And, Your Honor, just for the record to make
15 sure we get it right. The procedural history on that
16 preservation order is going back a little bit. We made
17 an argument on October 22nd, 23rd of 2020, and then
18 again April 14th or 16th of this year also where we had
19 talked about the preservation order. And those were the
20 contents of the Franks hearing, but it did come up
21 earlier.

22 I need to renew the Pratt motion. Your
23 Honor did provide a written ruling, so I don't need
24 to go through the -- actually brief it, so to speak.
25 So, I just need to renew that. I need to get a ruling

1 on both of those. And then I'm going to turn it over
2 to Mr. Phillips for a somewhat related motion regarding
3 that search.

4 THE COURT: Sure. Just so the record
5 is clear, the Court's prior ruling -- and you're right.
6 I think I did, which is uncharacteristic, but I think
7 I did rule from the beach -- from the bench. I would
8 have loved to rule from the beach. But I did rule
9 from the bench on the Franks issue and did not provide
10 a written order. But I do have a good recollection
11 of the basis for my order from my oral ruling.
12 And, of course, that ruling stands.

13 As it relates to Pratt, a written order was
14 done, I believe, and the Court will reaffirm its ruling
15 on that case, or on that issue, as it relates to Pratt,
16 which I think is spelled P-R-A-T-T, Pratt motion, for
17 the record will reflect that, that I reaffirmed those
18 previous rulings. All right. Mr. Phillips.

19 MR. PHILLIPS: Thank you, Your Honor.
20 If I may because when we took the break earlier,
21 and the jury is all out there, I would like a short
22 recess before I get started to have a break myself.

23 THE COURT: Sure. We can do that.
24 We have the other jury panel coming in at 1:00 though,
25 and we have to concern ourselves regarding subsistence.

1 How long do you think your argument will take? Maybe
2 what we can do is select the jury this afternoon,
3 and then I can hear you on a few things.

4 MR. PHILLIPS: We can do that.

5 THE COURT: But I do need to try and get my
6 court reporter back somewhat earlier rather than later.

7 MR. PHILLIPS: And I think that will
8 actually be smoother. If you remember, we sent that
9 e-mail that they were going to have the evidence ready
10 at 11:30 for us to go down and view.

11 THE COURT: Okay.

12 MR. PHILLIPS: So that would actually
13 be a perfect segue for us to go look at the evidence,
14 take a quick break, like you said, and then we can
15 finish these motions after we do the jury.

16 THE COURT: Okay. Mr. Graham is nodding
17 that he agrees with that as well, so that's what we'll
18 do. We'll go ahead and take a break, then reconvene
19 at one o'clock. Y'all look at the evidence. I assume
20 y'all either brought something for your client,
21 or the jail can get him some food, get him a sandwich
22 or something, but we'll be at ease until one o'clock.

23 MR. PHILLIPS: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. BROWN: Thank you, Your Honor.

1 (Recess taken.)

2 (Back on the record.)

3 THE COURT: Good afternoon, everyone,
4 and thank you. Please have a seat. Those of you
5 who are summoned for jury duty this afternoon, welcome
6 and good afternoon. I want to start my introductions.
7 My name is Frank Addy, and I'm a circuit judge, and it's
8 my pleasure to be with you this week here in Lexington
9 County. I reside in Greenwood, but I always enjoy
10 the opportunity to come over to Lexington County.

11 I've really gotten an opportunity to know
12 your particular area over the last two years, 2019
13 and -- yeah, 2019, 2020. I had the pleasure of working
14 as chief administrative judge on the criminal side
15 of things over here. And I will tell you that after
16 two years of being in the 11th circuit, I really do --
17 I can honestly say y'all got a fine county here. You've
18 got a wonderful area, and it is always a pleasure for me
19 to be able to return this way, even though it involves
20 about a 70-mile drive for me every morning.

21 Ladies and gentlemen, this is a term
22 of criminal court. And as you can imagine with the
23 pandemic and everything that's taken place over the
24 last year and a half, we do have a number of cases that
25 are desperately in need of attention. Unfortunately,

1 we had to shut down jury trials starting in March of
2 last year. We were allowed to restart them in the fall
3 for only a few months. And then, of course, had to shut
4 them down again because of COVID. So there is somewhat
5 of a backlog that does need to be addressed.

6 I will let you know that your local
7 solicitor here, Rick Hubbard, as well as the local bar,
8 and the public defender's office, were absolutely
9 incredible during the pandemic in terms of the way they
10 managed to operate, and the way we managed to move cases
11 and address cases. Despite that limitations that were
12 forced on us by DHEC and the governor, the 11th circuit
13 was one of the first circuits to transition over to
14 WebEx hearings, hearings conducted by computer remotely.
15 And because of that, the backlog in the 11th circuit is
16 not nearly as bad as it is in other parts of the state.

17 And I always try to give credit where credit
18 is due. A young solicitor who is very technologically
19 savvy known as -- his name is Wagner. He was absolutely
20 instrumental in getting things going again, keeping
21 things moving, addressing cases from the detention
22 center and other guilty pleas that maybe weren't
23 even involving people who were in jail, bond hearings,
24 and all that sort of things. So credit where credit
25 is due.

1 Your clerk of court also did a very,
2 very fine job of helping out during the pandemic.
3 But now, guess what, we're back at it again. Why?
4 Because, thankfully, it looks like we're at the tail end
5 of this thing, and it's time for us to start addressing
6 some cases in earnest.

7 I want to thank you for being here.
8 You are, of course, the second group that we had in this
9 morning. Due to social distancing and such, we had
10 to divide the jury panel into two different groups.
11 The morning group is going to be reporting back in about
12 an hour and a half. I've already qualified them,
13 and that group is going to join those of you who are
14 left here, and we're going to move forward in selecting
15 a jury for the case that we have for trial this week.

16 I will let you know that it is my sincerest
17 intention and hope that we can finish this trial this
18 week. There's a possibility it may go to next week,
19 but I can discuss that with you at a later point in
20 time. Right now, our purpose is to determine your
21 qualification and your eligibility to serve as jurors
22 in this court.

23 Jury qualifications is done in several
24 stages, the first of which is known as the roll call
25 stage. In a moment, the clerk will call the roll of

1 everyone who was summoned for jury duty this afternoon.
2 When your name is called what I need you to do is stand
3 and give us the information that's on that piece of
4 paper, that whole slip of paper that you were provided
5 when you came into the courtroom, okay?

6 It basically will ask you to restate your
7 name, let us know what it is that you do for a living,
8 where it is that you work. If you're retired,
9 unemployed or disabled, let us know what your last
10 job was. If you're married give us your spouse's name,
11 and let us know where they work. Similarly, if they're
12 retired, unemployed or disabled, let us know what their
13 last job was.

14 For example, if I were summoned for jury
15 duty this afternoon, when my name was called I would
16 stand up, and I would say my name is Frank Addy,
17 I'm a circuit judge, I'm employed by the South Carolina
18 Judicial Branch, I'm married to Kelly Addy, she's
19 a nurse practitioner who works at the emergency
20 department at Self Regional Hospital in Greenwood.
21 So that's essentially the information that we're going
22 to be requesting from y'all in just a moment.

23 Now, as part of the qualification process,
24 I need the clerk to administer a very brief oath to
25 you so that we can be sure that the information that

1 you provide to us is accurate. So, if you would,
2 stand where you are at this time and raise your right
3 hand so that she can administer that oath to you,
4 please. Madam Clerk.

5 THE CLERK: Yes, sir, Your Honor. Raise
6 your right hand, please.

7 (Whereupon, the jury panel was duly sworn.)

8 THE CLERK: Be seated, please. Is there
9 anyone in the venire not able to take the oath? If so,
10 please stand. All are under oath, Your Honor.

11 THE COURT: Very good. In a moment, the
12 clerk will call the roll and give us that information
13 that I requested. When you speak, feel free to go ahead
14 and lower your mask or take it off because it will help
15 us hear a little bit better. When the air conditioning
16 cuts on here, it's almost impossible for us down in
17 front to hear you guys, so feel free. We've got enough
18 distance between everybody. Feel free to remove your
19 mask whenever your name is called. Madam Clerk,
20 if you'll call the roll, please.

21 THE CLERK: Yes, sir, Your Honor. Number
22 117, Anna Masse.

23 THE JUROR: My name is Anna Masse.
24 I'm employed by Richland School District II,
25 and I'm a teacher, and I don't have a husband or wife.

1 THE CLERK: Thank you. 121, Coy McCormick.

2 THE JUROR: I'm self-employed, home
3 remodeler, and I'm not married.

4 THE CLERK: Thank you, sir. 125, Krista
5 Meyer.

6 THE JUROR: I'm employed by Lexington
7 Medical Center as an accountant. My husband is
8 self-employed.

9 THE CLERK: Thank you. 126, Candy Miller.

10 THE JUROR: I'm Candy Miller. I work
11 at Prisma Health, and I'm not married. I'm a medical
12 assistant.

13 THE CLERK: Thank you, ma'am. 133, Cindy
14 Oswald.

15 THE JUROR: I'm Cindy Oswald. I'm employed
16 by Centerville Elementary School as a housekeeper during
17 the week, during the school year, and then I work
18 at Wal-Mart as an associate on the weekend, and I'm not
19 married.

20 THE CLERK: Thank you, ma'am. 136, David
21 Oxley.

22 THE JUROR: I'm David Oxley. I work at
23 Lexington High School as a chemistry teacher. My wife
24 works at Columbia College as a chemistry professor.

25 THE CLERK: Thank you, sir. 138, Cameron

1 Parler.

2 THE JUROR: I work at a temp service,
3 and I'm not married.

4 THE CLERK: Thank you, sir. 140, Lynnette
5 Paxton.

6 THE JUROR: I'm Lynnette Paxton. I'm
7 employed by Lexington School District III as a teacher.
8 And my husband is a line haul dispatcher with
9 Southeastern Freight Lines.

10 THE CLERK: Thank you, ma'am. 141, Allix
11 Pelenski.

12 THE JUROR: My name is Allix Pelenski.
13 I'm a server at Alodias, and I'm not married.

14 THE CLERK: Thank you, ma'am. 144, Michael
15 Poole.

16 THE JUROR: My name is Michael Poole.
17 I'm retired from the South Carolina Department of Public
18 Safety as a telecommunications operator. My wife is
19 Kelly Poole. She's the director of Lexington County
20 Public Library.

21 THE CLERK: Thank you, sir. 145, Annette
22 Powell.

23 THE JUROR: Annette Powell. I work at
24 Nelson Mullins Law Firm, and I'm a financial reporter,
25 not married.

1 THE CLERK: Thank you, ma'am. 146, Kris
2 Pratt.

3 THE JUROR: I'm Kris Pratt. I'm employed
4 with Lexington School District as a teacher. My husband
5 works as a sales engineer.

6 THE CLERK: Thank you, ma'am. 148, Justin
7 Proctor.

8 THE JUROR: I'm Justin Proctor.
9 I'm employed by Armstrong as an operator.

10 THE CLERK: Thank you, sir. 149, Matthew
11 Rabe.

12 THE JUROR: I'm Matthew Rabe. I work for
13 DXC Technology. I'm a project manager. My wife, Terry,
14 works in downtown Columbia.

15 THE CLERK: Thank you, sir. 157, Paul
16 Roscoe.

17 THE JUROR: I'm Paul Roscoe, maintenance
18 director. My wife, she works at TJ Maxx.

19 THE CLERK: Thank you, sir. 162, Gage
20 Sease.

21 THE JUROR: Gage Sease. I am employed
22 as a landscaper, and I am not married.

23 THE CLERK: Thank you, sir. 164, Clyde
24 Sharpe.

25 THE JUROR: I'm Clyde Sharpe. I'm employed

1 as an equipment specialist. My wife is Amy Sharpe.
2 She's a Lexington School District I teacher.

3 THE CLERK: Thank you, sir. 166, Carla
4 Shealy.

5 THE JUROR: I'm Carla Shealy, and I'm
6 a special educator for Lexington School District II.
7 My husband is Ross Shealy. He is a litigator.

8 THE CLERK: Thank you, ma'am. 168, Jesse
9 Shealy.

10 THE JUROR: Jesse Shealy. I'm employed by
11 Ferrous Engineering as a machine operator. I'm not
12 married.

13 THE CLERK: Thank you, sir. 169, Tavy
14 Shealy.

15 THE JUROR: I'm Tavy Shealy. I'm a director
16 of serviceability for Spectrum Cable, and I'm not
17 married.

18 THE CLERK: Thank you, ma'am. 170, Zachary
19 Shealy.

20 THE JUROR: I'm Zachary Shealy. I'm
21 an assistant principal at Saluda Elementary School.
22 My wife is employed by Lexington Medical Center.
23 She's a stenographer.

24 THE CLERK: Thank you, sir.

25 THE COURT: Did you subpoena the entire

1 Shealy family?

2 THE CLERK: Just about.

3 THE COURT: I'm messing here. Okay. Keep
4 going.

5 THE CLERK: 176, Samantha Sorenson.

6 THE JUROR: I'm Samantha Sorenson. I work
7 at -- and I'm single.

8 THE CLERK: Thank you, ma'am. 179, Jacob
9 Speares.

10 THE JUROR: I'm Jacob Speares. I'm an
11 assistant custodian at River Bluff High school, and my
12 fiance is a medical assistant.

13 THE CLERK: Thank you, sir. 187, Jessica
14 Stephens.

15 THE JUROR: I'm Jessica Stephens.
16 I'm employed by Driven Signs Solutions.

17 THE CLERK: Thank you, ma'am. 188, Deborah
18 Stewart.

19 THE JUROR: I'm Debra Stewart. I'm a school
20 nurse. I work for Richland School District I.
21 My husband works for Wal-Mart as a manager.

22 THE CLERK: Thank you, ma'am. 194,
23 Christian Sumter.

24 THE JUROR: My name is Christian Sumter.
25 I work for UPS. My wife is an administrator.

1 THE CLERK: Thank you, sir. 199, Angela
2 Taylor.

3 THE JUROR: I'm Angela Taylor. I work for
4 Brookland Baptist Church as a financial analyst and part
5 time South Carolina Legal Services as an administrative
6 assistant. I'm not married.

7 THE CLERK: Thank you, ma'am. 201, Douglas
8 Thomson.

9 THE JUROR: My name is Doug Thomson. I work
10 at Jim Hudson Toyota in the sales department. My wife
11 doesn't work.

12 THE CLERK: Thank you, sir. 202, Amanda
13 Trotter.

14 THE JUROR: My name is Amanda Trotter.
15 I am currently a stay-at-home mom. I was previously
16 employed by the South Carolina Baptist Association
17 as an accounting assistant. My husband is employed
18 by the United States Postal Service as a mail carrier.

19 THE CLERK: Thank you, ma'am. 203, Hunter
20 Vandyke.

21 THE JUROR: I'm Hunter Vandyke.
22 I'm a full-time student in college. I'm not married.

23 THE CLERK: Thank you. 208, Stephanie
24 Watson.

25 THE JUROR: I'm Stephanie Watson. I work

1 at East Point Academy as a teacher. My husband works
2 for...

3 THE CLERK: Thank you, ma'am. 209, Jason
4 Watts.

5 THE JUROR: I'm Jason Watts. I work
6 as a landscaper. My wife is Melissa Watts. She's
7 unemployed.

8 THE CLERK: Thank you, sir. 210, Derrick
9 Webster.

10 THE JUROR: I'm Derrick Webster.
11 I'm employed at Boeing [ph.] Insurances, and my job
12 is a lead supervisor.

13 THE CLERK: Single?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: Thank you, sir. 211, Patricia
16 Wessinger.

17 THE JUROR: Patricia Wessinger.
18 I'm a retired teacher, widowed.

19 THE CLERK: Thank you, ma'am. 214, Joseph
20 Wider.

21 THE JUROR: My name is Joseph Wider.
22 I work at Samsung as an electronics repair technician.
23 I'm single.

24 THE CLERK: Thank you, sir. 219, Henry
25 Winkler.

1 THE JUROR: My name is Henry Winkler.
2 I'm a retired Marine. I currently work at the
3 Department of Veteran's Affairs as a supervisor.
4 My wife works for the local teamster, 509.

5 THE CLERK: Thank you, sir. 223, Ingrid
6 Yon.

7 THE JUROR: My name is Ingrid Yon.
8 I'm employed by Lexington School District I as a library
9 assistant. My husband, Kenneth Yon, is employed by
10 Dominion Energy as an infrastructure analyst.

11 THE CLERK: Thank you, ma'am. Anyone else
12 here for jury duty whose name I did not call? If so,
13 please stand. Roll call complete, Your Honor.

14 THE COURT: Ladies and gentlemen, I now
15 have certain questions that I'm going to need to ask
16 you in order to determine your qualification and your
17 eligibility for service as jurors in this court.
18 And, please, do understand that state law requires
19 that I ask these questions of you. In my experience,
20 sometimes these questions may touch on something that's
21 maybe a little bit personal, something that you're not
22 comfortable disclosing in open court.

23 The process that I use is if I ask a
24 question, and it applies to you, and you're comfortable
25 doing so, I'll ask that you simply stand up at that

1 point in time and give me your response to that
2 question, okay? However, if any question embarrasses
3 you in any way whatsoever, even in the slightest degree,
4 that's fine. You don't have to stand up in open court
5 and give me an answer then because at the end of the
6 questioning process what I'll do is give you a chance
7 to come forward and speak privately down here next to
8 my court reporter, all right.

9 Again, I don't want to cause anyone any
10 undue embarrassment. If any question I ask embarrasses
11 you, in even the slightest degree, that's fine. You
12 don't have to stand up then. Just do be sure to make
13 a mental note of that question and come forward when
14 I ask you to because it's absolutely essential that
15 we have accurate information concerning all our jurors.

16 Here are the questions concerning jury
17 service. First, is there any member of the jury panel
18 who is not a United States citizen? If so, please
19 stand. No one is standing. Is there any member
20 of the jury panel who is not a resident and citizen
21 of Lexington County, South Carolina? If so, please
22 stand. No one is standing.

23 Is there any member of the jury panel who's
24 unable to read, write, speak or understand the English
25 language? If so, please stand. No one is standing.

1 Is there any member of the jury panel who has less than
2 a sixth-grade education or its equivalent? If so,
3 please stand. No one is standing.

4 Is there any member of the jury panel who
5 suffers from any mental or physical infirmity or problem
6 or issue that might affect your ability to render
7 efficient jury service? I understand that there's not
8 a lot of heavy lifting associated with jury duty.
9 Basically, you would need to be able to sit for maybe
10 an hour or so between breaks and be able to hear the
11 testimony of the witnesses. That's usually what's --
12 all that's required of you. Any member of the jury
13 panel who feels that they might have a physical or
14 mental issue that could affect jury service? If so,
15 please stand. No one is standing.

16 Is there any member of the jury panel who's
17 been convicted by a guilty plea or a trial in state
18 or federal court of any crime that's punishable by
19 imprisonment for more than a year, and your civil rights
20 have not been restored by a grant, pardon or amnesty?

21 Ladies and gentlemen, I'm not asking if
22 you've actually done a year in prison. What I'm asking
23 is whether the crime that you were potentially convicted
24 of, whether it carried the possible sentence of more
25 than a year in prison. Good rule of thumb, if you've

1 been on probation before, this question might apply to
2 you. So if you think it applies, please stand. No one
3 is standing.

4 I don't think this applies, but I'll just
5 double check. Is there any member of the jury panel
6 who's a clerk or deputy clerk of court, constable,
7 sheriff, or other commissioned law enforcement officer,
8 probate judge, county commissioner, magistrate or other
9 county officer, or is employed within the walls of any
10 courthouse? If so, please stand. No one is standing.

11 I'm pretty sure this one does not apply.
12 Is there any member of the jury panel that has
13 previously served on jury duty in circuit court during
14 this calendar year, 2021? If so, please stand. No one
15 is standing. Is there any member of the jury panel
16 that has previously served as a member of the Lexington
17 County grand jury during the past several years? If so,
18 please stand. No one is standing.

19 We now move to exemptions, and state law
20 does provide for several exemptions to jury service.
21 The way exemption works is if it applies to you,
22 it means that you have the right to say, Judge,
23 I appreciate the invite, but I choose not to serve.

24 Now understand, ladies and gentlemen, again,
25 we are resuming with jury trials, and after qualifying

1 the panel this morning, I'm beginning to get a little
2 bit concerned that we may not have enough jurors to
3 select a jury on the case that we are looking to try
4 this week, and it is one that definitely requires our
5 attention.

6 So if you are incline to stay with us,
7 even if you could claim an exemption, golly, I would
8 love to have you, okay? I just ate at the Flying Deck
9 Restaurant down the road for lunch, and facing me on
10 the wall was that poster from World War II with Uncle
11 Sam pointing the finger out there, saying, I want you
12 for the United States Army, okay?

13 Well, even if you're entitled to an
14 exemption, I want you for jury duty, guys, because
15 I need you, all right. I'm concerned that we may not
16 have enough jurors, and it will be -- if we, at the end
17 of the day, don't have enough, that's going to be
18 a problem, okay? So that said, an exemption is yours
19 to claim as a matter of right, if you want to claim it.

20 First exemption deals with anyone who is
21 65 years of age or older. I think that the reasoning
22 behind the exemption is if you made it at that age,
23 you've done enough for our country and our state. We're
24 not going to force you to serve on a jury. At the same
25 time, if you are 65 or older, and you would like to stay

1 with us, I need you. I would love to have you.

2 Any member of the jury panel though who
3 would like to claim that exemption? If so, please
4 stand. No one is standing. Thank you for staying with
5 us. I know there are several jurors out there who could
6 have claimed that.

7 Another exemption concerns prior jury
8 service. No one is required to serve as a juror more
9 often than once every three calendar years. So if there
10 is any member of the jury panel who has served on jury
11 duty during 2019 or 2020 and would like to claim the
12 exemption, please stand. No one is standing.

13 Persons who have served as grand jurors
14 in the last five years can also be exempted from jury
15 service. Is there any member of the jury panel who has
16 served on any grand jury, state or federal, in the last
17 five years and would like to claim the exemption?
18 If so, please stand. No one is standing.

19 Now, the next exemption deals with those of
20 you who have small children. This exemption has three
21 parts, all of which has to apply to you, in order for me
22 to exempt you on this basis. I can excuse you from jury
23 service this week if you have a small child or small
24 children who are under the age of seven, you have
25 primary responsibility of taking care of that child,

1 and you can't find alternate child care arrangements
2 for taking care of the kid while you're here at
3 the courthouse, okay? So that's what's required.
4 Any member of the jury panel who feels that they
5 meet all three of those? If so, please stand. No one
6 is standing.

7 Now, the next exemption deals with those
8 of you who are working in some capacity with a school
9 at this time, or have some kind of a school obligation.
10 I realize that it's June. I think most of the schools
11 are out and have graduated, what have you, released for
12 the summer. But if you do have a school obligation this
13 week that would conflict with jury service, what I can
14 do is transfer your service to a term in July at a time
15 that hopefully won't conflict with your school
16 obligation.

17 So is there any member of the jury panel
18 who is a teacher, a full-time student, administrator
19 or works in any capacity with a school that's unable
20 to serve on jury duty this week as a result of that
21 school obligation? If so, please stand. Yes, ma'am.
22 Your name again?

23 THE JUROR: Debra Stewart.

24 THE COURT: Ms. Stewart, and I think you
25 indicated that you did -- you were working ---

1 THE JUROR: I'm a school nurse for Richland
2 School District I.

3 THE COURT: Okay. And is summer school in
4 now?

5 THE JUROR: Unfortunately. Unfortunately,
6 yes.

7 THE COURT: Unfortunately. And you're the
8 nurse for ---

9 THE JUROR: I'm the nurse.

10 THE COURT: Okay. Juror number ---

11 THE CLERK: She's 188.

12 THE COURT: Yes. Okay. Anybody who can
13 fill in for you, Ms. Stewart, or is it just you?

14 THE JUROR: It's just me in that particular
15 school. At this point, no. It's hard.

16 THE COURT: Yeah, I understand.
17 I appreciate what you do, Ms. Stewart. My son was
18 a juvenile diabetic, and we got to know the school
19 nurses really, really, really well while he was in
20 school. So, I really do appreciate what you do for your
21 students. If school is in session, ma'am, is it going
22 to be in session again in July, or does summer school
23 end?

24 THE JUROR: I won't be serving in July,
25 so I'll be able to.

1 THE COURT: You can do it in July?

2 THE JUROR: Yes.

3 THE COURT: July 26th?

4 THE JUROR: Yes.

5 THE COURT: Okay. You'll get another

6 subpoena, Ms. Stewart. Take care of yourself.

7 Thank you for coming, ma'am.

8 THE JUROR: Yes.

9 THE COURT: Anyone else? No one is
10 standing. I don't think this applies, but let me double
11 check. Is there any member of the jury panel who works
12 at the department of corrections, in a prison, and you
13 would like to be exempted? If so, please stand. No one
14 is standing.

15 Next question is a little convoluted the
16 way the law has it worked out -- has it written out.
17 I'm going to read it to you verbatim from the statute,
18 and then I'm going to give you kind of a practical way
19 that this applies. Is there any juror who performs
20 services for a business, commercial or agricultural
21 enterprise, which is so essential to the operation of
22 that enterprise, that if you had to perform jury duty
23 the enterprise would have to close or stop functioning?

24 Now that's a convoluted way to ask a simple
25 question. If you're self-employed, and you're having

1 to perform jury duty, and basically your business is
2 100 percent shut down, you've got nobody that works with
3 you, and whatever it is that you do for a living is
4 at a standstill 100 percent, that's what this is getting
5 at, okay?

6 The example I typically use is a plumber.
7 He goes from call to call during the day and working off
8 his cell phone out of his van, and because he's having
9 to perform jury duty his business is 100 percent shut
10 down. He's got nobody that works with him. That's what
11 I'm getting at. Any member of the jury panel who feels
12 this exemption may apply to them and wants to claim it?
13 If so, please stand. Yes, sir, your name, please?

14 THE JUROR: 157, Paul Roscoe.

15 THE COURT: Mr. Roscoe, I think you
16 indicated that you worked maintenance in an apartment
17 complex.

18 THE JUROR: Yes, there's no other
19 maintenance guy there.

20 THE COURT: Okay.

21 THE JUROR: I get calls in the middle of the
22 night.

23 THE COURT: Okay. Nobody can fill in for
24 you? There's nobody during the day that can cover?
25 You're talking maintenance, like, general things;

1 plumbing, stairs broken, carpet ripped, something like
2 that, in the lobby?

3 THE JUROR: Plumbing, electrical,
4 air conditioning, anything that goes wrong.

5 THE COURT: All right. Do you work
6 as an employee of the apartment complex, or are you
7 independent?

8 THE JUROR: Employed.

9 THE COURT: Okay.

10 THE JUROR: I also have another thing.
11 I'm also tomorrow -- in the apartment complex, a guy
12 came in and attacked some people, and I was the one
13 that called. I've got to go to court tomorrow.

14 THE COURT: Let's do this, let's talk
15 about -- lovely. Let's talk about this in a minute.
16 Come forward, we'll chat confidentially down here, okay,
17 Mr. Roscoe. Just have a seat. I'll get you down in
18 just a minute.

19 THE JUROR: Okay.

20 THE COURT: Yes, sir, your name, please?

21 THE JUROR: 121.

22 THE COURT: What was your number again?

23 THE JUROR: 121.

24 THE COURT: 121, Mr. McCormick. Okay.

25 You are a home remodeler. I see that you are

1 self-employed. You've got anybody that works with you?

2 THE JUROR: No, sir, I'm by myself.

3 THE COURT: All by yourself. Better man
4 than I am, Mr. McCormick. All right. Mr. McCormick,
5 thank you for coming. You're free to go. They wrote
6 the exemption for you. I wish you would stay though.
7 Take care. Anyone else? No one is standing.

8 Last question, ladies and gentlemen.
9 Is there any juror who's the primary caretaker of
10 a severely disabled person who cannot be left unattended
11 or care for themselves? Or is there any juror who's
12 the primary caretaker of somebody who's 65 years
13 of age or older? If so, please stand. All right.
14 No one is standing.

15 Now, ladies and gentlemen, that concludes
16 the list of exemptions and qualifications. And it could
17 be that you're qualified to serve, but jury service this
18 week would constitute extreme hardship on you for some
19 particular reason. And I do understand -- I assure you
20 I understand how logistical issues come up, and if this
21 is absolutely the worst week for you to serve on jury
22 duty, maybe you've got a vacation planned or, you know,
23 you're flying out somewhere on Tuesday or Wednesday,
24 maybe you've got some appointment that you just cannot
25 miss. I'm happy to hear you out on that. I'm trying

1 to work with you on that.

2 What you need to understand though is that
3 legally I'm not permitted to excuse a juror who's
4 otherwise qualified to serve. I cannot excuse someone
5 who is qualified to serve permanently. I can though
6 transfer your jury service to another time this year,
7 hopefully at a time that won't conflict with whatever
8 logistical problem has arisen.

9 Now again, ladies and gentlemen, I do have
10 some concerns that we may not have enough jurors,
11 so I might be a little bit more stingy on the releasing
12 folks than I normally would be. But what I'll do is
13 if you need to speak with me about any sort of issue
14 concerning jury service this week, just form a line
15 right there where the double swinging doors are, and one
16 by one you can come forward and speak with me down here
17 next to my court reporter.

18 This will also be a chance for anyone who
19 didn't feel comfortable disclosing information in open
20 court. This will also be a chance for you to come
21 forward and speak with me privately, okay? So if you
22 need to talk to me, that's perfectly fine. I do
23 anticipate we're going to try and get this case done by
24 Friday. There's a possibility it could run over into
25 next week. I'm hoping that's not going to be the case.

1 It's my intention to power through this case
2 as quickly and as efficiently as possible. But there
3 is the possibility it could go into next week. I'm just
4 throwing that out there so that nobody is caught
5 unaware, all right. With that, if you need to see
6 me just form a line right there and come on down.
7 Mr. Roscoe, you can come on down too.

8 THE BAILIFF: Juror 210.

9 THE COURT: 210, Mr. Webster.

10 THE JUROR: Yes, sir.

11 THE COURT: Yes, sir. What can I do for
12 you?

13 THE JUROR: So, I work for my dad, and I'm
14 lead supervisor, and we work out of town 24/7 anytime
15 we can get a job right now since the coronavirus.

16 THE COURT: Sure.

17 THE JUROR: And I've got a bunch of guys
18 kind of standing around right now that -- I mean,
19 everybody is new. We hired new people. I've got guys
20 standing around right now not knowing what to do.

21 THE COURT: Okay. I guess, you and your
22 father have two teams?

23 THE JUROR: No, everybody is under me.

24 THE COURT: Everybody is under you.

25 THE JUROR: I mean, he just does paperwork.

1 That's, basically, all he does.

2 THE COURT: I would like to be able to help
3 you out. I'm sorry. Y'all just try to do the best
4 you can, okay? If you're -- it's not a situation
5 where you're the only one who works there, so I'm sorry.
6 I would love to be able to help you, Mr. Webster.

7 THE JUROR: All right.

8 THE COURT: Thank you, sir. Just have
9 a seat. Thank you. All right. 210 is fine.

10 THE BAILIFF: Juror 157.

11 THE JUROR: Hey, how are you doing?

12 THE COURT: You're Mr. Roscoe? Yes,
13 that's right. Okay. So you're in court tomorrow?

14 THE JUROR: Yeah, I got court tomorrow.
15 We had a guy come into the apartment complex and
16 attacked a girl and then attacked me. I had to call
17 the police, and the court date is tomorrow.

18 THE COURT: Okay.

19 THE JUROR: And they're ---

20 THE COURT: So it is a trial then, it looks
21 like. Yeah, okay.

22 THE JUROR: Unless there's no one else -- if
23 something happens at the apartment -- I mean, I can call
24 a plumber but ---

25 THE COURT: Sure.

1 THE JUROR: --- I'm the one that does it all
2 there.

3 THE COURT: Okay. Do you have any -- has
4 anybody contacted you about how long the trial is going
5 to last, or anything like that?

6 THE JUROR: That's all I got. They sent
7 that to the office.

8 THE COURT: Okay.

9 THE JUROR: And since I was the one that
10 made the call, they called, and they said I had to come
11 in.

12 THE COURT: Okay. Yeah, you do. Okay.
13 All right. I can transfer you to sometime in July
14 or later this year, but you'll need to show up.
15 Is that cool?

16 THE JUROR: Yeah.

17 THE COURT: Okay. All right. Just step
18 over here, and they'll give you another date that
19 hopefully works. Mr. Roscoe is going to be moved since
20 he has court tomorrow.

21 THE BAILIFF: Juror 146.

22 THE COURT: Ms. Pratt, yes, ma'am.

23 THE JUROR: My concern is next week.
24 This Saturday, I leave for vacation, and said that
25 possibly it could run into next week.

1 THE COURT: It is possible. Where are you
2 going on vacation, first of all?

3 THE JUROR: Cherry Stone, which is, I don't
4 know, eight hours away.

5 THE COURT: Cherry Stone. Okay. I'm not
6 familiar with it.

7 THE JUROR: Me either. It's my first time.

8 THE COURT: Okay. Let's do this, Ms. Pratt.
9 I'm hopeful we're going to be able to push through
10 on this, okay? I would ask that you stick around.
11 If worst comes to worst -- and I know you and your
12 family have already got travel plans, but hopefully what
13 I can do is if we do bleed into next week, I can replace
14 you with one of the alternates, but I'm really short
15 on jurors.

16 THE JUROR: Okay.

17 THE COURT: And you kind of understand why
18 I'm looking at this once we start the qualifications.
19 Is that cool?

20 THE JUROR: Yeah, I understand, yeah.

21 THE COURT: Ms. Pratt, no problem.
22 Thank you so much. Yes, ma'am.

23 THE JUROR: My other question. My grandson
24 is nine months old, and he's having surgery on
25 Wednesday.

1 THE COURT: Okay.

2 THE JUROR: How -- what are the hours
3 because I was planning to go with my daughter to the
4 surgery on Wednesday?

5 THE COURT: What time is he supposed to be
6 there?

7 THE JUROR: 5:30 in the morning.

8 THE COURT: Okay. What kind of surgery?
9 He's six months?

10 THE JUROR: He's nine months. He's having
11 his circumcision.

12 THE COURT: Oh, okay. Okay, okay.

13 THE JUROR: So it's a minor procedure.

14 THE COURT: It's very minor. You will
15 be in and out of there, yeah. We usually start around
16 9, 9:30.

17 THE JUROR: Okay.

18 THE COURT: They're going to do a local
19 on that. He'll be fine.

20 THE JUROR: Okay.

21 THE COURT: Yes, ma'am. You'll be good.
22 If it's 5:30 in the morning, you're great.

23 THE JUROR: Okay.

24 THE COURT: All right. Ms. Pratt is going
25 to stay with us, 146.

1 THE BAILIFF: Juror 194.

2 THE COURT: Yes, sir, Mr. Sumter.

3 THE JUROR: I have two misdemeanor charges.

4 I don't know if those -- leaving the scene, and then
5 another one is to some property, malicious intent.

6 THE COURT: Malicious injury. Was it
7 handled in general sessions or magistrate court?

8 THE JUROR: I have no idea.

9 MS. FULLER: He's clear, Judge.

10 THE COURT: He's clear.

11 MS. FULLER: He's qualified.

12 THE COURT: It sounds like you're okay.

13 THE JUROR: Okay.

14 THE COURT: Thank you so much, sir. 194
15 is fine. Yes, ma'am.

16 THE BAILIFF: Juror number 208.

17 THE COURT: Ms. Watson, yes, ma'am.

18 THE JUROR: I have -- I'm the caregiver
19 to a four-year-old and a 16-year-old special needs
20 granddaughter.

21 THE COURT: Okay.

22 THE JUROR: It's just going to put a strain
23 on two families.

24 THE COURT: I gotcha. Can anyone take care
25 of them, or is it just you?

1 THE JUROR: Well, I've already obligated,
2 and it's not like you can go find people.

3 THE COURT: Yeah.

4 THE JUROR: I mean, that's affecting my
5 daughter and my daughter-in-law.

6 THE COURT: Okay. So these are your grand
7 kids?

8 THE JUROR: My grandchildren.

9 THE COURT: All right. Then, the special
10 needs kid is?

11 THE JUROR: She's 16.

12 THE COURT: Sixteen.

13 THE JUROR: She's coming in the day.
14 So, she can't be home alone.

15 THE COURT: Okay.

16 THE JUROR: Both her parents are employed.

17 THE COURT: All right. No chance anybody
18 can fill in for you this week?

19 THE JUROR: They just came off vacation.

20 THE COURT: Ms. Watson, gotcha. What I'll
21 do -- let me transfer you to sometime in the fall,
22 then; is that okay?

23 THE JUROR: That's fine.

24 THE COURT: Madam Clerk, transfer 208 to
25 sometime in the fall. Step over there. Yes, ma'am.

1 THE BAILIFF: Juror number 169.

2 THE COURT: Ah, one of the Shealys.

3 Ms. Shealy, yes, ma'am.

4 THE JUROR: My only concern, Judge,
5 you mentioned it could possibly go into next week.

6 We have a family vacation starting this Saturday,
7 and we've had to rent a pretty big place to accommodate
8 everyone.

9 THE COURT: Gotcha. Where are you going?

10 THE JUROR: Maggie Valley.

11 THE COURT: Oh, lovely. That's going
12 to be beautiful, and it won't be as hot as it is here.

13 THE JUROR: Yeah.

14 THE COURT: Here's how I kind of like to
15 play it. I'm confident, hopeful that we can get through
16 this by Friday, okay? If you get picked on it, and it's
17 looking like we're going to push into next week, then
18 what I may just have to do is replace you with an
19 alternate or something like that. I'm really crossing
20 my fingers that we can make this happen in four days.
21 Is that cool?

22 THE JUROR: Yeah.

23 THE COURT: All right. We'll leave it at
24 that then, Ms. Shealy.

25 THE JUROR: Thank you.

1 THE COURT: Thank you.

2 THE BAILIFF: Juror number 214.

3 THE COURT: 214. Mr. Wider, yes, sir.

4 THE JUROR: I really don't -- I have
5 a question.

6 THE COURT: Sure.

7 THE JUROR: In my job, I'm the only repair
8 technician on my shift.

9 THE COURT: Okay.

10 THE JUROR: And that is from 5 until 2:40
11 when we get off. So what time do we have to report in?

12 THE COURT: Okay. You have to show up
13 at 5 p.m., and then you get off at 2:40?

14 THE JUROR: Yeah.

15 THE COURT: Okay.

16 THE JUROR: If I don't work, I don't get
17 paid.

18 THE COURT: Sure. Typically, we work to --
19 normally, we break around 5 or 5:30, and my intention
20 is maybe go a little bit later on a few days, like, 5:30
21 to 6. And then we would start in the morning around 9,
22 9:30, somewhere in there. Can you make that work?

23 THE JUROR: I tried to call my supervisor
24 today; he didn't answer the phone. So, I can't get
25 in touch with him.

1 THE COURT: Okay. All right. Do this:
2 I'm going to give everybody a break in a few minutes.
3 Try him again, if there's a problem when we come back,
4 just kind of get my attention, okay? So, I'm going
5 to put you down, 214, and we'll touch base after we take
6 a break, okay, sir? Thank you.

7 Just a few other questions, ladies and
8 gentlemen. I meant to ask these when we started,
9 COVID-specific questions. Is there any member of the
10 jury panel that's currently suffering from any of the
11 symptoms commonly associated with COVID; cough, fever,
12 all that fun stuff that you've heard about for one year
13 and four months? Anybody who thinks they may have
14 symptoms of COVID, please stand. All right. No one
15 standing.

16 Is there any member of the jury panel
17 who is residing in the same household with anyone who
18 is positive currently for COVID? If so, please stand.
19 Very good. No one is standing.

20 Ladies and gentlemen, what we would like
21 to do, again, have the other jury panel coming back
22 at 2:30. I was thinking the panel this morning took
23 about an hour and 15 minutes to qualify, but I was
24 thinking it might take y'all about the same amount of
25 time. What I'm going to do is we're going to be at ease

1 for about the next 30 minutes, okay? That morning panel
2 is going to be coming in, we're going to mix them with
3 you guys, and we're going to move forward with jury
4 selection specific questions that are specific to the
5 case that we're going to be trying, okay?

6 So, you've got 30 minutes to kill. Don't go
7 too far. Do some window shopping on Main Street or
8 something. The merchants know you're in town, but just
9 be back here in the courtroom, if you could, in about 30
10 minutes so we can move forward with this and get you out
11 of here.

12 I will note if you're not selected on the
13 jury that we're going to pick today, your jury service
14 is going to be done this week, okay? So that's an
15 additional incentive for you to stick around and be with
16 us, at least, this afternoon because if you are not one
17 of the lucky ones chosen, you will be done for the week,
18 all right. With that, thank you very much. See you
19 back in 30 minutes. Thirty minutes. Thank you.

20 (Recess taken.)

21 (Back on the record.)

22 THE COURT: Thank you. Please have a seat.
23 We will go ahead and get back on the record in State v.
24 Mr. Ritter. The Defendant is present, and at this point
25 in time, any additional motions?

1 MR. PHILLIPS: Thank you, Your Honor.
2 Dayne Phillips for the defense. We do have -- as Your
3 Honor has seen, I've provided via e-mail, and also
4 provided hard copies to opposing counsel, as well
5 as to Your Honor, of our motion for supplemental
6 attorney-conducted voir dire and proposed standard
7 voir dire.

8 I know we've discussed some of it at
9 the bench. But to put it on the record, specifically,
10 the Defendant respectfully moves for supplemental
11 attorney-conducted voir dire examination of the venire,
12 and the inclusion of the proposed voir dire questions.
13 This has been marked as Defendant's Exhibit No. 2.

14 Specifically, the Defendant requests
15 voir dire examination using the following procedure.
16 The standard voir dire conducted by the Court, pursuant
17 to the South Carolina Code of Laws, and then limited
18 supplemental attorney-conducted voir dire by the
19 prosecution and defense. We raised this under the
20 5th, 6th and the 14th Amendments of the United States
21 Constitution, Article 1, Sections 3 and 14 of the South
22 Carolina Constitution.

23 Specifically, Your Honor, our basis here
24 is obviously not to delay, but to have a reinforced
25 defense right to a fair and impartial jury and fair

1 trial. Specifically, the purpose of supplemental
2 attorney-conducted voir dire is to expose any known,
3 and more importantly, and the emphasis is any unknown
4 biases or prejudice with respect to jurors against the
5 Defendant and/or the nature of the criminal charge
6 alleged.

7 Specifically, I have -- obviously, Your
8 Honor has the motions. So, I'm not going to verbatim
9 read the law, and Your Honor has been able to look at
10 it. Co-counsel, I believe, found this survey. There
11 was a joint survey by the National Center of State
12 Courts and State Justice Institute that shows that less
13 than ten states -- state courts are allowing the judge
14 to do the voir dire, and obviously we're one of those.

15 It also noted that we are at the bottom
16 of the list, unfortunately, like many things, that the
17 study found that South Carolina, and this is a quote,
18 "Consistently reported the shortest average of voir
19 dire time, 30 minutes, in both felony and civil trials,
20 with Delaware and Virginia closely following around
21 an hour or less."

22 Our argument is, specifically, that
23 supplemental voir dire is necessary in the interest
24 of justice to obtain an impartial jury, including
25 intelligent exercise of peremptory challenges

1 by counsels, informed consideration by the court
2 of any challenges for cause.

3 Specifically, as Your Honor knows, as we
4 just did the qualification procedure, right now the only
5 things we know is age, sex, race, employment, address
6 and spouse -- spousal information for the same thing.
7 And most of those things, constitutionally, we're not
8 allowed to consider. That leaves very little for the
9 State to use their intelligent peremptory strikes, other
10 than, say, based stereotypes and unconstitutional basis.

11 Further, Your Honor, supplemental voir dire
12 will aid the parties in applying the requirements of
13 Batson v. Kentucky and its progeny in ensuring that
14 people are not improperly struck on an unconstitutional
15 basis. Furthermore, the COVID-19 pandemic enhances
16 the necessity to allow conducted attorney --
17 attorney-conducted voir dire, Your Honor.

18 Specifically, as Your Honor knows, very
19 controversial on some things. There's some pretty
20 wide opinion about COVID-19 and the effects of social
21 distancing and masks. Obviously, Your Honor has asked
22 a few questions, some of the basics, and we have in
23 our standard voir dire -- proposed voir dire a bunch
24 of questions regarding COVID, as Your Honor sees.

25 But we believe that we have this ability,

1 at least, to open the door and allow, what we've offered
2 is to limit attorney-conducted voir dire. You know,
3 we're not trying to be California or any other state
4 and have this go on for days or weeks. We are saying
5 that if we -- if the Court would allow us to have five
6 questions and limit each side, the prosecution and the
7 defense, to one hour a piece that would allow for us to
8 comport with due process, ensure a fair and impartial
9 jury and fair trial for Mr. Ritter.

10 Specifically, as Your Honor sees with the
11 five questions, I don't know if Your Honor has any
12 specific objections, per se, to these five questions.
13 I was just speaking with Solicitor Fuller about it,
14 and she didn't find them herself offensive. I know
15 she probably doesn't agree with attorney-conducted
16 voir dire, but I won't speak for her.

17 Now, as far as that's concerned, before
18 I get to the next set of the standard proposed voir
19 dire, I think it would be best that I leave it as --
20 to get a ruling on the request for attorney-conducted
21 voir dire.

22 THE COURT: All right. And, Ms. Fuller,
23 do you have a position on this?

24 MS. FULLER: I don't have a position,
25 Your Honor. I told defense counsel it would be up

1 to Your Honor. But the only position is I don't agree
2 with the individual attorney since it's not done in our
3 state. But in terms of the actual questions they
4 proposed, there isn't one that jumped out that is highly
5 offensive.

6 THE COURT: Okay. I do appreciate your
7 motion. And I will tell you, you know, personally
8 I'm conflicted on this question. In some respects,
9 I definitely agree where perhaps it could be useful
10 for the reasons that you explained on the record.
11 The flip side of that is that it also creates the
12 potential to blow up a jury panel.

13 If you're doing it one by one in a death
14 penalty case, where obviously a lot more time is
15 allotted in what we're able to use or able to do for
16 a non-death penalty case, you know, if we were able
17 to go one by one with the jurors, that's obviously
18 preferable.

19 But during the first question that you
20 throw out there, what are your assumptions, opinions
21 and feelings about a person who was arrested for murder
22 based on the presumption of innocence, you know, I could
23 easily see someone who has been negatively affected
24 by a homicide going to town on that question and
25 potentially prejudicing one side or the other.

1 So, I'm a little hesitant for that reason to allow it.

2 And, secondly, you know, when I first
3 started practicing, we struck by zip code and by
4 address. There was so little information out there,
5 aside from, as you put it, their age, their race, their
6 residence, their address, what they do for a living,
7 that kind of thing. There was so little information
8 out there that you basically would, as we used to say,
9 strike by zip code.

10 At least nowadays we do have the benefit
11 of social media. We've got ways to access information
12 about jurors that were -- you know, we could have only
13 dreamt of in 1993. And so there is an opportunity
14 to do juror research outside of the traditional confines
15 of the court.

16 Due to efficiency constraints and just
17 general concern, I'll be happy to ask your questions,
18 at least the vast majority of your questions for you.
19 What I'll do is probably paraphrase a lot of them,
20 and then -- and make them kind of equal to both sides.
21 So, I'll be asking, for example, if anybody -- is there
22 any member of the jury panel who has a close family
23 member whose ever been the victim of or accused
24 or convicted of a violent crime or a serious crime,
25 things like that.

1 So, I'll largely paraphrase a lot of what
2 you have out there, but I'm just very hesitant right
3 now to permit attorney-conducted voir dire, at least
4 in the context of this case due to the constraints
5 that we're operating under. I appreciate your motion.
6 Your objection, of course, is noted.

7 MR. PHILLIPS: Thank you, Your Honor.
8 As Your Honor knows, for error preservation we have
9 it marked as Court's Exhibit 2. If we don't mark
10 it as a court's exhibit, the appellate court said
11 it's not good enough, so it's marked. You know,
12 I guess, it gets to be a little bit of a shell game.

13 THE COURT: Sure. I understand.

14 MR. PHILLIPS: And so with that, Your Honor,
15 obviously, as far as our standard proposed voir dire
16 questions, is there any specific questions that you know
17 you're not going to -- because we have to specifically
18 address those as well to preserve them for appeal?

19 THE COURT: Let me just look through here.
20 The COVID thing, I'm -- we're really at the tail end
21 of that is my, knock on wood, hope. And at this point
22 in time, I mean, honestly, anybody that comes down with
23 it, we've got vaccines available. I can't understand
24 someone who's actively wanting to get sick, but,
25 I guess, you know, that's none of my business.

1 MR. PHILLIPS: I understand, Your Honor.
2 The only ---

3 THE COURT: So, I'm probably not going
4 to ask the COVID ones.

5 MR. PHILLIPS: The only specific I would
6 have for that are the questions about how people feel
7 as far as comfortable. In other words ---

8 THE COURT: I could ask that. There is an
9 elderly lady, I think she's in her 70s out there, who
10 I just want to make sure -- I do want to make sure she's
11 comfortable. So, I will ask a general question about --
12 I'll explain the masks and the procedures and make sure
13 that they are comfortable.

14 MR. GRAHAM: Your Honor ---

15 MR. BROWN: Let them know that Mr. Ritter
16 has to wear a mask.

17 THE COURT: Yes, yes. I'll say -- I'll
18 basically say that everybody, including the
19 participants, I think I've been setting this example
20 from hopefully while they were here. But if you're not
21 speaking, you need to have a mask on, and that will
22 cover everybody, I think, which I really think is,
23 again, silly if you've gotten the shot, but whatever.

24 MR. PHILLIPS: Understood. The main concern
25 is whether the jury would feel uncomfortable serving.

1 That is my main concern.

2 THE COURT: Certainly. Certainly.

3 MR. PHILLIPS: Obviously with -- I guess
4 -- depending on the judge regarding social media.
5 I understand you're going to ask about violent crimes,
6 death crimes, drug addiction. As you see, I've kind of
7 outlined these specific topics, gun crimes, et cetera.
8 What is Your Honor's feelings as far as those are
9 concerned?

10 THE COURT: Which questions are you talking
11 about?

12 MR. PHILLIPS: So, we can go to 41.

13 THE COURT: Okay.

14 MR. PHILLIPS: For each section has a social
15 media-type question.

16 THE COURT: I'm probably going to wrap all
17 of those into one. Instead of dealing with robbery,
18 theft, violent crime, drugs, I'll probably do -- yeah,
19 generally crime.

20 MR. PHILLIPS: Your Honor, I have no issue
21 with that.

22 THE COURT: And, you know, again I'm
23 assuming that some juror research was done in terms
24 of their Facebook pages and that sort of thing. So,
25 hopefully, we have an idea of -- or a decision has been

1 made, or the profiles have been gathered by both sides,
2 but that's neither here nor there. I'll ask the
3 questions.

4 MR. PHILLIPS: Thank you, Your Honor.
5 The other two that come up, that are the same thing
6 is the morally or religiously opposed, and then,
7 of course, would you hesitate to vote not guilty based
8 on those.

9 THE COURT: Yeah, I'll generally cover those
10 in my general instructions. So morally or religiously
11 opposed to violent crime that you cannot render a fair
12 and impartial decision. And, generally, I think anyone
13 is morally or religiously opposed to violent crime.

14 MR. PHILLIPS: Not so much ---

15 THE COURT: If you feel like I haven't
16 touched on it enough before I -- before we start
17 selection, you can ask for me to get further
18 clarification from them.

19 MR. PHILLIPS: I appreciate it, Your Honor.
20 And then hesitate to vote not guilty simply because it
21 involves -- I mean, that's another way to ask the same
22 question.

23 THE COURT: Yeah, and I'll -- I'm probably
24 going to ask something along the lines of that you'll
25 be instructed at the conclusion of the trial to judge

1 the case based only on the evidence and not the law.
2 Is there any member of the jury panel who -- if anybody
3 feels that the Defendant is not guilty would feel
4 compelled to either go along with the majority, or set
5 aside that feeling of not guilty just to be in agreement
6 with everybody else, some words to that effect, okay?

7 MR. PHILLIPS: Yes, Your Honor. The other
8 one that might be -- are you a supporter of proposed
9 legislation, or say, stricter gun laws, stricter drug
10 laws, those, I think, given the political climate can
11 be ---

12 THE COURT: I don't know if you're going
13 to find any member of Lexington County who's going
14 to be willing to stand up in open court and, perhaps,
15 say that I'm in favor of stricter gun laws ---

16 MR. PHILLIPS: I'm born and raised, so,
17 I mean...

18 THE COURT: --- in front of other members of
19 the jury panel. I'll probably ask that in the advocacy
20 question sort of thing, Mothers Against Drunk Driving
21 or any organization, the promotion of which is victim's
22 rights or rights concerning stronger or weaker gun laws,
23 things of that nature.

24 MR. PHILLIPS: Yes, Your Honor.

25 THE COURT: I'm certain that there are

1 a few NRA members out there. You probably have already
2 identified them.

3 MR. PHILLIPS: I don't know if you feel
4 this is the same thing, No. 58, do you own a gun
5 for personal protection.

6 THE COURT: I'm probably not going to ask
7 that because everybody does.

8 MR. BROWN: I actually don't. I grew up in
9 Sumter. I was on the rifle team, I'm an NRA marksman,
10 and I do not own a gun.

11 THE COURT: It might be easier to ask the
12 opposite way, is there any member of the jury panel who
13 does not have a firearm.

14 MR. BROWN: That sounds -- then, they're
15 going to go on a list of houses that you go visit.

16 THE COURT: Yeah, there are certain
17 questions that just pry maybe a little bit too much.
18 Obviously, questions of a religious nature, we have
19 Mennonites over in Abbeville. Fortunately, you know,
20 you can usually pick them out by their attire. But you
21 can't, obviously, sit them on a jury because they will
22 never vote one way or another.

23 And there have been occasions where
24 strangely they have found their way onto a jury,
25 which is problematic, especially if you're down to 12.

1 I'm probably not going to ask whether they've got a gun.
2 I don't know that that's terribly germane.

3 MR. PHILLIPS: Now, I know -- while I'm just
4 looking at it, these are -- I don't want it to get lost
5 in translation. But basically have you liked, followed
6 or commented on a law enforcement agency's social media
7 page? Have you liked, followed or commented on
8 prosecutorial social media page such as 11th Circuit
9 Solicitor's Office? Both of those, obviously, have
10 Facebook pages and have a lot of members -- or friends.

11 THE COURT: I'll touch on that.

12 MR. PHILLIPS: Thank you.

13 THE COURT: The ones I'm looking at --
14 inclined not to ask 77; 78, I'll fold into MADD and that
15 kind of a thing. I'm not going to ask about bumper
16 stickers; that's 79.

17 MR. PHILLIPS: Yes, sir.

18 THE COURT: And I don't plan on asking
19 service on a prior jury panel in criminal cases.
20 Bad experience with a criminal defense attorney,
21 I'm not really sure we want to go there.

22 MR. PHILLIPS: Well, I mean, it would be
23 good to know. You can say prosecutor's office or
24 defense attorney's office and leave it open so it's not
25 as pointed.

1 THE COURT: What I was looking at getting
2 at, have you -- any member of the jury panel ever had
3 a very bad experience, or a very negative experience
4 in court with lawyers, judges or the subject matter
5 that you feel would affect your ability to be fair
6 and impartial? And I may just, you know, leave off
7 that tail end about fair and impartial, but just probe
8 to see if they've had any negative courtroom experience
9 that could affect their impartiality, and that's kind
10 of a big open sort of question.

11 MR. PHILLIPS: That's perfect, Your Honor.
12 I don't believe, as far as this motion is concerned,
13 as far as the motion for attorney-conducted voir dire
14 and proposed voir dire, I think that concludes it,
15 Your Honor.

16 THE COURT: Very good. And before I -- you
17 know, before I move to selection, I'll pull you guys
18 aside, and if you feel strongly that I've missed
19 anything in particular just let me know, and I'll hear
20 you out on that privately, and we'll put it on the
21 record afterwards, if I decide not to ask it, okay?

22 MR. PHILLIPS: Thank you, Your Honor.

23 MR. BROWN: And, Judge, just on that note.
24 When they go to respond, is that going to be done
25 privately?

1 THE COURT: Say again?

2 MR. BROWN: You mentioned the problem
3 of having some bleed over from responses.

4 THE COURT: Yes. Well, I mean, the personal
5 questions I'm going to ask down in front.

6 MR. BROWN: That was my question.

7 THE COURT: Yeah, I never expect somebody
8 to stand up, and say, I was sexually molested when I was
9 ten years old by somebody. That's -- judges who do that
10 are not asking -- they're asking for it to be reversed
11 later on due to juror concealment. So, I do not expect
12 that kind of honesty in open court. Period. End of
13 story.

14 MR. BROWN: Yes, sir, that's why.

15 THE COURT: Yeah.

16 MR. PHILLIPS: Go ahead and strike the ---

17 THE COURT: Yeah, I want to go ahead --
18 if we have them here, I want to go ahead and get moving.
19 Was there anything that the State had, or you felt
20 strong about, or anything that you needed me to address
21 from y'all's perspective?

22 MS. FULLER: Just the one. My last question
23 is the biggest one of mine that I've submitted. Mine
24 is relatively short. So, I think I have -- pretty much
25 your standard. But, if you remember, my last question,

1 the way you asked it one time, you're, like, oh, I think
2 I asked it, and you asked it -- it's just the way it's
3 written.

4 THE COURT: You're talking about number
5 seven?

6 MS. FULLER: It should be the last question.

7 THE COURT: Yes, I will ask that verbatim.

8 MS. FULLER: Thank you.

9 THE COURT: All right. Let's go ahead and
10 get the jury moving in here, if we could. And, again,
11 I did tell the lawyers that once we have the jury
12 selection, I'm more than comfortable for as many family
13 members to be in here as possible. But I just have
14 to restrict somewhat. I'm sorry -- have to restrict
15 the families that are participating, or family members
16 that are participating.

17 MS. FULLER: And just so we're clear, for
18 the victim you said three each and the surviving victim?

19 THE COURT: Yeah, two for a total of five.
20 Two for each decedent and then ---

21 MS. FULLER: So five total?

22 THE COURT: Yeah. And then, of course,
23 the other one. So, we'll be at ease for a moment while
24 we get them in here and seated.

25 MR. PHILLIPS: Your Honor, I know in the

1 past -- trials done since COVID, what's the new
2 protocol?

3 THE COURT: I'm probably going to have --
4 we're going to go ahead and pull them in, seat them over
5 here. I want to give them very specific instructions
6 once we have them selected, and then I'll release the
7 rest. They'll approach here, and yeah, kind of ---

8 MR. PHILLIPS: Same procedure as normal.

9 THE COURT: Same as we normally would, yeah.

10 MR. BROWN: I'm trying to figure which way
11 to turn around.

12 THE COURT: Yeah, you're good where you
13 are right now. Well, you'll be better to move around
14 because I'm going to ask the questions.

15 MR. BROWN: Yes, sir. Yes, sir.

16 (Recess taken.)

17 (Back on the record.)

18 THE COURT: Thanks. Please do have a seat.
19 Okay. Ladies and gentlemen, if you were here this
20 morning, welcome back. We are now in a position to move
21 forward with selection of the jurors on the first case,
22 the only case, that we're going to be looking at trying
23 this week. So at this point in time, Ms. Fuller,
24 if you'll call the case.

25 MS. FULLER: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Yes, ma'am.

3 MS. FULLER: The State calls for trial
4 Damien Lavar Ritter, under indictment number
5 2019-GS-32-02891, an indictment for kidnapping;
6 indictment number 2019-GS-32-02890, an indictment
7 for armed robbery; indictment number 2019-GS-32-02889,
8 an indictment for attempted murder; indictment number
9 2019-GS-32-02887, an indictment for murder;
10 2019-GS-32-02888 -- I'm going to pronounce and say
11 it one more time, the last four digits is 2888,
12 an indictment for murder. All indictments have been
13 true billed by the Lexington County grand jury.
14 May I approach, Your Honor?

15 THE COURT: Please. All right. Ladies
16 and gentlemen of the jury, we're about to begin jury
17 selection in the case of the State of South Carolina
18 v. Damien Ritter. And I've been handed indictments
19 that charge Mr. Ritter with two counts of murder,
20 one count of attempted murder, one count of armed
21 robbery, and one count of kidnapping.

22 Now, ladies and gentlemen, at the get-go,
23 at the outset, I want to let you know that these
24 indictments are nothing more than a couple of pieces
25 of paper, okay? The significance of an indictment is

1 nothing more than the means by which a case is brought
2 into court, all right.

3 The Defendant in this case, Mr. Ritter,
4 has pled not guilty to all of the charges, and that plea
5 puts the burden firmly on the State to prove each and
6 every element of these crimes beyond a reasonable doubt.
7 If you're selected on the jury, I'll give you further
8 instructions on that again at a later point in time.
9 But again Mr. Ritter has pled not guilty to these
10 charges, and that plea puts the burden on the State
11 to prove his guilt beyond a reasonable doubt as to each
12 and every charge, each and every element of each and
13 every charge.

14 Now in this case, ladies and gentlemen,
15 I now have certain specific questions that I need to ask
16 you, questions that are specific to this case. We're
17 going to follow the same procedure that we used before.
18 If I ask you a question that applies to you, simply
19 stand and give me that answer, okay?

20 First question, ladies and gentlemen,
21 is there any member of the jury panel who's related by
22 blood or marriage, or has any close business or social
23 relationships with the Defendant in this case, Damien
24 Lavar Ritter? If so, please stand. All right. No one
25 is standing.

1 The two decedents in this case their names
2 are Samir Atkins and Elzie Mack. Samir is spelled
3 S-A-M-I-R; Atkins is spelled A-T-K-I-N-S. Elzie,
4 E-L-Z-I-E, Mack, M-A-C-K. Again, those are the two
5 decedents involved in this case. Is there any member
6 of the jury panel who is related, or was related, by
7 blood or marriage, or anyone who had any close business
8 or social relationships with the decedents involved
9 in this case, or any member of their immediate family?
10 If so, please stand. No one is standing.

11 The attorneys who are going to be
12 representing various sides in this case, for the State,
13 Sutania Fuller and Shawn Graham will be representing the
14 State. Ms. Fuller, do you care to introduce yourself
15 and anyone seated at counsel's table with you.

16 MS. FULLER: Thank you. I'm Assistant
17 Solicitor Sutania Fuller. I'm a prosecutor here in
18 Lexington County, but I also handle cases in the
19 remaining parts of our circuit, Edgefield, McCormick
20 and Saluda Counties.

21 MR. GRAHAM: I'm Deputy Solicitor Shawn
22 Graham.

23 MS. FULLER: And seated with us is
24 Investigator Matt Deas with the West Columbia Police
25 Department, Investigator James Sullivan, who is an

1 investigator in our office, and my paralegal Madison
2 Lundy, and I also have my victim's advocate, Rhonda
3 Robinson.

4 THE COURT: Thank you, Ms. Fuller. The
5 defense in this case, Mr. Ritter, is being represented
6 by Jim Brown from the Beaufort bar and Dayne Phillips
7 of the local bar here. If you care to introduce
8 yourselves, gentlemen, to the jury panel.

9 MR. BROWN: My name is Jim Brown. I grew
10 up in Sumter. I live in Beaufort County, where I run
11 a law practice. And Mr. Phillips is my co-counsel,
12 and he's a local lawyer who lives in Lexington,
13 practices throughout Richland County. And if I may,
14 Your Honor, introduce the law clerks.

15 THE COURT: Please by all means.

16 MR. BROWN: It's summertime, so we have some
17 law clerks. And I have Randy Brown on the left, Parker
18 Baker in the middle, and Christian Gerr [ph.] on the
19 right. We also have another law clerk that, I believe,
20 will be here later in the week. Her name is Jennifer --
21 I apologize. Jessica Stark, and we appreciate their
22 help with us.

23 THE COURT: Thank you, Mr. Brown.

24 MR. BROWN: Thank you, Your Honor.

25 THE COURT: Next question, ladies and

1 gentlemen, is there any member of the jury panel who's
2 related by blood or marriage, or anyone who has any
3 close business or social relationships with any of the
4 attorneys involved in this case? If so, please stand.
5 No one is standing. Is there any member of the jury
6 panel who is currently being represented, or has
7 previously been represented, by any of the lawyers
8 involved in this case? If so, please stand. No one
9 is standing.

10 Ladies and gentlemen, the State alleges that
11 this incident took place on July the 5th of 2018 in West
12 Columbia. What's the address and the approximate time
13 of day?

14 MS. FULLER: Yes, Your Honor. [REDACTED] Glenn
15 Street in West Columbia, Your Honor, and approximately
16 2:15 p.m.

17 THE COURT: Okay. What was that street
18 again?

19 MS. FULLER: Glenn.

20 MR. BROWN: Glenn Street, [REDACTED].

21 THE COURT: Glenn Street.

22 MR. BROWN: Yes, sir, two Ns.

23 MS. FULLER: It intersects on Airport
24 and Platt Springs.

25 THE COURT: All right. It's alleged, again,

1 that this incident took place on July the 5th of 2018,
2 at [REDACTED] Glenn Street, at approximately 2:15 in the
3 afternoon, in West Columbia. Is there any member of the
4 jury panel who thinks that they may know anything about
5 this incident, or has formed or expressed any opinion
6 about the facts in this case? If so, please stand.

7 No one is standing.

8 I'm going to read a list of potential
9 witnesses in this case, and when I'm done reading this
10 witness list -- again, I don't think all these people
11 are going to testify, ladies and gentlemen. But when
12 I'm done reading this list, I'm going to ask if there
13 is any member of the jury panel related by blood
14 or marriage, or anyone who has a close business
15 or social relationship with any of these witnesses,
16 okay? It's a long list. Bear with me, all right.

17 Here are the possible witnesses who may
18 testify in this case: Rodney Furtick, F-U-R-T-I-C-K;
19 Kenyetta, K-E-N-Y-E-T-T-A, Moorer, M-O-O-R-E-R; Towanna,
20 T-O-W-A-N-N-A, Ashford; James Ashford; Nikki, N-I-K-K-I,
21 Hicks.

22 Matt Deas, D-E-A-S; Thomas Griffin. These
23 are all West Columbia -- Matt Deas, Griffin and -- these
24 next witnesses, until I tell you otherwise, are all
25 with West Columbia Police Department; Matt Deas, Thomas

1 Griffin, Chris Morris, Bruce Wade, Page McCraw,
2 M-C-C-R-A-W; Jan Otterbacher, O-T-T-E-R-B-A-C-H-E-R;
3 David Myers, Tommy Todd; Stacy Turner, S-T-A-C-Y,
4 Turner; John Holland; Jody Putney, P-U-T-N-E-Y; John
5 King; Tushanna Jones, T-U-S-H-A-N-N-A, Jones; Justin
6 Shumpert, S-H-U-M-P-E-R-T; Marion Boyce, India Taylor;
7 William Branham, B-R-A-N-H-A-M; Chris Yarbrough, Ashley
8 Aldridge, Ronald Fair, Andrew Jackson, Mark Jones,
9 Jeff Phillips.

10 Maria, M-A-R-I-A, Ardia, A-R-D-I-A; Nikki
11 Rodgers, who's with the Lexington County Communications;
12 Kevin Ashe -- sorry, Kelvin, K-E-L-V-I-N, Ashe, A-S-H-E,
13 with the West Columbia Fire Department; John Jones,
14 also with the fire department; Kenneth Fisk with the
15 fire department; Patrick O'Toole, also with the fire
16 department; Tyler Lund, L-U-N-D, with the fire
17 department; Leonard Hanger, H-A-N-G-E-R, also with
18 the fire department.

19 Cal Thomas with the KC Department of Public
20 Safety; Paula Hare, H-A-R-E, with the Lexington
21 Detention Center; Brenda Snelgrove with the Lexington
22 Sheriff's Department; Matthew Gottlieb with EMS; Andrew
23 Diehl, D-I-E-H-L, also with Lexington EMS; Charles Wason
24 with EMS; Aarohi, A-A-R-O-H-I, Vashi, V-A-S-H-I with
25 EMS; Virginia Youmans, Y-O-U-M-A-N-S, with EMS; Margaret

1 Fisher with the coroner's office; Chandler Clardy with
2 the coroner's office; Mory Rosario with the coroner;
3 Andy Taylor, also with the coroner; Dr. John Reeves,
4 R-E-E-V-E-S, with Prisma Health.

5 The next series of witnesses, until I tell
6 you otherwise, are all with Prisma Health. Dr. Allison
7 L. Harvey, Dr. Daniel E. Baker; Dr. Phillip J. Prest,
8 P-R-E-S-T; Dr. Caitlin B. Tidwell; Chad D. Maxon,
9 M-A-X-O-N, with Prisma Health; Cole B. Graham, III,
10 he's a doctor; Catherine McClung, M-C-C-L-U-N-G,
11 hyphen Smith, also with Prisma Health.

12 The following witnesses are from SLED, State
13 Law Enforcement Division. Jessica Stowe, with an E on
14 the end; Lindsay, L-I-N-D-S-A-Y, Mitchell; Kimberly
15 Mears, M-E-A-R-S; Ila Simmons, I-L-A, Simmons; Doris
16 Yarbrough, Bethany Davidson, Jackie Davis; Brian Hudak,
17 H-U-D-A-K; Britt Dove; Charlotte Pitts, P-I-T-T-S;
18 Anglika, A-N-G-L-I-K-A, Dodwani, D-O-D-W-A-N-I; Margaret
19 Ariail, A-R-I-A-I-L; Jennifer Bartman, B-A-R-T-M-A-N;
20 Paul S. Greer, G-R-E-E-R; Agent Farand, F-A-R-A-N-D,
21 Wasiak, W-A-S-I-A-K; Agent John Vanhouten with the U.S.
22 Secret Service, last name spelled V-A-N-H-O-U-T-E-N;
23 Agent R. Clayton Simmonds, S-I-M-M-O-N-D-S, with the
24 FBI.

25 Dr. Janice Ross, who's with Newberry

1 Pathology; she's a doctor. Clarissa Dubard,
2 D-U-B-A-R-D, with the South Carolina Department of Motor
3 Vehicles. Betty Martin, Jethro Martin, James Anderson,
4 Kendra Brown, Ashton Miles, Chris Cranford; Marissa
5 Howard, M-A-R-I-S-S-A, Howard; Tyrone Davis; Shacond,
6 S-H-A-C-O-N-D, Davis; Kelly King; Gail Loundagin,
7 L-O-U-N-D-A-G-I-N; Kris Webber; Kerria, K-E-R-R-I-A,
8 Woods; Beverly McGruder; Taeanna Sanders, spelled
9 T-A-E-A-N-N-A, Sanders; Kobrandum, K-O-B-R-A-N-D-U-M,
10 Bostick; John Adkins, A-D-K-I-N-S; Kathy Bussey,
11 B-U-S-S-E-Y; Thomas Deknight, D-E-K-N-I-G-H-T. I think
12 I left out -- okay.

13 Next one is Carey, C-A-R-E-Y, Shealy,
14 S-H-E-A-L-Y; Swtea Patel, S-W-T-E-A, Patel, P-A-T-E-L;
15 Krupal, K-R-U-P-A-L, Patel; Bryan Chassereau,
16 C-H-A-S-S-E-R-E-A-U; Eric Ashley; Will Haring,
17 H-A-R-I-N-G; Danny Smith; Douglass Platt, P-L-A-T-T;
18 William Lorick, L-O-R-I-C-K. Wanda Lorick, Jody Parker,
19 Loretta Warren, Annette Maxwell; Andrina Maxwell,
20 spelled A-N-D-R-I-N-A, Maxwell; Kris Webber; Beverly
21 McGruder, M-C-G-R-U-D-E-R; Taeanna Sanders, T-E-A --
22 T-A-E-A-N-N-E. Time out. Taeanna Sanders,
23 T-A-E-A-N-N-A, Sanders; Kelly King, John Adkins, Nikki
24 Hicks; Andrina, A-N-D-R-I-N-A, Maxwell; Robert Wilson,
25 Kendra Brown; Paul Greer, G-R-E-E-R. Investigator

1 Putney and Jones, Investigator Jones.

2 Those are the possible witnesses in this
3 case. Again, ladies and gentlemen, not all these people
4 are going to testify. However, if there is any member
5 of the jury panel who's related by blood or marriage,
6 or has any close business or social relationships
7 with any of those witnesses, please stand. Yes, sir,
8 your name, please?

9 THE JUROR: Michael Poole.

10 THE COURT: Last name again, sir?

11 THE JUROR: Poole, P-O-O-L-E.

12 THE COURT: Mr. Poole, who was it that you
13 knew?

14 THE JUROR: It's several. Officer Todd with
15 the West Columbia Police Department. Deputy Coroner
16 Taylor and myself served together in the fire service.

17 THE COURT: Okay.

18 THE JUROR: And Nikki Rodgers, relations
19 communications. We've been friends since she started
20 in 1993.

21 THE COURT: Okay. If those individuals were
22 to testify in this case, would that affect your ability
23 to be fair to both sides, giving both the State and the
24 defense a fair side -- a fair shake?

25 THE JUROR: No, sir.

1 THE COURT: It would not. Very good.

2 Thank you, sir. You can have a seat.

3 THE CLERK: That was number 144, Your Honor.

4 THE COURT: Thank you. Yes, ma'am.

5 You. Yes.

6 THE JUROR: Carla Shealy, 166.

7 THE COURT: Ms. Shealy, yes, ma'am.

8 THE JUROR: I grew up with one of the
9 decedents, and I am friends with two of the EMS,
10 and another one of the witnesses.

11 THE COURT: Okay. Did you say you grew
12 up with one of the decedents? Okay. So, you did know
13 one of the decedents in this case? Okay. Excuse me.
14 I've had my shot. It's not COVID; it's just me talking
15 too much, okay? How long has it been since you knew one
16 of the decedents that you grew up with? Did you still
17 keep in touch with them before they passed away?

18 THE JUROR: (Shakes head.)

19 THE COURT: No. But you knew them for
20 roughly how many years, ma'am?

21 THE JUROR: Eighteen years.

22 THE COURT: Eighteen years. Okay. Do you
23 feel a little uncomfortable serving in this case then,
24 ma'am?

25 THE JUROR: A little bit.

1 THE COURT: All right. I'll let you sit
2 this one out. Just have a seat, but you won't serve
3 on this. What was your number again?

4 THE JUROR: 166.

5 THE COURT: 156.

6 THE CLERK: 166.

7 THE COURT: 166. And, yes, ma'am,
8 your name, please?

9 THE JUROR: Angela Taylor. I know -- juror
10 number 199. And I know Jethro Martin and Betty Martin.
11 They both attend Brookland...

12 THE COURT: They both what, ma'am?

13 THE JUROR: They both are members of
14 Brookland Baptist Church.

15 THE COURT: Okay. All right. If they were
16 to testify in this case, ma'am, would that affect your
17 ability to be fair to both sides?

18 THE JUROR: No.

19 THE COURT: It would not. Thank you very
20 much for that information, ma'am. And, yes, ma'am,
21 your name?

22 THE JUROR: My name is Tammy Black.
23 I'm juror number 15, and I've been friends with
24 Nikki Rodgers for about 40 years.

25 THE COURT: Nikki Rodgers. Okay. If Nikki

1 Rodgers were to testify, would that affect your ability
2 to be fair to both sides and follow the instructions
3 of the Court?

4 THE JUROR: No, sir.

5 THE COURT: All right. Thank you very much,
6 ma'am. And, yes, sir, your name again, please?

7 THE JUROR: Juror 194.

8 THE COURT: Yes, sir.

9 THE JUROR: I grew up with one of the
10 decedents as well.

11 THE COURT: You also grew up?

12 THE JUROR: Yes, sir

13 THE COURT: Which one did you grow up with,
14 sir?

15 THE JUROR: Samir Atkins. I played football
16 with him.

17 THE COURT: Okay. You feel like you need
18 to sit this one out, sir?

19 THE JUROR: Yeah, I don't...

20 THE COURT: All right. Say again?

21 THE JUROR: Yeah, I don't want to be part
22 of this.

23 THE COURT: You don't. Okay. Just have
24 a seat then, sir. You will sit this one out. Yes,
25 ma'am, your name, please?

1 THE JUROR: My number is 126, Candy Miller.
2 I know quite a few of the EMS and police involved.
3 I served in Lexington County for 12 years.

4 THE COURT: Okay. I think you work in the
5 hospital setting too, right?

6 THE JUROR: Yes.

7 THE COURT: Yeah. You naturally would know
8 a number of them. If they were to testify, would that
9 affect your ability to be fair?

10 THE JUROR: No.

11 THE COURT: Thank you, ma'am. You can have
12 a seat. Anyone else? No one is standing. All right.
13 Ladies and gentlemen of the jury, as you're aware from
14 the notification that the court sent you, if you're
15 selected as a juror in this case, you'll be required
16 to wear masks.

17 As a matter of fact, you'll notice that even
18 though I've had my shot, because the chief justice
19 ordered it, unless you're speaking, you're supposed
20 to have a mask on. That pretty much goes kind of
21 for everybody involved in the courtroom. You'll have
22 a larger jury room than is typical additionally, so that
23 you can social distance.

24 I ask all of that and I inform you of that
25 just so that you understand why everybody is wearing

1 masks when they're not talking. Is there any member
2 of the jury panel who feels uncomfortable with the COVID
3 protocols, or who feels vehemently uncomfortable with
4 wearing a mask? And again this is by order of my boss,
5 the chief justice. Anybody who feels uncomfortable
6 doing so, or has any issues or concerns about possibly
7 contracting COVID, or anything along those lines, based
8 upon the protocols that were previously explained to
9 you? If so, please stand. Good. Thank you. No one
10 is standing.

11 Is there any member of the jury panel --
12 again, I've reviewed the charges that the Defendant
13 is facing. He's facing two counts of murder, one count
14 of attempted murder, one count of kidnapping, and one
15 count of armed robbery.

16 Is there any member of the jury panel who
17 feels so strongly about the subject matter of this
18 material, or anyone who feels that the person who
19 was arrested for these kinds of offenses, these kinds
20 of serious offenses, anyone who has any assumptions,
21 opinions and feelings about a person who's arrested
22 for these offenses based upon the presumption of
23 innocence and the State's burden of proof?

24 Anybody who feels like you're not going to
25 be able to -- because the subject matter is so serious,

1 basically, you think that the Defendant is automatically
2 guilty, or you feel so strongly about the subject
3 matter, you can't give the defense and the State a fair
4 trial, one way or another? If so, please stand. No one
5 is standing.

6 Is there any member of the jury panel who
7 has any strong feelings, one way or another, for or
8 against, on the topic of marijuana possession or selling
9 marijuana? Any member of the jury panel who has very
10 strong feelings one way or another, for or against,
11 the issue of using marijuana or selling marijuana?
12 If so, please stand. No one is standing.

13 Is there any member of the jury panel who
14 has any strong feelings, one way or another, for or
15 against, guns and using guns for personal protection?
16 Any member of the jury panel who basically feels like
17 guns should never be used for personal protection,
18 or feels like they should always be used for personal
19 protection? I'm looking for extremes here, folks.
20 That's what I'm asking about. Any member of the jury
21 panel has any of those feelings? If so, please stand.
22 No one is standing.

23 As I've previously explained to you,
24 ladies and gentlemen, the Defendant has pled not guilty
25 to these charges. That plead puts the burden on the

1 State to prove his guilt beyond a reasonable doubt.
2 Is there any member of the jury panel who would hesitate
3 to vote not guilty simply because of the serious nature
4 of the allegations in this case? Any member of the jury
5 panel who would hesitate if you feel like the State has
6 failed to meet its burden of proof would hesitate to
7 vote not guilty simply by the nature of the allegations,
8 or because of the nature of the allegations? If so,
9 please stand. No one is standing.

10 Any member of the jury panel who, to your
11 recollection, has ever commented on any news article
12 in social media, like Facebook or Twitter, concerning
13 violent crimes or crimes of this nature? Any member
14 of the jury panel who has ever posted a comment on
15 social media about crimes of this nature or serious
16 crimes? If so, please stand. No one is standing.

17 I think I kind of touched on this. Is there
18 any member of the jury panel who is strongly in favor
19 of, or strongly opposed to, the legalization of
20 marijuana? Any member of the jury panel who has strong
21 feelings about marijuana and whether it should remain
22 prohibited or not? If so, please stand. No one is
23 standing.

24 All right. Is there any member of the jury
25 panel who believes that someone is probably guilty

1 of the crime simply because they were arrested by
2 the authorities? If so, please stand. In your mind,
3 guilt equals arrest, that's what I'm asking. If so,
4 please stand. No one is standing.

5 All right. Ladies and gentlemen, the
6 obligation of a jury is to assess the credibility of all
7 witnesses who would testify. Is there any member of the
8 jury panel who would automatically believe a police
9 officer's testimony over that of another witness simply
10 because that person is a police officer? Anybody who
11 would give a police officer's testimony more credibility
12 than they would a member of the public? If so, please
13 stand. No one is standing.

14 Ladies and gentlemen, understand that under
15 the constitution of our state, and under the
16 constitution of the United States, no one who is facing
17 criminal charges can ever be compelled to be a witness
18 against themselves in a trial. That's someone's Fifth
19 Amendment right against self-incrimination.

20 Is there any member of the jury panel who
21 believes that someone is probably guilty, or probably
22 hiding something, if that person decides to exercise
23 their statutory and constitutional rights and decline to
24 testify? Anybody who believes that assertion of Fifth
25 Amendment rights automatically means that they're hiding

1 something? If so, please stand. No one is standing.

2 Is there any member of the jury panel who
3 has liked or followed or commented on a law enforcement
4 agency's social media page, like the sheriff's
5 department, Lexington Sheriff's Department, Facebook
6 page? Or is there any member of the jury panel who
7 has liked or followed or commented on the 11th Circuit
8 Solicitor's Office's Facebook page? If so, please
9 stand. Yes, ma'am, what's your name, please?

10 THE JUROR: I'm juror 223, Ingrid Yon.

11 THE COURT: Yes, ma'am. And how does that
12 apply to you, ma'am?

13 THE JUROR: I follow the sheriff's page.

14 THE COURT: Okay. You're basically friends
15 on Facebook with them, and might pop up from time to
16 time?

17 THE JUROR: Yes, I did it recently.

18 THE COURT: Okay.

19 THE JUROR: Within the last few months.

20 THE COURT: All right. Did you seek it
21 out individually, or you just happened to be friends?

22 THE JUROR: Just popped up in my feed.

23 THE COURT: Very good. Thank you for that
24 information, ma'am. Anyone else? Yes, ma'am, your
25 name, please?

1 THE JUROR: Juror 60, Jennifer Duke.

2 I think I'm the same way, but I haven't been on Facebook
3 in several years.

4 THE COURT: Good for you.

5 THE JUROR: I think that it's still there,
6 and I think I'm following them, but I'm not on it.

7 THE COURT: Thank you for that information.
8 Anybody else? No one is standing. Is there any member
9 of the jury panel, or a close family member, who's ever
10 been employed as -- with any sort of law enforcement
11 agency or police department at any point in time?
12 Any member of the jury panel, or any close family member
13 -- by close family member I mean, generally, parent,
14 child, spouse, that kind of a thing, maybe sibling if
15 you're really close to them. But any member of the jury
16 panel who's ever been employed, or have a close family
17 member, that is employed in law enforcement? If so,
18 please stand. Yes, ma'am. First row in the blue top.

19 THE JUROR: Juror number 63. My husband
20 works for Richland County Sheriff's Department.

21 THE COURT: Okay. I think you indicated
22 that to us. Thank you very much, ma'am. Yes, sir,
23 what's your name and number?

24 THE JUROR: Juror 164, Clyde Sharpe. I have
25 a daughter and niece that work with the department ---

1 THE COURT: DNR?

2 THE JUROR: Yes, sir.

3 THE COURT: Very good. Thank you,
4 Mr. Sharpe. Yes, ma'am, your name again?

5 THE JUROR: Juror number 61. My only cousin
6 works for Lexington County Police.

7 THE COURT: Lexington County Police
8 or Lexington Sheriff's Department?

9 THE JUROR: I think it's the sheriff's
10 department. It's the one with the black cars.

11 THE COURT: Okay. Thank you for that
12 information, ma'am. Yes, ma'am.

13 THE JUROR: Juror number 70, Rebecca Gauntt.
14 My husband was a former state trooper.

15 THE COURT: All right. How long has he been
16 out of business -- in that business?

17 THE JUROR: Twenty-two years.

18 THE COURT: Twenty-two years. Thank you
19 for that information, ma'am. Yes, sir, your name again,
20 please?

21 THE JUROR: It's Michael Poole, number 144.
22 I'm retired from the South Carolina Department of Public
23 Safety.

24 THE COURT: I think you indicated that
25 to us in voir dire. Thank you for that information,

1 Mr. Poole. Anyone else? No one is standing. Is there
2 any member of the jury panel, or a close relative,
3 who's ever been employed with a prosecutor's office,
4 like the solicitor's office, the U.S. attorney's office,
5 AG's office, that kind of a thing, district attorney's
6 office? Any member of the jury panel, or any close
7 family member, who's ever worked at a prosecutor's
8 office? If so, please stand. No one is standing.

9 Any member of the jury panel who has ever
10 worked at, or any close family member of yours --
11 oh, I'm so sorry. Ma'am, give me your name, please,
12 and your number.

13 THE JUROR: 141. My mother worked for
14 a solicitor's office.

15 THE COURT: Okay. You said -- I missed part
16 of that. Your mother worked at the solicitor's office.
17 When did she stop working there?

18 THE JUROR: About ten years ago.

19 THE COURT: Twenty years ago.

20 THE JUROR: Ten.

21 THE COURT: Ten years ago. Okay. So it was
22 prior to the current administration. Thank you for that
23 information. Is there any member of the jury panel,
24 or any member of the jury panel's close family members,
25 who's ever worked with a defense attorney that

1 specializes primarily in criminal defense? Any member
2 of the jury panel who has worked, or had a close family
3 member, who worked at a firm that specializes primarily
4 in criminal defense? Your name, ma'am?

5 THE JUROR: Sarah Cotham, number 48.

6 THE COURT: Yes, ma'am.

7 THE JUROR: My sister was a paralegal
8 in the Truslow's office up until about a year ago.

9 THE COURT: A paralegal where?

10 THE JUROR: Doug Truslow.

11 THE COURT: I couldn't hear you. I'm so
12 sorry.

13 MR. BROWN: I think she said Doug Truslow.

14 THE COURT: Doug Truslow. Oh, okay.

15 Thank you for that information, ma'am. Yes, ma'am,
16 your name again?

17 THE JUROR: Tammy Black, juror number 50.
18 I worked for Jay Sr. for 30 years.

19 THE COURT: Okay.

20 THE JUROR: I left there in 2016.

21 THE COURT: All right. Worked with Big
22 Jake.

23 THE JUROR: Yes, sir.

24 THE COURT: Okay. Very good. Thank you,
25 ma'am. Anyone else? No one is standing. Is there

1 any member of the jury panel, or a close family member,
2 who has ever volunteered with, provided financial
3 support to any victim advocacy organization, or any law
4 enforcement agency? I'm talking about things like
5 Sister Care, South Carolina -- Mother's Against Drunk
6 Driving, organizations, the primary purpose of which
7 is the promotion of law enforcement, victim's rights,
8 things of that nature.

9 Any member of the jury panel who's a member
10 of, has previously been a member of, contributed to,
11 or otherwise supported or aided any organization along
12 those lines? If so, please stand. Yes, ma'am.

13 THE JUROR: I've had donations a couple
14 of times.

15 THE COURT: Thank you for that information,
16 ma'am.

17 THE JUROR: Juror number 13. My daughter
18 worked for Sexual Trauma Services of the Midlands,
19 and we support that as well.

20 THE COURT: Okay. When did she stop working
21 there?

22 THE JUROR: She stopped working there,
23 but she's currently with the sexual abuse area.

24 THE COURT: Okay. Thank you for that
25 information. Yes, ma'am.

1 THE JUROR: Juror number 60, Jennifer Duke.
2 I have -- my assistant has been a member of the victim's
3 advocacy, and her husband had been murdered through
4 that.

5 THE COURT: Okay.

6 THE JUROR: And I've supported her on
7 several things.

8 THE COURT: Okay.

9 THE JUROR: She's not been my assistant for
10 ten years.

11 THE COURT: Okay. Thank you for that
12 information, ma'am. No one else is standing. I always
13 hesitate to ask this question, but I'm going to ask
14 it again. Is there any member of the jury panel,
15 or a close family member, who has ever had a bad
16 experience in court involving an attorney, a judge,
17 or maybe just it was the subject matter? Anybody who
18 had a bad experience in court, and that bad experience,
19 you feel could cloud your judgment or otherwise bias you
20 one way or another? If so, please stand. Yes, ma'am,
21 your name, please?

22 THE JUROR: I was involved in a kidnapping,
23 rape and attempted murder back in '87.

24 THE COURT: And that was ---

25 THE JUROR: It was the state of Georgia

1 against the Defendant.

2 THE COURT: Okay. The fact that -- not to
3 pry, ma'am. I'm going to ask a question, if you want to
4 answer this later, I'm going to give some folks a chance
5 to come forward. But were you the victim on that case,
6 ma'am?

7 THE JUROR: Yes.

8 THE COURT: You were? Okay.

9 THE CLERK: I apologize, Your Honor,
10 she didn't give us her name or her number.

11 THE JUROR: 126, Candy Miller.

12 THE COURT: Because you went through that
13 in Georgia in the 80's, would that affect your ability
14 -- do you feel like you need to sit this out, because
15 we do have allegations involving kidnapping and robbery
16 and things of that nature?

17 THE JUROR: No.

18 THE COURT: You're sure?

19 THE JUROR: Yeah.

20 THE COURT: Okay. So you can be fair
21 to both sides, even though you personally experienced
22 that?

23 THE JUROR: Yes.

24 THE COURT: Thank you for that information.
25 Anyone else, bad experience in court? Not to make light

1 of the situation, but people rarely come to court
2 because good things happen, so, like going to the
3 doctor. All right.

4 Next series of questions, ladies and
5 gentlemen, I'll give you an opportunity to come forward
6 and speak privately down here if it applies to you,
7 okay? I don't expect you to respond to these questions
8 in front of everybody in open court. Is there any
9 member of the jury panel, or any close family member,
10 who has ever been the victim of, or accused of,
11 a serious crime?

12 I'm not defining serious crime for you.
13 That's in your own mind, okay? Whatever you would
14 consider to be a serious crime that's what I'm asking
15 about. I would typically consider things like murder,
16 armed robbery, burglary, kidnapping, sexual assault,
17 things of that nature to be serious crimes, okay?

18 Is there any member of the jury panel
19 who, either you yourself, were the victim of or accused
20 of a serious crime, or you had a close family member
21 who was a victim or accused of a serious crime?
22 If so, just stand. Okay. I'll let you come forward,
23 and we can talk down here, sir.

24 THE BAILIFF: Juror number 24.

25 THE COURT: Yes, sir. How does that

1 question apply to you, sir?

2 THE JUROR: Me and my brother -- I was
3 at the house with my brother and Berkeley County kicked
4 our door in for a drug offense.

5 THE COURT: Okay. All right. Were you
6 charged in that case, sir?

7 THE JUROR: He was charged, but we had to go
8 to court and all that though.

9 THE COURT: Okay. You had to go to court.
10 Were the charges ultimately resolved in your favor?
11 How were they resolved?

12 THE JUROR: They charged him with a felony
13 drug count within a school district, church and all
14 that.

15 THE COURT: Okay. Proximity.

16 THE JUROR: Yeah.

17 THE COURT: But you were not charged?

18 THE JUROR: No, we were not charged.

19 THE COURT: Okay. Was your brother
20 ultimately convicted of that charge?

21 THE JUROR: He got probation, and then went
22 to jail for violation of probation.

23 THE COURT: Okay. All right. Very good.
24 I appreciate that information. This obviously involves
25 primarily a homicide, but there's some allegation of --

1 drugs kind of filters into this too. Would that affect
2 your ability to be fair to everybody? It would not?
3 Thank you very much for that information. You could
4 have a seat.

5 THE BAILIFF: Juror number 162.

6 THE COURT: Yes, sir.

7 THE JUROR: My cousin, I don't know, five
8 or ten years ago, he was convicted with drug possession,
9 and it was either attempted armed robbery or armed
10 robbery. But I do not -- lost contact with him ever
11 since, but I believe he's still in jail. I'm not sure.

12 THE COURT: Okay. This happened how long
13 ago?

14 THE JUROR: It was five to ten. I haven't
15 seen him since.

16 THE COURT: Was it your first cousin,
17 do you know?

18 THE JUROR: It was my dad's brother's son.

19 THE COURT: Okay. That would be your first
20 cousin then. This case involves allegations of drugs.
21 Would that -- that experience that your cousin, that
22 your family went through, would that involve or color
23 or otherwise affect your ability to be fair to both
24 sides?

25 THE JUROR: No, sir.

1 THE COURT: It would not. Very good.
2 Thank you very much. Anyone else? Is there any member
3 of the jury panel who has any moral or religious beliefs
4 the penance of which would prevent you from passing
5 judgment on another person as a member of the jury?
6 Any member of the jury panel who subscribes to any
7 deeply-held moral or religious beliefs that prohibit
8 you from sitting on a jury and passing judgment on
9 someone else? If so, please stand. No one is standing.
10 All right.

11 Is there any member of the jury panel who
12 has had any kind of experience with any law enforcement
13 agency, positive or negative, which would affect
14 your ability to be fair and impartial in this case?
15 Any member of the jury panel that has had a negative
16 experience, or a very positive experience, that would
17 affect your ability to be fair to all sides? If so,
18 please stand. No one is standing.

19 Any member of the jury panel who has any
20 reason whatsoever for why you could not give the state
21 of South Carolina and the Defendant in this case,
22 Mr. Ritter, a fair trial, judging the case based solely
23 on the evidence and the laws that I instruct you?
24 Any reason whatsoever that you feel like you just need
25 to sit this out? If so, please stand. All right.

1 No one is standing.

2 Additional questions? You want to speak
3 to me over here, Mr. Phillips, anything that you feel
4 strongly about?

5 (Off-the-conversation held at sidebar.)

6 (Back on the record.)

7 THE COURT: Ladies and gentlemen of the
8 jury, again as I've previously explained, the burden
9 of proof is on the State to prove each and every
10 element of these charges beyond a reasonable doubt.
11 The Defendant in a criminal trial has no burden
12 whatsoever to prove anything.

13 Is there any member of the jury panel --
14 again, the defense doesn't even have to present a case
15 in a criminal trial. The burden is on the State.
16 Is there any member of the jury panel who feels like
17 you need to hear from the Defendant, or you need some
18 defense in order to judge this case fairly? Any member
19 of the jury panel who would hold it against the defense
20 if they decided not to present a case? If so, please
21 stand. No one is standing. Does that cover it?

22 MR. BROWN: Yes, sir. Thank you.

23 THE COURT: Now, I'm going to ask you a few
24 more questions privately. Just for the record, what was
25 your name and number again?

1 THE JUROR: Ms. Candy Miller, 126.

2 THE COURT: Ms. Miller. Now, the incident
3 took place in Georgia, and it was a kidnapping
4 and robbery, and you were the victim?

5 THE JUROR: No robbery. Rape.

6 THE COURT: Rape. Okay.

7 THE JUROR: Kidnapping, rape and attempted
8 murder.

9 THE COURT: And this happened in the late
10 80s?

11 THE JUROR: '87.

12 THE COURT: '87. Did -- the person who did
13 this, were they arrested and convicted?

14 THE JUROR: They were arrested and
15 convicted. Ten years in prison; ten years probation.

16 THE COURT: Okay.

17 THE JUROR: And it was my ex-husband.

18 THE COURT: It was your ex-husband who did
19 this to you?

20 THE JUROR: Right.

21 THE COURT: Ma'am, I'm terribly sorry.
22 I don't mean to ---

23 THE JUROR: It was a second offense.
24 He did it before that too.

25 THE COURT: I'm terribly sorry, ma'am.

1 Did it go to trial, or did he end up pleading guilty?

2 THE JUROR: We were in the state of
3 Kentucky, and the DA would not take the case because
4 he was in the military. He said if I wanted to pursue
5 it any further, I would have to sue the U.S. military.

6 THE COURT: Okay. And then y'all moved
7 to Georgia?

8 THE JUROR: No. Then, I left with him
9 hunting me with a 30/30, and I came back to South
10 Carolina, and reestablished here with my family.

11 THE COURT: I gotcha. Okay.

12 THE JUROR: And then we divorced three years
13 later because the Army sent him to Germany.

14 THE COURT: Okay.

15 THE JUROR: And then when he came back from
16 Germany, he found me.

17 THE COURT: I see.

18 THE JUROR: And proceeded to do ill things.

19 THE COURT: Well, I appreciate you standing
20 up for yourself.

21 THE JUROR: Almost killed me that night.

22 THE COURT: Very good. Very good.

23 All right. Are you certain that -- you're certain
24 that situation ---

25 THE JUROR: If it had been a stranger that

1 I didn't know, it would have been a lot worse to deal
2 with.

3 THE COURT: Okay.

4 THE JUROR: But upon the second thing,
5 I was just angry.

6 THE COURT: Once bitten, twice shy. Gotcha.
7 Okay. But you can be fair to everybody involved in
8 this? This doesn't involve a domestic situation like
9 your husband.

10 THE JUROR: Right.

11 THE COURT: Different sort of situation.
12 You're good? If you're good, I'm good.

13 THE JUROR: I am.

14 THE COURT: Thank you, ma'am.

15 MR. BROWN: Thank you, Your Honor.

16 THE COURT: And could I see juror number
17 210, Mr. Webster? Mr. Webster, come on down, please.
18 I'm not looking to put your family in a bad way.
19 We have enough jurors. But it sounds like, you know,
20 things are tight for you guys, and you've got a lot
21 of work for you and your dad to do, so have a nice day.

22 THE JUROR: I appreciate it.

23 THE COURT: Juror 210 has been excused.
24 Additional voir dire from the State?

25 MS. FULLER: None from the State,

1 Your Honor.

2 THE COURT: None from the defense?

3 MR. BROWN: None from the defense.

4 THE COURT: With the exception of the motion
5 for attorney voir dire just earlier.

6 MR. BROWN: Yes, sir.

7 THE COURT: You understand that you are
8 protected on that issue. Your objection is noted.
9 No additional questions, other than that?

10 MR. BROWN: No, Your Honor. Thank you.

11 THE COURT: Okay. Ladies and gentlemen,
12 y'all have been out there for about one hour and -- by
13 my count, about an hour and ten minutes. Jury selection
14 usually takes about 25 to 30 minutes. If there's anyone
15 that needs a brief break, raise your hand. Do not be
16 shy. If you want a brief break to go to the bathroom
17 or something -- we've got one taker. Very good.
18 So, we'll be at ease -- two takers. And it's not
19 limited to just those two. If you feel like you want
20 to just move around, step outside, that's perfectly
21 fine. I want to give the lawyers a chance to review
22 the list of jurors any way.

23 We're going by that clock on the wall.

24 Ten minutes to four. Please be back in here, and we'll
25 select a jury and move forward in this case, okay?

1 So we're at ease for about ten minutes. Be back
2 in here in ten minutes, and we will move forward.
3 Thank you all very, very much.

4 (Recess taken.)

5 (Back on the record.)

6 THE COURT: Thank you. Please have a seat.
7 All right. Ladies and gentlemen, we're about to move
8 forward with the selection of the jury on this case.
9 Madam Clerk, I'm going to need at least 39 names, but go
10 ahead and run, like, 45, if you want, since we have the
11 jurors. I'm going to, hopefully, pick three alternates.
12 Very good. Got it. Got it. Thank you. All right.

13 Ladies and gentlemen, we're now about
14 to move forward with jury selection in this particular
15 case. If your name is called, what I need you to do
16 is come forward. And then where this middle stand thing
17 is with the Elmo on it, stand right where that gentleman
18 is standing perfectly. He's demonstrating it perfectly.
19 Thank you so much. Stand there, turn around, face
20 towards the back of the courtroom, but do bring with
21 you anything that you took to the courthouse today --
22 that you brought to the courthouse today; purses,
23 pocketbooks, clothes, whatever the case may be.
24 Bring it with you in case you are seated on the jury.

25 The State -- once you're up here, the State

1 will be given an opportunity to either seat you or
2 to excuse you. The defense will be given a similar
3 opportunity.

4 Ladies and gentlemen, I'm going to tell you
5 what I tell every jury. If for some reason one of the
6 lawyers ask that you not serve of this case, folks,
7 don't get bent out of shape, don't take it personal,
8 don't get all angry at them, okay? These are people
9 who are professionals, and they are simply trying to
10 do their job for their side, okay? So if they do excuse
11 you, don't take it personal. Like they say in the
12 mafia, it's just business, okay? So strikes will be
13 five and ten. With that, Madam Clerk, if you will give
14 me a jury, please.

15 THE CLERK: Yes, sir. Number 48, Sarah
16 Cotham. What sayeth for the State?

17 MS. FULLER: Please excuse the juror.

18 THE CLERK: Return to your seat, please,
19 ma'am. 136, David Oxley. What sayeth for the State?

20 MS. FULLER: Please present the juror.

21 THE CLERK: What sayeth for the defense?

22 MR. BROWN: Please seat Mr. Oxley.

23 THE CLERK: Have a seat in the jury box,
24 sir. 223, Ingrid Yon. What sayeth for the State?

25 MS. FULLER: Please present the juror.

1 THE CLERK: What sayeth for the defense?

2 MR. BROWN: Please excuse Ms. Yon.

3 THE CLERK: Return to your seat, please,
4 ma'am. 125, Krista Meyer. What sayeth for the State?

5 MS. FULLER: Please present the juror.

6 THE CLERK: What sayeth for the defense?

7 MR. BROWN: Please seat Ms. Meyer.

8 THE CLERK: Have a seat in the jury box,
9 ma'am. Number 60, Jennifer Duke. What sayeth for the
10 State?

11 MS. FULLER: Please present the juror.

12 THE CLERK: What sayeth for the defense?

13 MR. BROWN: Please excuse Ms. Duke.

14 THE CLERK: Return to your seat, please,
15 ma'am. 67, Melissa Frederick. What sayeth for the
16 State?

17 MS. FULLER: Please present the juror.

18 THE CLERK: What sayeth for the defense?

19 MR. BROWN: Please seat Ms. Frederick.

20 THE CLERK: Have a seat in the jury box,
21 ma'am. 112, Kathy Lord. What sayeth for the State?

22 MS. FULLER: Please present the juror.

23 THE CLERK: What sayeth for the defense?

24 MR. BROWN: Please excuse Ms. Lord.

25 THE CLERK: Return to your seat, please,

1 ma'am. 63, Wanda Evans. What sayeth for the State?

2 MS. FULLER: Please present the juror.

3 THE CLERK: What sayeth for the defense?

4 MR. BROWN: Please excuse Ms. Evans.

5 THE CLERK: Return to your seat, please,

6 ma'am. 146, Kris Pratt. What sayeth for the State?

7 MS. FULLER: Please present the juror.

8 THE CLERK: What sayeth for the defense?

9 MR. BROWN: Please excuse Ms. Pratt.

10 THE CLERK: Return to your seat, please,

11 ma'am. 201, Douglas Thomson. What sayeth for the

12 State?

13 MS. FULLER: Please present the juror.

14 THE CLERK: What sayeth for the defense?

15 MR. BROWN: Please seat Mr. Thomson.

16 THE CLERK: Have a seat in the jury box,

17 sir. 219, Henry Wrinkler. What sayeth for the State?

18 MS. FULLER: Please present the juror.

19 THE CLERK: What sayeth for the defense?

20 MR. BROWN: Please seat Mr. Wrinkler.

21 THE CLERK: Have a seat in the jury box,

22 sir. 187, Jessica Stephens. What sayeth for the State?

23 MS. FULLER: Please present the juror.

24 THE CLERK: What sayeth for the defense?

25 MR. BROWN: Please seat Ms. Stephens.

1 THE CLERK: Have a seat in the jury box,
2 ma'am. 133, Cindy Oswald. What sayeth for the State?

3 MS. FULLER: Please present the juror.

4 THE CLERK: What sayeth for the defense?

5 MR. BROWN: Please excuse Ms. Oswald.

6 THE CLERK: Return to your seat, please,
7 ma'am. 169, Tavy Shealy. What sayeth for the State?

8 MS. FULLER: Please present the juror.

9 THE CLERK: What sayeth for the defense?

10 MR. BROWN: Please seat Ms. Shealy.

11 THE CLERK: Have a seat in the jury box,
12 ma'am. Number 65, Martha Ford. What sayeth for the
13 State?

14 MS. FULLER: Please present the juror.

15 THE CLERK: What sayeth for the defense?

16 MR. BROWN: Please excuse Ms. Ford.

17 THE CLERK: Return to your seat, please,
18 ma'am. 168, Jesse Shealy. What sayeth for the State?

19 MS. FULLER: Please present the juror.

20 THE CLERK: What sayeth for the defense?

21 MR. BROWN: Please seat Mr. Shealy.

22 THE CLERK: Have a seat in the jury box,
23 sir. 79, Charles Hart. What sayeth for the State?

24 MS. FULLER: Please present the juror.

25 THE CLERK: What sayeth for the defense?

1 MR. BROWN: Please excuse Mr. Hart.

2 THE CLERK: Return to your seat, please,
3 sir. 126, Candy Miller. What sayeth for the State?

4 MS. FULLER: Please present the juror.

5 THE CLERK: What sayeth for the defense?

6 MR. BROWN: Beg the Court's indulgence.

7 And, Your Honor, for what it's worth, our client wasn't
8 at the sidebar.

9 THE COURT: Oh, I see. Yes, I understand.
10 I understand.

11 MR. BROWN: I appreciate it.

12 THE COURT: No worries.

13 (Pause.)

14 MR. BROWN: Please seat Ms. Miller.

15 THE CLERK: Have a seat in the jury box,
16 ma'am. Number 70, Rebecca Gauntt. What sayeth for the
17 State?

18 MS. FULLER: Please present the juror.

19 THE CLERK: What sayeth for the defense?

20 MR. BROWN: Please excuse Ms. Gauntt.

21 THE CLERK: Return to your seat, please,
22 ma'am. 179, Jacob Speares.

23 THE COURT: And you're at nine now.

24 MR. BROWN: Yes, sir.

25 THE CLERK: What sayeth for the State?

1 MS. FULLER: Please present the juror.

2 THE CLERK: What sayeth for the defense?

3 MR. BROWN: Please seat Mr. Speares.

4 THE CLERK: Have a seat in the jury box,
5 sir. 97, Mary Jo Jenny. What sayeth for the State?

6 MS. FULLER: Please present the juror.

7 THE CLERK: What sayeth for the defense?

8 MR. BROWN: Please seat Ms. Jenny.

9 THE CLERK: Have a seat in the jury box,
10 ma'am. Number 88, James Hook. What sayeth for the
11 State?

12 MS. FULLER: Please present the juror.

13 THE CLERK: What sayeth for the defense?

14 MR. BROWN: Please excuse Mr. Hook.

15 THE CLERK: Return to your seat, please,
16 sir. 148, Justin Proctor. What sayeth for the State?

17 MS. FULLER: Please present the juror.

18 THE CLERK: What sayeth for the defense?

19 THE COURT: Any excuse for cause?

20 MR. BROWN: No challenge for cause.

21 Please seat Mr. Proctor.

22 THE CLERK: Have a seat in the jury box.
23 Proceed with the alternates, Your Honor?

24 THE COURT: Yes, we're going to select three
25 on each alternate, strikes will be one and two.

1 THE CLERK: Yes, sir. Number 40, James
2 Channell. What sayeth for the State?

3 MS. FULLER: Please present the juror.

4 THE CLERK: What sayeth for the defense?

5 MR. BROWN: Please excuse Mr. Channell.

6 THE CLERK: Return to your seat, please,
7 sir. Number 164, Clyde Sharpe. What sayeth for the
8 State?

9 MS. FULLER: Please present the juror.

10 THE CLERK: What sayeth for the defense?

11 MR. BROWN: Please excuse Mr. Sharpe.

12 THE CLERK: Return to your seat, please,
13 sir. 117, Anna Masse. What sayeth for the State?

14 MS. FULLER: Please present the juror.

15 THE CLERK: What sayeth for the defense?

16 THE COURT: Any excuse for cause?

17 MR. BROWN: Please seat Ms. Masse.

18 Thank you, Your Honor.

19 THE CLERK: Have a seat in the jury box,
20 ma'am. That's alternate one. 149, Matthew Rabe.

21 What sayeth for the State?

22 MS. FULLER: Please present the juror.

23 THE CLERK: What sayeth for the defense?

24 MR. BROWN: And, Your Honor, at this point,
25 the second alternate. Is it just two?

1 THE COURT: Yes, you get another two.

2 MR. BROWN: Yeah, making sure. Please,
3 Your Honor -- please excuse Mr. Rabe.

4 THE CLERK: Return to your seat, please,
5 sir. 145, Annette Powell. What sayeth for the State?

6 MS. FULLER: Please present the juror.

7 THE CLERK: What sayeth for the defense?

8 MR. BROWN: Please excuse Ms. Powell.

9 THE CLERK: Return to your seat, please,
10 ma'am. 91, Shanta Jackson. What sayeth for the State?

11 MS. FULLER: Please present the juror.

12 THE CLERK: What sayeth for the defense?

13 THE COURT: Any excuse for cause?

14 MR. BROWN: Please seat Ms. Jackson.

15 THE CLERK: Have a seat in the jury box,
16 ma'am. That's alternate number two. 202, Amanda
17 Trotter. What sayeth for the State?

18 MS. FULLER: Please present the juror.

19 THE CLERK: What sayeth for the defense?

20 MR. BROWN: Please excuse Ms. Trotter.

21 THE CLERK: Return to your seat, please,
22 ma'am. 141, Allix Pelenski. What sayeth for the State?

23 MS. FULLER: Please present the juror.

24 THE CLERK: What sayeth for the defense?

25 MR. BROWN: Please seat Ms. Pelenski.

1 THE CLERK: Have a seat in the jury box,
2 ma'am. That's alternate five -- excuse me. Alternate
3 three, Your Honor.

4 THE COURT: Very good. No issues concerning
5 selection or composition of the jury from the State?

6 MS. FULLER: None from the State,
7 Your Honor.

8 THE COURT: None from the defense?

9 MR. PHILLIPS: None from the defense,
10 Your Honor. One thing I just want to make sure.
11 If we can approach?

12 THE COURT: Yeah, come on up.

13 (Off-the-record conversation held at sidebar.)

14 (Back on the record.)

15 THE COURT: All right. Very good.
16 No issues concerning selection or composition of the
17 jury. Ladies and gentlemen who were picked on this
18 case, let's do this. Y'all kind of adjourn. Don't
19 go down to the jury room yet. I need to excuse them.
20 That's only going to take about five minutes. So,
21 I don't want to send you down, and then wait for ten
22 minutes to come back up.

23 So, y'all go out to the hallway, sort
24 of space out right behind the courtroom here while
25 I dismiss the rest of the jury panel. I've got to bring

1 you back in and just give you some very brief
2 instructions for the evening, okay? So go outside,
3 let me have the courtroom, let me get rid of them.
4 I'll bring you back in, okay? Thanks. Don't talk
5 about the case.

6 Okay. Ladies and gentlemen who were not
7 selected on this case, what can I say, you don't get
8 to look at my beautifully masked face anymore this week.
9 You can go about your business here momentarily, all
10 right. I do want to thank you for your coming in here
11 today and putting up with us today as again we try to
12 address the cases.

13 I know you didn't get picked on a jury
14 today. I honestly hope that at some point in the future
15 you do get the opportunity to serve. If you haven't
16 served before, I'll let you know -- I'm sure that there
17 was much glee, rejoicing and excitement on your part
18 when you opened the envelope requiring you to be here
19 today. I'm sure that you were just tickled pink to
20 accept our invitation to join us.

21 Truth be known, I've talked to a lot of
22 people, buddies of mine, friends of mine, acquaintances
23 of mine, who have served on juries. They loathed
24 it when they were summoned. But when it was all over
25 with, they really felt like they did something good.

1 They felt like they did something worthwhile, and they
2 actually enjoyed it. There's not a single person I have
3 spoken to, who's at least in my friend circle or my
4 acquaintance circle, who didn't like it and find it
5 very rewarding.

6 So, you know, you may approach it with
7 some measure of apprehension. But at the end of the day
8 when you have served as a juror, you've doing something
9 very valuable. I guess it's like parenting that way.
10 Anyway -- I can say that; I've got two kids. They're
11 both grown. Thank God. Almost out of college. Doubly
12 thank God.

13 With that, again, if you get summoned in the
14 next three years though, and you decide that you don't
15 want to serve, you get summoned to the court of common
16 pleas or the court of general sessions, you can call
17 the clerk's office, let them know that in late June of
18 2021 you were summoned. They will check their records,
19 and they'll excuse you. You won't even have to show
20 up on the first day, okay?

21 So for the next three calendar years,
22 the rest of this year and two more years, if you
23 get summoned again for general sessions, common pleas,
24 you can let the clerk of court office know, and they
25 will excuse you after they've checked their records.

1 If you're summoned for federal court, city court,
2 magistrate's court, sorry, can't help you. You're going
3 to have to show up for those.

4 Again, ladies and gentlemen, I want to thank
5 you for being here. I want to thank you for putting up
6 with us today. I also want to encourage you in every
7 way possible, if you are so inclined, please do get the
8 COVID vaccine. The vaccination rates are still climbing
9 in South Carolina. We're in better shape than we were.
10 I really had to twist my son's arm to do it. But my
11 wife, who works in the medical field, she had to do it.
12 She wasn't given a choice. For all intents and
13 purposes, I really wasn't given a choice by my employer.
14 And my daughter, she voluntarily took it because she's
15 going to Hungary in a few weeks, and they require it.

16 So, I have O positive blood. If you've
17 got O blood, it's apparently, there's no side effects.
18 The flu shot is worse for me. My wife has -- she was
19 achy for about a day, a day and a half. Ditto for my
20 son, who's type A. So blood type might have something
21 to do with that. I don't know. I'm not a scientist,
22 but I know that I'm loving the fact that I can go to
23 the movies, which I did yesterday. I'm loving the
24 fact that our state is starting to reopen, and I will
25 be very happy -- very, very happy when the only kind of

1 mask I have to wear is the one that I wear on Halloween.

2 So with that, a little public service
3 announcement to encourage you to do so. I promise you
4 I'm not magnetic, nobody is tracking me, and so far
5 as I'm concerned everything else is working just as it
6 should. So think about it if you haven't done it, about
7 getting it, it is free. Y'all take care. I'm not going
8 to keep you any longer. Take care and enjoy your -- the
9 rest of your week. Y'all are free to go. Take care.

10 (Remaining jury panel exits the courtroom.)

11 THE COURT: Housekeeping wise, before
12 I release and get the jury back in here, we've got
13 a State's motion in limine that I need to deal with.
14 We've got Neil v. Biggers, which will take 15 minutes,
15 and we've got a motion to suppress on two ---

16 MR. PHILLIPS: Two of them.

17 MR. BROWN: It's two different theories on
18 the same search warrant. We've mentioned them before,
19 reliability and staleness. It just never got addressed
20 back in April.

21 THE COURT: Oh, okay. Okay.

22 MR. BROWN: We never got to argue the
23 ruling.

24 MR. PHILLIPS: We don't need a hearing.

25 THE COURT: Got it.

1 MR. BROWN: They were on the list for April.
2 But, Judge, I would suggest -- these items are not all
3 equally the same.

4 THE COURT: Right.

5 MR. BROWN: And we don't know what the basis
6 of their objections are.

7 THE COURT: Sure.

8 MR. BROWN: Besides it doesn't fit the
9 theory of their prosecution.

10 THE COURT: Okay. Do we have the witnesses
11 here for the Neil v. Biggers?

12 MS. FULLER: Yes, Your Honor.

13 THE COURT: Okay. Let's go ahead and knock
14 that out this afternoon. I'll have the jury come back
15 in at -- I'll have them report back to the jury room
16 at 10:15, and we'll deal with the argument -- the two
17 arguments on the search warrant and the motion in limine
18 from the State, so that this evening Ms. Fuller can kind
19 of expand upon the -- or somebody can kind of expand
20 upon the reasons for the State moving to exclude those
21 specific items. There are, looks like, about nine items
22 that we'll need to discuss. And I don't think your
23 motion -- you can probably argue it in five or ten
24 minutes.

25 MR. PHILLIPS: Both of them will be fairly

1 quick.

2 THE COURT: Very good. Let's have the jury
3 back in, please.

4 MR. PHILLIPS: And, Your Honor, while
5 they're not here for a second.

6 THE COURT: Yeah, hold on. Well, real
7 quick.

8 MR. PHILLIPS: I wanted to put on the
9 record, paranoid lawyer, as far as what we have at
10 the bench conference regarding Juror 219 ---

11 THE COURT: We're going to do that after
12 we break, yeah -- after I dismiss the jury.

13 (Selected jury panel enters the courtroom.)

14 THE COURT: The record will reflect
15 that the jury is back and seated. Ladies and gentlemen
16 of the jury, I'm going to release you in a few minutes,
17 but I need to give you just some basic instructions for
18 tonight before I release you and have you report back
19 tomorrow morning.

20 First thing, and I'll give you more details
21 on this tomorrow, but please don't discuss this case
22 with anyone, all right. Don't talk about it with
23 anyone. At this point in time, that should be
24 incredibly easy for you to comply with because you know
25 nothing about this. You haven't heard the first

1 witness; you haven't heard anything about this case
2 right now. So, technically, you know nothing about
3 the facts.

4 The reason I'm asking that you not speak to
5 your husband, wife, significant other, whoever it is you
6 share a roof with, is understand, ladies and gentlemen,
7 the decision that will ultimately have to be made in
8 this case will have to be made by you, not your spouse,
9 not your significant other, not whoever it is you share
10 a room with -- a roof with.

11 And so it would be inappropriate for
12 anything that they say to you -- no matter how well
13 intention it might be, it would be inappropriate for
14 anything that person might say to you to influence what
15 you ultimately find in this particular case. So,
16 please, I'm trusting that your life is more interesting
17 than this.

18 When you go home, and your significant other
19 asks you, well, honey, how was your day? Tell them it
20 was fine. They'll ask, okay, well, did you get picked
21 on a case today? Because I know they know you had jury
22 duty. Tell them, yeah, I did. What's the next
23 question? What kind of case is it, all right. Say the
24 big, old, mean judge from Greenwood said you can't talk
25 about it, all right, and then change the subject to what

1 lovely weather we had yesterday night.

2 With that, let me also admonish you, please,
3 during the course of this trial do not perform any kind
4 of independent investigation. Don't go Googling
5 people's names; don't go looking for information about
6 this case. You're all intelligent individuals. You all
7 are aware that a lot of the stuff that's online, a lot
8 of the stuff that's reported in the media, it just ain't
9 true, all right. And you probably see daily examples
10 of this just in your news feed, whatever it is that
11 you receive.

12 So, please, understand that the rules of
13 evidence were designed over hundreds of years to provide
14 you with accurate and most reliable information
15 possible. The same cannot be said for what is printed
16 in the media or what is put online. That's simply the
17 fact. There's nobody going behind it to verify or check
18 it or subject it to any kind of cross-examination or
19 scrutiny. So a lot of the stuff that's online just
20 ain't true. No point in watching it; no point in
21 looking at it; no point in researching it. Please,
22 therefore, do not do that. I assure you, you'll get
23 the information that you need from this witness stand
24 to judge the case, all right.

25 Third thing, please do be back in the --

1 it's going to be on the third floor is where you're
2 going to report to tomorrow morning. If you wear those
3 juror tags, the bailiffs, the gentlemen and ladies,
4 in the red jackets, they'll see you downstairs,
5 and they'll show you where to report, okay? Did you
6 want to show them now?

7 THE BAILIFF: We can catch them in the
8 morning.

9 THE COURT: All right. They're going to
10 catch you in the morning. That'll keep you from having
11 to go to the third floor and view the jury area there.
12 Do wear your masks back; do wear your badges back.
13 The badges will help identify you as jurors. Enjoy
14 your evening. I'm going to keep working on this case
15 a little bit more, and I'll be, of course, here early
16 tomorrow morning working on it. Those matters don't
17 concern you, and I see no reason to have you here any
18 earlier than 10:15. I think that's the soonest that
19 we'll be able to start.

20 So with that, enjoy your evening.
21 Do be back here at 10:15 tomorrow morning, and we'll
22 be in a position, hopefully promptly at that time,
23 to proceed with the trial, all right. Y'all have
24 a great evening and looking forward to seeing y'all
25 tomorrow. Take care.

1 (Selected jury panel exits the courtroom.)

2 THE COURT: You, Mr. -- you want to put
3 something -- you want to put on the record what you
4 explained to us at sidebar, Mr. Phillips, about juror
5 number ---

6 MR. PHILLIPS: Yes, Your Honor.

7 THE COURT: Juror number ---

8 MR. PHILLIPS: 219.

9 THE COURT: 219, Henry Wrinkler, not the
10 Fonz. Go ahead.

11 MR. PHILLIPS: Yes, Your Honor. I just
12 wanted to make sure it was on the record that I told
13 the solicitors before -- they said that they knew that
14 I said about a personal contact. I said I wrestled
15 with his son in high school. He did not -- this is why
16 I'm bringing it up. My recollection is he did not say
17 anything during voir dire regarding that.

18 I'm 36 years old, so I would have wrestled
19 with his son, who is a year younger than me, almost
20 20 years ago. I felt compelled to make sure, as a CYA
21 measure. I don't believe the State thinks I'm trying
22 to conceal anything. They've dealt with me twice.
23 So, I just want to make sure it's on the record.

24 THE COURT: Okay.

25 MR. GRAHAM: Judge, we don't doubt that

1 he told us.

2 THE COURT: Very good. All right.
3 Twenty years ago, he may not even recognize you.

4 MR. PHILLIPS: Maybe not.

5 THE COURT: All right. Now, the State does
6 have a Neil v. Biggers -- we do need to apparently
7 conduct a Neil v. Biggers hearing real quick concerning
8 the photo lineup that was shown to the surviving alleged
9 victim. Are y'all ready to call your first witness
10 on that, Ms. Fuller?

11 MS. FULLER: Almost, Your Honor.
12 Two seconds. Thank you, Your Honor. First, we'll call
13 Investigator Chris Morris.

14 THE COURT: I'll put you under oath since
15 we're doing this non-jury, okay?

16 MR. MORRIS: Yes, Your Honor.

17 INVESTIGATOR CHRIS MORRIS was called as
18 a witness, being duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MS. FULLER:

22 Q. Investigator Chris Morris, where are you
23 currently employed?

24 A. I'm currently employed at the City of West
25 Columbia Police Department.

1 Q. And jumping straight to the issue of this
2 hearing, I'm going to hand you what's been marked
3 as State's Exhibit -- I need a sticker.

4 (State's Exhibit No. 1 was marked for identification.)

5 BY MS. FULLER:

6 Q. I'll mark it as State's Exhibit 1. I'm going
7 to ask you if you recognize this.

8 A. I do.

9 Q. And what is that a copy of?

10 A. That is a copy of a photo lineup.

11 Q. And whose photo lineup is that?

12 A. That is the photo lineup that was shown
13 to Mr. Furtick, and it also contained a picture --
14 a photograph of Mr. Damien Ritter.

15 Q. We'll get to that. But this is a photo lineup
16 you showed to Rodney Furtick in this case. And who
17 is Rodney Furtick?

18 A. He was a surviving victim.

19 Q. And as it relates to the incident in this case,
20 that happened on July 5th of 2018?

21 A. That's correct.

22 Q. And how do you recognize that to be the actual
23 photo lineup you showed in this case?

24 A. Because of my signature and date.

25 Q. Okay. And what date did you show him that photo

1 lineup?

2 A. On July 6, 2018.

3 Q. And where were you when you showed him that photo
4 lineup?

5 A. At the West Columbia Police Department.

6 Q. And, obviously, he was present there in person?

7 A. Yes, ma'am.

8 Q. And can you go ahead and explain to the judge
9 your procedure, your method of presenting that photo
10 lineup to Rodney Furtick?

11 A. Once Mr. Furtick was in the interview room,
12 we read the back of the photo lineup verbatim. And then
13 from there, basically, verbatim on here. Do you want
14 me to read it all to you, Your Honor? "In a moment,
15 I'm going to show you a group of photographs that may
16 or may not contain the picture of a person involved
17 in the crime now being investigated. The fact that
18 photographs are being shown to you should not cause
19 you to believe that anyone has been or will be arrested.
20 Remember: When viewing a group of photographs you
21 should consider the lighting and how it may affect the
22 complexion of some persons, making them appear lighter
23 or darker. You should also consider the fact that
24 hairstyles, facial hair, scars, marks, etc. can be
25 easily changed, added or taken away. Finally, do not

1 allow yourself to be distracted by any background
2 scenery since photographs are sometimes taken at various
3 locations or obtained from a variety of sources.
4 Please take your time and study the photographs
5 carefully. Once you have viewed the photographs,
6 you will be asked to record your viewing."

7 Q. And did Rodney Furtick understand what you read
8 to him?

9 A. Yes, he did.

10 Q. And how do you know that he understood it?

11 A. He acknowledged by shaking his head or saying
12 yes.

13 Q. And then at that point, did you show him the
14 photo array?

15 A. Yes, ma'am. At that point, I would have flipped
16 the piece of paper over, revealing six photographs.

17 Q. And can you describe to the judge the six
18 photographs, their characteristics?

19 A. They're all similar in nature.

20 Q. Okay. And are they -- were they in color
21 or black and white?

22 A. They were in black and white.

23 Q. Okay. And did Rodney Furtick make
24 an identification in this case?

25 A. He did immediately.

1 Q. And when you say immediately, approximately
2 how long did it take him to make the identification?

3 A. Less than three seconds.

4 Q. And I have to ask this. Did you suggest to him
5 that -- who did he identify?

6 A. He identified number four.

7 Q. And who is number four?

8 A. Number four is the photograph of Mr. Damien
9 Ritter.

10 Q. And at any point, did you tell Rodney Furtick
11 that Damien Ritter was in the photo array?

12 A. No, ma'am.

13 Q. And at any point, did you tell Rodney Furtick
14 who to select in this case?

15 A. No, ma'am.

16 Q. And when he selected Damien Ritter, was he --
17 who was he selecting?

18 A. He was selecting the person that he observed
19 during this crime -- this incident, and the person
20 who shot at him.

21 Q. Okay. And the person that committed the two
22 homicides in this case?

23 A. Yes.

24 MS. FULLER: And, Your Honor, I did -- going
25 through quickly just for interest of time, but I believe

1 that covers everything from law enforcement's
2 perspective.

3 THE COURT: Cross?

4 MR. BROWN: May it please the Court.
5 Your Honor, may I stay here at the table?

6 THE COURT: Yes, wherever you're
7 comfortable.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q. I'm just going to hit a couple of things that you
11 mentioned. All right. When you went to present the
12 lineup to Mr. Furtick, how much of the case did you know
13 about?

14 A. I just -- I was one of the initial responding
15 officers.

16 Q. All right.

17 A. And I had a brief interaction with Mr. Furtick
18 on scene prior to him getting into an ambulance.

19 Q. Before he got in the ambulance?

20 A. Correct.

21 Q. Okay. And let me ask you just a little bit about
22 how that's -- because I don't want to make this too
23 long. So on the scene, did you ask him what happened?

24 A. Briefly.

25 Q. Okay. And was that recorded and what manner?

1 A. It was not recorded. I don't have a body camera.

2 Q. Okay. And did you write notes about that?

3 A. Yes.

4 Q. About that first discussion you had?

5 A. Yeah, briefly.

6 Q. Okay. And how did he describe -- and, I guess,
7 I'm asking distinguishing features between the two --
8 between the person who shot him and the second suspect?

9 A. During that encounter that didn't come up.

10 Q. What do you mean it didn't come up?

11 A. I asked him who did this, and he explained the
12 victim's cousin. And then at that point, I think I got
13 a little bit more detail, and then I noticed that he was
14 in pain. So at that point, my mind switched from
15 investigative to emergency personnel to check himself
16 for any type of gunshot wound. At that time, we
17 realized he had a gunshot wound, and I directed him
18 towards the ambulance.

19 Q. Had you already been inside the house?

20 A. No, not at that point.

21 Q. Who had been inside the house?

22 A. I'm not sure. I'm sure patrol officers --
23 uniformed officers.

24 Q. Okay. Well, the point I'm trying to get at is
25 this: You didn't know he was shot when you asked him

1 who did this, did you?

2 A. Not at that time, no.

3 Q. Okay. So when you said who did this, you were
4 referring to what?

5 A. The person who shot him.

6 Q. Well, you didn't know he was shot at the time
7 you asked him who did this, right?

8 A. Well, I knew -- we knew we were there responding
9 to a gunshot wound and two unresponsive victims.

10 Q. Okay. Where did you get that information?

11 A. Radio traffic.

12 Q. You got it. Okay. All right. So somebody
13 radioed that there had been a shooting?

14 A. Correct.

15 Q. And when you showed up you didn't know it was
16 Mr. Furtick?

17 A. No.

18 Q. And you said who did this, and he said two
19 people, one of them is a cousin?

20 A. He said just the cousin.

21 Q. Just the cousin. All right. Now, you mentioned
22 when you went through that lineup, putting it together,
23 that everyone in the lineup was similar in nature.

24 A. Correct.

25 Q. Tell me what their similar -- what is similar?

1 A. Similar facial characteristics; eyes, ears, nose,
2 mouth, hair, possibly ---

3 Q. I'm only laughing because it reminds me of the
4 potato head, you know, take the eyes, ears, you're just
5 left with the potato. But out of curiosity, is there
6 something about their eyes or their ears that makes
7 it similar?

8 A. I don't know. I don't create -- the lineup,
9 SLED creates it, and they send it to us.

10 Q. Okay. All right. So you just tell them, hey,
11 you need to send a lineup over. And you had put one
12 photo in there, or did you put more than one?

13 A. I didn't send any of that information. I was
14 just given the lineup right before I walked into the
15 interview room and told to show the lineup.

16 Q. All right. So you don't know what they asked
17 for?

18 A. I have no idea.

19 Q. Okay. You didn't see anything dissimilar between
20 the folks in that lineup?

21 A. They all appeared fairly similar.

22 Q. Okay. All right. Are they dissimilar enough
23 that you could actually distinguish one person from
24 the other?

25 A. I wouldn't say so, no. It's a pretty good

1 lineup.

2 Q. Okay. So there are differences?

3 A. There are differences.

4 Q. Okay. Fair enough. And you don't know who set
5 Mr. Ritter in the lineup at that point?

6 A. I'm not sure.

7 Q. Okay. Did Mr. Furtick know Mr. Ritter's name?

8 A. No.

9 Q. He did not at the time of this?

10 A. He did not.

11 Q. All right. And it's my understanding that this
12 occurred upon his release from the hospital?

13 A. That's correct.

14 Q. All right. And what type of narcotic drugs was
15 he taking at that time?

16 A. He appeared not under the influence of anything.

17 Q. Okay. Did you ask him whether he had taken any
18 narcotics?

19 A. I can't remember, but he was of sound judgment
20 and character when I had spoken with him.

21 Q. Well, let me ask you this: Did he tell you --
22 let me back up. So at the time you saw him at the
23 scene, you said who did this, and he said Mr. Atkins'
24 cousin, something to that effect?

25 A. He just referred to him as cousin.

1 Q. All right. Cuz? Cousin?

2 A. Cuz or cousin. I'm not -- I would have to look
3 at my notes.

4 Q. All right. And, in turn, did he tell you -- when
5 he went to select it out, did he ask you whether or not
6 you were asking him to pick out the first person or the
7 second person inside the apartment?

8 A. I just explained to him to select the person that
9 was identified as -- who he was referring to as cuz.

10 Q. Okay. So not the person who was the shooter,
11 just the person who is cuz?

12 A. Who was also the shooter.

13 Q. Okay. What was your question to him?

14 A. Please identify the person you're referring
15 to as cousin.

16 Q. Okay. So he never picked this person out as the
17 shooter?

18 A. It's my understanding the cousin was the shooter.

19 Q. Is it also your understanding that Mr. Furtick
20 said there were two suspects in the apartment?

21 A. Yeah, there was two, but he identified Mr. Ritter
22 as the shooter and cousin.

23 Q. Okay. Well, now, I'm going to break it down
24 because there's a lot of facts in here now. So you
25 asked him who do you mean as cuz, or who do you mean

1 as shooter, or did you ask him both, or did the second
2 suspect ever come up when you were talking to him?

3 A. During the interview, the second person came up.
4 However ---

5 Q. Tell me about that.

6 A. He said he heard another voice in the room,
7 I believe. But as far as the photo lineup, when I gave
8 him -- showed him the lineup, I asked him to identify
9 the person that he was referencing to as cousin and the
10 shooter.

11 Q. You asked both of those?

12 A. Well, he was -- they're one in the same. During
13 the interview, he's tell me cousin was the shooter.

14 Q. But did you tell him -- oh, he told you that?

15 A. Yes.

16 Q. Okay. So you did a full interview with him;
17 it wasn't just a lineup?

18 A. Yes.

19 Q. All right. And then tell me how he identified
20 the second person, as opposed to being Mr. Mack?

21 A. The second ---

22 Q. Did y'all have a talk -- a discussion about that?

23 A. About the second person?

24 Q. Didn't he say -- well, the second suspect,
25 or a person listed as Freak?

1 A. Right. At that time, we did not have that person
2 identified.

3 Q. Okay. That wasn't -- okay. Is this the notes --
4 you don't happen to have a copy of the West Columbia
5 Police Department investigative report, do you?

6 A. No, I don't.

7 Q. Have you reviewed that at all?

8 A. I don't believe so, no.

9 Q. Okay. All right. But when -- it says 11:47,
10 that's, I assume, an entry related to Investigator
11 Morris, I met with Mr. Furtick?

12 A. I'm not sure what you're referring to. It's an
13 investigative report.

14 Q. Right. And you're saying in that same entry
15 at 11:47, y'all didn't talk about Freak being the other
16 person who is deceased?

17 A. I'm not sure, like, as far as who Freak was
18 at the time. I think I'm still -- I was gathering
19 information. The extent -- to the time we got here to
20 this lineup, the only part I had was initially talking
21 with Mr. Furtick, I believe speaking to him at the
22 hospital, then this interview. He may have said the
23 name Freak as a nickname, but I wasn't sure. I might
24 not have been sure who that was. Like I said, I was --
25 Investigator Deas was the lead investigator, and I was

1 just assisting him.

2 MR. BROWN: Beg the Court's indulgence.

3 BY MR. BROWN:

4 Q. Okay. And you don't have any independent notes
5 of that meeting, or do you?

6 A. Of which meeting?

7 Q. The meeting where there was a discussion about
8 Freak or a second suspect with Mr. Furtick at the time
9 that he was presented this lineup.

10 A. I'm sure I had handwritten notes of the
11 interview. I'm not sure what's the content of those
12 notes. I would have to look at them to know what ---

13 Q. Well, I've got to be honest with you. My real
14 concern is this: Is whether or not that lineup was
15 somehow or another involving two different people, the
16 person who's cousin and the second person. That's what
17 I'm trying to ask you about, not the second decedent,
18 but the second person that was alleged to have been
19 the co-conspirator when y'all had a warrant indictment
20 for conspiracy.

21 A. Okay.

22 Q. Does that sound right?

23 A. There, again, it's not my case. I don't know
24 the charges.

25 Q. So you never heard nothing about a second person

1 in that meeting?

2 A. You're talking about the Defendant?

3 Q. Suspect.

4 A. The suspect. Yes, he mentioned there was another
5 person.

6 Q. All right.

7 A. However, he didn't know that person or -- I would
8 have to look at my notes. I don't believe he saw that
9 person.

10 Q. Okay. He never saw?

11 A. He saw one person.

12 Q. He saw one person. And so there's no chance that
13 the person he picked out was cuz and not the shooter?

14 A. He was pretty clear that the person he identified
15 in the photo lineup was cousin and the shooter.

16 Q. Okay. And what did he say about that person?

17 A. I don't -- I don't think he knew who --
18 but I'm not sure.

19 Q. And it's not recorded?

20 A. It's not recorded.

21 Q. Y'all have videotaping?

22 A. We just have a live feed camera to our
23 supervisor's office, and that's all.

24 Q. Okay. But it is a camera?

25 A. There's a camera, yes.

1 Q. Okay. And so it's a camera that records?

2 A. No, it's just live feed.

3 Q. Okay. And what device is it going through in the
4 other office?

5 A. It goes through just a monitor.

6 Q. Okay. Not on a computer?

7 A. It's not through a recording device; it's just
8 a straight line from a camera to a TV.

9 Q. Anybody else look at that?

10 A. I don't know who would have been viewing
11 it at the time. Usually, my supervisor would have
12 it on.

13 Q. But it's only that one feed?

14 A. There's one feed there. Then, there is another
15 feed to the investigator's office that's a split line,
16 but neither record.

17 Q. Okay. And is that the same room that y'all put
18 Kris Webber in?

19 A. I don't know who Kris Webber is.

20 Q. Fair enough.

21 MR. BROWN: No further questions.

22 THE COURT: No redirect?

23 MS. FULLER: Just for the record.

24 REDIRECT EXAMINATION

25 BY MS. FULLER:

1 Q. Investigator Morris, the photo lineup you
2 presented, did you suggest to Rodney Furtick who
3 to identify in that case?

4 A. Absolutely not.

5 Q. And just so it's clear for the record,
6 when he referred to the cousin and the shooter,
7 they're one in the same person?

8 A. Yes, ma'am.

9 Q. And that's Damien Ritter?

10 A. Yes, ma'am.

11 MS. FULLER: No further questions,
12 Your Honor.

13 THE COURT: Can I look at the lineup real
14 quick, please, sir? You can step down. Thank you.

15 THE WITNESS: Thank you.

16 MS. FULLER: Thank you. Can I call my next
17 witness?

18 THE COURT: I'm sorry?

19 MS. FULLER: Can I call my next witness?

20 THE COURT: Oh, yeah, go ahead.

21 MS. FULLER: Your Honor, at this time,
22 the State calls Investigator Matt Deas.

23 INVESTIGATOR MATT DEAS was called as
24 a witness, being duly sworn, was examined and testified
25 as follows:

1 MS. FULLER: Thank you, Investigator Deas.

2 DIRECT EXAMINATION

3 BY MS. FULLER:

4 Q. You are the lead investigator in this case for
5 the West Columbia Police Department?

6 A. Yes, ma'am.

7 Q. Just jumping to this pertinent part of the
8 hearing. On July 5, 2018, did you have an opportunity
9 to interact with Rodney Furtick?

10 A. Yes, ma'am.

11 Q. And during that interaction, or even the next
12 day, did you receive a description of the shooter in
13 this case?

14 A. Yes, ma'am.

15 Q. And do you recall, or do you need your notes,
16 as to what description you received?

17 A. Yes, ma'am, I recall.

18 Q. And what description did you receive from Rodney
19 Furtick?

20 A. He said that it was a black male, that he had
21 dark skin, a gold grill. I believe he referred to it
22 as a low temp fade haircut.

23 Q. Okay.

24 A. And he gave the clothing description.

25 Q. And can you explain to the Court how -- at that

1 time, did Rodney Furtick have a name for this person?

2 A. He didn't. He just said that when he spoke
3 with Samir, that Samir told him that's my cousin.
4 And when the Defendant walked into the apartment before
5 the shooting, that Samir again introduced him as this
6 is my cousin.

7 Q. Okay. And so in conversations on July 5th
8 and July 6th, in your conversations with Rodney Furtick,
9 he was referring to the cousin and the shooter as one
10 in the same?

11 A. Correct.

12 Q. And how did you -- can you explain to the judge,
13 how did you develop Damien Ritter's name?

14 A. So in gathering information, first with
15 Mr. Furtick, and learning his physical description
16 of being dark skinned, having a gold grill, the type
17 of vehicle that he drove, I then spoke with Nikki Hicks,
18 who was Samir Atkins' girlfriend. And she -- when given
19 pieces of information about that, she said that sounds
20 like a person named Black, his cousin.

21 Q. Okay. And what other information did you have
22 that connected, besides the description, to the name
23 Black?

24 A. So, I believe that Nikki Hicks said that she also
25 knew his name is Damien. And when I made contact with

1 Towanna Ashford, Mr. Atkins' mother, she told me some
2 more information that eventually after going through,
3 I believe, the grandmother of Mr. Atkins, I was able to
4 secure a family name. I made contact with one of those
5 family members. I got his real last name, Damien
6 Ritter. When I did a DMV search, I found that he,
7 in fact, had a Tahoe.

8 Q. You mentioned the Tahoe. What was relevant --
9 can you explain to the Court what was relevant about
10 the Tahoe?

11 A. The Tahoe is the vehicle that the Defendant came
12 and left in, that was the same one that Mr. Furtick shot
13 at as it was fleeing the scene.

14 Q. Okay. And what color was that Tahoe?

15 A. Burgundy.

16 Q. And did Nikki Hicks also have that color as well?

17 A. Correct.

18 Q. At that point, you were able to develop the name
19 Damien Ritter?

20 A. Yes, ma'am.

21 Q. And from there what did you do with that
22 information?

23 A. So at that time, I felt like there was sufficient
24 -- I felt there was reasonable suspicion to be able
25 to show a lineup. I believe that I filled out the SLED

1 photo lineup request, the standard form, where the only
2 thing they ask for is the type of crime, the person's
3 name, date of birth, driver's license number. You send
4 it off to SLED and give them a call, tell them to rush
5 it, and they send you back a photo lineup.

6 Q. And so did you receive a copy of the photo lineup
7 in this case?

8 A. Yes, ma'am.

9 Q. And that's the one that's presented to Rodney
10 Furtick?

11 A. Yes, ma'am.

12 Q. Were you present when it was presented to him?

13 A. Yes, ma'am.

14 Q. And did in any way you suggest to Rodney Furtick
15 who to select?

16 A. No, ma'am.

17 Q. In any way, did you tell him that the
18 cousin/shooter was Damien Ritter?

19 A. No, ma'am.

20 Q. And were you present when he actually made the
21 identification?

22 A. Yes, ma'am.

23 Q. And do you recall how long it took him to make
24 that identification?

25 A. I remember writing in my notes it was about two

1 and a half seconds.

2 Q. Okay. And did -- prior to presenting the lineup,
3 did you review it to determine if it was unduly
4 suggestive in any way?

5 A. Yes, ma'am.

6 Q. And did you determine it to be unduly suggestive
7 in any way?

8 A. No, ma'am. It's standard that before we show
9 the lineup, we have to show it to our supervisor,
10 and he approves it.

11 Q. And what are you looking for to determine
12 if it was suggestive?

13 A. We want to make sure that -- you don't want
14 to have -- like something would be unduly suggestive
15 if he knew a physical description of this person
16 as being a black male, and we put five white males
17 and one black male. That would be unduly suggestive.

18 Q. And so you did review it to make sure that there
19 were consistent features, characteristics?

20 A. Yes, ma'am.

21 Q. Race, haircut in the photo lineup that you
22 presented?

23 A. Yes, ma'am.

24 Q. And just to ask, you didn't point at who Damien
25 Ritter was?

1 A. No.

2 Q. Okay. And prior to that photo lineup, did Rodney
3 Furtick have any idea of the name Damien Ritter
4 whatsoever?

5 A. No, ma'am, that never came up.

6 Q. Prior to the photo lineup, was there an arrest
7 warrant?

8 A. No, ma'am.

9 Q. Would Damien's name have been released to the
10 media prior the photo lineup?

11 A. Absolutely not.

12 Q. Okay.

13 MS. FULLER: No further questions at this
14 time.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q. Tell me the physical description he gave,
18 besides Samir says that's his cousin?

19 A. I forget the exact height that he gave, but I'm
20 six foot tall. To me, what he gave was on the shorter
21 end, to me. He said that it was a dark-skinned black
22 male with a low temp fade haircut, gold grill, driving
23 a burg -- not driving a burgundy SUV, but there was
24 a burgundy Tahoe there.

25 Q. How did that differ from the second suspect?

1 A. So, it was difficult to get a really good
2 description of the second suspect in this case because
3 of the way that everything happened inside that
4 apartment.

5 Q. And so is there any recording of the questioning
6 of Mr. Furtick regarding his description of the second
7 suspect?

8 A. So, I can answer it this way. I remember him
9 giving it to me on the back of the ambulance. Now,
10 as far as there being a recording, there was a recorded
11 statement that he gave in the interview room at the time
12 that this photo lineup was shown. I would have to go
13 back and listen to it to find out if he gave a physical
14 description at that time.

15 Q. Okay. So let me -- a couple of things there.
16 He told you something in the back of the ambulance?

17 A. Yes, sir.

18 Q. About the second person?

19 A. Pardon me?

20 Q. About the second person?

21 A. No, not about the second person. So, the second
22 person is -- he was in the middle of fighting with
23 Mr. Ritter when the second person was involved.

24 Q. Okay. Let me go back. So what did he tell you
25 about the description of the second suspect?

1 A. He wasn't able to give a good description of that
2 second suspect because he said that he was in a fight
3 for his life with Mr. Ritter.

4 Q. Okay. That's the best, I can't tell you?

5 A. Correct.

6 Q. Okay. And where is that discussion memorialized?

7 A. In terms of where -- have I written that down?

8 Q. That he was unable to give a description of the
9 second suspect.

10 A. I would have to go and -- if you have my
11 handwritten notes, copies of them, I would have to
12 review to see if that's been written down there. But
13 I remember speaking with him, and saying that he didn't
14 get a great look at that person because he was fighting
15 with Mr. Ritter.

16 Q. Okay. But he gave no description?

17 A. I don't recall getting a good description.

18 Q. How about any description?

19 A. I don't recall any details that he gave about
20 the second person.

21 Q. Fair enough. And ---

22 A. In term of the way that he looks.

23 Q. I'm sorry?

24 A. In terms of the way that he looks, correct.

25 Q. Okay. What do you mean by that? That sounds

1 like qualifying -- I just wrote no details. I'm not
2 trying to beat a dead horse.

3 A. So -- well, the only thing that was brought up
4 about that second suspect, the detail is that a second
5 person came in and was, you know -- the part in the
6 notes that I'm sure you read where Mr. Ritter tells
7 the other person, here, take this, and he had a second
8 person pulling a gun on him while he's on the floor.

9 Q. And that recording that was made during that
10 time captured the interview with Mr. Furtick the same
11 day, at the same police station, with the same law
12 enforcement officers, but did not capture this lineup
13 presentation?

14 A. So, first, I spoke with Mr. Furtick on the 5th
15 on the back of an ambulance. And then it was not until
16 the 6th, the next day, that we had a recorded interview
17 with him.

18 Q. And it's at the same location?

19 A. Well, the -- no. The location where we showed
20 the lineup was at the West Columbia Police Department.
21 When I spoke with him on the back of the ambulance,
22 it was in the roadway on Glenn Street.

23 Q. Okay. How about the recording?

24 A. The recording was at the police department.
25 There was -- to the best of my knowledge -- I know

1 I didn't take any recorded statements or anything
2 on the 5th from Mr. Furtick. That wasn't done until
3 the next day.

4 Q. Right. I mean, I'm just trying to find out.
5 Y'all recorded the statement from Mr. Furtick at the
6 West Columbia Police Department on the 6th of July.
7 But it did not include the discussion about the lineup
8 presentation, even though it was done on the 6th with
9 Mr. Furtick at the West Columbia Police Department?

10 A. I'm not following what you're asking
11 specifically.

12 Q. Okay. Did you have -- was it the same visit
13 Mr. Furtick made to the West Columbia Police Department?

14 A. On the 6th, I believe that he just came one time
15 to the police department.

16 Q. Okay. And then y'all meet with him and have
17 a camera, but you're not recording?

18 A. That's correct.

19 Q. And then you have a recorder, but you're not
20 recording?

21 A. It's just standard procedure of how we do
22 interviews. We'll interview the individual, we'll get
23 the information we need, and we'll ask them -- either
24 we'll make a decision, or we'll ask them, you know,
25 if we're going to do a written statement or a recorded

1 statement. We did a recorded statement at that time.

2 Q. Okay. But that was after the lineup or before?

3 A. I don't recall if we showed the lineup on the
4 recording, or if it was done beforehand and then just
5 brought up in the recording. I don't recall.

6 MR. BROWN: I don't have any other
7 questions, Your Honor.

8 THE COURT: Thank you, sir. You can step
9 down. No additional witnesses on this?

10 MS. FULLER: No, Your Honor.

11 THE COURT: Y'all need anything else on
12 this?

13 MR. BROWN: Beg the Court's indulgence.
14 Nothing further, Your Honor.

15 THE COURT: All right. I assume that the
16 SLED agent is going to testify, or would be testifying
17 at trial, and it's the standard-type stuff, or were you
18 planning on eliciting that the way that these lineups
19 are generated?

20 MS. FULLER: I never have, Your Honor.
21 If you're requiring that ---

22 THE COURT: I'm not. I was just asking,
23 generally speaking, if you were planning on doing that.
24 You're fine.

25 MS. FULLER: Okay.

1 THE COURT: All right. If there's
2 nothing further on this -- any argument on this?
3 I mean, I'm looking at the lineup, and quite candidly
4 I'm seeing ---

5 MR. BROWN: The only argument I will make
6 is that there's absolutely no good reason not to have
7 the recorder on for this.

8 THE COURT: Well, the recorder is one thing.
9 I understand. But the question for the Court is whether
10 the lineup is unduly suggestive, and the six photos that
11 I'm looking at, even though they are in black and white,
12 all the characteristics of the six gentlemen shown
13 in the photos are very similar, very short haircuts,
14 maybe a little bit of a five o'clock shadow around the
15 chin or the nose. But, generally speaking, the same
16 age, the same general facial build. And so I would find
17 that these photographs -- the lineup, rather, was not
18 unduly suggestive when it was presented to the witness.
19 That would be my ruling on that. Okay.

20 Let's go ahead and take a break for the
21 evening. If we could, let's reconvene around 9:30.
22 And I anticipate being able to work through the State's
23 motion in limine fairly quickly, and the defense can get
24 a final ruling on those other two questions. I think
25 y'all all know where we're going with it.

1 MR. BROWN: And, Judge, for what it's worth,
2 we would note it's only a motion in limine, and the
3 reason I point that out is my understanding is, and they
4 actually have to object contemporaneously for offering
5 it as evidence.

6 THE COURT: Right. Well, here's where
7 I'm going. I have an inkling of now the jury selection
8 is done, maybe I've got an idea of where you're going
9 in terms of a defense, and maybe I'm wrong. But either
10 way, what I am asking for Ms. Fuller to do, so that
11 I have a chance to ruminate on this, is if she could
12 take just maybe a few moments tonight and give us the
13 breakdown on the reason they're seeking exclusion.

14 I understand, apparently, the deceased
15 victim, the toxicology reports indicated marijuana.
16 Y'all told me that in the back, and it might be
17 relevant, might not be relevant. Again, you know,
18 I've said it before in this courtroom, y'all have tried
19 cases with me before, evidence falls into one of three
20 categories, it either hurts you, it helps you, or it
21 doesn't do either.

22 And if it helps you, you definitely want
23 it in. If it hurts you, from the State's perspective,
24 it's got to come in because of Brady. And if it does
25 neither of them, you know, why not let it in.

1 Now, are we going to start chasing wild
2 geese? No. Because we've, obviously, got, you know,
3 a certain timeframe that we're operating under.
4 So, if it's clearly irrelevant, sure, it will be kept
5 out. But at the same time, if there's some potential
6 for it to become relevant, it's probably coming in.

7 MR. PHILLIPS: And, Your Honor, I apologize.
8 I didn't mean to interrupt.

9 THE COURT: No, you're not.

10 MR. PHILLIPS: As the person doing the
11 opening and only depending on how you rule, how that
12 potentially -- that motion could immediately --
13 literally go from the -- my opening could change
14 technically.

15 MR. BROWN: Which I think what he's really
16 asking for is we may need some time. Well, I think it's
17 going to be a very voluminous argument or no argument.
18 In other words, we're kind of stuck at telling you our
19 defense before they open.

20 MR. PHILLIPS: From an error preservation,
21 I would ask if it's something that we feel is part
22 of our defense theory, I would ask for -- and, again,
23 I know this is unusual, maybe even an ex-parte where
24 we tell you the relevance based on our defense theory.
25 We've got to proffer it for the ---

1 MR. BROWN: It's kind of like ---

2 MR. PHILLIPS: We would have to proffer
3 it for the appellate record.

4 THE COURT: Sure. Okay. Well, you know,
5 there aren't too many defenses to a homicide. So,
6 I think I know what you guys are maybe alluding to
7 here. Any prior acts and/or reputation of the deceased
8 victims, I indicated in the hallway that that's
9 potential 404(b) type of evidence. But that would
10 presuppose, of course, that the Defendant takes
11 the stand to say that he was acting in self-defense
12 or something to that effect.

13 MR. BROWN: But, Your Honor, there's a --
14 our client wouldn't be able to take the stand until
15 after their case was presented.

16 THE COURT: Right. I understand.

17 MR. BROWN: And we could develop our case
18 on cross because one of the cases that talks about that
19 is an entrapment case where entrapment was all developed
20 on cross-examination. That was actually my appeal,
21 and they said that was enough. And so it really is one
22 of these chicken and egg thing in that you can't put
23 the whole picture in without doing one piece at a time.

24 THE COURT: And I don't disagree with you.
25 But if the defense is self-defense, I don't know how you

1 present that. If it's 404(b) evidence, and your client
2 intends to testify, I was aware that decedent A was
3 a violent person because he was previously charged
4 with this assault incident involving a firearm.
5 And so I knew his tendency to lose his temper quickly.
6 You know, you're going to need that in order to ---

7 MR. BROWN: Well, I would suggest this:
8 The items were in plain view, with some exception,
9 in the house when you walk in. It's a very tiny house.

10 THE COURT: Sure.

11 MR. BROWN: So that's very clear for a lot
12 of the stuff.

13 THE COURT: Fortunately, fortunately,
14 Ms. Fuller is going to endeavor to give us a brief
15 skinny on the individual items, and that way we're
16 not talking about nine collectively, but we can focus
17 in, laser attention, sometimes perhaps this evening
18 on the specifics of the motion.

19 MR. BROWN: And I think what Mr. Phillips
20 was going to ask for was some time to react to your
21 ruling for our opening.

22 THE COURT: Right. Well, let's see --
23 I know that you'll be working on the opening, and if
24 you need additional time to tweak your opening, that's
25 perfectly cool. But I'm sure that you'll -- I'm sure

1 that you'll already have something, a general idea
2 in your mind of what you're going to point out.

3 MR. PHILLIPS: I just, you know -- don't
4 need a moving target.

5 THE COURT: Well, I mean, the -- there's no
6 secret that there was drug dealing going on. I think
7 that we made this abundantly clear. There's no secret
8 that there was drug dealing going on at the house.
9 The decedents, I think, were involved in it in some way,
10 shape or form. I don't think this is news to anyone.
11 Guns and drugs are always found together.

12 There's ample case law on that, and I know
13 in prior hearings we've addressed this before, and the
14 State does not intend to present the decedents as
15 innocent Sunday schoolteachers or nuns or priests.
16 It is what it is, and it's tragic that those people
17 are not here. But at the same time, the facts are what
18 the facts are. Let's see where they lead us. See you
19 all tomorrow morning at 9:30-ish, okay? Thank you.

20 MR. BROWN: Thank you.

21 THE COURT: Hope you have a great night.

22 (Proceedings adjourned until 9:30 a.m.)
23
24
25

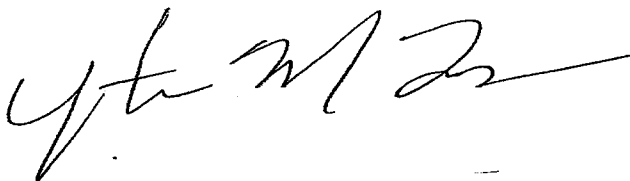
CERTIFICATE OF REPORTER

State of South Carolina)
County of Lexington)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 21st of June, 2021.

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

October 30, 2021



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
2019-GS-32-02887-2893

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) June 22, 2021 - Vol 2 of 5

Damien Lavar Ritter)

) Lexington, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Judge

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

Sutania A. Fuller, Esquire
Shawn Graham, Esquire
Attorneys for the State

Jim Brown, Esquire
Dayne Phillips, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-1	Photo Lineup		415
S-2	911 Call Disc	248	310
S-3	Aerial of Apt.	248	305
S-4	Apt. Diagram	248	312
S-5	Still Shot	248	394
S-6	Still Shot	248	392
S-7	Still Shot	248	392
S-8	Aerial Map	248	350
S-9	Aerial Map	248	350
S-10	Still Shot	248	314
S-11	Phone Photos	248	
S-12	Still Shot	248	365
S-13	Still Shot	248	
S-14	Disc	248	391
S-15	Disc	248	363
S-16	Dispatch	248	
S-17	911 Call	248	
S-18	Disc	248	385
S-19	Still Shot	248	386
S-20	Still Shot	248	386
S-21	Still Shot	248	386
S-22	Photo	248	411

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	NO	DESCRIPTION	ID	EVIDENCE
1				
2				
3				
4	S-23	Photo	248	411
5	S-24	Photo	248	
6	S-25	Photo	248	
7	S-26	Photo	248	411
8	S-27	Photo	248	424
9	S-28	Photo	248	422
10	S-29	Photo	248	422
11	S-30	Photo	248	422
12	S-31	Photo	248	422
13	S-32	Photo	248	430
14	S-33	Photo	248	430
15	S-34	Photo	248	430
16	S-35	Photo	248	430
17	S-36	Photo	248	430
18	S-37	Photo	248	422
19	S-38	Photo	248	424
20	S-39	Photo	248	
21	S-40	Photo	248	
22	S-41	Photo	248	
23	S-42	Photo	248	436
24	S-43	Photo	248	436
25	S-44	Photo	248	436

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-45	Photo	248	433
S-46	E-mail & Attachments	248	
S-47	Morris Drawing	248	482
S-48	Photo	248	
S-49	Photo	248	
S-50	Photo	248	
S-51	Photo	248	
S-52	Photo	248	
S-53	Photo	248	
S-54	Photo	248	
S-55	Photo	248	
S-56	Photo	248	
S-57	Photo	248	
S-58	Photo	248	
S-59	Photo	248	
S-60	Photo	248	
S-61	Photo	248	
S-62	Photo	248	
S-63	Photo	248	
S-64	Photo	248	
S-65	Video Clip	248	
S-66	Screen Shot	248	

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NO	DESCRIPTION	ID	EVIDENCE
S-67	Screen Shot	248	
S-68	Tahoe DMV Records	248	
S-69	DMV Insurance	248	
S-70	Current DMV Plates	248	
S-71	Map	248	
S-72	Map	248	
S-73	Wound Photo	248	
S-74	Wound Photo	248	
S-75	Wound Photo	248	
S-76	Wound Photo	248	
S-77	Phone Photo	248	
S-78	Phone Photo	248	
S-79	Phone Photo	248	
S-80	Phone Photo	248	
S-81	Phone Photo	248	
S-82	Phone Photo	248	
S-83	Phone Photo	248	
S-84	Phone Photo	248	
S-85	Phone Photo	248	
S-86	Phone Photo	248	
S-87	Phone Photo	248	
S-88	Phone Photo	248	

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-89	Phone Photo	248	
S-90	Phone Photo	248	
S-91	Phone Photo	248	
S-92	Phone Photo	248	
S-93	Phone Photo	248	
S-94	Phone Photo	248	
S-95	Phone Photo	248	
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S-99	Phone Photo	248	
S-100	Phone Photo	248	
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S-102	Phone Photo	248	
S-103	Phone Photo	248	
S-104	Coroner Photo	248	
S-105	Street View	248	
S-106	Injuries Photo	248	
S-107	CT Scan Photo	248	
S-108	Rad. Images	248	
S-109	Injuries Photo	248	
S-110	Photo	248	

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-111	Photo	248	
S-112	Photo	248	
S-113	Photo	248	
S-114	Photo	248	
S-115	Photo	248	
S-116	Photo	248	
S-117	Photo	248	
S-118	Photo	248	
S-119	Photo	248	
S-120	Photo	248	
S-121	Photo	248	
S-122	Photo	248	
S-123	Photo	248	
S-124	Photo	248	
S-125	SLED Item 5	248	
S-126	SLED Item 5.1	248	
S-127	Disc	248	
S-128	Still Shot	248	
S-129	Still Shot	248	
S-130	SLED Item 35	248	
S-131	Bag Photo	248	
S-132	SLED Item 1	248	

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-133	SLED Item 6	248	
S-134	SLED Item 2	248	
S-135	SLED Item 3	248	
S-136	SLED Item 7	248	
S-137	SLED Item 5	248	
S-138	Photo	248	
S-139	Photo	248	
S-140	Photo	248	
S-141	Photo	248	
S-142	Photo	248	
S-143	Photo	248	
S-144	Photo	248	
S-145	Photo	248	
S-146	Photo	248	
S-147	Photo	248	
S-148	Photo	248	
S-149	Photo	248	
S-150	Photo	248	
S-151	Photo	248	
S-152	Photo	248	
S-153	Item 10 DVR	248	
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1 (State's Exhibit Nos. 2 through 244 were marked for
2 identification.)

3 THE COURT: Thank you. Good morning.
4 Have a seat. We'll get back on the record, if we can,
5 in the State v. Mr. Ritter. The record, of course,
6 will reflect that the Defendant is present with counsel.
7 Sorry for the delay in getting out here. The solicitor
8 wanted to speak with me briefly, and I needed to sign
9 an order or two.

10 I did receive the e-mail from the State
11 last night concerning the motion in limine that the
12 State has made. I did have a chance to review it.
13 And in an effort to kind of move matters along a little
14 bit, Solicitor, what 404(a) evidence do you anticipate
15 them trying to introduce? I'm assuming that's what you
16 mean by prior acts and/or reputation of the deceased
17 victims.

18 MR. GRAHAM: Judge, specifically, we don't
19 know. I guess, as you stated yesterday, this is a drug
20 dealing, so we expect to be talking about marijuana
21 dealing. Anything beyond that, we would want to have
22 it, you know, properly ruled on by Your Honor.

23 THE COURT: Were ---

24 MR. GRAHAM: We don't have anything
25 specifically.

1 THE COURT: Were y'all looking -- typically
2 in a 404(a) context, general reputation for violence,
3 prior bad acts involving convictions for assault,
4 or things where the decedent was the initial aggressor,
5 or found to be the initial aggressor, that's what we're
6 touching on. Did the decedents have any prior criminal
7 record that would raise those red flags?

8 MR. GRAHAM: Let me look, Your Honor.
9 Elzie Mack has convictions, Your Honor. The only thing
10 that I see -- I don't see any type of assault. There's
11 been unlawful carrying of a pistol conviction from 2001.
12 Everything else seems to be drug related. There's
13 an alcohol charge, a harassment charge, a driving under
14 suspension charge.

15 THE COURT: Okay. My default setting is,
16 okay, I'm assuming that the State in preparing its case
17 did the logical thing and put themselves in the position
18 of the defense and said, okay, if I were the defense,
19 what would I -- what would my defense be? And so maybe
20 some of these items are what the State is believing that
21 the defense will raise. Were y'all looking at going for
22 -- was the defense looking at a 404(a) type situation,
23 or what are your ---

24 MR. BROWN: Your Honor, with all due
25 respect, I think that this motion would probably

1 be easier to argue after our opening statement.

2 And I say that because I know they want us to not
3 go into this in opening. And for what it's worth,
4 Mr. Phillips and I talked about it, and I don't think
5 we would broach this specific thing they're talking
6 about.

7 Let me give you some idea, some things
8 are so broad that I can't answer. Irrelevant cell
9 phone content. They want to keep out irrelevant
10 cell phone content. But, Judge, let me just tell you,
11 there are probably 350 pages of cell phone content
12 from the nine cell phones that were extracted at SLED.
13 So the irrelevant part, we're not going to go into.

14 THE COURT: I would tend to agree. I think
15 we're all in agreement that irrelevant evidence will,
16 in all likelihood, not be admitted.

17 MR. BROWN: But we are willing to stay
18 away from these specific items; the 40-caliber prong,
19 two 45-caliber handguns that were in the household.
20 And, by the way, none of these are attributed to our
21 client, obviously, because if they were they would not
22 be considered irrelevant by the State.

23 But we will stay away from the 40-caliber
24 drum magazine in Rodney Furtick's car, the two
25 45-caliber handguns in the boxes, the AR-15 assault

1 rifle under the girl's bed in the child's bedroom,
2 the drum -- rounds that matched that AR-15 found in
3 the red bag, not taken into evidence at the front door
4 entranceway, and the untested white powder that they
5 list is probably cocaine, 30 grams. That's in the
6 police report, that has not been tested.

7 We don't mind staying away from that,
8 the ledger, and the toxicology reports in opening.
9 Again, everybody will see our defense at that point.

10 MR. PHILLIPS: As somebody who has to give
11 the opening, I would say, one, we don't waive the
12 opportunity as far as the right to present a full
13 and complete defense ---

14 MR. BROWN: That's right.

15 MR. PHILLIPS: --- our right to
16 confrontation of witnesses and to challenge the
17 integrity of the investigation. With that being said,
18 I think there should be some leeway of broad strokes,
19 maybe not specifics, but broad strokes. That's the very
20 definition of the fact of what the evidence will show,
21 the very definition of opening statement.

22 MR. BROWN: And, traditionally, Judge,
23 I'm on the other side, and I'm the one that's being
24 forced to object to evidence in front of the jury
25 and caught in a catch 22 where I have to tell the jury,

1 | hey, this is something I don't want in, watch me stand
2 | up, be a squiggling lawyer in front of y'all to try
3 | to keep you from hearing something that's germane.
4 | Well, goose versus gander.

5 And quite honestly we're not trying to skirt
6 it. We understand that everybody would really like
7 to narrow down the focus of the case. And if we had
8 civil discovery where you request to admit or somethings
9 like that, but we have trial by ambush. I mean, it is
10 flat out. Andy Savage said federal court is a prize
11 fight, and state court is a street fight. And it always
12 works against us.

13 But at this time, they don't know if
14 whether they need ten witnesses or 110 witnesses,
15 and I appreciate that. But I think after we lock in the
16 case, the jury is sworn, then I think what our argument
17 is and our theory will be abundantly clear at the end
18 of our opening because if it's not, we didn't do a very
19 good job of telling them that. And I would just ask
20 that you consider ruling on the specific items, if it
21 needs to be in limine, after we give our opening.

22 THE COURT: Does that sound fair to you?

23 MR. GRAHAM: Did I hear that they're not
24 going to mention anything?

25 THE COURT: It sounds like they're going

1 to give some general broad strokes. I imagine they
2 will, of course, touch on evidence. But, at least,
3 after that point -- and here's the problem with the
4 Court. You know, irrelevant cell phone records, okay,
5 I agree irrelevant cell phone content won't be coming
6 in. But I can't, at this juncture, determine what
7 is or what is not relevant, okay?

8 It could be relevant for impeachment
9 at a later point in time; it could be relevant on the
10 substance of charges; it could be relevant to a defense.
11 I have not seen the cell phone records like y'all have.
12 So for me to say, okay, eliminate any irrelevant cell
13 phone content and don't refer to that in your opening,
14 I don't know what their defense is; I don't know what
15 evidence is going to be produced.

16 So, I don't know what is relevant
17 or irrelevant at this point. That's best handled
18 by a relevancy objection at some later point in time.
19 If you're selling marijuana, it should come as no
20 surprise that marijuana would be in the decedents'
21 systems, okay? So that's a nothing burger right there.

22 MR. BROWN: Judge, I want to point out one
23 thing. We're not -- I'm not coming off what I said.
24 We won't talk about those specific items I went through,
25 mostly ammunition and guns and the white powder

1 substance. But, Your Honor, I did ask to narrow
2 the broad language of personal items to have something
3 defensible, like just the safe. And, Your Honor said
4 it could be any item, even the watch that was taken
5 because we'll see what they testify to.

6 And, Your Honor, I would point out they
7 claim that the safe contains items that were taken.
8 And at least, according to some of the witnesses,
9 those items were drugs and money and guns.

10 THE COURT: Okay. Well, that might be
11 handled at a direct verdict stage.

12 MR. BROWN: Well, I'm just getting into
13 what was in the house might have been opened by the fact
14 that they're alleging personal items were taken, putting
15 us into the inventory of what's there mode.

16 THE COURT: Maybe, maybe not. I don't know.

17 MR. BROWN: Well, I know. I'm just saying
18 you may have done us a favor leaving personal items
19 in there.

20 THE COURT: What we're going to do is
21 I'm going to -- I received insurance that this will
22 become a lot clearer after the opening. And at that
23 point in time, we'll have a better idea of what the road
24 map is for this, thereby in large, staying away from
25 this stuff.

1 So, I think we're good as far as the
2 State's motion in limine. I'm not in a position anyway.
3 I like to let lawyers try their cases, and I'm not
4 in a position at the start of the case to start moving
5 the goal post, or otherwise restricting what evidence
6 is coming in because, again, I don't know how this
7 is going to develop factually. I'll have a better idea
8 of that as we go along, so that's where we are on that.
9 The defense needed to renew two motions that apparently
10 were made.

11 MR. PHILLIPS: Yes, Your Honor. Actually,
12 we never fully addressed them actually.

13 THE COURT: Go ahead, renew those in for me,
14 please.

15 MR. PHILLIPS: Thank you, Your Honor.
16 Also, we didn't address yesterday what's Your Honor's
17 policy post COVID on witnesses and masks?

18 THE COURT: Don't have to wear them on the
19 stand.

20 MR. PHILLIPS: Okay. Now ---

21 THE COURT: And the lawyers don't either.

22 MR. PHILLIPS: But what if a witness wears
23 the mask near the stand, what's your position on that?

24 THE COURT: Well, it's their personal right
25 to if they wish to, if they feel like they need to be

1 safe and wear a mask, that's fine. But if they feel
2 like they don't need to, then they could certainly take
3 it off.

4 MR. PHILLIPS: I understand, Your Honor.
5 And you understand where I'm set going with that,
6 is that there's concern from the defense's part as far
7 as under the right for confrontation when somebody's
8 masked, you can't get the full demeanor of the jury
9 trying to weigh credibility of witnesses. Obviously,
10 facial expression is a big part of that.

11 THE COURT: In the trials I've done,
12 all witnesses have been unmasked when they testify.
13 I don't think there's been a single one that actually
14 did have a mask on.

15 MR. PHILLIPS: We can cross that bridge when
16 we get to it.

17 THE COURT: Yeah. The only one I've ever
18 had where a witness was wearing a mask, they had an
19 active case of the flu, and I tried that one in
20 Abbeville a few years ago, and they were drug analysts
21 from SLED whose testimony I couldn't get the defense
22 to agree to do by Skype or WebEx. Post COVID, I would
23 probably insist on it and send that up, let the Supreme
24 revisit that issue, but that's where we are.

25 As far as I'm concerned, assuming the

1 lawyers have been vaccinated, if you need to approach
2 the witness, you don't need to put your mask back on,
3 okay? So, I'm not going to ask -- but we're on an honor
4 system here. If you've gotten the shot, you don't have
5 to wear a mask when you approach the witness, okay?

6 MR. PHILLIPS: Thank you, Your Honor.
7 I just wanted to clear that up. I didn't want us
8 to run into those issues as we go along. Your Honor,
9 I guess, we'll go ahead and address these issues.

10 Specifically, the first one is a motion
11 to suppress based on the evidence seized by the State,
12 pursuant to the search warrant issued on July 18th,
13 where the issuing magistrate judge falsely believed
14 that a mere tipster was a confidential informant,
15 and was not provided sufficient reliability for
16 determination of probable cause, the totality
17 of the circumstances.

18 We made this motion to suppress pursuant
19 to -- let's make sure -- under South Carolina
20 Constitutional Article I, Sections 3 and 10, the Fourth
21 Amendment, Fifth Amendment, and Fourteenth Amendment
22 of the United States Constitution. Specifically,
23 Your Honor, the magistrate erroneously believed that
24 the mere tipster to have been a confidential informant,
25 thereby implying a greater credibility despite there

1 being no corroborating evidence.

2 We specifically cite the State v. Jones
3 case, which is a case where there's actual confidential
4 information, but the police used in their affidavit
5 the word "agent" to imply a higher level of credibility,
6 in other words, implying to the magistrate that it was
7 a police officer versus a confidential informant.

8 As Your Honor denied our Franks hearing,
9 Your Honor, in your ruling found that the confidential
10 informant language that was provided in the affidavit
11 on the July 18th search warrant listed improperly,
12 and let me rephrase because that's not Your Honor's
13 ruling, that incorrectly listed the confidential
14 informant as a mere tipster.

15 So in other words, the language listing of
16 mere tipster as a confidential informant was not false
17 in the sense of the reckless disregard for the truth.
18 But, Your Honor, did find that it is not a confidential
19 informant; that it was a mere tipster.

20 Same as in Jones, the magistrate erroneously
21 believed that this mere tipster to have been a
22 confidential informant, or as in Jones believed it
23 to be a police officer. This very similarity is where
24 it provides greater credibility in understanding Jones.
25 The cite is 342 S.C. 121; it's a 2000 South Carolina

1 Supreme Court case.

2 Essentially, again in that case the warrant
3 had the word "agent" to imply a police officer versus
4 a confidential informant, which provided greater
5 credibility in the affidavit to that person supplying
6 the information for determination of probable cause.

7 In this case, the officer -- the affiant
8 provided the word "confidential informant" versus
9 the word "mere tipster," implying greater credibility
10 than a mere tipster. Therefore, in the same similarity,
11 we argue that without there being any further
12 corroboration, it doesn't rise to the level of probable
13 cause. Specifically, if you look at Adams v. Williams;
14 that's 407 U.S. 143. That's a 1972 United States
15 Supreme Court case. The Court found an unverified tip
16 from a known informant may not have been sufficient
17 to establish probable cause, but carried enough indicia
18 of reliability for a forceable stop and frisk.

19 We don't deny that there's enough evidence
20 for a reasonable suspicion seizure. But it doesn't
21 cross that higher threshold of probable cause to issue
22 a search warrant for a residence. Specifically, the
23 search warrant on its face, the affidavit on its face,
24 failed to provide the issuing magistrate with sufficient
25 information concerning the tipster's reliability for

1 probable cause determination.

2 And, again, the magistrate's erroneous
3 belief that the mere tipster was a confidential
4 informant is significant because there's no -- one,
5 there would be more credibility provided to the
6 magistrate when they read the word confidential
7 informant versus mere tipster.

8 THE COURT: Sure. Correct me if I'm wrong
9 though, in Jones I think the magistrate did, in fact,
10 testify at the Franks hearing. And I think in this
11 case there wasn't an independent recollection similar
12 to the kind that the magistrate -- there's not evidence
13 of an independent recollection similar to the kind that
14 you had in Jones. Am I wrong? Did I bring that wrong?

15 MR. PHILLIPS: So, I think -- my
16 recollection of how Jones is presented, that the
17 magistrate did imply that there was greater credibility
18 provided based on agent versus informant.

19 THE COURT: Right. He thought it was a cop
20 or something.

21 MR. PHILLIPS: Exactly.

22 THE COURT: Police officer. And instead --
23 and it was just John Q public person, some tipster, CI,
24 whatever the case may be. But the magistrate was able
25 to articulate what he recalled at the time the warrant

1 was issued in Jones, and I think we don't have that
2 in this case, correct? We're limited to four corners
3 of the affidavit as opposed to being able to perceive
4 any kind of independent recollection from the magistrate
5 that issued the warrant in this case, right?

6 MR. PHILLIPS: And I will certainly
7 absolutely argue that because the affidavit on its face
8 fails because it has no language regarding reliability
9 at all.

10 THE COURT: Which goes back to Franks,
11 but go ahead.

12 MR. PHILLIPS: Yeah, but again if we --
13 the Franks and reliability are two separate issues,
14 Your Honor. And when you're looking at the affidavit
15 on its face, and it doesn't have any indicia of
16 reliability on it, obviously, I know the State is going
17 to argue that there was probably oral supplemental based
18 on the testimony that was provided.

19 We argue that this misrepresentation is
20 particularly important because the tip had not been
21 corroborated. In this case, what's interesting is there
22 was no exigent circumstances, and we would not know that
23 there was no corroboration if we wouldn't have had this
24 Night Owl DVR that was seized. That's the ironic part,
25 is what -- the way we can prove that there was no

1 corroborating evidence of this tip is that the Night
2 Owl DVR does not have any information supporting
3 the information that was provided by this mere tipster.

4 In other words, you have the information
5 provided in the tip, and what we saw was that
6 Investigator Singleton goes out there to try to verify
7 this tip. And by looking at the video itself, the
8 evidence that -- or at least the alleged tip is not
9 corroborated. There's no evidence that the vehicle was
10 there when this mere tipster said it was, which proves
11 that the reliability of this tip is, one, unverified
12 and likely untrue.

13 And so, specifically, although the
14 information was provided by a tipster that we said
15 would justify a reasonable suspicion of a traffic stop,
16 again it doesn't cross that higher threshold of probable
17 cause for issuing a search warrant of a residence.
18 Again, especially considering that there's no exigent
19 circumstances, and that the evidence received by the
20 police was based on a tip on July 9th. This warrant
21 wasn't issued until nine days later on July 18th.

22 Again, when you have this nexus it's also --
23 the nexus to the home was the fact that the tip says
24 that the vehicle was outside of the home, but the
25 Defendant is not seen. And again that's not verified

1 by the very evidence that was seized from the home.

2 So we have, one, a mere tipster that's told
3 to the magistrate that they're a confidential informant.
4 In it of itself that we're saying is very similar to
5 Jones in the sense that the only reason -- and I know
6 you ruled against us on the Franks. But at the end
7 of the day from a magistrate's standpoint, the word
8 "mere tipster" versus "confidential informant" implies
9 a greater level of credibility, as far as a known
10 confidential informant versus a mere tipster.
11 That implies a higher level of credibility.

12 Now, when we take it to the next step
13 that we know, one, there's no corroboration of that tip.
14 So that strikes at the reliability that we can prove
15 that the tip was unreliable.

16 The next step is we can show that there's
17 no exigent circumstances in addition to that. And so on
18 its face, it just does not rise to the level of probable
19 cause. When you look at State v. Philpot; that's 317
20 S.C. 458, holding a search warrant was not supported
21 by probable cause because the officer has no first-hand
22 knowledge, and the officer didn't show the confidential
23 informant was reliable. That's exactly the situation
24 we have.

25 And, in fact, in this situation it's

1 not a confidential informant; it's a mere tipster,
2 highly distinguishable from that. So going further,
3 the affiant intentionally declined to provide the
4 identity of the tipster. If they would have provided
5 John Adkins' name, we wouldn't have this argument,
6 and this would be closed, this matter would be closed.

7 The tipster should not be considered.
8 I think this is highly distinct from non-confidential
9 informants who have a higher level of reliability
10 and credibility because their identity is exposed.
11 And as the Court said in State v. Driggers, which is
12 322 S.C. 506, and it's highly distinct from that case,
13 finding a non-confidential informant should be given
14 a higher level of credibility because they expose
15 themselves to public view and possible criminal
16 and civil liability should the information prove
17 to be false.

18 In this case, it's listed as a confidential
19 informant, but it's actually a mere tipster, so there's
20 no identity provided, and it strikes to the level of
21 having -- on its face having to need that corroboration
22 to be provided as reliable. So on its face -- on the
23 search warrant from July 18th in the affidavit, there
24 is not one word of reliability. There's not one
25 sentence explaining the reliability. And, obviously,

1 I'm not going to make the State's argument for them
2 on that. But at the end of the day, there's no
3 corroboration. There's absolutely no corroboration.

4 I know you've ruled against us in the
5 Franks, and I don't want to keep looping back, but
6 at the end of the day what's presented to the magistrate
7 on its face is just that there was an informant that
8 went and saw this information. And what we know is that
9 that information was not corroborated, and it wasn't
10 actually an informant.

11 Again, when you look at State v. Sullivan
12 it distinguished -- our courts acknowledged the
13 distinguishment between affidavits relying on
14 eyewitnesses or victim informers. And the other side
15 of that is those relying on paid informers, and that
16 the former may be sufficient to establish probable
17 cause, even if the affidavit does not independently
18 establish the credibility of the informant when other
19 circumstances show the information is likely to be
20 reliable.

21 Now in this case, it's also interesting that
22 the tipster who came up here and testified under oath,
23 provided sworn testimony, that, one, he didn't provide
24 that information to the affiant, that the affiant lied,
25 that the affiant didn't like him, that he didn't like

1 the affiant, that he previously dated the affiant's
2 sister, he didn't know the Defendant drove a Chevy
3 Tahoe, and that the affiant identified him as a tow
4 truck driver, that's the reason why he provided his
5 name.

6 The tipsters on the sworn testimony
7 illustrates the lack of credibility and possible
8 ulterior motivate to lie. One of the issues that's
9 always provided in these cases when you have a
10 confidential informant -- one, when you have that higher
11 level of credibility for a non-confidential informant
12 is whether there's any underlying evidence as far as
13 an ulterior motive to lie.

14 Again, this should be weighed against the
15 affiant's reluctance to provide the tipster's identity
16 to the Court. And, I mean, obviously, Your Honor knows
17 that we had quite a hard time in trying to get the
18 identity revealed of this tipster. That was known,
19 at least, presented to the Court, as a confidential
20 informant.

21 Some very unusual circumstances in this case
22 regarding the affiant's inconsistent statements
23 regarding knowing the "informant" for eight years versus
24 16 months, the failure to tell the magistrate about this
25 "informant" was previously dating his sister, pistol

1 wiping his sister, holding a gun and pulling the trigger
2 in her face, having no specific information on what this
3 "informant" had previously provided, and having no files
4 or no corroborating evidence, not providing the
5 magistrate with the information that he went there that
6 morning, and the tip was unverified.

7 And what we know from the DVR, that the time
8 provided from the tip of when he -- when that alleged
9 call -- when the call was made, that there was no
10 toddler there.

11 The good faith exception would not apply
12 to this search warrant, Your Honor. And when you look
13 at confidential informant cases, specifically, United
14 States v. Ross, 456 U.S. 798, from the United States
15 Supreme Court, they found probable cause existed where
16 a confidential informant who proved to be reliable
17 previously, provided -- and this is where it's important
18 here -- specific detailed information, and officers
19 observed corroborating evidence.

20 We don't have any corroborating evidence,
21 and that's for an informant case. This is a mere
22 tipster case. That's the distinguishing factor here.
23 More credibility is given to a confidential informant
24 than mere tipster. There's no corroborating evidence.
25 Based on that, the reliability is not proved. On its

1 face, the search warrant affidavit fails.

2 Obviously, I can have rebuttal when
3 the State provides their argument regarding that,
4 Your Honor.

5 THE COURT: Okay. Briefly in reply,
6 did y'all want to respond?

7 MS. FULLER: Yes, Your Honor, just briefly.
8 I think, respectfully, counsel's motion -- motion to
9 suppress rely on the reliability of the confidential
10 informant, but I think it's still -- his arguing circled
11 back to Franks. And what we have different in this
12 case, compared to all of the case law on the reliability
13 of a confidential informant, is the confidential
14 informant in those cases, the actual -- I don't think
15 the principle party of the crime, but actually witnessed
16 the actual offense.

17 In this case, in prior ruling back in April,
18 you indicated that even if you struck that sentence
19 we would still have probable cause, and I think that's
20 still the concern before the Court. Is there probable
21 cause in the actual affidavit for the search warrant?
22 And you found that there is.

23 And so we would just respectfully request
24 that you deny defense's motion. If you require more
25 argument and more case law to back that up because

1 I found one case that suggest technically separating
2 the issue where we've gone forward with Franks,
3 had a ruling in Franks, and now we're circling back
4 to reliability. Your Honor has already ruled on that
5 issue.

6 THE COURT: Okay. Did you want to reply?

7 MR. PHILLIPS: Yes, Your Honor. The
8 reliability prong is separate from Franks. They are
9 not tied together. Specifically, when we talk about
10 excising that statement, without a doubt the only
11 nexus is the information provided by this mere tipster.
12 The mere tipster saying that they saw the vehicle at the
13 home that morning is the very reason for determination
14 of probable cause.

15 I know Your Honor may disagree, but for
16 our record and error preservation purposes, our
17 argument, to be consistent, is that there's no other
18 nexus to that home to get that warrant, other than
19 the fact that that tipper called and said they saw
20 that vehicle there that morning. And again ---

21 THE COURT: I appreciate that's your
22 version. I believe, factually, I found a slightly
23 different version, that there was additional evidence.
24 Between the time that the tip was given and the
25 time that the warrant was issued, the case continued

1 to develop. And by the time the warrant was sought,
2 there was additional evidence which supported probable
3 cause for issuance of the warrant to search the home.

4 I understand completely the irony that
5 you're putting out there, and that the recording in some
6 ways, perhaps, contradicts what was related to the
7 officer by the tipster. The use of the word
8 "confidential informant" in the affidavit, I think
9 I've already ruled that it was clearly an article.

10 But I think I also ruled that there was
11 no nefarious intent on the part of the investigating
12 officer from Hampton to try and pull the wool over the
13 eyes of the magistrate. And if I have not explicitly
14 stated that, I'm stating it now. I do appreciate your
15 motion. I think that there was sufficient probable
16 cause despite the argument that you're making,
17 and I'm going to decline to suppress the fruits
18 of that. But you are protected, and, of course,
19 you have a written motion that details your argument
20 much ---

21 MR. PHILLIPS: And that's marked as Court's
22 Exhibit -- excuse me, Your Honor, Defendant's Exhibit
23 No. 3.

24 THE COURT: Very good.

25 MR. PHILLIPS: All right. So, Your Honor,

1 we move to the next one. Marked as Defendant's Exhibit
2 No. 4, the Defendant respectfully moves to suppress all
3 evidence seized by the State pursuant to the search
4 warrant issued on July 18th of 2018 based on the stale
5 information provided by the mere tipster on July 9th,
6 who was falsely identified as the confidential
7 informant, the search warrant affidavit that was not
8 corroborated by the police.

9 Specifically, the case on point, Your Honor,
10 is State v. Winborne, 273 S.C. 62; that's a 1979 case,
11 in finding that the affidavit must state facts so
12 closely related in time that the warrant was issued
13 as to justify a finding of probable cause at that time.
14 And any lapse of time involved can be considered with
15 other factors, including the nature of the criminal
16 activity involved and the kind of property for which
17 the authority of the search is sought.

18 In plain language, as Your Honor knows,
19 the alleged evidence should have been seen by the
20 informant within a reasonable amount of time before
21 the issuance of the search warrant, and the time should
22 be sufficiently short to justify the conclusion of the
23 evidence, which still would likely be in the place that
24 it was seen.

25 Our argument is specifically when you look

1 at our case law, the Court of Appeals said that it's
2 a case specific set of factors. And in that case,
3 were State v. Corns, 310 S.C. 546, we're arguing
4 that it's highly distinguishable from that because
5 in that case the Court found that two months between
6 an informant seeing drugs and an execution of a search
7 warrant was not too long because of two things;
8 the house was still under surveillance, and any
9 execution of the search warrant would have interfered
10 with the police investigation.

11 In this case, the State has provided
12 no justification for the unreasonable nine-day delay
13 in seeking the search warrant based on the alleged
14 information identifying the Chevy Tahoe as the
15 Defendant's vehicle with the bullet holes at his
16 residence after the murders.

17 THE COURT: Not to make their argument
18 for them, but if the confidential informant was
19 adherently reliable -- unreliable, as you just argued
20 he was, and there was some question as to whether or not
21 he actually saw what he saw, and of course, the officer
22 who gave the affidavit is deceased now, it would then
23 behoove them to, perhaps, undertake additional
24 investigation, and the argument that they're going to
25 make in a moment is that in the time between the tip

1 and the time of the execution of the search warrant
2 that additional information was forthcoming, and the
3 Defendant was further developed as a suspect.

4 And, therefore, it's not so much a question
5 of a single instance with a confidential informant
6 observing something and then waiting months for --
7 to get the warrant based solely on that confidential
8 informant's observation. It's a situation where
9 the case was developing, additional information came
10 in, and they're not relying only on the CI, tipster,
11 whatever. So go ahead and address their counter
12 argument because that's the argument that they're going
13 to make, I think. And I'm sending the jury in here soon
14 that's why I'm trying to ---

15 MR. PHILLIPS: No, I understand, Your Honor.
16 But the main issue there is that what the testimony
17 we had at these prior suppression hearings, Your Honor,
18 is that the investigators from West Columbia never went
19 to Hampton until July 18th, that they took the notes.
20 They spoke to Investigator Singleton on July 9th,
21 and there's no other further nexus of criminal activity
22 to that home, other than this statement from the mere
23 tipster.

24 And so we can say a broad statement
25 that they conducted additional investigation,

1 but there's no evidence, certainly none that's been
2 presented to this court, unless the State is going
3 to say otherwise, or argue more specifically for
4 Your Honor that there's a nexus tieing criminal
5 activity, or the Defendant, to that home after
6 the shootings that hasn't been already provided
7 in the record because there is none.

8 We have the tip that was relayed for
9 the search warrant, information that was provided
10 to Investigator Aldridge on July 9th by Investigator
11 Singleton. Nothing was done as far as the nexus to
12 that home, or any additional information found tying
13 it to that home over that nine-day period.

14 And as you heard through the sworn testimony
15 of Investigator Deas, the first time the police from
16 West Columbia ever went to Hampton County was nine days
17 later for the execution of that search warrant on July
18 18th. Again, the automobile is clearly moveable,
19 the Defendant was not seen.

20 We, based on our prior motion, argued
21 that it was unreliable, and it's clearly supported
22 by the DVR that that tip was a lie and not corroborated.
23 And because it wasn't seen, and the nexus to the home
24 was a vehicle that's not verified and, of course,
25 moveable, we argue that this information went stale

1 over the nine-day period when there's no other nexus
2 establishing the Defendant's presence at the home,
3 or any other criminal activity from that crime linked
4 to the home.

5 Therefore, the delay in seeking the search
6 warrant is unreasonable, and the information provided
7 is stale. Again, we make this argument under State v.
8 Winborne, citing the Fourth, Fifth, and Fourteen
9 Amendments of the United States Constitution and Article
10 I, Sections 3 and 10 of the South Carolina Constitution.

11 THE COURT: Okay. Thank you. Your
12 response.

13 MS. FULLER: Yes, Your Honor. It's still
14 pretty much the same, it kind of piggyback off what my
15 argument was, and that's why I was kind of smiling under
16 my mask. But the court has not set this time period.
17 They haven't boxed us in and say you have to act on
18 something within a day or two. And, as you stated,
19 the investigation was still ongoing.

20 There, obviously, would be information
21 that's presented during the trial that clearly shows
22 the Defendant going back to the home even after the
23 crime, but, obviously, that's not in the search warrant,
24 so that's not even -- that's why it hadn't been before
25 the Court before. But we still stand on your ruling

1 back in April, in my opinion, already addressed this
2 motion. And so we respectfully request that this motion
3 be also denied.

4 THE COURT: I'm familiar with the case cited
5 by the defense, and I'm not prepared to say necessarily
6 that nine days is an unreasonable period of time that
7 would automatically render issuance of the warrant stale
8 -- render the warrant. I'm not prepared to say that
9 nine days is adherently unreasonable, or per se
10 unreasonable, which would cause the warrant to become
11 stale, or the affidavit or the information to become
12 stale.

13 To the extent nine days could be considered
14 unreasonable, I stand by the ventriloquist argument
15 that I put in the mouth of the solicitor, and it follows
16 that, obviously, this was an ongoing investigation.
17 And I understand the issues with the tipster, but it
18 also stands to reason that fruits of the crime could
19 be discovered, or would reasonably be discovered at
20 the Defendant's residence.

21 We are talking about a double homicide,
22 and very often it would stand to reason -- at least
23 in most of the cases that I'm involved with, it would
24 stand to reason that there is a very high probability
25 that the fruits of a crime could be located at one's

1 residence, if they do, in fact, return to their
2 residence. And that's where we are, but your objection
3 is noted. I think the record is protected on the
4 staleness question, Counselor.

5 MR. PHILLIPS: Thank you, Your Honor.

6 THE COURT: Very good. I do know that
7 an officer needs a warrant from me for something.
8 Let's take a few moments for ourselves. I assume
9 that the jury is here, and we'll come back in ---

10 MS. FULLER: Beg the Court's indulgence.

11 THE COURT: Sure.

12 (Pause.)

13 MR. BROWN: Judge, there is ---

14 THE COURT: Do we need to be on the record?

15 MR. BROWN: Yes, ma'am -- yes, sir.

16 THE COURT: Okay. We're back on the record.
17 We haven't taken a break yet. What do we have real
18 quick?

19 MR. BROWN: Judge, there was a question
20 about a motion we had filed. We filed a 404(b) motion
21 to have other acts that were criminal acts, not subject
22 to conviction, be proven by clear and convincing
23 evidence before they came in.

24 THE COURT: Okay.

25 MR. BROWN: They're similar to the one that

1 they filed. We filed ours back, like, in April, yeah,
2 April 9th. And she was just asking if we've agreed to
3 let in stuff about our client's drug dealing in another
4 incident.

5 THE COURT: Probably not. I doubt you've
6 agreed to do that.

7 MR. BROWN: We haven't agreed to do that.

8 MS. FULLER: My question was -- there was
9 no more motion -- so, I'm, like, you did file one more
10 motion, so I was asking, the motion regarding hearsay
11 testimony in terms of that. But in terms -- I don't
12 believe it's going into an opening. But, obviously,
13 depending on how the case unfolds, there is, you know,
14 contact between the Defendant and the homeowner victim
15 of drug dealing.

16 And so I wanted to -- I don't believe
17 it's going to come out in the first few witnesses,
18 so we can address after opening. We're not going into
19 it in opening, but we can -- I don't see how we separate
20 that when there's conversation of money owed for drugs.

21 MR. BROWN: And, Judge, the interesting
22 thing is, I think, that sound is opening. It's the
23 opening of the door on all the stuff that they don't
24 want let in.

25 THE COURT: Well, I mean ---

1 MR. BROWN: I mean, I can hear that door
2 swinging open right now.

3 THE COURT: This is perhaps -- you know,
4 it's impossible to give -- this is your typical Lyle
5 case under the traditional Lyle sense. How do you
6 provide a full context of the crime without alluding
7 to ---

8 MR. BROWN: The prior history.

9 THE COURT: Yeah, the prior bad acts under
10 404(b). So, I don't see how it's going to be possible
11 to sanitize the case and how it would be appropriate to
12 characterize this as just a friendly visit when we all
13 know in truth it was not simply a social call to check
14 on somebody's cousin. It was something entirely
15 different.

16 MR. BROWN: There are hearsay issues,
17 she mentions that, because quite frankly Mr. Furtick,
18 through discovery, indicated he doesn't know my client.
19 So, he's not first-hand knowledge without the discussion
20 with the person who's not alive.

21 THE COURT: Right.

22 MR. BROWN: But that's unrelated to that
23 door kicking open to the prior dealings between the
24 parties.

25 THE COURT: Well, I'm not hearing -- I'm not

1 hearing that anybody is suggesting that we could
2 possibly avoid the nature of the drug dealing. I think
3 we've all agreed that that was going to be coming in,
4 and that that's something that can't be avoided,
5 correct?

6 MR. BROWN: We haven't conceded that yet.
7 If we don't object, we waive it. We did file a 404(b)
8 motion, like, two months ago, and here we are at the
9 eve talking about whether we're going to object,
10 and the answer is yes. And for what it's worth,
11 I filed the 404(b) motion in federal court. If you
12 request 404(b), they have to give it to you in advance.
13 I did it the same way. They didn't give it to us,
14 which is fine, and they're not required to.

15 THE COURT: Well, are you suggesting --
16 I mean ---

17 MR. BROWN: If they can let in prior bad
18 acts that are not admissible under 404(b), we may move
19 for a mistrial. And we couldn't have asked for more
20 than two months ago. I mean, Judge, we tried. We saw
21 this coming.

22 THE COURT: Maybe I'm not understanding the
23 issue here.

24 MS. FULLER: Yeah, I'm confused.

25 THE COURT: Are you saying that the State

1 should refrain in their opening argument, or otherwise
2 refrain in their presentation of their defense from
3 proving, suggesting, alluding to the fact that the
4 decedents were involved with selling marijuana?

5 MR. BROWN: Not just marijuana.

6 THE COURT: Whatever.

7 MR. BROWN: Yes, sir.

8 THE COURT: At least marijuana, stuff that
9 ain't legal, that the decedents were involved in selling
10 stuff that was not legal. And, according to their
11 theory of the case, that provides motive and whatever
12 for why your client was there potentially to steal
13 the money out of the safe or steal the safe.

14 MR. BROWN: Or the guns.

15 THE COURT: Or the guns or whatever.

16 I mean, I'm not going to say that they can't go
17 into that. It's logically relevant.

18 MR. BROWN: Then how are they going to keep
19 the guns out? They want to keep out all the guns.

20 THE COURT: I'm not saying that the guns
21 are staying out ---

22 MR. BROWN: No, I understand ---

23 THE COURT: --- maybe coming in.

24 MR. BROWN: And I'm just trying to waive
25 this flag, saying that's the door kicking open.

1 They give you a laundry list of stuff that's not
2 relevant to their case.

3 THE COURT: I'm keeping the jury waiting.
4 We're going to start with opening argument ---

5 MR. BROWN: We're ready.

6 THE COURT: --- and we're going to see where
7 this puppy goes, all right.

8 MR. BROWN: Yes, sir.

9 THE COURT: Let's kick the tires and light
10 the fire, folks.

11 MS. FULLER: Thank you, Judge.

12 THE COURT: All right. Five minutes for us,
13 five, ten minutes for us, and then we'll get going.

14 (Recess taken.)

15 (Back on the record.)

16 THE COURT: Thank you. Please have a seat.
17 Let's get the jury moving.

18 MS. FULLER: Judge, as the jury is coming,
19 can I just put one quick thing on the record?

20 THE COURT: Sure.

21 MS. FULLER: From the Franks hearing on
22 April 14th, defense counsel requested that DVR footage
23 for July 8th and 9th be part of the record. So we went
24 ahead -- they've looked at it, and we've marked it as
25 Court's 1 for this hearing with the note on it that it's

1 referring to the April 14th Franks hearing that they
2 requested.

3 THE COURT: Very good.

4 (Jury enters the courtroom at 10:51 a.m.)

5 THE COURT: Okay. The record will reflect
6 that the jury is back and seated. Ladies and gentlemen
7 of the jury, thank you for being here. I know that you
8 were all here on time, and I appreciate your patience
9 with us.

10 As I explained yesterday before we took
11 a break, I needed to take up a few issues of law that
12 hopefully would help expedite the trial of this
13 particular case. And, unfortunately, that took a little
14 bit longer than I had anticipated. That's why we've
15 kept you waiting for an additional 30 minutes, but we're
16 now in a position to move forward with the trial of this
17 case.

18 The first order of business for the Court
19 is appointing a foreperson of the jury, and who is
20 Mr. Oxley? Mr. Oxley, you're the first person selected
21 yesterday. You also just so happen, I believe, to be
22 a chemistry teacher, and anyone who I think could keep
23 order in a classroom in a chemistry context, and keep
24 the students from blowing themselves up, could probably
25 do a good job as being the foreperson. So, I'm going

1 to make you the foreman.

2 I'll tell you there's not a lot of stress
3 involved with this. Your primary responsibility
4 is once the case is submitted to the jury, you have
5 the responsibility to make sure everybody has a fair
6 say, has a chance to speak their mind. And, of course,
7 you'll sign the verdict form once a verdict is reached.
8 Of course, your vote counts no more or no less than
9 that of any other juror. So, you'll be the foreperson.

10 Traditionally, in non-COVID times, and you
11 don't have to switch seats right now, but the gentleman
12 immediately to your left is where you would usually sit.
13 So, perhaps, if you could sit in that chair. You don't
14 have to switch now. You can do it after we take
15 a break, when we come back. Our alternates, if you
16 ladies wouldn't mind just staying in those chairs.
17 That's traditionally where the alternates sit, okay?

18 And just a few housekeeping matters for you,
19 if at any point in time during the course of the trial
20 you have any difficulty hearing the witnesses, I want
21 you just to raise a hand. And, hopefully, either
22 myself, my law clerk, or somebody in the courtroom will
23 see that, and will ask the witness to speak up, okay?

24 Similarly, if you need a comfort break for
25 any reason during the course of the trial, sort of wave

1 at us, get somebody's attention, all right, and we'll
2 be happy to take a comfort break for you at that time.

3 Now, ladies and gentlemen, I will tell you
4 before we begin that this case is probably going to be
5 a little bit different from what you've seen from trials
6 being depicted on TV or in the movies. From what we
7 see in popular culture, we often get the impression
8 that trials are filled with a lot of intensive drama
9 and a lot of riveting circumstances, and the plot line
10 is intriguing, and, obviously, that's made up.
11 That's fiction; this is real life.

12 This case is really important to both
13 sides, all right, to both the State and to Mr. Ritter.
14 It's not for anyone's entertainment, and it's not going
15 to be wrapped up, I promise you, in an hour or two hours
16 like on TV or in the movies. And again that's because
17 real life is very often boring. Real life is not as
18 exciting as what we see on TV.

19 So, I want to thank you for your patience
20 with us going forward. I want to thank you for your
21 participation in this case this week. Again, as I said
22 yesterday, it's absolutely essential that we bring 15
23 of you in here to hear the evidence and to determine
24 an outcome in this particular case. Otherwise, the case
25 would simply not be resolved. And, as you know, there's

1 already some age on this case due to COVID and other
2 situations.

3 So, it is absolutely necessary that
4 we get this case resolved as quickly as possible.
5 And I promise you we will try to be as efficient as
6 possible as well going forward. Again, thank you for
7 your service on this jury. And before I give you any
8 further remarks, I'm going to ask that you stand where
9 you are and raise your right hand so the clerk can
10 formally administer your oath to you as jurors.

11 (Whereupon, the jurors were duly sworn.)

12 THE COURT: Thank you. Please have a seat.

13 THE CLERK: Be seated please. Was anyone
14 not able to take the oath? If so, please stand.
15 They're under oath, Your Honor.

16 THE COURT: Thank you. Now, ladies and
17 gentlemen, what I now say to you is intended to serve
18 just as an overview or an introduction to the trial
19 of this case. And, of course, these remarks are not
20 an instruction on the law. I'll instruct you on the law
21 at a later point in time at the conclusion of the trial
22 before you begin your deliberations. Again, this
23 is just an overview of the process that we're going
24 to use going forward so that you can better understand,
25 or better anticipate what the trial is going to be like.

1 Now, I do permit note taking in trials,
2 and there's a -- that cheese box right there has got
3 a whole bunch of tablets in it. If you don't mind,
4 go ahead, and if you want a tablet, that's perfectly
5 fine. It's got a tablet and some pens. Go ahead and
6 start passing those around. If you don't want a tablet,
7 that's perfectly fine. Just keep the stack moving.

8 Just a few notes, or a few rules about note
9 taking. First, please don't let the taking of notes
10 distract you from the testimony of the witnesses.
11 Second, the notes are kind of for your eyes only.
12 They're your personal property, your private property.
13 Any time that we take a break for lunch or whatever,
14 just leave those notepads on your chair. The bailiffs
15 will collect those and put them in a secure location,
16 all right. They'll be returned to you when you come
17 back.

18 When the case is over with, please tear
19 out any notes that you took and take them with you,
20 either as a souvenir or dispose of them privately at
21 your house, or whatever the case may be. Just be sure
22 to take any notes that you have taken with you when
23 the case is over with.

24 Now, as I explained yesterday, ladies
25 and gentlemen, the Defendant in this case, Mr. Ritter,

1 is charged with indictments filed with this court with
2 two counts of murder, one count of attempted murder,
3 one count of armed robbery, and one count of kidnapping.
4 I will explain the elements of these charges to you
5 at a later point in time before you begin your
6 deliberations.

7 Again, ladies and gentlemen, these
8 indictments are simply the means by which these cases
9 are brought into court. And they are not, in any sense
10 of the word, proof of any of the allegations contained
11 in the indictments. These are nothing more than pieces
12 of paper, and the Defendant has pled not guilty to these
13 charges.

14 The State, therefore, has the burden of
15 proving each and every element of these charges beyond
16 a reasonable doubt. It will be your duty to determine
17 whether the State has met this burden. Now your purpose
18 as jurors, ladies and gentlemen, is to find and
19 determine the facts in this case.

20 Understand that you are the sole judges
21 of the facts. So if at any point in time I make any
22 comment concerning the facts, you have to disregard
23 that comment because the law does not permit me to have
24 any opinion about the facts in a case.

25 You'll determine the facts from

1 the testimony that you hear and the other evidence,
2 which is introduced during the course of the trial.
3 It's up to you to determine inferences which you feel
4 can properly be drawn from the evidence presented.

5 Ladies and gentlemen, it's especially
6 important that you perform your duty of determining the
7 facts diligently and conscientiously because ordinarily
8 there is no way to correct an erroneous determination
9 of facts by a trial jury.

10 Now, the same law that makes you the judge
11 of the facts, makes me the judge of the law. Understand
12 that you'll have to accept and apply the law as I give
13 it to you, even though you may disagree with it.
14 Again, the law doesn't let me tell you what the facts
15 are, and the law doesn't permit you to disagree with
16 me about what the law is and what the law ought to be.
17 Your job will be to take the law as I give it to you,
18 apply the facts as y'all find them to be, and after
19 doing that, you'll render your verdict under the oath
20 that you have just taken.

21 Now, as I mentioned yesterday, until you
22 begin your deliberations, please don't discuss this case
23 with anyone, not friends, family members, not even your
24 fellow jurors, okay? You cannot start discussing this
25 case until all the evidence has been presented, you've

1 received my instructions on the law, you've heard the
2 closing arguments of the attorneys.

3 Please, when you start your deliberations
4 you can only discuss it in the presence of all 12
5 jurors. Now, I'll let you know that the lawyers and
6 the parties involved with this case have been instructed
7 to have nothing to do with you while the case is going
8 on. So, I realize that this is somewhat of a larger
9 courthouse, you're not used to, but perhaps you might
10 bump into one of the lawyers or one of the parties
11 coming or going from the courthouse, and maybe they're
12 not going to say hello to you. They might not even
13 acknowledge you, perhaps, they're going to look away
14 from you.

15 Understand that the reason that they're
16 staying away from you, that they're staying clear
17 of you, ladies and gentlemen, is that if the other side
18 were to see an attorney or one of the parties having
19 a conversation with you, even if it's an innocent
20 conversation about the weather, that perception could
21 easily be misinterpreted as an effort at jury tampering.
22 So the easiest way to keep that kind of issue from
23 coming up is just to say that the jurors are off limits
24 while the case is going on. Again, they're not being
25 rude; they're just following my instructions.

1 As I explained yesterday, during the trial,
2 please, don't read about or listen to or perform any
3 kind of Google search or internet search or any kind
4 of independent investigation of the facts in this case.
5 You cannot consider anything which you may have read
6 or heard about the case outside of the courtroom,
7 whether before or during the trial.

8 Do keep an open mind. Don't decide any
9 issue in this case until all the evidence has been
10 presented, and you've heard the attorneys' closing
11 arguments. Understand it's your solemn responsibility
12 to determine the guilt or the innocence of the
13 Defendant. Your verdict has to be based solely
14 on the evidence presented to you during the course
15 of the trial.

16 Now, in a moment, the lawyers will make
17 their opening statements to you. I'll instruct you
18 that what the lawyers say during their openings is not
19 evidence; it's merely their contention as to what will
20 be proven or won't be proven. Even though it's not
21 evidence, of course, you should pay attention to the
22 attorneys' openings because it will give you kind of
23 an overview or a summary of what they anticipate being
24 proven. The evidence in this case, again, will be
25 presented from the testimony of sworn witnesses as well

1 as any exhibits.

2 Now, in most of the cases that I try,
3 it's necessary from time to time to take a brief break
4 when I have to take up an issue of law with the
5 attorneys. And usually the lawyers will say, Judge,
6 we think we have an issue of law for you. And sometimes
7 it's necessary in taking up an issue of law for me
8 to ask you to leave the courtroom so that I can have
9 a candid conversation with the attorneys out here about
10 that particular issue.

11 The reason that I ask that you leave
12 the courtroom is that often in ruling on issues
13 of law, I have to make a comment about what testimony
14 has been presented, what evidence has been presented.
15 And I don't want any comment that I make about the
16 testimony or the evidence to have any affect on what you
17 ultimately find the facts to be. That's why I ask that
18 you leave the courtroom, so that I can have a candid
19 discussion with the lawyers out here about the issue
20 of law or about the facts, and I can be sure that it
21 won't affect what you find the facts to be.

22 Of course, during those breaks please
23 don't speculate as to what I'm saying about the facts.
24 Again, the law does not permit me to have any opinion
25 about the facts in this particular case.

1 Determining what the true facts are,
2 ladies and gentlemen, you'll have to decide whether
3 or not the testimony or the evidence is believable
4 or not. Understand that it's my job to rule on whether
5 certain testimony can be admitted. Once it's admitted
6 though, whether you choose to believe it, is solely up
7 to you.

8 Deciding whether to believe a witness,
9 you have the right to consider the interest of any
10 witness, the bias of any witness, the prejudice of
11 any witness. You can consider the opportunity for the
12 witness to have seen the matters and things about which
13 they testify. And you can also consider the way that
14 the witness acts while on the witness stand. You can
15 consider anything that's in the record in this case
16 which will help you evaluate the testimony of the
17 witnesses.

18 That means it's your duty to pay close
19 attention to them, listen to them, observe them,
20 and pay close attention to the attorneys and the Court.
21 If you keep your thoughts from wandering, and just give
22 strict attention to what's going on here in this
23 courtroom, I assure you at the conclusion of the case
24 you will be in as best a position possible to determine
25 the facts, apply the law, and render a verdict under

1 the oath that you have taken.

2 With that, we're going to begin with the
3 opening arguments of counsel. Mr. Graham, you're giving
4 opening for the State. Mr. Graham, you're recognized
5 for your opening, sir.

6 MR. GRAHAM: Thank you, Your Honor.
7 Two men dead; one shot. It sounds like a headline from
8 a newspaper. This week you will learn that it's much
9 more. And you'll learn the facts about what happened,
10 who was killed, how they were killed, and who did it.
11 And we will prove to you that Damien Ritter did it.

12 But it's a lot more than that. What you'll
13 hear is that on July 5th, 2018 at [REDACTED] Glenn Street
14 in West Columbia, Apartment [REDACTED], two men were executed.
15 About 2:15 in the afternoon, Damien Ritter came to
16 his cousin's house, which is Samir. While he was there,
17 he took Samir into the kitchen, pulled a gun
18 and executed him, shot from the back of the head.

19 Samir had a job; he had just lost it,
20 and he also sold marijuana. He was a drug dealer.
21 He did not deserve to be killed; he did not deserve
22 to be executed in cold blood.

23 Elzie Mack was Samir's friend. He showed
24 up after Samir was down on the ground dead. He walked
25 into the apartment to see his friend. He was put down

1 on the ground. He was shot in cold blood in the back
2 of the head by Damien Ritter. He was executed.

3 Rodney Furtick was a friend of Samir.
4 He had been at the house before Damien Ritter came.
5 He saw the whole thing, and he's lucky that Damien
6 Ritter's gun jammed or he would be dead. He was down
7 on the ground. He was getting ready to be executed.
8 The gun jammed. He fought Mr. Ritter; Mr. Ritter fled.

9 There were other people in the apartment
10 that came with Mr. Ritter. They stole items out of
11 the house. They stole Mr. Furtick's phone. Mr. Furtick
12 rushed outside, he went to his car, and he pulled
13 out a gun that he had, and he fired at the vehicle,
14 which was a burgundy Tahoe, as Mr. Ritter fled the
15 scene, and you'll hear that evidence. And it's our job
16 to prove to you beyond a reasonable doubt what happened
17 and who did it.

18 You're going to determine what happened
19 from the witness stand. Witnesses will get up there,
20 and they'll tell you what they saw, what they heard,
21 what they know. And everything you hear will be a step
22 towards convincing you, and us proving to you beyond
23 a reasonable doubt, that Damien Ritter is a cold-blooded
24 killer.

25 When the judge reads you the law, and you

1 put the facts with the law, you're going to know that
2 he had malice because that's what the State has to prove
3 to you, an evil heart, a heart intent on causing
4 mischief on hurting someone, executing someone,
5 executing two people, trying to execute a third.

6 So it may start off like a headline
7 in a newspaper, two men killed, another shot.
8 But by the end of this trial, you will know that
9 Damien Ritter is a cold-blooded killer. Thank you.

10 THE COURT: Thank you, Mr. Graham.
11 Mr. Phillips, you're recognized for your opening.

12 MR. PHILLIPS: Fear is not malice.
13 Let me say that again. Fear is not malice. When
14 a person acts out of fear because they're being robbed,
15 they're not guilty of what they have to do. We agree
16 with the State that a person who acts out of fear while
17 -- during the course of a robbery is not guilty of the
18 charges. We absolutely agree with that. We know this
19 because they didn't charge Rodney Furtick.

20 In this case, you will see that Rodney
21 Furtick is the aggressor, that he is the robber in this
22 case, that what he tells police can be easily
23 transferred if you flip the roles between Rodney Furtick
24 and Mr. Ritter.

25 Now, in this case, you really can boil

1 it down to three things; credibility, responsibility
2 and duty. Now, the credibility in this case, you're
3 going to see on that witness stand Rodney Furtick
4 testify. You're going to be able to assess his
5 credibility. You're going to be able to look at
6 what he told police and match it up with the evidence.

7 You're going to hear also that Nikki Hicks,
8 that's Samir Atkins' girlfriend, is involved in this
9 case. She provided information to police. Those
10 are the two key witnesses in this case as to their
11 credibility; Rodney Furtick and Nikki Hicks.

12 Let's talk about Nikki Hicks for a second.
13 There are text messages that show why Rodney Furtick
14 is the aggressor in this case, why he is the best friend
15 of Samir Atkins, and why they planned the robbery
16 against Mr. Ritter. Why he's the aggressor, why it
17 was a joint effort on their part. You're going to see,
18 from Nikki Hicks's point of view, what she told police.

19 For the armed robbery charge, they have said
20 that a safe was stolen, they said \$5,000 was stolen,
21 and cell phones were stolen. And where did they really
22 get that information from? Primarily from Nikki Hicks,
23 who wasn't even there. She gave three statements
24 to police, and remember she wasn't there. She tells
25 police, well, generally, there's \$5,000 in that safe,

1 give or take. There's drugs in that safe. There's
2 other items of criminal activity throughout the house.
3 She tells that in two statements to police.

4 Then there's a third statement she provides,
5 says she doesn't know anything. You have to wonder
6 why would she tell the police these things. She wasn't
7 there; she doesn't know what happened. These are
8 questions you have to ask about her credibility.
9 Specifically, regarding the safe, she says it would
10 take two people to carry that safe out of the home.
11 What does Rodney Furtick say about the case -- the safe?
12 That's very specific.

13 You're going to hear from Investigator Deas,
14 who's sitting right here, who's the lead investigator
15 in the government's case, regarding his conversations
16 with Mr. Furtick, his investigation as the overall lead
17 as to Nikki Hicks' involvement in this case, and you've
18 got to tie that together. As far as credibility, what
19 does the evidence actually show?

20 Now let's talk about Furtick. He's the only
21 eyewitness in this case. He's the only one who's going
22 to be able to say what happened. You've got to ask
23 yourself if evidence doesn't match up, and there are
24 things that are inconsistent, why would a victim of
25 a robbery lie about those things? If you're not guilty

1 of being the robber, why would you lie? Why would
2 you misrepresent? Why would you tell the police,
3 basically, things that are not true? What would be
4 your motive to lie to police if you're the victim?
5 Credibility is at issue in this case.

6 Now what we know from the evidence is that
7 Samir Atkins and Rodney Furtick were sitting in the
8 living room that day. There's an empty holster sitting
9 on that living room table, okay? We have an empty
10 holster. We also know, based on what Mr. Furtick said
11 to the police, was that there was at least three shots
12 inside that residence.

13 Now, again, looking at specifically,
14 as you heard the State say, Rodney Furtick said he was
15 able to get away because the gun jammed. Rodney Furtick
16 also said that Mr. Ritter was shooting back at him as
17 he ran away. So which is it?

18 There's a lot of things that you're going
19 to hear in this case. We have waited three long years
20 to show that Mr. Ritter acted out of fear of being
21 robbed and is not guilty of these charges. We've waited
22 three long years to put Rodney Furtick on that witness
23 stand to show you what the evidence actually is, for you
24 to answer those questions of why would somebody tell the
25 police things that are not true if they're the victim

1 of a crime.

2 Now, let's talk about responsibility.

3 The government has a responsibility to conduct a full
4 and complete investigation, to not have tunnel vision,
5 to not disregard evidence or ignore evidence in a case,
6 but to seek exactly what the evidence shows. So pay
7 attention to the things that the government ignored
8 in this case. What evidence was collected? A lot
9 of evidence was collected, I'm just going to let you
10 know. A lot of evidence was collected in that home.

11 Well, what was it? Okay. What didn't
12 they collect, more importantly? What did the government
13 decide not to collect? But what they did take into
14 evidence, did they do touch DNA on it? Did they try
15 to see who actually had touched this evidence?
16 Who actually possessed it? Did they do fingerprints?
17 Pretty sure you can know I'm asking those questions,
18 you already know the answer.

19 But if they were searching to do a full
20 and complete investigation, and they're collecting all
21 this evidence from inside the home, why would the State
22 decide not to do touch DNA or fingerprints? Those are
23 questions you've got to answer for yourself, and you're
24 going to have to know why. Investigator Deas is going
25 to hopefully answer it for you.

1 Now, in this case, what's important
2 is there's only three things missing from that crime
3 scene; a 9-millimeter shell casing, the murder weapon,
4 and Rodney Furtick's cell phone. You'll find out that
5 the other two shell casings are on the other side of the
6 room where the bodies were, inaccessible, up under where
7 the kitchen counter is. But one shell casing is
8 missing, the murder weapon is missing, and Rodney
9 Furtick's cell phone is missing.

10 Now you're also going to hear that after
11 the shooting Rodney Furtick left the apartment.
12 Why would he leave? If anybody is familiar with the
13 area, this Glenn Street is a very popular cut-through
14 road. I grew up here in Lexington County, went
15 to Airport High School. So this cut-through road,
16 if you're familiar with it, hard to describe off
17 the top of my head, but if you've been down that road,
18 you realize that this set of apartment complex is not
19 isolated. There are apartment complexes on both sides
20 of the street.

21 Mr. Furtick, he knows, you've heard him,
22 he's best friends with Mr. Atkins. He knows that
23 Mr. Atkins' family lives upstairs, in the apartment
24 upstairs. Why did he leave? What purpose would have
25 caused him to leave? State is probably going to say

1 that's because he went to grab some people down the road
2 and make a 911 call, but not Mr. Atkins' family
3 upstairs, or any of the other people that were already
4 calling 911 within the apartment complex itself, or the
5 apartment complexes around it.

6 Why would he get in his car and drive off?
7 These are things that you have to ask yourself as to why
8 he would do those things, specifically going to
9 credibility and responsibility, weighing what the
10 evidence actually showed, what Nikki Hicks told the
11 police, what Mr. Furtick told the police, and then
12 looking at the government's investigation.

13 What did they ignore? What did they do to
14 try to followup certain pieces of evidence? That is
15 your role. You're fact finders in this case. The judge
16 deals with the law, but as jurors you're the fact
17 finders. That's why I'm asking y'all these questions,
18 because you're the ones that's gotta answer it.
19 And we're going to be able to answer them for you
20 through these cross-examination questions.

21 Now, finally, duty. As jurors, you have
22 an awesome power, one that I've never had the privilege
23 of sitting in. But you have the power of sitting
24 in judgment of your own government and their evidence,
25 and the power of judging another citizen.

1 That indictment reads the State v. Damien
2 Ritter. This is not just a trial against Damien Ritter;
3 it's a trial on the State's evidence. It's an
4 indictment that the State has to prove. And you swore
5 on that Bible under oath before God that you're going
6 to hold the State to that burden, that you're not going
7 to make assumptions, and you're going to evaluate the
8 evidence, and you're going to be fair and impartial.

9 You know that we took a lot of time in
10 picking you, each one of you. We took time for every
11 juror to make sure we evaluated whether you would be
12 the right jurors to decide this case. And the reason
13 we took that time is because, ultimately, we felt
14 that each one of you, with your own life experiences
15 and convictions, will bring something to the table
16 to be able to add and answer these questions when
17 you have to go back to the deliberation room.

18 And at the end of the day, fear is not
19 malice. When a person acts out of fear because they're
20 being robbed, they are not guilty of these charges.
21 And how do we know this? Because Rodney Furtick is
22 not charged with murder. He's not charged with armed
23 robbery; he's not charged with anything. Fear is not
24 malice, and Damien Ritter is not guilty. Thank you.

25 THE COURT: Thank you, Mr. Phillips.