VOLUME IV of V

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

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

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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A. No, sir.
Q. You just have her name and phone number?
A. Correct.
Q. Right?
A. Correct.
Q. My God, that's a lot different than what's being said here, right?
A. Yes, sir.
Q. Okay.
(Defendant's Exhibit No. 19 was marked for identification.)
MR. PHILLIPS: Your Honor, we've marked a flash drive as Defendant's Exhibit 19 for identification only, and it's going to be the pictures of Mr. Furtick's shoes that we're going to reference.
THE COURT: Okay. All right.
BY MR. PHILLIPS:
Q. So the laptop in front of you, you could see that there are pictures, and they're numbered?
A. Yes, sir.
Q. Do you see the image in 3760?
A. Yes, sir.
Q. All right. And that's a dress shoe. Do you see any blood on the bottom of that shoe?
A. I do not. I just see dirt.

Q. Image 3763, that's the other dress shoe, the left dress shoe. Do you see any blood on that shoe?

A. No, sir, just the dirt.

Q. One last question.

A. Yes, sir.

Q. Do you have any police reports from Pine Ridge with Nikki getting pulled over on July 18th with $5,800 in drugs?

A. I do not have the report, no, sir.

Q. All right. Thank you.

MR. PHILLIPS: I'm sorry. No further questions.

THE COURT: Oh, you're done. Okay. Very good. Redirect then, please.

MS. FULLER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. FULLER:

Q. Investigator Griffin, if you can go to your notes dated February 25, 2020, Page 46 of 70, and let me know when you get there.

A. Yes, ma'am. Yes, ma'am, I'm there.

Q. At the top, what's the date that you wrote this?

A. That's on the 6th of July, 2018.

Q. And what time?

A. That's 8:10 a.m.

Q. And what's the first sentence?
A. "In Bruce's office going over things to do."
Q. And what is -- is it just you in that office?
A. No, ma'am. That's -- any time we have a big case, usually the day of, or the next morning before we start working, we all come into the office together. Bruce is my captain; that's Captain Wade. We all go in his office together, and we start talking about the case, and then we talk about the things to do, and then we're sent off to do said things.
Q. So the notes that follow, that you just published, would that be the summary from your meeting?
A. Yes, ma'am, it would have been.
Q. So it's not from you speaking to Rodney Furtick?
A. That is not from me speaking to Rodney.
Q. And so has Rodney ever said that Mack pulled a gun on him?
A. No, sir.
Q. Has Rodney ever said that Elzie Mack was conspiring with Damien Ritter?
A. No, ma'am.
Q. Okay. Were you present -- I don't know the answer, so I'm just generally asking. Were you present later on the 6th when Rodney did find out that Elzie Mack was the second deceased person?

A. I was not.

Q. Okay. Looking at -- and you probably didn't have the benefit of going to the page and notes -- going to Page 48 of that same note.

A. Yes, ma'am.

Q. What's the date and time?

A. That's on January 6th -- I'm sorry. My notes cut it off, but it's July 6th of 2018, and that's 2:34 p.m.

Q. Please publish the entire sentence.

A. It says, "Out of [redacted] Glenn Street, Apartment [redacted], execute second search warrant due to interview with Nikki Hicks stating safe located by the investigator, meaning, the smaller safe that was collected the day previously, was not the safe with drugs and money. She also said two rifles should be located in the residence."

Q. Is the word "heavy" in your notes?

A. No, ma'am.

Q. Okay. Now if you can go to the second search warrant for the residence, and I'll give you the page number. And flipping to page, on September 6, 2018, Page 194 of 525.

A. Yes, ma'am.

Q. And what are we looking at on this page?

A. This is the affidavit.

Q. Please publish the entire affidavit.

A. It states, attachment B continue. The unknown individual also ---

Q. Oh, I'm sorry. What page are you on?

A. I'm on 195 of 525.

Q. Oh, 194.

A. I apologize. At the top of the page it says attachment B.

Q. Thank you.

A. "On 7/5/2018, officers responded to [redacted] Glenn Street in West Columbia, South Carolina to a shooting. Upon arrival, Captain Norman, Sergeant Fair and Officer Jackson arrived on scene, and confirmed that there was a shooting at Apartment [redacted], that two males lying inside the kitchen area of the apartment, and both had what appeared to be gunshot wounds to the head, and there was a large amount of blood on the floor.

Officers also smelled a strong odor of marijuana inside the residence and observed marijuana in plain view to the living area of the residence. Lexington Emergency Medical Services arrived on scene and transported one individual to the hospital. Samir Atkins is deceased at the residence.

While on scene, Investigator Morris made

contact with Rodney Furtick, who advised he was on scene during the shooting. Sergeant Fair also observed Mr. Furtick getting out of a silver Dodge Challenger, South Carolina tag MAZ196, with the VIN 2C3DZAG3GH108012. Mr. Furtick stated that the suspects of the shooting left in a burgundy SUV.

I observed this vehicle on scene in front of the same apartment the victim is deceased in, with the door open and a handgun holster lying on the ground just outside of the silver Dodge Challenger. Investigator Todd could also smell an odor of marijuana emanating from the passenger compartment of the silver Dodge Challenger.

Investigator Griffin and Investigator King executed a search warrant at [redacted] Glenn Street, Apartment, [redacted] and located multiple cell phones within the apartment. A black safe was also located here in the search warrant that opened from the top and also had a silver keypad on the top it, along with multiple cell phones.

During an interview with Samir Atkins' girlfriend, Nikki Hicks, she informed investigators that this safe contained drugs and money. Ms. Hicks also provided a phone number of [redacted] for Mr. Atkins and was advised that this was his second

phone number.

A phone that rings when the above-listed number is called back is black IPhone IMEI 013432009627480, that was found during the search warrant. This phone was searched, and a phone call was missed and then received at a time frame consistent with the shooting from [redacted]. There was also a text message sent around this time that said pulling up from this same number. All other phone calls after this one missed.

On the same day, Investigator Todd went to Richland County Hospital and met with Mr. Furtick. Mr. Furtick told Investigator Todd that Mr. Atkins received a phone call on his cell phone from an individual that Mr. Atkins stated was his cousin. But the first time that it rang, Mr. Atkins did not answer. The number called a second time, and Mr. Atkins answered the phone.

After the conversation, Mr. Atkins told Mr. Furtick that his cousin was coming over, and that he was coming to purchase drugs from Mr. Atkins. When this individual arrived on scene, Mr. Atkins and the unknown suspect went to the kitchen where this individual shot and killed Mr. Atkins."

Q. And continue publishing the entire statement.

A. Yes, ma'am. On the next page, again, it says,

attachment B at the top, continued. "This unknown individual also let another suspect into the house identified as Elzie Mack that held Mr. Furtick at gunpoint. The unknown suspect had Mr. Mack hold Mr. Furtick at gunpoint as he searched the house. This unknown suspect then shot and killed Mr. Mack and attempted to shoot Mr. Furtick, but the gun jammed.

On 7/6/2018, Betty Martin, who is Mr. Atkins' grandmother, contacted Investigator Griffin and told him that she received a phone call at her phone number of [redacted] that was blocked. The individual told her I'm calling to let you know that Samir's cousin, Damien Black, was the shooter.

Officers conducted another interview with Ms. Hicks on 7/6/2018, and she advised that the safe located was not the safe that contained the drugs and money. Ms. Hicks said that another larger safe was inside the house along with two rifles. Investigator wished to reenter the house and obtain these items. The house has been secured by the West Columbia police officers since the initial search warrant."

Q. Thank you for that. And this was the second search warrant for the home that was sworn out on July 6, 2018, looks like 2:10 p.m.?

A. That is correct.

Q. And this was then just one day after these homicides occurred?

A. That's correct.

Q. Looking at State's 198, let's zoom in on the holster, I'm sure without objection. Do you recognize that?

A. Yes, ma'am.

Q. Looking at 198 here, did you have an opportunity to do some research on this holster?

A. I did, yes, ma'am.

Q. And what type of firearm did this holster go to?

A. That's a Relentless holster that carries a 1911.

Q. I am going to show you a couple more exhibits, I'm sure without objection, that they reference.

MR. PHILLIPS: Yeah, that's fine.

MS. FULLER: Looking at -- and, Your Honor, I apologize. I'm not sure if I moved it in, 198 for evidence, please.

THE COURT: In evidence, without objection.

(State's Exhibit No. 198 was entered into evidence.)

BY MS. FULLER:

Q. Looking at 202, 203, 204, 205, you take a look at those.

A. Yes, ma'am.

Q. These are photographs that you took?
A. Yes, ma'am.
Q. That you captured?
A. That's correct.
Q. Okay.
MS. FULLER: Your Honor, at this time, those items for evidence, the photographs.
THE COURT: No issues with those?
MR. PHILLIPS: Without objection, Your Honor.
THE COURT: 203 [sic.] through 205 are in evidence.
(State's Exhibit Nos. 202 through 205 were entered into evidence.)
BY MS. FULLER:
Q. And I'm going to publish these as I look for the photos of the kitchen area where they were originally captured. Looking at 202, what are we looking at here? It's on the overhead. I apologize.
A. I apologize. I was looking at my notes ---
Q. Okay.
A. --- to reference when they were collected. Yes, ma'am. That is going to be the case for the PSA, the Palmetto State Armory, 1911 45-caliber handgun.
Q. Okay. Looking at 141, you can use the laser

pointer and point to where that case was collected from. Looking back at 202 -- looking at 203, what are we looking at?

A. That's that same case but opened, so you could see the contents inside.

Q. And forgive my ignorance, it looks like the long part -- the longer barrel, that's what ---

A. (Indicating.) This here.

Q. Okay. It's called a barrel?

A. Yes, ma'am, a barrel. Yes, ma'am.

Q. Okay. So looking back at the Relentless, how were you able to verify that this holster potentially can go to one of the 1911s?

A. This particular holster it has an opening at the bottom of it right here, so the length of the barrel can extend through there.

Q. Putting this back. This was in a closed box on the ground?

A. Yes, ma'am.

Q. Did it appeared to be fired in any way?

A. No, ma'am.

Q. Was it related to this crime in any way?

A. Did not appear to be, no, ma'am.

Q. Going to 204, what are we looking at here?

A. That is the Colt Gold Cup Trophy model 45.

Q. Okay. That's another shot of it?
A. Yes, ma'am.
Q. And did that appear to be used in this crime in any way?
A. No, it did not.
Q. Okay. And going back to, I believe, 144. Can you point out to the jury where that was in this image?
A. (Indicating.) Right there.
Q. Thank you. Defense counsel was showing you ---
MS. FULLER: It isn't on the laptop, I'm sure without objection. I'll just move them in.
MR. PHILLIPS: Sure. Is that all of the shoes photos?
THE COURT: I think I made a mistake yesterday, I said -- not yesterday, a moment ago. I said 203 through 205. It's actually 202 through 205 are in evidence.
MS. FULLER: I apologize.
THE COURT: It's my fault.
BY MS. FULLER:
Q. Yesterday, you testified that you arrived on scene. When did you arrive on scene?
A. I arrived on scene ---
Q. Were first responders still there?

A. Yes, ma'am, first responders.
Q. And then you've been in court. So there's a photo of Rodney Furtick and what he was wearing.
A. Yes.
Q. Defense counsel showed you some photographs. I'm just going to show you -- do these appear to be some of the photographs they showed you?
A. Yes.
MS. FULLER: At this time, Your Honor, we move 206, 207, 208, 209 and 210 into evidence.
MR. PHILLIPS: No objection, Your Honor.
THE COURT: 206 through 210 are in evidence.
(State's Exhibit Nos. 206 through 210 were entered into evidence.)
BY MS. FULLER:
Q. Looking at 206, what, if anything, do you notice on the shoes?
A. There appears to be something red on the side, possibly blood.
Q. Okay. It might be lost on the projector, so I'll just publish. And can you point out where you were pointing when I was up there?
A. (Indicating.) Here along the sole, and then also it's spread up here as well.
MS. FULLER: And, Your Honor, for this next

one, can we approach briefly?

THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

MS. FULLER: Your Honor, at this time, the State seeks to introduce Item 13. It was previously marked for ID, and only the black and white version was entered.

THE COURT: State's 13 will be in evidence, without objection.

(State's Exhibit No. 13 was entered into evidence.)

BY MS. FULLER:

Q. I'm going to bring this to you first. This is a body cam from one of the first responding officers. Do you see the area that Rodney Furtick indicated he was in on this area?

A. Yes, ma'am.

Q. It's off ---

A. It is a little off.

Q. Off the camera?

A. Yes, ma'am.

Q. And the concentration of blood initially is where?

A. By the body of Mr. Atkins.

Q. Okay. And you testified on cross that the body

-- how did you say it -- as the body laid ---

A. As the body continues to lay there -- there was a gunshot wound to his head, so as the body continues to lay there, blood will continue to pool or drain from his body.

Q. Okay. So what time did you start processing the crime scene?

A. I believe it was at 4:00 p.m.

Q. And at 4:00 p.m. would be your initial photograph?

A. Yes, ma'am.

Q. So the black and white version that we entered in, it was a -- as compared to this, is that a larger or smaller pool of blood?

A. That's a significantly smaller pool of blood.

Q. Okay.

MS. FULLER: At this time, Your Honor, I'm going to publish.

THE COURT: Sure.

MS. FULLER: And, for the record, the dates stamped on this body cam is 2/22/21.

BY MS. FULLER:

Q. Now, just publishing the rest of the clothing items of Rodney Furtick. Looking at 207, what does that appear to be?

A. Appears to be blood.
Q. And looking at 208?
A. That also appears to be blood on the shirt.
Q. And then just putting in the pants just as we have them, 209 and then 210?
A. Yes, ma'am.
Q. And then we previously already entered the photograph of his ripped shirt. And, Detective Griffin, in your career, have you ever worked narcotics?
A. Not specifically, but I have worked them, yes, ma'am.
Q. Have you executed search warrants in major distribution cases?
A. No, ma'am.
Q. Distribution or large quantities of drugs?
A. I've seized large quantities, yes, ma'am.
Q. I'm going to show you some of your photographs. In those cases, what is considered a large quantity of drugs?
A. Anything that could be outside of personal use, anything that's bigger than a small amount.
Q. So like a small baggy?
A. A small baggy, yes, ma'am.
Q. Okay. 199, 200, 211 and 201 for evidence, I'm sure without objection.

MR. PHILLIPS: Without objection.

THE COURT: 199 through 201 are in evidence.

(State's Exhibit Nos. 199 through 201 were entered into evidence.)

BY MS. FULLER:

Q. I'm going to ask you if you recognize this.

A. Yes, ma'am.

Q. And these are photographs you've taken?

A. Yes, ma'am.

MS. FULLER: Your Honor, are they officially moved in?

THE COURT: Yeah, I've got 199 through 201 in evidence.

MS. FULLER: And then -- there was 199, 201 and then 211.

THE COURT: And 211 also in evidence, then. Sorry.

(State's Exhibit No. 211 was entered into evidence.)

MS. FULLER: Beg the Court's indulgence. Trying to find the kitchen diagram. Okay.

BY MS. FULLER:

Q. Placing this back on just to orient you and the jury, that's Exhibit 4. Now looking at 199, where is this on Exhibit 4?

A. (Indicating.) It is right over here.

Q. Okay. That's 199. And looking at 200, is that the item that you seized?

A. Yes, ma'am. So a clear plastic bag with white powder.

Q. And white powder that was not tested?

A. Correct.

Q. Okay. But it's in a closed cabinet, lower side, looks like next to some Ziploc bags or a sandwich bag?

A. Correct.

Q. And it's back there?

A. Yes, ma'am.

Q. And then now -- and these are photographs of all the drugs you found in the home?

A. Yes, they are.

Q. Including the blood that we talked about that was in the living room?

A. Correct.

Q. Okay. So now showing the last remaining pictures of the drugs, 201. Going back to 4, can you orient the jury where this cabinet is?

A. (Indicating.) The upper cabinet right here.

Q. That's 201. And that's the cabinet where you found green leafy-like substance consistent with marijuana?

A. Yes.

Q. And what else do you see going to 211? What else is in there?

A. It's cigars.

Q. Okay. And the cigars are on top of that packaging?

A. That's correct.

Q. Okay. And the other drugs in the home, where were they -- are there any other drugs in the home?

A. Other than the blunt in the living room, and then the various amount of marijuana throughout the kitchen, no, ma'am.

Q. Okay. And the marijuana, that's what we see in the pool of blood ---

A. Correct.

Q. --- in the kitchen?

A. Correct.

Q. On the kitchen counter -- let's see if I can find that. So 151, just for orientation, looking at this item right here, going to 156, the food saver?

A. Yes, ma'am.

Q. Food savers, what are they typically used for?

A. When it comes to drugs, they're typically used to seal narcotics in a bag.

Q. Okay. And in front of the food saver, is that

projectile?

A. That's correct.

Q. And here is where we're looking, where Samir fell?

A. Correct. His feet are right down here.

Q. Okay. And going to 13, and I think I have other photographs, but you zoom in, the marijuana bags are ballooned around here?

A. Yes, ma'am.

Q. As if he was standing in front of the food saver?

A. Yes, ma'am, as it went everywhere when he was shot.

Q. And the marijuana went everywhere?

A. Yes, ma'am.

MS. FULLER: Beg the Court's indulgence. I do have more questions.

THE COURT: Sure.

MS. FULLER: Thank you.

BY MS. FULLER:

Q. Going back -- oh, the AR. Can't forget that. The bedroom. That's been made a big deal. Go back to that. This photograph was taken the first day, correct?

A. That's correct.

Q. Okay. And when you first encountered this room,

did you search it the first day?

A. We went through the room, yes, ma'am.

Q. Okay. Did you extensively search it?

A. No.

Q. Did it appear to be related to this crime in any way?

A. It did not.

Q. Did it appear to be disturbed?

A. No, ma'am.

Q. And what about this photograph that suggests that it did not appear to be disturbed?

A. Just getting all the items on the floor, the location they were at on the bed.

Q. Okay. And the items under the bed as well?

A. Yes, ma'am.

Q. When it comes to -- and I think I covered the guns. Oh, the one on Samir. Let's talk about that one. And this is my fault because I don't know the right terms, and I'm going to try to get it out. When you encountered that firearm on Samir's hip, can you tell me whether or not it was fully seated in the holster?

A. It was fully seated in the holster, yes.

Q. Did it appear to be pulled out in any way?

A. It did not appear to be pulled out.

Q. Can you tell me whether or not it was used

in this incident?

A. I do not believe it was used in this incident given the way in which it had one in the chamber, and the magazine was fully loaded as well.

Q. And I don't know the answer, so this is risky. Was it -- I am scared. I don't know. Was it difficult to remove it because it was tucked in? Because, for me, looking at the photograph, it looks tucked in.

A. Yes, ma'am. It's in the waistband holster, so it goes in between the pants and the actual hip, and this item right here is a clip. That clips onto the belt that way if you were to try to remove the firearm from the holster, the holster stays put, and the firearm comes out. But it was firmly seated inside the waistband of Mr. Atkins.

Q. Firmly seated, firmly seated. Properly seated?

A. Okay.

Q. That work?

A. That works as well, properly seated.

Q. Okay. And on the first day that you processed, let's talk about this safe. This safe -- we don't know if this is the actual safe. It hasn't been identified; is that correct?

A. Correct, it has not.

Q. Okay. The Sentry card that we saw and put

in evidence -- I'm not sure what number it is. We know that it was a larger safe than this one, correct?

A. That's correct.

Q. But we don't know if it was this size?

A. That's correct.

Q. Per se?

A. Per se.

Q. The Sentry card did not have a serial number -- the insert did not have a serial number on it, did it?

A. I don't recall, no, ma'am. I don't believe it did.

Q. If I can -- let me find it and try to speed along. And there is no way to know without a witness who actually observed the safe, or lived in the home with the safe to know what size the safe is; is that correct?

A. That's correct.

Q. And the Sentry card, there's no way to know what safe it actually goes to, correct?

A. I don't believe so.

Q. Okay. I mean, manufacturers would be printing 30,000 different images if it went to one per safe style?

A. Yes, ma'am.

Q. Okay. I want to talk about your theory in

processing crime scenes -- or actually this -- at the academy. And I don't know the answer, so I'm just asking. At the academy, you guys have to test fire, right, shoot guns?

A. Oh, we do shoot guns.

Q. Okay. And talk me through that. What does it look like? What do you do?

A. It's, essentially, at the academy when you -- you go to the firing range for one week, and that's where they train you on how to shoot. And then at the end of the week, you qualify with your firearm.

Q. Okay. Have you ever gone through training of shooting 100 rounds and then collecting 100 casings?

A. No, ma'am.

Q. Okay. Is it possible to shoot 100 rounds and find all 100 casings that you shoot?

A. That's difficult.

Q. Why?

A. Because there's so many, and they go in various directions.

Q. They go in different directions?

A. Yes, ma'am.

Q. What direction?

A. Typically -- usually when you're shooting a firearm, the rounds are going to eject to the right

and to the rear. The right and to the rear is not always the same angle. It all depends on the position you hold the gun in, which is going to affect which way that round ejects.

Q. Okay, that's interesting. It's a learning moment for me too.

A. Yes, ma'am.

Q. So, I'm standing here and I -- I'm not going to point to the jury. If I stand here and I shoot, the projectile should go over my shoulder?

A. Yes, ma'am. It should go back that way.

Q. Okay. And then it's just going to sit where it lays?

A. Yes, ma'am.

Q. Does it roll, or does it just fall and stay there?

A. It will tumble through the air. So when it hits the ground, it's possible it will continue to roll until it stops.

Q. So tell me whether or not it's common -- I don't know if I would say whether or not common or uncommon -- to shoot a firearm and not retrieve a casing from the shooting?

A. It's pretty uncommon.

Q. Uncommon?

A. To retrieve a casing from an actual shooting.

Q. Oh, okay. So how many crime scenes have you processed?

A. Hundreds.

Q. Shootings?

A. Yes, ma'am. Not hundreds of shootings, but I've processed multiple shootings.

Q. And in those cases, those shootings that you processed, those cases, those crime scenes you've encountered, you knew a shooting occurred in every single one of those cases, have you retrieved either projectile, the bullet, casings, in every single one of those crime scenes?

A. No, ma'am, not every single one, no, ma'am.

Q. What's the ratio, the batting average?

A. When it comes to shell casings, you have a better chance of collecting shell casings in a shooting incident more than anything. Projectiles are the hard ones to find. They're hard to locate because those can go in a number of places, especially, if you don't have an impact point. If it travels through the body, it stays in the body. So more than anything, you're usually collecting shell casings, but projectiles are a little bit harder.

Q. Okay. So if a projectile went through the body

and ended in the wrist, would you recover that projectile?

A. If it was still in the wrist, possibly, yes.

Q. At the scene?

A. At the scene, no, ma'am.

Q. Okay. And at the scene, a projectile traveled through and through and then entered with no exit, would you recover that projectile at that scene?

A. Can you say what it traveled ---

Q. So if a projectile traveled through the knee area to the thigh -- through the knee, out the inner thigh, and then into the lower buttocks and never ejected again, or exited the body again, would you find that projectile at the crime scene?

A. No, ma'am, you would not.

Q. And then the firearm. I think it was years ago I shot a revolver in college or something. I noticed that the revolver, I had to -- unartfully, I had to, like, dump it out.

A. Yes, ma'am.

Q. The shell casing, I think, stayed in?

A. Correct.

Q. What's the difference between a pistol, like, a 9-millimeter that was used in this case verses a revolver?

A. Yes, ma'am. A semi-automatic handgun is going to have the magazine. And once the round is fired, the round is ejected. But in a revolver it's all contained within the cylinder of the revolver. So if a revolver is shot, shell casings will not eject. They will stay in the cylinder of the revolver.

Q. So if a person was shot with a revolver at a crime scene, would you expect to find the casing at the crime scene?

A. No, we would not expect to.

Q. So if I understand this correctly, even with a semi-automatic -- did I say that right?

A. Correct.

Q. That ejects to the right and back, there is a possibility of recovering casings, but not all the time; is that correct?

A. Correct.

Q. And if it's a revolver, it's more probable or less probable?

A. Less probable because it's still inside the revolver.

Q. Still inside the revolver. Okay. Looking at 44 that I was looking for earlier, this is what I was referring to. Do you see a serial number, or you could see anything on that -- what's the card

called?

A. Desiccant.

Q. A desiccant. I learned that this week.

A. No, ma'am, I do not.

Q. Okay. And so is there any way to tell really what safe this went to?

A. No, ma'am.

Q. Or what size safe?

A. That is pictured in that photograph, no, ma'am.

Q. Okay. You would need a witness to actually install the safe at some point?

A. Yes, ma'am.

Q. Okay. Oh, one more thing to talk about. Touch and latent prints. When you processed this crime scene, I think your direct was a little over an hour, the judge might have the exact time. But you were on scene processing for how long?

A. Over five hours.

Q. Five hours.

A. Yes.

Q. And you only -- I was trying to go fast because I knew it was a lot of evidence, but we only endured just an hour of it, of going back over it. When you arrived on the scene, knowing what you had, knowing what had happened, what was your primary concern

in processing?

A. The primary concern in processing was -- I mean, there's a lot, but it was collect blood throughout the residence as well as any shell casings, or projectiles, that caused the actual death.

Q. Okay. So touch DNA, what were your thoughts on that that day? On July 5, 2018, you're there five hours processing, doing your job.

A. Yes, ma'am.

Q. What happened to touch? Did you think about it?

A. I was focused on blood, to be honest.

Q. Okay. And let's talk about latent prints. That day, when you were doing your job, what were you focused on?

A. I was focused on blood.

Q. Okay. Did you think about latent prints?

A. I honestly did not that day.

Q. Okay. All right. I think that's it. Thank you so much.

THE COURT: Recross briefly.

MR. PHILLIPS: Yes, Your Honor, I know.

RECROSS-EXAMINATION

BY MR. PHILLIPS:

Q. We just had a discussion about shell casings and semi-automatics and revolvers. My uncle was a cop,

and I never -- my grandfather passed down the -- old school cops all use revolvers, right?

A. Most of them, yes, sir.

Q. Right, 38s, 357 Magnums?

A. Correct.

Q. That's because they don't jam?

A. Correct.

Q. Did you know in this case Mr. Furtick says two guns jammed?

A. I believe from his testimony.

Q. Would either one of those be revolvers?

A. They could be.

Q. How often does that happen?

A. I don't fire revolvers very often. I've probably fired one in my life, so I'm unsure. I'm not familiar with revolvers when it comes to jamming.

Q. I thought you just said it doesn't happen often? You're not familiar with it?

A. I don't have personal experience with them.

Q. But as a police officer who's trained in weapons, you know that there's kind of a longstanding thing where revolvers don't jam, and that's why old school gun lovers and cops like revolvers versus the semi-automatic because they jam all the time or something?

A. I would concede that a revolver is less likely

to jam than a semi-automatic.

Q. That's common knowledge in your line of work?

A. Yes, sir.

Q. Okay. You don't have to fight with that, right? And so what's the likelihood of two semi-automatics jamming?

A. Depends. That's kind of a vague question because the ---

Q. Likelihood -- I'm sorry?

A. The likelihood of my firearm jamming, zero to none because it stays clean. But a target firearm, the likelihood of it jamming is pretty significant.

Q. Just depends, right?

A. Yes.

Q. And then to have two of them. But the one thing we know -- we just had this whole rendition about revolvers and spent shell casings. If guns are jamming, more likely than not, it's not a revolver?

A. I'm not saying revolvers can't jam, if that's what you're trying ---

Q. Sure.

A. --- to allude to. I believe that revolvers can jam. They're just less likely than the semi-automatic.

Q. You conducted a thorough search; you spent five hours. You fine-tooth combed that apartment?

A. Yes, correct.
Q. So, if I was in this room, and I fired some shots, and you did a fine-tooth combed, detailed, thorough search of this room, what's the likelihood you wouldn't find the shell casings in this room?
A. Pretty slim.
Q. Pretty slim. That's a small apartment?
A. Yes.
Q. That's inside?
A. That's correct.
Q. So, presumably, it would be pretty slim you would be missing a shell casing inside that apartment?
A. I would say so.
Q. Because you did a thorough search?
A. We looked extensively for shell casings, yes, sir.
Q. Where's -- did you find the projectile from Mr. Furtick?
A. The only projectile that was found in the residence was from the cabinet that came from Mr. Atkins.
Q. And in that five hours, you never did fingerprints?
A. No, sir.
Q. Any doorknob or anywhere else. You never did --

as far as touch DNA, you don't know if that's analyzed. You said your main concern was blood?

A. That's correct.

Q. Okay. Same with that holster, right? Now let's focus on that holster for a minute. I know you said that it was a 45. Does that holster specifically say it's got to carry a 45?

A. No, it says for 1911s, but the description of that actual holster states ---

Q. Like if you bought it from, say, Palmetto State Armory. And that gun is in a case, the one you just showed?

A. Yes.

Q. All right. You've never seen a picture of the AR-15? That didn't go up there, right?

A. The picture did not go there, no, sir.

Q. And the pictures of the bottoms of Furtick's shoes didn't go up there, right?

A. No, sir.

Q. And Furtick was shot in the leg. And if Furtick happened to shoot somebody, blood could be on the top of his shoes? In other words, I'll just say it like this. If I shot somebody, it's possible blood would be on the top of my shoes?

A. If you shot somebody, is it possible that blood

could be on the top of your shoes?

Q. Sure.

A. That's possible.

Q. And what about the bottom of my shoes, if I was in the middle of that? You didn't see any pictures up there that the prosecutor didn't show you as far as the bottom of the shoes, the ones that you and I talked about that didn't have any blood on the bottom?

A. Correct.

Q. Okay. And so as far as the gun that was on Mr. Atkins' hip, anybody that's ever put in one of those types of holsters -- you're right, to get it off your belt, it's tough, and it's meant to be tough that way, right?

A. Correct.

Q. So it's secure?

A. Yes.

Q. But it's easy to draw the weapon, or that would defeat the purpose of the holster?

A. That's correct.

Q. Okay. I mean, there was this big play about how difficult it is. That's right, it is difficult to take a holster out, it's hooked to your belt, but not hard to draw the weapon?

A. No, sir.

Q. Okay. And you agree with that?
A. Yeah.
Q. I mean, that's what it's meant to do?
A. Correct. It's meant to come out of the holster.
Q. Okay. Now, this picture right here of Mr. Furtick's shirt, if you were laying in blood, blood should be on your back, presumably?
A. If you're laying in blood, yes, sir.
Q. But if I shoot somebody, where did the blood possibly go?
A. It depends how close you are to the person.
Q. Possibly on my arm?
A. Depending on the closeness.
Q. Okay. Yeah, I mean, stippling. You know about stippling, right?
A. Yes, sir.
Q. So if I shot somebody at point blank range, possibly blood on my arm, right?
A. That's a significant amount of blood.
Q. It is.
A. Blow back from stippling.
Q. And Furtick got shot in the leg, right?
A. Yes, sir.
Q. Okay. What kind of gun do you carry?
A. I carry a Glock 23; it's a 40 caliber.

Q. 40 caliber. And so that's a little bit bigger than a 9-millimeter?

A. A little bit.

Q. So trying to -- I was hoping you carried a 9, because I was going to say do you want to try to put that 9 in that holster and see if it fits, because a 9-millimeter will fit in that holster, right?

A. I'll concede that most Glocks would fit. I believe most Glocks would be similar in size, yes, sir.

Q. Right. A 9-millimeter absolutely could have fit in the empty holster that was sitting on that coffee table?

A. I believe it could.

Q. Because the 45 that was showed up there, it's a nice weapon, it's expensive, that's a big gun?

A. It is.

Q. Long barrel, right?

A. Yes.

Q. Did we hear about it, long barrel?

A. On that barrel, yes, sir.

Q. Okay. Talking about that cocaine, I heard the word small. That's trafficking weight in South Carolina. Somebody would face 7 to 25 years if they had that amount of coke?

A. That's a large amount of cocaine.

Q. Right. I heard the word small was used. And so that's a second-level offense of trafficking, right?

A. Yes, sir.

(Defendant's Exhibit No. 20 marked for identification.)

MR. PHILLIPS: Your Honor, I'm not going to make this mistake again. Defense's Exhibit No. 20, marked for ID. It's volume two; it's our discovery kind of compressed in volumes.

THE COURT: Let the State know which page you're looking at, or what document.

MR. PHILLIPS: Yes, Your Honor, we absolutely will. In the chain of custody, the description of the white powdery substance, Tag No. 18172.

BY MR. PHILLIPS:

Q. You're taking a look at that inventory notes?

A. Yes.

Q. What's the purpose of those inventory notes?

A. To document the logging in of the evidence.

Q. Okay. And that says, per Investigator Griffin, this is not to be sent to SLED retainment case. So, it's actually you who didn't send it to SLED to be tested?

A. Correct.

Q. Okay. I was confused because -- start pointing at Mr. Deas there.

A. Yes, sir, I didn't realize -- so that helps.

Q. Okay. But you're the one that actually said not to send it to SLED?

A. Correct.

Q. Okay. There was a -- you left a red bag at the scene, but you also left that target. It was in the closet, right?

A. It was left there, yes, sir.

Q. Why isn't there a good picture of the target?

A. It appeared like it was just on the bottom of the closet, so I just moved it out of the way to take the photo.

Q. Okay. All right. Now as far as the safe is concerned, you said you wouldn't know what the safe looked like or anything like that. Mr. Furtick would know what the safe looked like because he said he'd seen it before, and Nikki Hicks would know what it looked like, right?

A. Correct.

Q. Okay. So both of them could physically say what the safe was, and Furtick did say -- possibly would say what it looked like, right?

A. Yes, sir.

Q. Possibly. I mean, he said he knew what the safe looked like. All right. Now you talked about -- when you read the search warrant affidavit, you went into cell phones, contents of cell phones, and text messages. Let's talk about that.

MS. FULLER: He did not.

MR. PHILLIPS: Okay. Your Honor, may we approach?

THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

BY MR. PHILLIPS:

Q. When you read that search warrant affidavit, talked about text messages and going into that phone, did you know the contents as far as the search? You said -- I mean, you read it out loud. So were you aware of the text messages on that phone?

A. I was aware of what was written in this affidavit that I read earlier, yes, sir.

Q. That there was a search of the phone?

A. Correct.

Q. All right. And who conducted the search of the phone?

A. I'm unsure without that actual search warrant.

Q. Okay. But you can't say as far as the text messages specifically?

A. No, I cannot.

Q. Who would be, Investigator Todd maybe?

A. It could be Investigator Todd, or any one of the other investigators. Again, it would be on the actual search warrant for that cell phone ---

Q. Okay.

A. --- of who extracted that information, or backed that information.

Q. And so if there's text messages that have valuable information to the case, that would be something that you would certainly want to take into evidence and collect, as far as who would be the aggressor? In other words, if somebody had animus against another person, it would show the identity of the aggressor. If there was a text message that had that, you would want to take that into evidence?

A. I'm confused by your question. I'm sorry.

Q. Since you haven't seen what I want to ask you, I'm trying to be broad.

A. Yes, sir.

Q. And so I'm saying if there was a text message -- this is a murder scene.

A. Correct.

Q. If there was a text message that had something of evidentiary value showing the identity of an aggressor, in other words, somebody with bad blood, would that be relevant in a murder case?

A. That would relevant, yes, sir.

MR. PHILLIPS: Last question, Your Honor. I know I'm on thin ice with time.

BY MR. PHILLIPS:

Q. That would be something that you would expect Investigator Deas, as the lead investigator, to know and investigate?

A. As far as the extraction of the cell phones?

Q. Contents of that last question. If there was that text message of bad blood and identity that could lead to the identity of an aggressor, that would be something that would be left to the lead investigator?

A. That would be something that's left to be discovered down the road, yes, sir.

Q. Sure.

A. Initial when it was recovered, yes, sir.

Q. Thank you.

THE COURT: Briefly.

MS. FULLER: I get another chance.

THE COURT: Yes. Yeah, if you need to, by all means go right ahead.

MS. FULLER: I really don't think -- I was just going to call the next witness.

THE COURT: Oh, perfect. Even better. Before you do that, we will be, however, taking a brief commercial break to hear from our lovely sponsors. You can step down. Thank you very much. Appreciate you being back. Ladies and gentlemen, if you would adjourn downstairs for a few moments, freshen yourself up, whatever you need to do. Don't talk about the case. Back on the record in about 10, 15 minutes, around 11, okay? Thanks.

(Jury exits the courtroom at 10:46 a.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Have a seat. Thank you. So sorry. Housekeeping wise, we were able to agree to anything that we could go ahead and breeze into evidence last night, or we didn't make much progress, we did make some progress, or where are we?

MR. PHILLIPS: We did, Your Honor.

THE COURT: Okay. Do we have those exhibits? We can go ahead, and I will note for the jury that they're in evidence once they're in here.

(Pause.)

THE COURT: Let's get on the record real

quick. The jury is on the way up. I just wanted to put on the record that the parties have agreed to the introduction of State's 184 through 195, per Mr. Graham. Those are in evidence without objection and without the need for further authentication or validation by a live witness.

It's also been agreed that the defense is not going to be challenging whether or not the DVR was altered. They agree that it was not altered when the cloned copy was formed, or when the clone copy was made, rather.

There is an argument we're going to have to address at a later point in time concerning the jail phone calls, but there's no issue with chain or authentication of those calls. But there is an issue with hearsay, and perhaps something else concerning the audio, but we'll cross that bridge later.

(State's Exhibit Nos. 184 through 195 were entered into evidence.)

MR. BROWN: And, Judge, we would renew our objection to the search of the home to get the DVR and to the search of the DVR.

THE COURT: That is correct. Those objections stand despite your stipulation that the cloned copy was not altered in any way.

So the objection still stands as far as the search is concerned.

MR. BROWN: Thank you.

THE COURT: That is clear.

(Jury enters the courtroom at 11:09 a.m.)

THE COURT: The jury is back and seated. Ladies and gentlemen, before the State calls their next witness, let me just let you know the parties in this case have stipulated as to Exhibits 184 through 195.

They are -- while we were on the break, we were discussing them, and those exhibits are now in evidence, without any need for any witness to authenticate or otherwise verify or validate the authenticity of those items. So State's 184 through 195 are in evidence. And I just wanted to note that for the record. Solicitor, if you'll call your next witness, please.

MS. FULLER: Thank you, Your Honor. The State calls Joe Putney.

MR. JODY PUTNEY was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: You can remove your mask. State your name, spell your last name for the record.

THE WITNESS: Joe Putney, P-U-T-N-E-Y.

DIRECT EXAMINATION

BY MS. FULLER:

Q. Can you introduce yourself to the jury, please?

A. Like I said before, my name is Joe Putney. I'm a detective with the West Columbia Police Department, been working for the past 14 years.

Q. And have you spent your entire career in law enforcement in West Columbia?

A. I have.

Q. And what division do you currently work in?

A. Narcotics.

Q. And back in July of 2018, what division were you working?

A. Just criminal investigations.

Q. Okay. Just jumping straight to your involvement in this case. Did you arrive on scene at [redacted] Glenn Street?

A. Yes, ma'am.

Q. And did you participate in the search of Rodney Furtick's vehicle?

A. I did.

Q. And can you describe to the jury your search of that vehicle?

A. I can read my supplemental report if that will help.

Q. First, what vehicle was it?

A. It was a silver Dodge Challenger.

Q. And when you -- what items did you collect from the glove box in that vehicle?

A. A Glock 23 40-caliber.

Q. And then underneath the vehicle, what items did you collect?

A. Two 40-caliber shell casings.

MS. FULLER: And, Your Honor, for the record, that's State's 194 and 195; 194 would be the two 40-caliber shell casings, and 195 is the 40-caliber Glock 23 that's in evidence.

BY MS. FULLER:

Q. Have you recognized if these are the items you collected?

A. Yes, ma'am.

Q. Also in processing the vehicle, I do want to note -- just publishing the photographs that are already in evidence, 61. Is that where you recovered the Glock?

A. Yes, ma'am.

Q. And then in -- can you describe your collection of 63?

A. It's a glass jar with a green leafy substance contained inside it.

Q. And the color of the jar is blue?

A. It's blue.

Q. Okay. And then already in evidence is photographs of Samir Atkins' vehicle, 28 and 29, in the center console in 30, and then 31. Based on your training, do you see any similarities -- or what's the significance of these glass jars, one found under the seat in Rodney's vehicle, and this one found in Samir Atkins' vehicle, 31?

A. They're similar type of glass jars.

Q. Okay. And in working narcotics, do you see individuals using similar containers, the same individual?

A. I do.

Q. Is that common?

A. It is.

Q. Okay. Jumping ahead, in this case, did you have opportunity to pull surveillance footage in this case?

A. I did.

Q. And can you explain to the jury what you did and when you did it?

A. The following day after the incident, I went around looking for different businesses that would have cameras and tried to pull video around the time of the incident to see vehicles coming and going, leaving the incident area.

Q. And what vehicles were you specifically looking

for?

A. The vehicles on scene; the silver Challenger, Mr. Mack's car or Mr. Atkins' vehicle, any vehicles that we had descriptions of, like, Mr. Ritter's vehicle also was a description of a vehicle leaving the area at the time of the incident. It's a burgundy Tahoe.

Q. Okay. And approximately how many businesses did you go to, to pull surveillance footage?

A. I went to numerous businesses. Some I didn't -- I don't know the exact number of how many businesses I went to. I spent several days looking at different videos from different businesses trying to find different videos.

Q. Okay. And what streets were you -- where were these businesses located that you went looking for video?

A. Glenn Street, Airport Boulevard and Charleston Highway.

Q. And what were the significance about those streets, Charleston Highway, Airport Boulevard? What information did you have?

A. Well, Airport Boulevard and Charleston Highway are pretty main thoroughfares coming into the city, coming to the area, and Glenn Street is the street that the incident took place on.

Q. Okay. I'm going to hand you what's been marked as 65, 67 and 66. And, for the record, 66 is a video clip that has been stipulated to, so the custodian did not testify. Ask you if you recognize these items.

A. I do.

Q. As well as this disc?

A. Yes, ma'am.

Q. Okay.

MS. FULLER: At this time, we'll offer this into evidence, Your Honor.

THE COURT: No objection?

MR. PHILLIPS: Without objection.

THE COURT: That's State's 66. And it was -- what are the other two?

MS. FULLER: 65 through 67. 65 is the video clip; 66 is the still shot.

THE COURT: Very good. 65 through 67 are in.

(State's Exhibit Nos. 65 through 67 were entered into evidence.)

BY MS. FULLER:

Q. Looking at State's 71 ---

MS. FULLER: I believe we're going to offer 71 without objection, Your Honor.

BY MS. FULLER:

Q. This is an overhead -- another angle of the area. Do you recognize this?

A. I do.

Q. And the video clip we just showed you, where on this map did you pull that video from?

A. The picture you showed me were from the Mr. Suds car wash on Airport Boulevard.

Q. Okay.

THE COURT: State's 71 is in evidence, without objection.

(State's Exhibit No. 71 was entered into evidence.)

BY MS. FULLER:

Q. And can you point to -- orient the jury with this aerial in State's 71, please?

A. (Indicating.) That's Mr. Suds right there on Airport Boulevard, and this is where the incident took place on Glenn Street.

Q. And can you also point out I-26?

A. (Indicating.) It's right there.

Q. And when you were looking for surveillance footage in the area, did you capture any surveillance footage of a burgundy Tahoe?

A. I did.

Q. Okay. Did you capture it coming into town or leaving town?

A. Leaving town.

Q. Okay. Did you capture any footage of it coming into West Columbia?

A. I did not.

Q. And how much did you search for that footage?

A. Like I said before, I spent several days looking for video to try to get video -- the vehicle coming in and leaving.

Q. Okay. And what time frame were you looking for?

A. The time of the incident, around 1300, one o'clock, to 2:30.

Q. Okay. When you went to -- what's already in evidence is the Glenn and Sox video. Do you have memory going there, to Glenn and Sox Street, the Builders Hardware place?

A. Yes, ma'am.

Q. And did you also pull that video?

A. I did.

Q. And do you recall what you were able to observe on that video?

A. I've seen -- I observed the vehicle that met the description of Mr. Mack's vehicle coming to the area. And then a short time later, a vehicle that fit the description of Mr. Furtick's leaving the area and then coming back with law enforcement.

(Video clip played for the jury.)

BY MS. FULLER:

Q. Looking at this footage, were you able to identify -- were you the one that identified this vehicle?

A. Yes, ma'am.

Q. And this was because it was on scene?

A. Correct.

Q. Okay. And then we published the beginning and the end, but with you we'll publish the center, pause it for a second and show you the previous exhibit. We already published on the TV screen State's 19 is that vehicle. And then looking at State's 20, what vehicle do you recognize in that image?

A. A silver Dodge Challenger.

Q. We're just going to jump ahead to picture time, which is 2:15:50. Is that accurate?

A. Yes, ma'am.

Q. While it's playing, did you have an opportunity to drive the route from the incident location to Platt Springs where D&D Restaurant is?

A. Yes, ma'am.

Q. And approximately how long did it take you to drive there?

A. In normal traffic from the incident location

to D&D, which is located in Platt Springs Road, it took me a minute and 14 seconds with the green light.

Q. Okay.

A. Green light at Dreher and Platt Springs.

Q. Okay. And let's pause the image at 2:15:50. And the silver Dodge Challenger, that's the direction it was heading?

A. Yes, ma'am.

Q. And then we published this image already of it coming back with law enforcement, and this is the footage you pulled. It's on the TV screen. Can you see it?

A. Yes, ma'am.

Q. On this camera angle, did you ever capture the burgundy Tahoe?

A. I did not.

Q. And you checked on Platt Springs as well for the burgundy Tahoe, or you just checked Airport for the burgundy Tahoe?

A. Well, the business is so close to Platt Springs Road I didn't feel I needed to go check Platt Springs Road.

Q. And from this intersection at Glenn and Sox, can you see D&D Restaurant from that street? If you're on Glenn Street, can you see Platt Springs?

A. You can if you're at the intersection of Sox Street, which is right there. That's Sox Street, and this is Glenn. You can see there's a clearing through there where there's power lines and some houses back there and the railroad tracks. You can see straight through there and see D&D Restaurant from there and that intersection of Dreher and Platt Springs.

Q. So from that intersection, you're able to -- so the city workers had lanes blocked off with cones and flashing lights. While you're driving on Glenn Street you're able to see through and see the crew, potentially, in front of D&D?

A. Absolutely.

Q. Now publishing the next footage, and just describe for the jury what's in this one.

A. This is a video from the Super Suds that I pointed out earlier on Airport Boulevard, and you see the burgundy Tahoe going through the intersection.

Q. Just go ahead and publish and describe 67 for the jury, that's on the TV -- it's really dark, so I don't think you can see it.

A. It's just another angle of the Super Suds. That's just another angle of the Super Suds also.

Q. And do you see that burgundy Tahoe in the still shot?

A. I do.

Q. And it matches up with the video time that we just watched? I'll put the video on the TV. Did you have an opportunity to watch another video that defense is -- the witness will not be testifying, for the record, which will be State's Exhibit 127.

MS. FULLER: And by agreement, this is stored in the normal course of business, Your Honor.

BY MS. FULLER:

Q. And I'm going to show you 127, 128 and 129 and ask you if you recognize it.

A. I do.

Q. Okay. And is that another shot of the burgundy Tahoe?

A. Yes, ma'am.

MS. FULLER: At this time, we'll seek to introduce 127, 128 and 129, Your Honor.

MR. PHILLIPS: Without objection.

THE COURT: 127 through 129 are in evidence.

(State's Exhibit Nos. 127 through 129 were entered into evidence.)

BY MS. FULLER:

Q. Can you describe to the jury what is observed in this video?

A. It's the intersection of Airport Boulevard.

It's down from Super Suds, and that's the I-26 overpass. And if you can stop, you can see the Tahoe going through the intersection at a red light. You can see the light is clearly red right there.

Q. And then publishing 128 on the TV and then 129. Is that the same red burgundy Tahoe?

A. Yes, ma'am.

Q. And this would be the vehicle that was provided to -- the description that was provided to law enforcement?

A. Correct.

MS. FULLER: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. FULLER: I believe no further questions, Your Honor.

THE COURT: Mr. Phillips.

MR. PHILLIPS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q. Good morning, Officer Putney. How are you?

A. Good morning.

Q. Investigator Putney, excuse me. Not to beat a dead horse because they've heard it. So inside the silver Challenger you found a gun?

A. Correct.

Q. You found a -- in the backseat, an ammo drum that fits that gun?

A. I believe so.

Q. A 40-caliber ammo drum, 40-caliber gun?

A. Right.

Q. You found bullets?

A. Correct.

Q. All right. There were shell casings littered all around the vehicle on the ground?

A. Yes, inside the vehicle, yes.

Q. There's an AK magazine drum, ammo drum, in the trunk?

A. I don't -- I guess I didn't put the -- I don't quite recall what kind of drum it was.

Q. Is it just a big metal ammo drum?

A. Correct.

Q. Fair enough. And then there was the weed in the jar that was in the glove box?

A. Under the passenger's seat.

Q. It was under the passenger's seat, excuse me. The gun was in the glove box?

A. Correct.

Q. The weed was under the passenger's seat, and you can smell it when you opened the door?

A. I didn't.

Q. Oh, I thought -- somebody. Anyway, so when you were getting the footage, wanted to make sure ---

THE COURT: State's 71 is what you're looking for, I think.

MR. PHILLIPS: Yes, Your Honor. I'm going -- dating back to earlier.

THE COURT: It's in evidence. It should be up here.

MR. PHILLIPS: Thank you.

BY MR. PHILLIPS:

Q. You said you decided not to get any footage on Platt Springs Road; is that right?

A. Correct.

Q. Why did you decide not to do that?

A. Because I was looking for vehicles coming and leaving the incident location. And possibly I don't think there's any cameras in this little area here anyway on Platt Springs Road.

Q. Well, the -- so the tire store is right there, right? Been there forever?

A. Correct.

Q. All right. And then that's the school, South Carolina Virtual Charter School?

A. I'm not sure it was then though.

Q. Three years ago, you're right. I'm not sure

what it was then, but you're right. It's a school now, but right across from it is the tire store?

A. Correct.

Q. Okay. And so did you go to the tire store?

A. In my years of working in West Columbia, I've never known them to have any kind of cameras.

Q. Did you ask them about it?

A. I didn't ask them.

Q. No, I mean, you said you've never known in your years. Have you ever had to go ask them if they had a camera?

A. No, but in my job we're pretty -- we look around for cameras all the time, so we're always observing and seeing which businesses have cameras.

Q. Sure. But you never went and asked them before?

A. No, I never went.

Q. Oh, okay. And so as far as even in this direction on Platt Springs, do you know what this is?

A. Used to be a bar. I'm not sure what it is now.

Q. A lot of bars have surveillance cameras, right?

A. I don't think that one does. We've had a pedestrian get struck right there, and there's no video.

Q. Did you go talk to them though?

A. I didn't personally, but...

Q. Well, the reason I'm asking is -- I'll kind of cut to the chase with you, is Mr. Furtick leaves the apartment complex here, drives all the way up Glenn Street and goes all the way over here to D&D Restaurant, right? And so we have the hardware store -- you've got your pointer?

A. Yep.

Q. Where's the hardware store? I don't want to hit the wrong spot. Is it that over there?

A. Yeah, it's right there.

Q. Okay. So you have the hardware store, you've got the tire store, and you've got this church, you've got the bar, and we have D&D way over here. And so he goes by on that footage at 2:15, right? He's going up Glenn Street towards Platt Springs Road. And so he gets on Platt Springs Road, and he eventually ends up here. Now, you don't get him back on that hardware store footage until 2:21, right?

A. Correct.

Q. And I think you just testified that it took you, like, a minute to drive down that road, right?

A. A minute, a minute and 14, something like that.

Q. So in that six minutes, it shouldn't have took Mr. Furtick six minutes to drive from right here to right there?

A. It probably didn't.

Q. Okay. And so in that amount of time, if you would have gotten maybe some footage, we could have seen on Platt Springs Road where he would have went maybe in that amount of time?

A. Yeah, I don't think that was a bar at that time, and I don't think there's any footage there. But if there was footage there ---

Q. Potentially. But it shouldn't have taken six minutes to go to D&D and to turn around and come back, potentially, right?

A. But if you're trying to contact law enforcement, I don't know.

Q. So if you were to drive at a high rate of speed to D&D in a hurry, say, call 911, they're calling 911, you pull a gun out of your glove box, and you hightail it back to the apartment complex, how fast do you think that will take you?

A. I have no idea.

Q. Less than six minutes?

A. I would hope so.

Q. Yeah, me too. You could do a lot in six minutes, right?

A. I imagine so.

Q. Now, you talk about running the red light.

You picked up all those shells. Mr. Furtick done shot that tire all up with a 40-caliber pistol, right?

A. I picked up two shell casings.

Q. Oh, but you picked up two, but there was a lot more shell casings that were around that vehicle?

A. Right.

Q. A lot more shots than two?

A. In the parking lot, yes.

Q. Right. Where he unloaded into that Tahoe?

A. I don't know if he unloaded into the Tahoe or not.

Q. Okay.

A. Shots were fired.

MR. PHILLIPS: No further questions, Your Honor.

MS. FULLER: Your Honor, just briefly. Your Honor, with this witness on the stand, I'm going to move in and publish now State's 16, which was the West Columbia dispatch audio.

THE COURT: Okay. Without objection?

MR. PHILLIPS: Without objection, Your Honor. I apologize.

THE COURT: No worries. State's 16, go ahead and publish, and it is in evidence.

MS. FULLER: Thank you, Your Honor.

(State's Exhibit No. 16 was entered into evidence.)

MS. FULLER: And then while I'm queuing this up, also for the record, with the agreement in regards to the Mr. Suds video, I forgot to place on the record that Mr. Suds' testimony within the video time was inaccurate. He set it himself, and the Cayce City video could have been a minute or two off.

MR. BROWN: That's true.

THE COURT: Very good. Those are stipulations; the parties agreed to that.

(Dispatch video played for the jury.)

REDIRECT EXAMINATION

BY MS. FULLER:

Q. And so there's a few more minutes of this. But that portion, the suspect's description being a burgundy red Tahoe, that came over dispatch?

A. Correct.

Q. And backing up to make sure it's clear for the record, we know testimony was already given, the 911 call was at 2:15 and 54 seconds, and we'll play this again just so it's clear for the record.

MR. PHILLIPS: Could you say that again?

THE COURT: 2:15 and 58 ---

MS. FULLER: 2:15 and 54 seconds was the testimony of the 911 call.

(Dispatch audio played for the jury.)

BY MS. FULLER:

Q. Did you hear clearly what the dispatcher put out?

A. The address and somebody had been shot.

Q. Okay.

A. It's kind of a little muffled.

(Dispatch audio played again for the jury.)

BY MS. FULLER:

Q. Did you hear that?

A. At [redacted] Glenn Street, Apartment [redacted], lady screaming somebody's been shot.

Q. Okay. And then we'll keep playing.

(Dispatch audio played again for the jury.)

BY MS. FULLER:

Q. Did you hear that?

A. Another subject states, I think.

Q. We'll back it up to make sure. I want it clear for the transcript.

(Dispatch audio played again for the jury.)

BY MS. FULLER:

Q. Did you hear that?

A. I did. I mean, it's a lot. Another subject on the regular line said someone's been shot, and a suspect left in a burgundy Tahoe.

Q. Okay. And so on dispatch audio, and just so it's

clear, and you can correct me if I'm wrong, this is what you heard. It starts out with woman screaming on the phone, [redacted] Glenn Street, and then I have another subject on the other line giving the description?

A. Correct.

Q. Okay. And is there any break in this time?

A. It didn't sound like it. It all happened at the same time.

Q. And I'll just play it, just so the time is plain and clear for the jury on how long it took to put that information.

(Dispatch audio played again for the jury.)

BY MS. FULLER:

Q. I just paused it. What's the time? How long did it take? Can you see it?

A. It looks like 23 seconds.

Q. Okay. Thank you.

MS. FULLER: No further questions.

MR. PHILLIPS: I will be brief, Your Honor.

RECROSS EXAMINATION

BY MR. PHILLIPS:

Q. So just to be clear, we've got Mr. Furtick driving towards Platt Springs Road at 2:15, and we have a 911 call at 2:15. So he did get there quick, presumably?

A. Okay.

Q. Testimony is that he jumped back in the car, while these fellows are making the phone call, he's grabbing that gun, and he hightails it out of there. So it took him five minutes -- well, let me get to the 23 seconds, four and a half minutes to get back. That's about not even half a mile. What did Mr. Furtick do for those five minutes -- four and a half minutes?

A. I'm guessing waiting for law enforcement.

Q. So we don't see him come back until 2:21. So there's -- at 2:15, right?

A. Okay.

Q. He's driving towards -- let's go back. I just want to make sure. All right. All right. So if we got him at this hardware store at 2:15, and he's making a 911 call -- so this hardware store right here at 2:15, he's making a 911 call at this restaurant at 2:15, and then he's seen again at this hardware store at 2:21, and he sped away after 23 seconds or so -- I mean, that's somebody on a phone call. He could have not stayed there for the entire 23 seconds. They said he jumped in his car and sped off, so, but we'll give you 23 seconds.

MS. FULLER: Objection. That's not in evidence. That's not the testimony. The testimony

of the city worker and Mr. Furtick was when law enforcement -- when he heard the siren, then he actually darted out. And Ashton Miles testified it was almost simultaneously with law enforcement.

THE COURT: All right. Well, the jury will remember the facts as you remember them to be. You can certainly ask the question based on your recollection of the facts, by all means, Mr. Phillips.

BY MR. PHILLIPS:

Q. And so from D&D Restaurant to here, that wouldn't take -- really wouldn't take over a minute, wouldn't take over two minutes, right, wouldn't take three minutes?

A. Well, it depends on traffic, but, yeah, more likely not.

Q. Okay.

A. Because of the red light you need to go through.

Q. Okay. And it wouldn't take three minutes or four and a half minutes?

A. I wouldn't think so, no.

MR. PHILLIPS: No further questions, Your Honor.

THE COURT: Sir, you can step down. Solicitor, if you will call your next witness, please.

MR. GRAHAM: States calls Paul Greer.

And, Your Honor, at this time, we're going to put in State's 213 as a court exhibit.

THE COURT: Okay.

MR. GRAHAM: It is a certified chain of custody for the items that went to SLED, without objection.

THE COURT: It would simply be ---

MR. PHILLIPS: Without objection.

THE COURT: Yeah, is it Court's or State's?

MR. GRAHAM: It's labeled State's Exhibit 213.

THE COURT: Yeah, it will be State's, in evidence.

(State's Exhibit No. 213 was entered into evidence.)

MR. PAUL GREER was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: You can take off your mask. Please state your name for the record, and spell your last for the record.

THE WITNESS: My name is Paul Greer, G-R-E-E-R.

MR. GRAHAM: Additionally, Your Honor, for the record, the defense is stipulating to the chain of custody that's in evidence to SLED, and in this case, to Mr. Greer.

THE COURT: Exactly. Thank you.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Mr. Greer, where are you employed, and what do you do?

A. I'm employed at the South Carolina Law Enforcement Division, which is commonly known as SLED. At SLED, I'm a forensic scientist in the forensics services laboratory.

Q. Can you tell the jury a little bit about your background and education?

A. Yes, sir. Prior to working at SLED, I received a bachelor's of science in biological sciences from the University of South Carolina. And as I started my position with SLED, I also completed the SLED firearm and tool mark course of instruction program. I'm employed in the firearms department where I examine fired ammunition components and bullets.

In this course of instruction training program, it's an extensive multi-year, apprenticeship-style training program that is conducted under the supervision of other core qualified examiners. During my training period, I completed multiple written and practical examinations. I assisted other examiners prep their cases, and I also conducted many microscopic

comparisons.

At the conclusion of this training program, I was given a comprehensive final exam that included some mock casework. I successfully completed that, and was able to begin casework on my own.

Q. Have you been qualified as an expert as a forensic scientist in firearm examination before?

A. Yes, sir, in firearms identification.

Q. Firearm what?

A. Identification.

Q. Firearm identification. How many times?

A. Eight times.

MR. GRAHAM: Your Honor, the State would offer Paul Greer as an expert as a forensic scientist in the field of forensic ---

MR. PHILLIPS: Without objection.

MR. GRAHAM: --- firearm identification.

MR. PHILLIPS: He's an expert.

THE COURT: All right. Very good. Again, ladies and gentlemen, as I explained yesterday with Dr. Ross, in this case the parties agree that Mr. Greer here is an expert in the field of firearms and tool mark identification, so he can give opinion testimony. He's not limited to stuff that he just saw or heard, and he can give opinion testimony that you may use

as you deem appropriate. Go ahead.

MR. GRAHAM: Thank you.

BY MR. GRAHAM:

Q. Is it agent or mister?

A. Mister is fine.

Q. Mr. Greer, you had an opportunity to look at firearms -- a firearm in this case as well as several other shell casings and the projectile and fragment; does that sound right?

A. Yes, sir.

Q. I'm going to hand you all of the these items, which are State's 195, 194, 171, 170, 169, 145, 130, 131, which is a bag containing multiple items, 135, 134, 133, 132, 136, 137, as well as 168. And let's go through these and talk about what you did and what you found out.

Now when the jury goes back, on each one of the items I just talked about, they would be able to see the items you're going to be referring to. So although here it says State's Exhibit 195 with a sticker, somewhere on here it's going to have a different number; is that correct?

A. That's correct. Each number will have a SLED item number.

Q. So State's 195 was the gun that was just put

in. You were in the courtroom and heard that testimony, correct?

A. Yes, sir.

Q. All right. So where do we find your number on here when you're referring to it?

A. As evidence is submitted to the SLED laboratory, each case is given a unique lab number and a corresponding item number. In this case, on this package, there's a lab label on the side here. And also I have written it across the front of the box.

Q. So the lab number that goes with this is what?

A. L18-10328.

Q. And your item number when you're referring to your testimony today will be what?

A. For the pistol, that will be Item 4.

Q. So as it's shown on this box here. For each other item that we're referring to, you will have also identified your item number on here as well, correct?

A. Yes, sir.

Q. So for one more example, State's 135. What is State's 135?

A. State's 135 is SLED Item 18, and that is a fired cartridge case.

Q. And that's 40 caliber, correct?

A. Yes, sir.

Q. Okay. So let's talk about your examination. Item No. 4 was what kind of weapon?

A. Item No. 4 was determined to be a Glock model 23 pistol and 40 Smith and Wesson caliber, serial number BBUU459.

Q. And upon your examination of that pistol, what did you find?

A. When I examined that pistol, I determined it to be in working order. And we were able to compare our test specimens that we fired from this pistol to other evidence in the case, the other submitted cartridge cases.

Q. And that would have been -- in this case, I think there were several 40-caliber shell casings. There's one that was a 40-caliber shell casing found in the apartment, described as a closed second drawer, left of oven, that's your Item 8?

A. Yes, sir.

Q. Do you recognize that?

A. Yes, sir.

Q. Okay. In your comparison between that 40-caliber shell casing found in the drawer in the kitchen, under the mit, what did you find when you compared it to the Glock 23 40-caliber SLED No. 4?

A. It was determined that the SLED Item 8 fired

40 Smith and Wesson caliber cartridge case was not fired by SLED Item 4, the pistol.

Q. In addition to that 40 caliber, you also had items -- SLED Items 11, 12, 13, 14, 15, 16, 17 and 18; is that correct?

A. That is correct.

Q. Items 11 and 12 were the two 40 Smith and Wesson cartridge cases that were found underneath the vehicle that was introduced through Detective Putney, that last witness; is that correct?

A. Yes, sir. Those were submitted as being underneath the vehicle that was processed, the Dodge Challenger.

Q. In addition, you have Items 13, 14, 15, 16, 17 and 18, which were also 40-caliber cartridge cases listed as coming from placards 5, 7, 1, 6, 2 and 3; is that correct?

A. That is correct.

Q. So when you compare those six 40 Smith and Wesson cartridge cases that were collected from the parking lot, what did you find when you compared that to Item 4?

A. It was determined that those cartridge cases were all fired by the Item 4 pistol.

Q. Now, Item 7 was a fired 9-millimeter Luger cartridge case that is from the parking lot, and that's

one of 9-millimeter cartridge cases you examined; is that correct?

A. That is correct.

Q. Would you see if you could find that one in here for me. What's the difference when we talk about 9-millimeter or 40 caliber? What does that mean?

A. 9-millimeter Luger and 40 Smith and Wesson are caliber designations for different cartridges. Just in general terms, a 9-millimeter Luger caliber cartridge is smaller than a 40 Smith and Wesson caliber.

Q. So they're different kind of bullets, so they come from the -- are they shot from the same gun or different guns?

A. They're different calibers, so you would typically expect to have a different gun that would fire it, that's chambered specifically for that caliber, so specifically for a 9-millimeter Luger or a 40 Smith and Wesson caliber.

Q. And Item 7 that you said you've found, where's the description that was given when collected?

A. As it was submitted, Item 7 -- SLED Item 7 was submitted as from a parking lot.

Q. Now, on the visual inspection of that, what is it you noticed about this 9-millimeter casing?

A. It is dented at the case map.

Q. What does that mean when you say dented?

A. That's just some type of damage. I don't know how that happened. There's just some damage that we noticed at the case map of the cartridge case.

Q. What are some examples that would cause that denting?

A. It could have been stepped on; it could have been ran over. Really anything. Without being there, I don't know, but it's possible. There's a multitude of reasons why that could have happened.

Q. When I ask what a head stamp is, can you tell the jury what a head stamp is?

A. The head stamp you'll see on the head of the cartridge case. That typically will give you information as to the manufacturer of the cartridge. You hear names such as Federal, Winchester, Remington. And it will also give you information as to what the caliber of that cartridge case is as well. That's something that's stamped on by the manufacturer of each cartridge.

Q. So when you examined Item No. 7, which is the one that has the crimped dent in it, how would you describe the color, because cartridge cases can be different colors, correct?

A. Yes, sir. They could be different colors based

on what material they are made of.

Q. What is the color for that one?

A. This one, Item 7, it's kind of tarnished, but it is -- construction is made of brass, a brass material.

Q. And how does tarnish happen on a shell casing?

A. Just exposed to the elements over time, anything really.

Q. Are you able to tell the head stamp? Were you able to determine the head stamp on that item?

A. Yes, sir, I was.

Q. And what was it?

A. Item 7 was head stamped PMC 9-millimeter Luger.

Q. And what is -- you discussed a 9-millimeter. What is the Luger designation, what's PMC?

A. That's just the caliber. 9-millimeter Luger is the caliber name, caliber designation. PMC is just the manufacturer of the brand.

Q. All right. There were two other cartridge cases; that's your SLED Item 9 and SLED Item 10. Do you have those up there with you?

A. Yes, sir.

Q. Okay. SLED Item 9 was described as a -- well, you tell me. Where did SLED Item 9 come from?

A. SLED Item 9 was submitted to the laboratory as being collected from the kitchen floor, located

at the corner of the kitchen and laundry room.

Q. And SLED Item 10?

A. And SLED Item 10 was submitted as collected from under the dishwasher in kitchen.

Q. And the color of Item 9 as far as the shell casing?

A. This is Item 9. It's silver in color, but the cartridge case material is aluminum.

Q. And the head stamp on that one?

A. The head stamp on this one FCNR, which stands for Federal, and it's a non-reloadable cartridge, and that's what the NR is designating. And it's also a 9-millimeter Luger caliber.

Q. And then Item 10. Where was Item 10 collected?

A. Item 10 was from underneath the dishwasher in the kitchen.

Q. An the color of that one?

A. The color of this one is also brass. There is a brass construction.

Q. And the head stamp on that one?

A. The head stamp on Item 10 was head stamped R-P, which stands for Remington, the brand of the ammunition, and a 9-millimeter Luger for a 9-millimeter Luger caliber.

Q. In your experience, is it common or uncommon

for different head stamps and different color casings to come -- be fired from the same weapon?

A. It's not uncommon to have multiple head stamps or construction coming from the same pistol, or the same magazine, or just from the scene in general.

Q. So the three shell casings that we're discussing, which is Items 7, 9 and 10, did you compare those with each other?

A. Yes, sir. I examined -- physically examined them and microscopically compared those cartridge cases with each other.

Q. And what was your conclusion after that examination?

A. Due to insufficient markings -- so when we're looking at these cartridge cases underneath the microscope, there wasn't enough information there available that we could say that those, 7, 9 and 10, were fired by the same firearm, or by multiple firearms. So our results for those cartridge cases were inclusive.

Q. So what does inconclusive mean?

A. Inconclusive is kind of a fancy word for I don't know. As I was saying, we looked underneath the microscope, tiny scratches and impressions on these cartridge cases, to determine if they were fired by the same firearm or not. And just due to their condition,

and due to how they were marked, we were not able to tell. So, we don't know if one gun fired those, two guns fired those, or three separate guns fired those cartridge cases.

Q. As far as Item No. 4, the 40 caliber, did you look at the shell casings and the Glock 23 caliber 40?

A. Due to a difference in the characteristics that we're looking at, and the caliber as well, we were able to determine that the 9-millimeter Luger caliber cartridge cases, which were 7, 9 and 10, were not fired by the Item 4 pistol.

Q. In addition, you have two other items that you looked at, one was SLED Item 35; is that correct?

A. Yes, sir.

Q. And what is the description for SLED Item 35?

A. SLED Item 35 was one bullet fragment.

Q. And that's the fragment that was collected from Samir Atkins?

A. Yes, sir, it was submitted as a fragment from the victim, Samir Atkins.

Q. So what is a fragment? Describe, I guess -- we talked about shell casings. Now, we're going to talk about projectiles and fragments. So would you tell the jury what we're getting ready to talk about?

A. Yes, sir. So a projectile, you hear that term

frequently. What that is, is it's just another name for the bullet. The bullet is the portion of a cartridge that travels down the barrel of the firearm towards a target.

In this case, we had a bullet fragment. So that just means simply a piece of that bullet tore off, or it came off, due to some circumstance. It could have been due to damage as it struck the target, or any other thing that it may have come in contact with. But it's just a portion of that entire bullet that we received.

Q. So when you looked at Item 35, that bullet fragment that's coming from Samir Atkin's head, what is it you saw?

A. We weren't able to determine much from that fragment just due to its -- the damage that it sustained and due to the size. It's a very small fragment. So we were unable to determine the caliber for that fragment. And also we were unable to determine its general rifling characteristics.

What that means is we were unable to determine how many lands and grooves of rifling were on that bullet. We were unable to measure it to determine any other information. And we determined ultimately it was unsuitable for identification.

Q. You mentioned lands and grooves. Briefly, could

you describe to the jury when you say you're looking under the microscope, and you mentioned the word rifling, and you mentioned the word lands and grooves?

A. Yes, sir. So on a bullet when it travels down a barrel, there's rifling in the barrel. When that bullet is going down the barrel, that rifling is imparted onto the bullet. The rifling is composed of what we call lands and grooves, and that helps to give the bullet the twist and the rotary motions that it needs to propel out of the barrel with velocity and travel towards a target.

Q. State's No. 35 that we're discussing, the fragments, you said you couldn't find much of it. Can you tell the jury anything about the consistency of the material or the color of the material?

A. Yes, sir. The bullet fragment was copper in color, and we did determine it was most likely the jacket portion that had just fallen off of the copper-jacketed bullet.

Q. So when you say jacketed and bullet, would you describe what a jacketed bullet is?

A. Sure. If you'll think of something easy. M&M has a center portion, which is chocolate, and an outer portion that you can kind of chip away. When you think of a bullet, it has a core, which could be various

different types of metal properties, and that core is sometimes covered with a harder metal surface that could be copper or brass or steel. If we just have a piece of that outer layer of M&M, if you will, so we were able just to look at that little piece, and that's what was submitted from the victim.

Q. So now SLED Item 25. What was that item?

A. SLED Item 25 was one fired bullet, and it was submitted as being collected from the kitchen counter, top left of sink.

Q. That's it right there, is it not?

A. Yes, sir, that is SLED Item 25.

Q. So can you describe upon your visual examination under the microscope what you observed about SLED Item 25?

A. SLED Item 25 was determined to be one fired bullet. It weighed 108.2 grains. We use grains to measure these bullets; it's a little different. This diameter was 0.345, and the caliber was a Nominal 38, which is kind of a larger umbrella that includes a 9-millimeter Luger. It was made of copper construction. Most likely it was a total metal jacket. So we were just talking about the jacket on that bullet.

Total metal jacket would -- if you're looking at that bullet, it would go all the way around the bullet,

cover each end, which we would refer to as the nose and the base. But we weren't able to definitively determine that due to its damage, and it had a lead core. So inside that M&M is the solid chocolate that had a lead core.

Q. So is the fragment that came from Samir, SLED No. 35, that copper fragment, is it consistent with the copper jacket that's here on SLED 25 from your observations?

A. The one from Samir, which is SLED Item 35, we weren't able to determine if it was fired by -- since it was unsuitable, there were no markings we were able to look at to determine if they were fired by the same firearm.

Q. Understood. I'm sorry. I guess my question was the copper jacketing, when you were talking about the copper jacketing as being the fragment, is that also consistent with the copper jacketing that's on 25?

A. Yes, sir, it's possible. The fragment from Samir was made of copper.

Q. And by the examination of 25, is some of the jacketing missing?

A. Yes, sir.

Q. And you said that is most consistent -- Item 25 was most consistent with a 9-millimeter?

A. Yes, sir. It was most consistent with a Nominal 38 caliber, which includes the 9-millimeter Luger. Based on several different factors, we were able to say it was most consistent with a Nominal 38. But we were able to include a 9-millimeter Luger caliber, specifically, based on our measurements and the way -- and the overall characteristics of that bullet.

Q. As far as -- well, let's talk a little bit about revolvers and semi-automatics. Can you briefly describe the difference between the two?

A. Sure. A revolver is a firing -- kind of back to, like, cowboy movies. You'll see them pull a revolver out. A revolver has what we call a cylinder that rotates around, and inside that cylinder are chambers where you load multiple cartridges. In order to fire that, you may have to pull a hammer on the revolver, or pull the trigger that will cock and release that hammer.

A pistol, a semi-automatic pistol, is a little different. If you think of common things like a Glock, you see that that's what a lot of officers also carry. That's a semi-automatic pistol. If you load a magazine and put that into the firearm and chamber a round, the pressures from firing that cartridge will cause the action of the firearm to work on its own.

So it will move the slide rearward, it will pull the spent cartridge case out of the chamber. It extracts it and ejects it and will load another cartridge into the chamber of that pistol, if one is available from the magazine, to have it ready to be fired again.

Q. So when you fire a revolver, when do the shell casings come out of the cylinder?

A. Typically, on most revolvers that I can think of, you'll have to manually empty those cartridge cases, or the unfired cartridges, from the actual cylinder, from those chambers of the revolver.

Q. As far as the -- well, do revolvers fail to fire?

A. It's possible they can.

Q. And what would be some causes of that?

A. There are multiple reasons why a firearm may fail. With some revolvers, one thing that may be common is the cylinder might be misaligned. You're talking about -- also it may be striking a part of the cartridge that doesn't cause it to detonate. You could have just some clay in the cylinder, or the other internal mechanisms, that would cause it to kind of act up and not fire correctly or lively.

Q. Now a semi-automatic pistol, when that gun fires, it's designed to eject the shell and load the next

round; is that correct?

A. That would be correct.

Q. So if I use the term stovepipe, what does that mean?

A. A stovepipe happens when the cartridge case is being extracted and ejected out of the chamber of the pistol, but it doesn't get ejected fully. And it really looks like an old stovepipe that's just hanging out of the pistol. So the cartridge case will be wedged in between the back of the chamber near the barrel of the pistol and the slides for each face. And it will just be sticking out at some angle from the pistol.

Q. So, hypothetically, if I had a semi-automatic, and I pulled the trigger, and the projectile went out the barrel, the gun was fired, the stovepipe would result in the shell casing being pointed up, like you're saying, like a chimney, but still not ejected from the gun?

A. Correct. The cartridge case would be -- would remain and stuck in the pistol.

Q. Let me go back to SLED 25. That was the projectile that was found on the kitchen counter. When you examined it, did you find any kind of particles or any other kind of material that's contained on the

fragment -- on the projectile, I mean?

A. On SLED Item 25, there was debris consistent in appearance with wood on the projectile.

Q. And then finally, Mr. Greer, did you have an opportunity to look at 25, the projectile that was found on the kitchen counter with wood fragments, and compare it to the 40-caliber weapon that was found in Rodney Furtick's car? That would be SLED 4.

A. Okay. Yes, sir, we did.

Q. So you compared the 40-caliber handgun with the projectile that you're saying is a Nominal 38, which is a 9-millimeter. What did you find about that projectile being fired or not fired from that gun?

A. On SLED Item 25, there were multiple different class characteristics that we noticed, and we were able to determine that SLED Item 25, that projectile, that fired bullet, was not fired by the Item 4 pistol.

Q. Thank you, Mr. Greer.

MR. GRAHAM: That's all the questions the State has.

THE COURT: Mr. Phillips.

MR. PHILLIPS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q. There was a lot of talk about copper and item

numbers. We can really boil down everything you just said as the shell casings that were outside, that were 40 caliber, were shot from the 40-caliber pistol. That's as far as those casings and that gun?

A. SLED Item 8, which was a 40-caliber cartridge case was not fired by the pistol, but the other items, 11 through 18 were.

Q. That's right. And I know you don't know exactly where evidence was collected, but there was a 40-caliber pistol that was tested -- but the 40-caliber pistol that you tested is consistent, they were all shot from the same gun?

A. Yes, sir, Items 11 through 18 were fired by Item 4.

Q. And you're unable to say what gun fired the 9-millimeter shell casings?

A. No, sir.

Q. Yeah, you can't say it. You have no clue.

A. No, sir, I don't.

Q. You don't know whether there was three guns, one gun, two guns. It's just all inconclusive?

A. The results of those comparisons were inconclusive.

Q. All right. So all of what we just heard was basically those two things, except for a couple

of things I want to talk about. The revolver and the semi-automatic, when there's a stovepipe, right, if somebody is going to un-jam it, where do the shell casings go? It wouldn't fly out, right?

A. Typically, it may fall right there, kind of where you are because you would have to manually clear the pistol. So it depends on, you know, where you are, what your angle is, where it would exactly fall.

Q. Because when you shoot a semi-automatic, it, you know, kind of just flings out, right?

A. The cartridge cases can be extracted and ejected in any direction.

Q. But there's a stovepipe that's stuck, so you have to physically take it and manually ---

A. You'll need to clear it, yes.

Q. And then it would fall out?

A. Yes, sir.

Q. Okay. So the shell casing should be somewhere around there?

A. Ideally.

Q. And you talked about revolvers jamming. What's the likelihood of two revolvers jamming? If you and I had revolvers, and we're going to go to the gun range, and both of us want to shoot, what's the likelihood both of our revolvers would jam?

A. I'm not really sure. Some of the revolvers that I see are in great condition and work fine, and some that ---

Q. Saturday night specials ---

A. Sometimes we have to do a little work. Some things may be out of alignment, so I don't have the likelihood.

Q. I mean ---

A. It depends on ---

Q. It's common knowledge that when you compare a semi-automatic to a revolver, there's no comparison in the likelihood of, say, a jam versus a revolver, right? Semi-automatics are more likely to jam than a revolver, is that fair to say?

A. Again, it would depend on the firearm.

Q. Sure. Okay. All right. And so with that, with semi-automatic pistols, I believe there was a talk about there being, as far as the shell casings are concerned, I'm just making sure as far as the location with the jam, if it's not a stovepipe, because you can have a jam with an unspent cartridge, right, in other words, just a normal bullet?

A. Yes, sir.

Q. And if you clear that jam, there should be an unspent cartridge?

A. If you cleared it, and then it ejected from the firearm, then it should be ---

Q. It should be there?

A. --- somewhere on the ground. Depending on what's going on at the scene, it could have been moved.

Q. Did you analyze any unspent rounds?

A. We did have several unfired cartridges submitted that we determined to be 380 auto caliber.

Q. And those weren't -- well, I guess you don't know the locations. Where were -- do you have the locations listed there?

MS. FULLER: Dayne.

(Pause.)

BY MR. PHILLIPS:

Q. Let me be specific. When you're talking about 9-millimeter shell casings, there's not any unspent 9-millimeter shell casings in the kitchen?

A. I don't believe I received any that were submitted for a 9-millimeter caliber.

Q. Because we were talking about the kitchen, right? There's no unspent in the kitchen, 9-millimeter shell casings?

A. No, sir, not that I'm aware of that was submitted to the lab.

MR. BROWN: Judge, may we have a moment?

THE COURT: Yeah.

MR. BROWN: We have something to work out.

THE COURT: Yeah. Let's do this. While they're talking, ladies and gentlemen, y'all go ahead and take a break. You've been out there, by my watch, for one hour and 20 minutes, so take a brief break. I'll talk to these folks, and we'll be back on the record in about ten minute, okay?

(Jury exits the courtroom at 12:18 p.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Have a seat, please. The jury is on its way up.

(Jury enters the courtroom at 12:37 p.m.)

THE COURT: All right. The jury is back and seated. We're continuing with the examination of Mr. Greer, ladies and gentlemen. And before Mr. Phillips continue, I'll just let you know the parties have stipulated, or otherwise agreed, a few moments ago, there was some testimony about some 380 automatic ammunition that was elicited.

But the parties have stipulated and agreed that there is no 380 automatic ammunition that is relevant or involved, or otherwise germane to this case. Okay? So there's nothing about 380s that you need

to recall or be concerned about. That is part of the stipulation they have all agreed to. You can continue, Mr. Phillips.

MR. PHILLIPS: Thank you, Your Honor.

BY MR. PHILLIPS:

Q. I'll just end with, when you reviewed the 9-millimeter shell casings that were provided to you, your determination as an expert, based on your training and experience, is that it's inconclusive, you're unable to tell whether they were fired from one gun, two guns or three guns?

A. That's correct.

MR. PHILLIPS: No further questions.

THE COURT: Any redirect?

MR. GRAHAM: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. You were asked, Mr. Greer, about clearing -- would you describe how you clear a stovepipe, or clear a jam in a semi-automatic?

A. Yes, sir. For the stovepipe -- would be kind of partially open or partially closed with the cartridge face sticking out. So all you really would have to do is pull back on the slide of that pistol to give the cartridge case room to pull out of the gun.

Q. And then depending on where somebody was standing, whether they were inside or outside, or in a car down the road, that would determine where that fired shell casing stovepipe came out when the jam was cleared; is that correct?

A. Yes, sir.

Q. Thank you.

THE COURT: Sir, thank you. You can step down. Solicitor, if you'll call your next witness, please.

MR. GRAHAM: State calls Jennifer Bartman.

MS. JENNIFER BARTMAN was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Have a seat, please, ma'am. Once you're seated, you may remove your mask. Please state your full name, spelling your last.

THE WITNESS: My name is Jennifer Bartman, B-A-R-T-M-A-N.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Ms. Bartman, where are you employed, and what do you do?

A. I'm employed at the South Carolina Law Enforcement Division. I work as a DNA analyst in

the DNA casework department. I'm also the DNA technical leader of the DNA department.

Q. What does a DNA technical analyst do, and what does a technical leader do?

A. As an analyst, I analyze evidence that is submitted to the laboratory from crimes that occur across the state of South Carolina. I can screen these items for the presence of any body fluid, for example, blood, semen or saliva. I then perform DNA analysis on these items, which means that I extract the DNA, I figure out how much I have, and then I generate a DNA profile.

I also receive standards from individuals that may be involved in the case, and I make comparisons between the DNA profile developed in the evidence in the case with the standards that are submitted. As the technical leader, I have the additional duty of overseeing the technical operations of the DNA laboratory.

Q. Would you tell the jury a little bit about your background education?

A. I have a bachelor of science degree in biology. I also have a master's of forensic science degree with a concentration in forensic biology. I also received approximately a year of on-the-job training

at SLED by a court-qualified analyst in the proper techniques and procedures of the laboratory.

Q. And have you been qualified as an expert -- what's serology?

A. Serology is, like I mentioned earlier, it's looking at the body fluids that may be present on a sample that was submitted to the laboratory. We can screen and confirm body fluid, such as blood, semen or saliva.

Q. And have you been qualified as an expert in DNA serology before?

A. I have in forensic DNA analysis.

Q. For DNA.

MR. GRAHAM: Your Honor, at this time, the State would offer Ms. Bartman as an expert in the field of DNA and serology.

MR. BROWN: Without objection, Your Honor.

THE COURT: Ladies and gentlemen, as I have explained previously, the parties agree that Ms. Bartman is an expert in the field of DNA and serology so she can give opinion testimony in that area, or in those areas, that you can use as you deem appropriate. Please proceed.

BY MR. GRAHAM:

Q. You had talked about known standards, so what

is a known standard?

A. A known standard is a sample that's submitted to the laboratory where the source is known. So it is typically a cheek swab, but it can also come in the form of a blood standard.

Q. And, in this case, did you have several known standards that you dealt with?

A. Yes, I did.

Q. Let me show you what's already in evidence as Items 126 and 125. And do you recognize your SLED sticker and number on there?

A. Yes, I do.

Q. Okay. So what is State's 126?

A. This is the dry blood standard from Samir Atkins.

Q. And back in the jury room, when the jury wants to look at it, this yellow sticker, it has a 5.1, and that's yours?

A. That's correct. That indicates the case number and the item number.

MR. GRAHAM: And, again, like the last witness, Your Honor, the defense is stipulating to the chain of custody on all these items.

MR. BROWN: That is correct.

THE COURT: Very good. The stipulation is acknowledged.

BY MR. GRAHAM:

Q. Additionally, let me show you what has been marked as 189, and that is your Items 23.1 and 23.2, I believe. Do you recognize those?

A. Yes, I do. This is SLED 23.1 and 24.1.

Q. And what are those items?

A. Item 23.1 is a cutting from the right leg of gray sweatpants from Elzie Mack, and Item 24.1 is a cutting from gray underwear from Elzie Mack.

Q. And were you able to develop a standard to that to use for comparison for it being from Elzie Mack?

A. That's correct. This item was used for an alternate known standard for Elzie Mack.

Q. Let me show you State's 184 and ask if you recognize this as a bag containing what's marked as State's 186 and 185. Do you recognize that as being your Items 21 and 22?

A. That's correct.

Q. And what are Items 21 and 22?

A. Item 21 is a buccal swab from Rodney Furtick, which was from the left cheek. And Item 22 is a buccal swab from Rodney Furtick from the right cheek.

Q. And let me show you what's been marked as 187, which is a SLED bag and the contents, which are 188, State's exhibit, do you recognize that as being your

Item No. 40?

A. That is correct.

Q. And what is that item?

A. These are buccal swabs from Damien Ritter.

MR. GRAHAM: And, Your Honor, the State would move all those items by stipulation into evidence at this time.

THE COURT: I thought those were in evidence already. Didn't we agree to that?

MR. GRAHAM: Yes, Your Honor.

THE COURT: They are in evidence.

BY MR. GRAHAM:

Q. So how many known standards did you have in this case?

A. Four.

Q. So you had one for Samir Atkins?

A. That's correct.

Q. Rodney Furtick?

A. Yes, that's correct.

Q. Elzie Mack?

A. That's correct.

Q. And Damien Ritter?

A. That's correct.

Q. And you handled several different items in this case to compare to those known standards; is that

correct?

A. That is correct.

Q. There were several different swabs. I'm going to put them up here, and, if necessary, we can refer to them. SLED Item 5 is labeled as a swab from the front door. Did you analyze that?

A. Yes, I did.

Q. And were you able to determine whether there was the presence of blood or not?

A. I did a presumptive test for blood, and it was positive.

Q. And then when you analyzed that, were you able to develop a profile?

A. Yes, I did. I did develop a profile that was for comparison.

Q. So if there's a -- if I use the term single source as we do this, or the term mixture, would you explain to the jury what the differences are in those?

A. Yes. When we refer to a single source profile that means that one person is contributing to the profile that I developed. When we refer to a mixture that means multiple people are contributing to the profile, two or more.

Q. When you analyzed this swab from the front door, you said it was positive for blood. Were you able to

determine whether it was a -- were you able to develop a DNA profile?

A. Yes, I was.

Q. Was it a single source, or was it a mixture?

A. The DNA profile was interpreted as a mixture originating from three individuals.

Q. All right. And when you compared that mixture in the profile you developed to the known standard, what were you able to determine?

A. When we compared the known DNA standards to a DNA profile that's develop from evidence, we first look at each of the individuals individually. So the first comparison I did was to compare Samir Atkins to the mixture. And the DNA profile is approximately 14 trillion times more likely if Samir Atkins and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture.

Q. You said trillion?

A. Fourteen trillion. That's correct.

Q. Fourteen trillion. Do you know what the population of the world is?

A. It is approximately seven to eight billion.

Q. Which is bigger, billions or trillions?

A. Trillion is bigger.

Q. So after you determine Samir's profile was likely there, what was the next step?

A. The next comparison I made was in Elzie Mack. And because this was an alternate known standard, it's the DNA profile developed from Item 23.1, which is the cutting from the right leg of the gray sweatpants from Elzie Mack, is actually from Elzie Mack, then the DNA profile is approximately 220 septillion times more likely if Elzie Mack and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture.

Q. So when you compared, what's the next thing you do?

A. The next comparison I did is with Rodney Furtick, and Rodney Furtick was excluded as a contributor to the mixture under the listed proposition that it is a mixture of three individuals and whether Rodney Furtick was a contributor to that mixture.

Q. Rodney was excluded?

A. That is correct.

Q. And the next thing you did for Item 5?

A. The next comparison that was made was with Damien Ritter, and Damien Ritter was excluded as a contributor to the mixture under the listed proposition

that I mentioned earlier.

Q. Moving onto the next, which is swab 6, which is described as a swab from the front porch floor; is that correct?

A. It is. I also made one other comparison for Item 5. When we have two individuals or more that are included as contributors to the mixture, we also make the comparison to see if those two in this case, individuals, could have contributed to the mixture together.

So, I looked at two different scenarios, the first being Samir Atkins, Elzie Mack and an unidentified, unrelated individual contributed to the mixture. And then the second scenario being three unidentified, unrelated individuals contributed to the mixture.

So if the DNA profile developed from Item 23.1 is from Elzie Mack, then the DNA profile is approximately 3.8 duodecillion times more likely if Samir Atkins, Elzie Mack and an unidentified, unrelated individual contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture.

Q. And I won't even try to pronounce it. How many zeros were there on that?

A. Duodecillion is 39 zeros.

Q. Thirty-nine zeros if you have Samir, Elzie together?

A. Yes, if the mixture -- Samir Atkins, Elzie Mack and an unidentified, unrelated individual contributed to the mixture.

Q. Swab number 6 is a swab from the front porch floor. Were you able to see where the blood was present?

A. Yes, the presumptive testing for blood for that item was also positive.

Q. And then were you able to determine whether that was a single source or whether that was a mixture?

A. The DNA profile I developed was interpreted as a mixture originating from two individuals.

Q. And what did you find when you compared those to the known standards?

A. The comparison with the two standards of Samir Atkins and an unidentified, unrelated individual contributing to the mixture, the DNA profile is approximately 1.4 billion times more likely if Samir Atkins and an unidentified, unrelated individual contributed to the mixture than if two unidentified, unrelated individuals contributed to the mixture.

Q. And then after looking at that, what was your next step?

A. The next comparison would be with Elzie Mack as a contributor to the mixture if the DNA profile developed from Item 23.1 is from Elzie Mack, then the DNA is approximately 12 octillion times more likely if Elzie Mack and an unidentified, unrelated individual contributed to the mixture than if two unidentified, unrelated individuals contributed to the mixture.

Q. And again comparing both Elzie Mack and Samir Atkins together, what did you find?

A. If the DNA profile developed from Item 23.1 is from Elzie Mack, then the DNA profile is approximately 61 undecillion times more likely if Samir Atkins and Elzie Mack contributed to the mixture than if two unidentified, unrelated individuals contributed to the mixture.

Q. And that was your most likely scenario?

A. I believe that one was in reference to all items.

Q. To the different propositions under Item 6?

A. Yes. For Item 6, that was the scenario with the strongest support.

Q. And then as far as Rodney Furtick or Damien Ritter, what were you able to determine?

A. Rodney Furtick and Damien Ritter were excluded as contributors to the mixture.

Q. The next item that you have is 7.1, 8.1

and 10.1.

MR. GRAHAM: Also by defense agreement, already been put into evidence, Your Honor.

BY MR. GRAHAM:

Q. Let me show you a bag that's been marked as a State's exhibit and is still sealed. Do you recognize that as containing your items that you used in your analysis?

A. Yes, that's correct. It contains SLED Items 7.1, 8.1 and 10.1.

Q. And those swabs were created from -- what are the description for those?

A. Item 7.1 were swabs from shell casing, 9-millimeter shell casing, from parking lot. Item 8.1 were swabs from shell casing, 40-caliber shell casing, located in the closed second drawer down directly to the left of the oven. And Item 10.1 were swabs from Item 9, which was a silver 9-millimeter Luger shell casing collected from the kitchen floor, located at the corner of the kitchen and laundry room. And Item 10, which was a gold 9-millimeter shell casing, collected from under the dishwasher in the kitchen.

Q. So, if there's a SLED Item 7, and then there's a 7.1, how are those two related?

A. 7.1 would be a sub-item of that item, or in this

case, swabs that were taken from SLED Item 7.

Q. So SLED Item 7 was a shell casing, 9-millimeter, taken from parking lot; is that correct?

A. That's correct.

Q. And so with 7.1, a sub-item was created. What are we talking about, or what do we mean when you're talking swabs taken from a shell casing?

A. This means that this item would go through our evidence processing department, and the actual items would be swabbed by a member of the department.

Q. So when the swab was taken from the 9-millimeter shell casing that was found in the parking lot, were you able to do anything with that swab as far as developing a DNA profile?

A. No. No human DNA was detected from that swab.

Q. Moving on to 8.1, which is a swab. Where was that one -- that's a swab from the shell casing collected, correct?

A. It was located in the closed second drawer down directly to the left of the oven.

Q. And what was the caliber on that one?

A. 40 caliber.

Q. And were you able to develop a DNA profile from the swab, 8.1, collected from there?

A. No, I was not. No human DNA was detected for

that item as well.

Q. Item 10.1 is a swab from Item 9 and a swab from Item 10; is that correct?

A. That's correct.

Q. Okay. Would you read the description for Item 9, what it is, and where it was found?

A. Item 9 was a silver 9-millimeter Luger shell casing collected from kitchen floor located at the corner of the kitchen and laundry room.

Q. And Item 10?

A. Item 10 was a gold 9-millimeter shell casing collected from under the dishwasher in the kitchen.

Q. So 10.1 is the swabs, one from each one of those, Item 9 and Item 10, correct?

A. Yes, they're swabs from both of those items.

Q. And were you able to develop a DNA profile from those swabs?

A. No, I was not. No DNA profile was developed from this item.

Q. Moving on to Item 26. It's described as a swab from the laundry room, trim right side; is that correct?

A. That's correct.

Q. Were you able to determine whether there was the presence of blood?

A. Presumptive testing for blood was positive.

Q. And were you able to develop a DNA profile?
A. Yes, I was.
Q. And what were you able to determine about the type of the profile; was it a single source, or was it a mixture?
A. The DNA profile developed from this item was interpreted as a single source.
Q. And were you able to determine from the known standards, as far as Elzie Mack, whether his DNA profile was found on that single source swab?
A. If the DNA profile developed from Item 23.1 is from Elzie Mack, then the DNA profile is approximately 27 octillion times more likely if Elzie Mack contributed to the profile than if an unidentified, unrelated individual contributed to the profile.
Q. Is it fair to say because it's a single source that all the other known standards were excluded as contributors?
A. Yes, the other three known standards submitted in this case were excluded as contributors.
Q. SLED 27 is described from swab from kitchen floor and on fridge; is that correct?
A. That's correct.
Q. And how about the presence of blood from that one?

A. Presumptive testing for blood was positive.
Q. And was that a single source or a mixture?
A. The DNA profile interpreted -- was interpreted as a single source profile.
Q. And were you able to determine who that source was?
A. The DNA profile was approximately 740 septillion times more likely if Samir Atkins contributed to the profile than if an unidentified, unrelated individual contributed to the profile.
Q. And because it was a single source, what could you say about the other contributors?
A. The other three standards submitted in this case were excluded.
Q. Item -- SLED Item 28 is described as a swab by the floor -- kitchen floor by the dryer; is that correct?
A. That is correct.
Q. And were you able to test for the presence of blood?
A. Presumptive testing for blood was positive.
Q. And were you able to develop a DNA profile?
A. Yes, I was.
Q. Was it a single source or a mixture?
A. The DNA profile was interpreted as a single

source profile.

Q. And were you able to determine who that one belonged to?

A. The DNA profile is approximately 740 septillion times more likely if Samir Atkins contributed to the profile than if an unidentified, unrelated individual contributed to the profile.

Q. And who, therefore, was excluded, I guess, from being contributors?

A. Rodney Furtick, Damien Ritter, and if the DNA profile developed from Item 23.1 is from Elzie Mack, then Elzie Mack as well.

Q. All right. 29 is described as a swab from above the sink on the ceiling mold; is that correct?

A. That is correct.

Q. And what, if anything, were you able to determine from that?

A. No human blood was identified on this item.

Q. Was a profile -- a DNA profile developed?

A. No, it was not.

Q. Item 40 was described as a swab from the wall between the kitchen and the living room; is that correct?

A. That is correct.

Q. And were you able to test for the presence

of blood?

A. Yes, presumptive testing for blood was positive.

Q. And was a DNA profile developed?

A. Yes, the DNA profile suitable for comparison was developed.

Q. And is that a single source, or is that a mixture?

A. The DNA profile developed from this item was again a single source.

Q. Were you able to determine of the known standards that was submitted to you whose blood that was?

A. The DNA profile was approximately 740 septillion times more likely that Samir Atkins contributed to the profile than if an unidentified, unrelated individual contributed to the profile.

Q. And all the other known standards were excluded; is that correct?

A. That is correct.

Q. 31 was a swab from the silver ring on the kitchen floor. What were you able to determine from that?

A. Presumptive testing for blood was positive.

Q. And then was that a single source or a mixture?

A. The DNA profile was interpreted as a mixture, originating from two individuals.

Q. And then what were you able to determine when

you compared that mixture to the known standards.

A. All the known standards that I received in this case were excluded as contributors to the mixture under the listed propositions.

Q. And you have a note that talks about CODIS. What is CODIS?

A. CODIS stands for the combined DNA system, and it is -- it was created and is administered by the Federal Bureau of Investigation, the FBI, and it is comprised of known standards from offenders as well as arrestees. And it could also be used in missing persons cases.

Q. And there's a notation that says that the item is not eligible for entry into CODIS, so what does that mean?

A. So when we have an unfound or known profile in the case, we have to determine whether the item is eligible for entry into CODIS. When profiles go into CODIS, they are searched against the offenders and arrestees that are housed in that database in order to determine if there's a potential hit.

And, in this case, for this item, I determined that the item was not eligible for entry into the combined DNA system, CODIS.

Q. Item 32 is described as swab from the countertop, left of sink, also labeled as upper cabinet left of

sink; is that correct?

A. That is correct.

Q. And was a DNA profile developed from that?

A. Yes, it was.

Q. Was there any test to determine whether that is blood or not?

A. No, they were not for this item.

Q. And then what were your conclusions as far as whether it was a single source or a mixture?

A. The DNA profile was interpreted as a single source.

Q. And when you compared those to the known standards, what did you find?

A. Rodney Furtick, Damien Ritter, and if the DNA profile developed from Item 23.1 is from Elzie Mack, Elzie Mack is excluded as contributors. The DNA profile is approximately 740 septillion times more likely if Samir Atkins contributed the profile than if an unidentified, unrelated individual contributed the profile.

Q. Number 33, the swab from the cabinet door, left of sink, also labeled as the countertop left of sink, was there any test done for blood?

A. Yes, presumptive testing for blood was positive.

Q. And was a DNA profile developed?

A. Yes, it was.
Q. And was it a single source or a mixture?
A. The DNA profile was interpreted as a single source.
Q. And were you able to determine who it belonged to and who was excluded?
A. The DNA profile is approximately 740 septillion times more likely if Samir Atkins contributed the profile than if an unidentified, unrelated individual contributed to the profile, and all if the other standards in the case were excluded.
Q. And I think the last item is 34, the swab from the floor under the kitchen table; is that correct?
A. That is correct.
Q. And were you able to determine whether that was blood or not?
A. Presumptive testing for blood was positive.
Q. And were you able to determine a DNA profile?
A. Yes, a DNA profile for comparison was developed.
Q. And was that a single source or a mixture?
A. The DNA profile was interpreted as a single source.
Q. And when you compared that DNA profile to the known standards, what did you find?
A. The DNA profile is approximately 740 septillion

times more likely if Samir Atkins contributed the profile than if an unidentified, unrelated individual contributed the profile. And the other three standards in this case where excluded as contributors to this item.

Q. So looking at Item 30, which is a swab from wall between kitchen and living room, and you said it was positive for blood. And 33, which is a swab from the cabinet door, left of sink, labeled countertop, left of sink, that was also positive for blood. Assuming or hypothetically, that appears to be a transfer from Samir Atkins, who was laying on the floor, what, if any, reasons would there be that his DNA was not developed in those swabs?

MR. BROWN: Calls for speculation.

THE COURT: Any response?

MR. GRAHAM: If she can offer one, she can offer one. She's an expert, Your Honor.

THE COURT: If you can offer an opinion, or if you can answer the question, that's fine. You need to repeat the question?

THE WITNESS: Yes, please.

BY MR. GRAHAM:

Q. Hypothetically, seeing where two people were executed in the back of the head with a lot of blood

around them, those two swabs, one is a swab from the wall between the kitchen and the living room that was presumptive positive for blood, and the other was a swab from the cabinet door. So we're not talking about the floor; we're talking about on a wall or on the cabinet.

Hypothetically, if those are transfers, meaning they came from some item that was transferred onto another item in some way, and there were blood in both Samir on the floor and Elzie Mack on the floor, can you give an explanation as to why the DNA of that person wouldn't have been transferred onto that ---

MR. BROWN: That is not a DNA question.

THE COURT: Overruled. I think maybe you need to break that up. There's too much in there, and she's having trouble understanding what you're saying by the look she's giving me. If I'm wrong, tell me I'm wrong.

THE WITNESS: If I understand right, you're asking if someone puts -- transferred -- would a person transfer the blood from the body onto these items? Is that what the question is?

MR. BROWN: That demonstrates it's a speculative nature.

MR. GRAHAM: It's a hypothetical question.

THE COURT: All right. She can answer

it hypothetically. You can deal with it on cross.

THE WITNESS: So, hypothetically, if that were the case, the reasons why that person's DNA would not be present could be that they are wearing gloves.

Another reason is when you're dealing with body fluids such as blood, typically, that type of DNA will greatly over -- have a greater amount than any DNA from what we refer to as touch DNA, or DNA that is left behind from skin cells, or items that people touch.

Q. Thank you. Please answer any questions the defense has for you.

MR. BROWN: May it please the Court.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Let me ask you about comparison items that have probative value. Who determines whether an item might have probative value to a case?

A. It can be the submitting or investigating agency, or the solicitor's office in most situations.

Q. And how about yourself?

A. I typically don't make determination of what is probative, as I generally do not know the whole scope of the case.

Q. Fair enough. Was there an item that has been

identified, and I apologize, I've got the report. I believe it's Item 31. It's a silver ring, there may be a photograph of it. And I can actually direct you to the SLED narrative, if you've got that, lab 18-10328. If you don't have a copy, I can provide you a copy as well.

A. I should have a copy.

Q. Yes, ma'am. And it's an entry, and it is -- appears about midway down, it's actually second to the last entry on Page 3 of that narrative. And it's got a date of 9/19/2019 at 4:50 p.m. Did you find that entry?

A. Yes, I did.

Q. Okay. And can you tell me what that item was described as? And I'm trying to put a photo up. I think you've got the description of it yourself.

A. SLED Item 31 was from silver ring on kitchen floor.

Q. Okay. And was there a determination about the probative value of that silver ring?

A. As far as entry into CODIS goes, this item was not eligible for entry into CODIS. That doesn't necessarily determine whether it is probative or not.

Q. Okay. And did you get a call from Investigator Deas about that?

A. I did not; I received an e-mail.
Q. E-mail. Communication from him?
A. That is correct.
Q. And tell me what the gist of that was?
MR. GRAHAM: Objection. Hearsay.
MR. BROWN: Was there a determination about the probative value. I'll rephrase.
THE COURT: Rephrase then.
BY MR. BROWN:
Q. Was there a determination made about the probative value on that?
A. Well, if I may, in order to enter a profile into CODIS, because it is administered by the FBI, like I mentioned earlier, we have to determine several factors. And the item has to meet certain criteria in order to be entered into the CODIS database.
So, in this case, I reached out to the West Columbia Police Department to determine more information about this item, to determine if it was eligible for entry into CODIS. And the information -- with the information that I was given, I determined that it was not eligible for CODIS.
Q. Okay.
A. But that does not mean that it's not related to the case. It just did not meet the criteria needed

for entry into that system.

Q. And tell me about the findings regarding Mr. Ritter in that item?

A. Damien Ritter was excluded as a contributor to the mixture developed from that item.

Q. Okay. And CODIS is a database where other people's DNA that might be involved in other activity, or have been collected from some other source, and it's a database that's compiled?

A. Yes. There are convicted offenders as well as arrestees in our state. And there are also unknown forensic profiles developed from cases that have been entered for comparison as well.

Q. Okay. And the short version, that silver ring, the DNA on that was not comparative DNA held within the FBI's database?

A. Correct. I did not enter it into CODIS because I deemed it was not eligible for entry.

Q. Okay. You deemed that?

A. I did, yes.

Q. Okay. Fair enough. Let me ask you about a couple of other things, one being, touch DNA. You had mentioned that DNA is something that you can get from blood, semen and saliva?

A. That is correct.

Q. All right. And epithelial cells, do they also maybe slough off DNA?

A. Yes. Like I mentioned earlier, they're commonly referred to as touch DNA, and that is DNA that can be transferred from an individual to an individual or an individual to an object.

Q. Okay. And that would be another source of DNA contribution?

A. Other than the body fluid.

Q. Okay. And that's something that you actually perform, is touch DNA analysis?

A. Yes, we do DNA testing on items believed to be from touch DNA.

Q. Okay. Fair enough. And to go back briefly, take a look at what's been entered as State's 143. Does that look like the silver ring that we talked about?

A. Yes, that looks like a silver ring.

Q. Okay. All right. And let me ask you about the item in State's Exhibit 208. What testing did you do on the blood on that shirt?

A. Do you happen to have a SLED item number for that item?

Q. I mean, I don't. That's why I'm asking.

A. I don't believe I received a swab from a shirt.

Q. Okay. Now if you had gotten a swab from that shirt, would you be able to determine who was the contributor of the blood that you would see on the sleeve, assuming that's blood on the sleeve?

A. Assuming that's blood on the sleeve, it is likely to be able to develop a profile for comparison.

Q. Okay. And you had mentioned sometimes the DNA from one contributor can be overwhelmed by another DNA contribution?

A. That's true. It is possible.

Q. So maybe the touch DNA on the wall was overwhelmed by the blood DNA from a different source, and that's what you had kind of discussed?

A. Yes, that is possible.

Q. Okay. Fair enough. But otherwise touch DNA is found fairly commonly on items, isn't it?

A. DNA is often recovered on items that were handled by other individuals.

Q. And it can survive over long periods of time, right?

A. Yes, depending if it is stored in a proper condition.

Q. And, in fact, isn't that one of the things that's come up in the JonBenet Ramsey case, hypothetically, some of that DNA might have actually been put in her

underwear by the person who packaged the underwear for sale?

A. I'm not ---

Q. Are you familiar with that?

A. I'm not aware of that.

Q. Okay. Fair enough. But that's -- something like that is possible, isn't it, hypothetically speaking?

A. Hypothetically?

Q. That the person who packaged the new underwear, that touched it and put it in the packaging, sent it out to the store, and it's purchased. Their touch DNA could still be on an item for that length of time?

A. It's possible.

Q. Fair enough. All right. And let me ask you, unlike fingerprinting, which the surface -- the smoother the surface, the more likely you get a print, touch DNA actually would be held in a rough surface too, wouldn't it?

A. That's correct. There are several factors that go into whether a DNA profile can be recovered from items that are handled. But typically rough systems -- rough surfaces, I'm sorry, do collect DNA cells at a higher rate than smooth.

Q. Okay. And so smooth surfaces, such as the metal on a gun, would be different than, let's say, the nylon

of a bag? One's smoother, one's rougher?

A. I'm not sure what you refer to as nylon of a bag.

Q. Sure. Sure. Well, let me ask, a smooth surface of a gun, you still get touch DNA off of it, right?

A. Yes, that is correct. It is possible to recover.

Q. You can. Have you ever gotten touch DNA submitted off of an AR-15?

A. Specifically, I'm not sure.

Q. How about on this case?

A. I do not believe so, no.

Q. Okay. Have you even taken touch DNA off of a surface, like a doorknob?

A. I have processed swabs taken from doorknobs, yes.

Q. Okay. Did they submit a touch DNA sample from the doorknob on the closet door that's in State's 43?

A. Just to make sure, I'm checking my report, but I do not believe so.

Q. And I don't mean to -- I'm not trying to ---

A. No, I did not receive any swabs from doorknobs.

Q. And how about from a leather holster depicted in State's 198?

A. No, I did not receive that item.

Q. And how about from the nylon bag that's in State's 152?

A. No, I did not receive items from a nylon bag.

Q. Is that the type of surface you could probably get DNA off of?

A. It's possible. Like I mentioned before, there are several factors that go into whether a DNA profile can be developed, which I can go into if you would like me to.

Q. I'm just asking. That is the appropriate surface to look for it?

A. It's possible that DNA can be recovered from that item.

Q. Got it. But you don't determine what gets submitted to you, do you?

A. No, not typically, not on the original.

Q. And then let me ask you, these item on 155, the bed sheets, and I apologize. I have three boys and not any girls, but I think it's Mickey -- Minnie Mouse bed sheets. Could you take potentially touch DNA off of those bed sheets?

A. It is possible with larger items such as that. It is usually requested to know a specific location of where a person could have touched or come in contact with such a large item.

Q. So, if there's an item under that bed, and somebody had to lift the bed sheet up to put the item underneath it, that would be a fairly specific area you

were looking at?

A. That's correct.

Q. Okay. Fair enough. And let me ask you, kind of in the whole of the items that you did receive, Mr. Ritter was excluded from those items?

A. Yes, from the items that I developed comparable DNA profiles.

Q. Thank you.

MR. BROWN: I beg the Court's indulgence. Just one moment.

BY MR. BROWN:

Q. And I did forget a couple of things. Do you ever do touch DNA on drug items?

A. On drug baggies, yes.

Q. Okay. Drug baggies. And how about if the baggies contained in a glass mason jar or grape jelly jar?

A. I would expect that could be done.

Q. And let me ask you, can you also get sweat DNA out of sweat if somebody's sweating from either it being hot in July ---

A. It's possible.

Q. --- adrenaline?

A. It's possible.

Q. And that would be different than touch DNA,

wouldn't it?

A. Well, sweat usually has the -- it's all from the cells of the body. It's through different mediums or different -- like there's a liquid component to sweat; however, they're all cells from the body.

Q. And one thing I didn't ask, but I'm going to show you what's been marked for ID as Defendant's Exhibit 18 and Defendant's Exhibit 17 for ID only. And just briefly, you don't have anything in your notes about those items being submitted for DNA testing?

A. Do these have SLED item numbers?

Q. They do not, but I don't want to be the one testifying. Because you don't have that on your list of items that were submitted -- that there was any DNA sample submitted or swabbed, submitted from those items?

A. I'm not sure what is all contained in this item.

Q. I apologize.

MR. GRAHAM: Judge, I would object. Those are marked for ID, and we're not supposed to be showing them to the jury.

MR. BROWN: Well -- I'm sorry. Then, I'll do this.

THE COURT: In this case -- I assume that y'all will submit -- that you would stipulate those items -- swabs weren't collected from those items.

That seems to be what he's getting at.

MR. BROWN: That's all I'm trying to get at.

THE COURT: All right. Y'all good with that?

MR. BROWN: I mean, I don't mind asking her how the items -- I don't mind blocking it.

MS. FULLER: They weren't submitted. I mean, it's clear.

THE COURT: Right. Ladies and gentlemen, everybody agrees that DNA swabs weren't submitted from Defendant's 17 for ID and whatever that other exhibit was.

MR. BROWN: 17 and 18, Judge.

THE COURT: 17 and 18.

BY MR. BROWN:

Q. But you did actually get swabs from ammunition, or at least some spent shell casings?

A. Yes, swabs were taken from shell casings. That is correct.

MR. BROWN: Thank you. I don't have any other questions. Thank you, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. No DNA was collected from the shell casings,

were they?

A. No DNA profiles were developed from these.

Q. And, additionally, Rodney Furtick, the known standard you had for Rodney Furtick, you did not find them anywhere on these items submitted; is that correct?

A. Yes, that is correct. Rodney Furtick was excluded from the comparable DNA profile that were developed.

Q. Thank you.

THE COURT: Ma'am, thank you for coming. Sorry to keep you waiting. Take care. Have a great afternoon, okay? All right. Ladies and gentlemen, we're probably at a good point to take a lunch break. So, we will adjourn for -- I'm going to ask you to try to be back here by -- try to be back here around 2:30, 2:35, thereabouts, okay? But I do have to take up something with the attorneys.

You know what, you guys are going to have a little bit more time. Y'all can be here at a quarter of three, all right. A quarter of three. That should give you enough time to get something to eat because I do need to take up an issue of law with the attorneys before we go back on the record, and they gave me a heads up to that when I came in this morning before you guys got here.

So, I'll address that around 2:30. That will give everyone here a chance to eat something. Y'all be back at a quarter of three, all right. Enjoy your lunch. Y'all take care.

(Jury exits the courtroom at 1:25 p.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Thank you. Have a seat, please. I do know that we have the jury here, but I assume that the next witness is going to be the jail call witness.

MR. BROWN: I believe the tech for cell phone extraction.

MS. FULLER: No, no, that's not the next witness.

THE COURT: Oh.

MS. FULLER: Your Honor, we were stipulating to that, to go in with our lead investigator, but he's not next.

THE COURT: Okay. Very good.

MS. FULLER: That's the other issue. And then there was one -- was there another one?

MR. BROWN: Well, we've got still that. I'm going to say the word -- we've got that police report from Pine Ridge regarding the forfeiture action, and it appears that there's something expunged, there

was something criminal.

THE COURT: Okay. We're probably going to have to flush that out, maybe when the jury has been released or something.

MR. BROWN: Yes, sir. And my only concern is that if we get it too late, then we're stuck using it not in cross. But for an expert witness, we don't need it.

THE COURT: What is it -- you referred to this briefly at the bench. What are we dealing with?

MR. BROWN: Yes, sir. Yesterday, we had marked it, there was a forfeiture of $5,980.

THE COURT: Right.

MR. BROWN: And some ecstasy pills and marijuana. And we don't -- we can't get a police report. We've looked. There's no way for us to get it. And we don't even know if there was one, but there had to be enough criminal activity to initiate a forfeiture proceeding and to keep the money, otherwise it would be a Rule 11 violation, Judge.

And so it turns out today we find out there might be an expungement. There was an arrest. And remember drugs and money were taken out of the safe, according to the person that forfeiture action lists as the person who found the drugs and money, and we don't

have that police report. And I would suggest it's highly likely to have something, if not exculpatory impeaching, and at some point its use is not available to us.

THE COURT: If it were expunged though, your biggest problem is that it no longer exists, because part of expungement is destruction of all the records, including the police report.

MR. BROWN: But there' s an open case about using conduct ---

THE COURT: Hold on.

MS. FULLER: Can we stop for one second?

THE COURT: Sure.

MS. FULLER: Can we step off the record for one moment?

THE COURT: Sure. Sidebar.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: The record will reflect that the last problem we were talking about is now solved. Let us go ahead and have the jury, please.

MR. BROWN: And, Judge, we do have a 404(b) issue with the next witness. It's pretty straightforward. It's the cell phone extraction guy. They went ahead and gave us some of the text messages

they would like to bring out. We believe, specifically, a text from 6/21 and potentially 6/29, would follow the 404(b)'s provision. We will hand up the case that actually affirms a conviction over 404(b).

THE COURT: Let's find out this first. Show them the two that you're talking about.

MR. BROWN: Yes, sir.

THE COURT: And see if they tend to elicit the testimony in those -- from those.

MS. FULLER: Yes, Your Honor. I gave them my prepared court's exhibit -- my prepared exhibits.

MR. BROWN: May I approach to hand up the case? And it came out yesterday morning.

THE COURT: Let me see the evidence that they're seeking to produce.

MR. BROWN: Yes, sir. I only have ---

MS. FULLER: Here's your copy, Judge. This is the challenged one, but these are the three documents. These are the other two.

THE COURT: All right. Eight pieces of paper here. Which one are you objecting to, Mr. Brown?

MR. BROWN: Judge, the one that says -- it is the very first text description on Page 1, "Man, cuz, you've got to give me time to sell all that weed." And that's from June 21st. And then down below it,

four down from on 6/29, is "Cuz, my people is trying to get half a bag."

And we would suggest that's an other act, which would somewhat kind of predict their argument. But we would just suggest that July 5th -- robbery/murder, I mean, that's the way it's indicted, that that's not appropriate 404(b) information.

THE COURT: And this message was from -- reportedly from your client to Atkins?

MR. BROWN: Yes, sir, that's the way they're portraying it, yes, sir.

THE COURT: And then the other one that you have an issue with is on 6/29?

MR. BROWN: Yes, sir, same page though, just four lines down.

THE COURT: Oh, I see. Okay.

MR. BROWN: Yes, sir.

THE COURT: "All right, cuz, my people's trying to get half a bag."

MR. BROWN: Yes, sir.

THE COURT: All right. For what purpose is the State seeking introduction of those two?

MS. FULLER: Thank you, Your Honor. It's not 404(b); it's under -- pursuant to State v. McGee, Your Honor. I think this tells a complete

picture of what we have here. It's continuous.

If you look at the communication that's stapled, it would be communication captioned at the top between Samir Atkins and Damien Ritter from June 21st to July 5th, continuous communication leading up to -- if you flip the next page, Your Honor, Page 204 at the bottom, the first line where Damien is texting Samir, "I got that money for you, bro." Said, "Cousin, what's up, bro, you on the way?" "No, not yet."

So it's a continuous -- these are communications between that time period, prior to this happening, leading all the way up to July 5th. And so I think it's relevant. It definitely goes towards what happened here.

And, Your Honor, just while we're talking about this specific issue, when Nikki Hicks testified in her written statement, which they also have, part of developing this case was, you know, who comes to the house, that type of thing, and she said the only people that actually could come to the house that Samir actually sold drugs -- marijuana to out of the home was Damien "Black" and Elzie.

And so that's how -- so some of her testimony would include selling drugs to Damien, hence why he was coming to the house. I don't see how we can

separate that from the case. You've seen the crime scene photos, Your Honor. Clearly, there was marijuana in the kitchen.

MR. BROWN: Identity is not an issue right now, Judge. And getting a half bag of weed is not what's been alleged.

THE COURT: Okay. Again, for what purpose are these text messages being introduced? What do they intend to prove substantively from the State's perspective?

MS. FULLER: It goes towards motive, intent. It's basically going towards the crime and how this happened and why this happened.

THE COURT: It is motive, intent, and it is 404(b).

MS. FULLER: Well, the ---

MR. GRAHAM: He's talking about owing money and bringing money up there on that day. They're talking about our victims -- the victim committing a robbery on them. That's very relevant to what's going on to paint the full picture. He says he has money he owes him -- he's acknowledging that he owes him money, and he says he has it, and he's coming. It's our belief that he did not have money.

But, regardless, the relationship they had,

why they were together that day, and the circumstances around it are very relevant and necessary for a full understanding. Otherwise, you've got our victims being slandered, talking about being gun-totting drug dealers who go to strip clubs. And we don't even get to talk about that their client is in a business relationship with one of our victims over weed, and he owes him money.

Maybe his motive was to go up there and rob them and not pay back the money he owes, and we have the right to argue that. But if you don't let us in, we don't get to do that.

MS. FULLER: And also, additionally, Your Honor, in open arguments, you heard defense counsel state that this was a planned robbery. They said Rodney was the aggressor. They told the jury they'll see messages of this planned robbery, and something Nikki sends, which show why Rodney is the aggressor.

In this situation here, we have contact between Samir and Damien where he's talking about coming to him. It's not like he lured him over -- you know, to suggest that they planned a robbery to rob someone who was bringing money that he owed him ---

MR. BROWN: Judge ---

MS. FULLER: --- that's kind of ---

MR. BROWN: I'm sorry.

MS. FULLER: That's kind of contradictory. And I think we have a right to show what they're trying to elicit through cross-examination of their messages, that frankly don't even exist. But I think it definitely -- just in our case-in-chief, this is definitely relevant, but also where they've been going with cross and opening, where they left it kind of vague, if Damien is really in the house, you know.

MR. BROWN: I don't know that we've left it vague about him being in the house. Judge, full candor, the issue she brought up about us, if I may approach? And I've got a copy for you. I have not marked it, but I will. And this will actually be -- well, I haven't marked the other one yet. I'm going to make this one 21, and go ahead and hand it to Your Honor.

We do hope to elicit this, and it is a different cell phone extraction from a third cell phone of Mr. Atkins. It is identified as SLED Item No. 3. And the person that is speaking on the right-hand column is Mr. Atkins. And, of course, our client has been referenced as "Black."

And Mr. Atkins says, "Black, don't know my gangsta. He's about to find out." And then the person

on the left is the phone number, that is Ms. Nikki Hicks' sworn statement to the police, as her number. And she says, "Yes, he is going to find out the hard way." And then they add all they need is his aunt's address, and that aunt is my client's mother.

And so it's only fair that you consider these together. We believe ours comes in to show who the probable aggressor was, that is 404(a), and I have John Nichols' book and the cases, at least the Taylor case, I believe, on that. It says that's 404(a) can come in, but not the details, particularly 404(b).

We understand that this speaker would not be the SLED agent. They are not a party. But at some point in time, Judge, it may not even be offered. I mean, we know you're going to have to wrestle with this. It is a different cell phone than the one on the first page, but it has already been identified as one of his phones by Mr. Furtick, and it's a white cell phone with a black case. And that is the text thread that we mentioned in opening.

MR. PHILLIPS: And we are showing our cards.

MR. BROWN: Yeah, we showed a big card to be fair, so Your Honor could make a ruling one time. We don't have anybody sequestered.

MR. GRAHAM: I'm not sure why we're talking

about this, Your Honor. I thought we were talking about what we were going to get in.

MR. BROWN: Because ---

THE COURT: They want to introduce that for the same extraction expert.

MR. BROWN: That's -- well, we want to at least get -- yes, if we can introduce it, absolutely, at least get out that it was on the phone. That's where we get it from, Your Honor. We didn't extract this phone.

MR. GRAHAM: So that would be a hearsay problem.

MR. BROWN: Not -- well, Ms. Hicks says that he really is going to find out the hard way. That's her statement.

MR. GRAHAM: I've never had a case yet, although, I've tried to get in -- getting Defendant's statements. I get that information from people who are on the witnesses stand. I don't know of any case that let's us get in hearsay off a phone extraction. As much as I would have liked to try in the past, it's not happened.

MR. BROWN: And I'm not going to disagree with Mr. Graham. But I can find out from this phone extraction guy if he recognizes that as being an item

contained on Page 199 of 2,733 pages on the cell phone extraction for phone number [redacted]. And he can't read it maybe because of hearsay, but I can get him to say that that's on there, that's been authenticated. Then, I get to ask her about making that statement, and then potentially use extrinsic evidence to bring it under a different ruling if she denies it.

THE COURT: And that would generally be how you should do it.

MR. BROWN: Thank you, Your Honor.

MS. FULLER: And, Judge, I was double checking, because I know I've read this. The auntie's address again -- and this is the danger of putting this in. You have to look at the full extraction, and he's texting someone else, [redacted] -- [redacted], a different conversation about auntie's address. And then texts her a different -- I guess a different strand of the conversation.

MR. BROWN: Judge, all I can say is that ---

MS. FULLER: But -- I'm sorry. The point is, the reason why hearsay doesn't come in, unless there is some exception, or something like that, but also to take this out of context with the cell phone extraction expert without -- you know, he can certainly cross-examine the witness but ---

THE COURT: We've already established that he's not going to be introducing this through the -- that he's not going to be introducing the substance of the text messages through the witness. He's simply getting authentication of Defendant's 21, and it would then come through Nikki. So that's how that would play out. Let me try and finish reading this case here. Give me two seconds, everyone.

MR. BROWN: Yes, sir.

(Pause.)

MR. BROWN: And, Judge, we've got another issue, but it's not something that needs to be done with the cell phone extraction. It's related to the reports we just got.

(Pause.)

THE COURT: Okay. All right. Here's where I am. I'm looking at Defendant's 21, the exchange that they are wanting to get into evidence, that the defense is seeking introduction of, is apparently dated June 18, 2018. That's, of course, three days prior to the June 21st exchange that the State wants to reference concerning the marijuana. There's no dispute that the Defendant was present at the scene, no dispute about identity. So the only reason -- valid reason that the State would seek introduction of these text messages

would relate to motive.

Defendant's 21 seems to sort of play into that motive theory a little bit in the sense that, obviously, Mr. Atkins was irritated with the Defendant for some reason back on June the 18th. So 6/21 is when he's talking about being short of the money he needs, apparently, to pay him back for the marijuana that he bought from Atkins. 6/29, looking for half a bag.

I agree that what appears on Page 2 through 4, where it starts off, I got the money for you, bro. That's the message on July the 3rd. I would agree that lacks context without the proceeding page and the messages on June 21st and June 29th.

At the same time, Mr. Brown, if you're seeking at some point in time to cross-examine a witness about your messages on June 18th, those lack context without also considering what the apparent motive is here on June 21st and June 29th.

It's apparent this is a quasi sort of self-defense case. So we are dealing with a 404(b) question under Perry, in that the State is seeking to introduce evidence of prior bad acts, AKA, that perhaps the Defendant was selling marijuana for Mr. Atkins and was short money as motive for Mr. Ritter to possibly kill Mr. Atkins.

It also stands to reason that if they had been in this relationship of supplier and sub-dealer, or whatever, for some time, it would stand to reason that Mr. Ritter might have knowledge of how much cash money Mr. Atkins might have in his possession.

So, the Court would conclude that the State's desire to introduce, especially in light of what I'm hearing the defense is seeking to introduce, the State's desire to introduce the text messages of June 21st and June 29th, would be extremely relevant to the issue of motive for Mr. Ritter to potentially commit these crimes, and would be very probative on that particular question.

And, of course, I'm well versed in 404(b) because I -- last week we went through this extensively, but it was under a common scheme or plan exception, and came to the ultimate conclusion that it was -- and Perry, that actually was applied subsequently in the same two cases that came out that day, Cotton and -- same day Perry came out, two other cases came out, one of them was Cotton, the other one was something else. I can't remember. Either way -- and Perry was applied in those other two cases as it relates to common scheme or plan.

This is a motive type of a case. I've still

got the obligation, of course, to do a 403 assessment to determine whether the probative value outweighs any prejudicial effect to the Defendant.

Is there any other evidence along those lines, is there any other evidence as to motive where the State would be in a position of introducing -- other than these text messages, are there any witnesses that are going to be able to testify as to bad blood, or that Mr. Ritter owed Mr. Atkins money, or that Mr. Atkins was angry at Mr. Ritter for not having paid back money, or anything like that? Do y'all have anyone along those lines?

MR. GRAHAM: Nikki Hicks is the one that had this communication with Samir.

THE COURT: Right. I assume you got her.

MR. GRAHAM: Yes.

THE COURT: Other than Nikki. I'm sorry.

MR. GRAHAM: No.

THE COURT: Okay. Mr. Brown, what are your thoughts. I mean, I would tend to agree. On the plus side, basically, my ruling, I will tell you, it's kind of being what's good for the goose is good for the gander. And if you're going to be able to allude to the fact that the decedent was about to go gangsta on your client, obviously, he would have had motive

to go gangsta on your client.

And, of course, the text message of June 21st definitively demonstrates that the decedent was, in fact, a drug dealer. No other way to read that one. And, of course, does not paint your client with the most flattering brush. But at the same time, I sincerely doubt that the jury is inclined to believe that they were just really, really, really good friends.

MR. BROWN: Cousins. Judge, my thoughts are this: There's two ways that we think that you could rule. One is that ours comes in, theirs doesn't. Ours should; it's under 404(a). Theirs doesn't meet the 404(b) standard for motive because it's actually they're arguing reverse motive. He owes money, so he was going to drive to the man he owes money to, that had a lot of guns. And I understand that's an argument for closing, but that's kind of counterintuitive to say that's a motive to drive to the guy that owes you money.

Now, having said that, the other way we can analyze it is that until we get ours in, they can't get theirs in to paint that complete picture. And so we could all authenticate them today, and if we don't get ours in, theirs doesn't come in because -- and I'll put it this way, your 403 analysis is different if ours is not in evidence.

Well, the entire analysis, but the 403 -- to the extent the motive is that he doesn't have any money, I get that. I mean, what did Mr. Furtick say, doesn't everybody want to make money. I mean, otherwise I wouldn't have -- I like Mr. Ritter, but I do this for a living too.

So, I would agree with them on that. But when we really get to the 403 part of it, I mean, it's really prejudicial if we don't have the going gangsta. Then, it's just our guy buying some pot.

THE COURT: I pretty much indicated that I think that you can.

MR. BROWN: But the jury won't hear it that way. And then -- Judge, and then they don't call Nikki, and then where are we mid-trial?

THE COURT: I don't think they can avoid calling Nikki.

MR. BROWN: But, Your Honor, if it's not in -- and don't get me wrong, there's also this theatrical part of it. They get theirs first without ours. But legally speaking, we could get the rug pulled out from underneath us, and there's nothing you could do, I don't think, to change it.

THE COURT: All right.

MR. BROWN: You could conditionally

admit ours, subject to linking it up through Nikki. They could wait to publish theirs until we get ours in. We could both authenticate it. They don't get to publish it, just like what we're trying to do.

THE COURT: All right. Here's what we're going to do, and it also allows me to kick the can down the road a little bit. You raised a valid point, that if they should elect not to call Nikki, and I don't see how they could avoid it. Sincerely, I do not see how they can avoid calling her as a witness. But you raised a valid point that should she not be called that creates a problem for you under 404(a), and how do you get your stuff in -- or the text exchange in.

Now -- and it also alters the 403 analysis and the prejudicial effect and probative value because if she is not called, if she does not testify, we're then stuck with the impression, okay, you know, Mr. Atkins is perfectly okay with Mr. Ritter, and it's Mr. Ritter who's, you know, on the cuff to Mr. Atkins and has sole motive. I think the complete picture is something that ultimately both of you are going to be able to do something with here. It's clear that Mr. Ritter, at least ---

MR. BROWN: You know, completeness is 3,000 pages of texts.

THE COURT: Well, I know. But I'm just saying that, you know, you take the two messages together, in isolation, probably neither of them should come in. But as a practical matter, they do paint a picture of the Defendant owing Mr. Atkins money, Mr. Atkins being angry about the fact that, of course, the Defendant is still on the hook or on his cuff, and so there is a rule of completeness issue here. There is a 403-type issue.

I do believe, ultimately, it all comes in. The only question is when and how because -- and you had a thought, Mr. Graham?

MR. GRAHAM: I do.

THE COURT: Yeah.

MR. GRAHAM: We plan on calling Nikki.

THE COURT: Right. Obviously.

MR. GRAHAM: If for some reason it doesn't happen, we would stipulate that they get to put it in, and they can say who it's from, and who the parties are that's talking.

THE COURT: Okay.

MR. GRAHAM: And that way we don't have to worry about the order because they will get it in.

THE COURT: I understand. I think the conversation needs to come in as a whole though, because

this is obviously a conversation between -- so we either do it all at once with the extraction guy, and that's part of the 403 and the rule of completeness kind of thing, because you've got a transaction -- you've got a relationship between these two that's been poisoned over money or the lack of a repayment.

And what they're putting out there explains animosity on behalf of the decedent towards him. And what you're putting out there explains motive for why the Defendant would perhaps want to kill the -- or rob the decedent. They really go hand in hand, I feel. You had a thought?

MS. FULLER: Yeah, Judge, because it's -- that text message is already in the record. They published it in a question on cross-examination yesterday.

MR. BROWN: It was denied.

MS. FULLER: But it was still -- so it's not ---

MR. BROWN: I asked if Mr. Furtick knew ---

MS. FULLER: Well, I was ---

THE COURT: Which witness? I'm trying ---

MS. FULLER: I was speaking. On cross-examination of Rodney Furtick, he quoted the exact text message. And so he's already built up to

confirming with our witnesses that this message exists. So it's already in the record. The jury has already heard that Nikki sent a message -- that Samir sent a message that Black don't know my gangsta.

THE COURT: I think Mr. Furtick though indicated that he was unaware of it.

MS. FULLER: He didn't know anything about it.

MR. BROWN: That's right. And you sustained the objection.

THE COURT: Right. Well, I mean, the ---

MR. BROWN: Which is proper.

MS. FULLER: Well ---

THE COURT: It's the answer that's evidence; it's not the question. The question merely gives meaning to whatever answer that is given. My biggest problem is not so much admissibility under 404, because I agree with y'all 100 percent that it is good evidence of motive.

It's the prejudicial aspect of it under 403, unless it comes in at the same time as State's -- Defendant's 21. That's what got me more worried than anything else. The prejudice is less -- the prejudice to the Defendant, and that's what I have to be concerned of under 403. The prejudice to the Defendant of what

you're seeking to introduce is substantially less if Defendant's 21 comes in contemporaneously with it.

That's my point, and I think that was kind of Mr. Brown's point. I think he kind of makes a good point, and I agree with him on this one. So the question is how we do it, either through the next witness, which I'm fine it, or we wait until Nikki tomorrow, and do it all at the same time. But kind of a complete picture of the animosity and the financial relationship needs to be put out there, and it needs to be put out at the same time to lessen the potential prejudice.

MR. GRAHAM: While we're pondering on that, two questions for clarification.

THE COURT: Yes, please.

MR. GRAHAM: I have not heard that they are stipulating that their client was there, so identity is still an issue as far as we're concerned as well. I mean, aside from ---

THE COURT: Yeah, and to the extent, that is correct. I mean, I'm hearing that their guy was saying that he was in the fight for his life against Furtick or somebody. I don't know, so I'm assuming. To the extent that you're arguing that maybe identity could be

an issue, I think it follows the same line of reasoning as motive though, as far as the 404(b) analysis.

MR. GRAHAM: I wanted to be clear. All that we've heard is in opening statements. There has been nothing else yet.

THE COURT: Fair enough.

MR. GRAHAM: And then, secondly, we would ask for -- 404 analysis and 403 analysis. We can't tell -- so we have to have this in to tell the story. It was so close in time, an explanation of why they were getting together, and what was going on between them.

MR. BROWN: And that goes with our same piece of evidence too. And we actually were going to argue res gestae too at some point.

THE COURT: If it's res gestae, there's a little bit of a temporal problem in the sense that the statement from June 21st is 14 days old, the one from June 18th is obviously 17 days old. So, you're talking about conversations that took place two weeks prior to a murder.

You know, excited utterance, res gestae, call it what you will, I agree that you're telling a complete story by admitting these text messages, but we're still back at square one. And even

if it is res gestae, something that's 14 days old is relevant, then something 17 days old, it relates to the same transaction, it's equally res gestae, at least in my mind.

MR. GRAHAM: And I can agree. We're not saying it shouldn't come in, it's just, like you said, the manner of how it comes in.

THE COURT: Yeah. The jury is standing in the hallway. Y'all want to think about this because I'm kind of -- I'm telling you that they're both coming in. And how we do it and when we do it is a different matter.

MR. GRAHAM: We have two witnesses that we can do before you have to rule on that.

THE COURT: Okay.

MR. PHILLIPS: The last thing is in that report we were just given regarding Nikki Hicks ---

MR. BROWN: Unrelated.

MR. PHILLIPS: Yeah, this is totally unrelated to what we were just talking about. There's two weapons found, and one of them is a Glock 23, and there would definitely be some cross for expert, possibly that ---

MR. BROWN: Very short, but we would like to cross expert Greer about a Glock 23.

MR. GRAHAM: 40 caliber.

MS. FULLER: 40 caliber.

MR. BROWN: We're going to have to give away the cross, but we I don't mind doing it to get it.

THE COURT: I'm sure Greer is still around.

MR. GRAHAM: They can ---

MR. BROWN: Yeah, but we didn't get that when we were entitled to it.

MR. PHILLIPS: Yeah. So to make the record clear, we were given this report after his testimony.

MR. BROWN: And we asked for it before.

THE COURT: Let's see how Ms. Hicks testifies.

MR. BROWN: But this is a gun question.

THE COURT: I understand. And ---

MR. BROWN: Not possession of a gun question.

THE COURT: I understand. It may very well be, and I agree that you were probably entitled to that. But at the same time, they only became aware of the expungement thing yesterday. So -- and I realize -- I appreciate everyone jockeying for position here, the State's effort to make the defense call the witness, or put something into evidence.

I understand the Defendant's reluctance

to do exactly that as well. Perhaps on motion of the defense, the Court would be more than happy to ask Mr. Greer to retake the stand and see where that goes. I don't know. I'll think about this later.

MR. BROWN: That would be our motion, that we recall him to ask this, related to the Glock 23.

THE COURT: And maybe you can bring a copy of that little part about the Glock so that I know what you're talking about.

MR. BROWN: Yes, sir.

THE COURT: And I can figure out what question you want to ask.

MR. BROWN: Yes, sir.

THE COURT: And I understand it's tactical, but they could probably figure it out too. Yes, sir.

MR. GRAHAM: Very briefly, I would say that I did not get that report, and I did not get this until lunch.

THE COURT: I appreciate you bringing that up because you're correct. At sidebar, you indicated that you had to consult with Nikki, it was PTI. And, obviously, there's certainly statutory things that attach. And I know that he -- and I know that you know, Mr. Brown, that he's not playing -- trying to play hide the ball or anything.

MR. BROWN: That's right. And I want to say, because we have some law clerks here too, Brady violation is considered to be prosecutorial misconduct, and it's really ugly. And I wish they had another term besides that ugly term because there's no question that these two prosecutors weren't aware of it.

THE COURT: Correct.

MR. BROWN: In fact, we talked amongst ourselves for maybe two years about do they really not know about it.

MR. PHILLIPS: It was on the public ---

MR. BROWN: Right. But they really don't. We agree with that, and so I do want our law clerks to know that, and I want them to know that.

THE COURT: Well, we're bumping up against the time as to getting out of here at five o'clock. If the -- I mean, you know, if the cell phone extraction guy, if he's going to testify today, and we're going to be out of here at five, you may want to call him next.

You know where we stand, and we're going to have to figure something out instead of doing the other two short witnesses because we are 20 minutes -- one hour and 20 minutes to lift off as far as what I explained at sidebar in terms of why we've got

to be out of here today earlier -- much earlier than yesterday.

MR. GRAHAM: We have to call him. They have phone numbers before they can publish the extraction.

THE COURT: Well, he'll be the next witness then. Let's go ahead and bring the jury in.

(Jury enters the courtroom at 3:39 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. Obviously, I kept you standing outside in the hallway for a reason. As you were probably all well aware, excessive sitting, which you have been doing all this week, is bad for your heart, and can lead to a strokes and embolisms. And so out of concern for your personal health, I decided to keep you standing in the hallway for 30 minutes. And if you believe that, I've got some oceanfront property in Arizona that I can sell you, and I'll throw the Golden Gate in for free, okay?

After I sent for you, there was another legal matter that I needed to take up with the attorneys, and so I sent you back down. I wanted to hash that out. It took longer than I expected. I apologize for that. It was an unexpected issue which arose over lunch, and it only became apparent when I -- just after I sent for you. So, I hope you enjoyed the

exercise. You've been sitting enough anyway, all right.

With that, Mr. Graham, you want to call your next witness.

MR. GRAHAM: Thank you, Your Honor. The State calls Kenyetta Moorer.

MS. KENYETTA MOORER was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Have a seat. Once you're seated, you can remove your mask. Please speak up loud and clear. State your full name, spelling your last.

THE WITNESS: Kenyetta Moorer, M-O-O-R-E-R.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Ms. Moorer, how are you related to Elzie Mack?

A. I am his spouse.

Q. And how long did you know him?

A. I've known him for ten years. At the time, it was ten years.

Q. And you all have a child together?

A. Yes, our son is now nine.

Q. And at the time that Elzie was killed, how long have you all been married?

A. We were married for two months.

Q. And at that time, was Elzie working?

A. Yes.

Q. What was he doing?

A. He was working at Fatz Cafe at that time.

Q. And did he have, at that time -- well, just prior to that, did he have more than one job?

A. He did, he did. He had two jobs at one time. I don't remember -- when he stopped working that other job, he would work one job half the week, and then the other job during the other half of the week. Due to our son getting a little older, he started putting him in extracurricular activities, so it was easier for him to take the early part of the week to take him to those activities, and I would do the last part of the week.

Q. There have been some questions by the defense of witnesses about Elzie shooting Samir. Did you hear those questions?

A. I did, yes.

Q. Do you have any reason, to your knowledge, of why Elzie would do that?

A. No, not at all. They have been friends for well over -- probably almost five years at that time.

Q. So describe the relationship.

A. They would hang out; they would go places together; they would party together occasionally, and just different family-friendly functions they were

together.

Q. Now, Elzie smoked marijuana, right?

A. Yes.

Q. Did he buy marijuana -- who did he buy marijuana from?

A. It would vary. Of course, he had different people that he would go to. Of course, it would be someone that he could trust, so it wouldn't always be the same person.

Q. So at some point, did he buy from Samir?

A. He did, yes.

Q. Do you know the amounts that he bought from Samir?

A. No, I don't.

Q. Did he -- Elzie, did he sell marijuana? How would you describe what he did with the marijuana he bought from Samir?

A. So, typically, my husband was a heavy smoker. That's the first thing he did when he woke up; that's the last thing he did at night. So, typically, mostly for him, it was more for personal use.

Of course, we have family and friends that are really close to us, those are the young people that would come to our home, so no strangers. So they know that he's usually always going to have something

of a higher grade, something that's good simply because he's not going to just smoke anything. So, typically, he would sell some to family and friends in small quantities.

Q. He didn't make so much money that he didn't have to work, did he?

A. No, not at all. No, I wasn't having that.

Q. So would you even characterize him as a drug dealer?

A. I would not, no, because again we only have family and friends that would come to our home. I literally can count on one hand how many of those people that he would actually sell to that would come to our home.

Q. What kind of car was Elzie driving back on July 5th of 2018?

A. He was driving a Honda Accord. I don't know the year, but I do know it was a gold Honda Accord.

Q. State's No. 49 is in evidence. Do you see Elzie's car?

A. Yes.

Q. Is that the one I'm pointing to right there?

A. Yes.

Q. State's No. 19, which is a still shot from a video from a hardware store on Glenn and Sox Street.

Do you recognize the vehicle that I'm pointing to in that?

A. Yes.

Q. And whose vehicle is that?

A. That's his car, Elzie Mack.

Q. At the time, back in July 5th of 2018, did you and Elzie live at [redacted] Tom Lucas Lane, in Pelion?

A. Yes.

Q. And let me show you State's 92 in evidence. Do you recognize those two phones?

A. Yes, I do.

Q. Both of them?

A. Yes.

Q. And whose phones are those?

A. They're my husband's, Elzie Mack.

Q. Let me read a number for you, [redacted]. Do you recognize that number?

A. Correct, yes. That would have been on the phone that has the cracked screen that says Item 6.

Q. This one over here?

A. Yes.

Q. And then let me read another one to you and ask if you recognize it, [redacted]?

A. Correct, yes. I remember that one. So that's our -- that was on our line together, and that was

on the one with Item 7.

Q. When was the last time that you had an opportunity, I guess, to talk with Elzie?

A. An actual conversation would have been on July 4th. On July 5th, he pocket dialed me. So, I -- some time, once I realized he called me while I was at work, I gave him a call back. He said that he pocket dialed me, so he hung up. So there was really no formal conversation that day because I went to work early that morning.

Q. So the pocket dial that you're talking about, is that the one listed approximately at 1:30 in the afternoon?

A. Yes, correct.

Q. And after -- in the afternoon, early evening, of July 5th, 2018, did you learn that Elzie had been shot?

A. Yes.

Q. And did you go to the hospital?

A. I did.

Q. And when you went there, were you able to see the injuries that he had?

A. Yes. So, I went into the room, and when I went in, they initially told me that he had -- his head was bandaged because it was leaking brain matter, and that

his wrist -- he had a hole in his wrist, so they bandaged that as well.

Q. Just one hole in his wrist?

A. I can't remember exactly what it was. I definitely remember that they told me there was a hole there. And I remember that it was wrapped, but I don't remember anything else beyond that.

Q. Did they tell you anything about the bullet?

A. They did tell me that it was still there. They said there was no sense in actually doing any kind of operation because of what they had told me previous before going to the room.

Q. Thank you.

MR. GRAHAM: That's all, Your Honor.

MR. BROWN: May it please the Court.

THE COURT: Yes.

MR. BROWN: Ms. Moorer, we're sorry for your loss. Your Honor, I have no questions.

THE COURT: You can step down. Thank you. Solicitor, call your next witness.

MR. GRAHAM: Kerria Woods, Your Honor.

MS. KERRIA WOODS was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Once you're seated, I need you to speak up loud and clear. State your full name,

spelling your last. You may remove your mask.

THE WITNESS: Kerria Woods, W-O-O-D-S.

MR. GRAHAM: And, Ms. Woods, your voice is very soft, so if you could scoot up to the microphone and pull it to you.

THE COURT: Pull it a little closer to you there.

MR. GRAHAM: Thank you.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Where do you live, not address, but what city?

A. Estill.

Q. And you're here under a subpoena today; is that correct?

A. Yes.

Q. And you do not want to be here today; is that correct?

A. No.

Q. You know Damien Ritter, true?

A. Yes.

Q. Have you seen him in the courtroom?

A. Yes.

Q. Sitting over at the table with the black mask on, with the yellow shirt?

A. Yes.

Q. How long have you known Damien Ritter?
A. For years.
Q. How many years?
A. For about ten or twelve years.
Q. Ten or twelve years?
A. Uh-huh.
Q. And did you date him for a while? Spent some time with him?
A. Yeah.
Q. And what nickname did you know him by?
A. Black.
Q. Black?
A. Uh-huh.
Q. And what kind of vehicle did he drive back around July of 2018?
A. A Tahoe.
Q. Do you remember the color?
A. Burgundy.
Q. A burgundy Tahoe. Back around July 1st of 2018, did you communicate with him through text and by using a phone and talking to him on it?
A. Yes.
Q. And the number [redacted], do you recognize that as being the number that you had for Black at that time?

A. Yes.
Q. Let me show you State's 196 and 197.
MR. BROWN: What were those numbers again, Mr. Graham?
MS. FULLER: 196 and 197.
MR. BROWN: Thank you.
BY MR. GRAHAM:
Q. 196 and 197, do you recognize those?
A. Yes.
Q. And these are screen shots of your phone that you had let police officers take pictures of back in 2018; is that correct?
A. Correct.
Q. And that it fairly and accurately depicts the phone we just talked about with Black, and the conversations you had on or around July 1st of 2018?
A. Yes.
Q. And you communicated on that number up until after July 5th of 2018?
A. I'm not sure.
MR. GRAHAM: Your Honor, the State, I believe without objection, will put these into evidence.
THE COURT: Which numbers are they again? I missed that. State's ---

MS. FULLER: 197 ---

MR. GRAHAM: 196, 197.

MR. BROWN: The only thing I can say, Your Honor, is I wasn't very clear on what she had said on her answers about talking to him on that number.

THE COURT: Would you ask that question ---

MR. BROWN: It's just because it was ---

MR. PHILLIPS: Yeah, we're having a hard time.

MR. BROWN: So, I have the right information.

THE COURT: Well, I'm hearing there's no objection, so if you need clarification ---

MR. BROWN: There's no objection.

THE COURT: If you need clarification on that question, you can ask it over.

MR. BROWN: Yes, sir.

THE COURT: Go ahead, They are in evidence, 196 and 197.

(State's Exhibit Nos. 196 and 197 are entered into evidence.)

BY MR. GRAHAM:

Q. The phone number at the top that you were talking about, that's the [redacted], correct?

A. Yes.

Q. And that's Black's number back in July of 2018?
A. Yes.
Q. And the date on here, the last communication you had, that was July 1st of 2018; is that correct?
A. Yes.
MR. GRAHAM: Thank you, Ms. Woods. Please answer any questions they have for you.
MR. BROWN: We have no questions, Your Honor. Thank you.
THE COURT: Ma'am, you can step down. Thank you for coming.
THE WITNESS: Okay.
THE COURT: All right. Next witness is the extraction. Okay.
MS. FULLER: Are we ready?
THE COURT: Yeah, I apologize. I need a comfort break.
MR. BROWN: Yes, sir, I do too.
THE COURT: All right. Ladies and gentlemen, I know we have been out here -- I saw one of y'all coming in with me on the elevator, and I've been working ever since she rode up the elevator with me. I need a comfort break; I'm taking one. I'm the judge. Y'all go back downstairs. I'll get you back up here in a few minutes, okay? Thanks.

(Jury exits the courtroom at 3:55 p.m.)

THE COURT: I'll be back on the bench ten minutes from now, five after four, okay?

(Recess taken.)

(Back on the record.)

THE COURT: Thank you. Have a seat, please. I think I saw Mr. Brown outside. Is he coming?

MR. PHILLIPS: Yes, Your Honor.

MR. BROWN: Thank you, Your Honor. I apologize.

THE COURT: No worries.

(Jury enters the courtroom at 4:08 p.m.)

THE COURT: The jury is back and seated. Please call your next witness.

MS. FULLER: Thank you, Your Honor. State calls Agent Wasiak. I apologize, Senior Special Agent.

SENIOR SPECIAL AGENT FARAND WASIAK, was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Once you're seated, state your full name, spelling your last. You may remove your mask.

THE WITNESS: Farand Wasiak. Last name, W-A-S-I-A-K.

DIRECT EXAMINATION

BY MS. FULLER:

Q. Special Agent, can you introduce yourself to the jury?

A. Farand Wasiak. I'm a senior special agent with SLED'S computer crime unit.

Q. And can you describe your training and experience for the jury?

A. Yes, I'm our unit's field training agent. I train all the newer agents in everything police related and everything also in digital forensics related. I'm a mobile device forensic instructor with the International Association Of Criminal -- Computer Investigative Specialists. I've been doing digital forensics and computer crimes my whole tenure at SLED, which has been since 2005.

Q. Thank you.

MS. FULLER: At this time, Your Honor, the State seeks to introduce Special Agent Wasiak as an expert in digital forensics.

MR. BROWN: Without objection.

THE COURT: All right. Again, ladies and gentlemen, the parties agree that Agent Wasiak is an expert in the field of digital forensics, so he can give opinion testimony in that area that

you use -- that you may use as you deem appropriate. Please continue.

MS. FULLER: Thank you, Your Honor.

BY MS. FULLER:

Q. And as it relates to this case, did you receive nine cell phones and a DVR for processing?

A. I did.

Q. And in terms of the DVR, were you able to access that DVR?

A. I was not able to access the DVR.

Q. But it was in your possession for some period of time?

A. That it was.

Q. Okay. I'm going to show you what's been marked as, I believe without objection, State's 153 and 154 and ask if you recognize it.

MR. BROWN: Judge, that's ---

MS. FULLER: That's the ones I showed you. Sorry.

MR. BROWN: Just subject to the other rulings, Your Honor.

THE COURT: Subject to all pretrial rulings.

MR. BROWN: Thank you, Your Honor.

THE WITNESS: Yes, this is the DVR.

BY MS. FULLER:

Q. And is this the DVR that was in your possession for a period of time?

A. Correct, yes.

Q. Okay. And it came to you from West Columbia?

A. Correct.

Q. And you returned it to West Columbia?

A. Correct.

Q. Okay.

MS. FULLER: At this time, Your Honor, State seeks to introduce State's Exhibits 153 and 154.

THE COURT: Subject to all prior objections and pretrial rulings.

MR. BROWN: Thank you, Your Honor.

(State's Exhibit Nos. 153 and 154 were entered into evidence.)

BY MS. FULLER:

Q. And, for the record, Agent, what item number is it on your report?

A. It is going to be our item -- SLED's number Item 10.

Q. Okay. And you received nine cell phones in this case?

A. I did.

Q. I'm going to show you what has been previously shown to defense counsel, I believe without objection,

just have you identify them. It's going to be photos 79, 81. I apologize, they're stuck together. 84, 86, 87. Take a look at those photos. And then 88, 90, 91, 93, 94, 95, 96, 98, 99, 100, 102 and 103.

A. Yes.

Q. And how do you recognize these?

A. The descriptions on there match the information I have on my forensic report.

Q. Okay. And so these are the items that you received -- are these your photos?

A. Yes, those are our intake photos. They are taken at the time of evidence when the phones are brought to us.

MS. FULLER: At this time, Your Honor, the State will move those item numbers in evidence. Do you need them again, Your Honor?

THE COURT: I got the last one is 103. What was the first one?

MS. FULLER: Seventy-nine.

THE COURT: 79 to 103?

MS. FULLER: Oh, no, Your Honor.

THE COURT: Okay.

MS. FULLER: It's 79, 81, 83, 84, 86, 87. 88, 90, 91, 93, 94, 95, 96, 98, 99, 100, 102 and 103.

THE COURT: Subject to all previous

objections and pretrial rulings, those will be in evidence.

MS. FULLER: These are cell phones.

MR. BROWN: And I think these are photos of cell phones, Your Honor, so they're without objection.

THE COURT: Oh, okay, they're without objection. That makes it easy. Those are in evidence, without objection.

MS. FULLER: Thank you.

(State's Exhibit Nos. 79, 81, 83, 84, 86, 87, 88, 90, 91, 93, 94, 95, 96, 98, 99, 100, 102 and 103 were entered into evidence.)

BY MS. FULLER:

Q. Publishing now just for the jury. Looking at State's 79, is this your SLED Item 1?

A. Yes.

Q. And then for reference for the jury, Item 78, State's Exhibit 78. And looking now at 81, is this your SLED Item 2?

A. Yes.

Q. For the jury, State's Exhibit 80, Item 2. Looking at 83, is this your SLED Item 3?

A. Yes.

Q. And then 84, the back up to SLED Item 3?

A. Yes.

Q. And then, for the record, Item 3 is State's Exhibit 82 from the residence. Looking at 86, is this your SLED Item 4?

A. Yes.

Q. As well as 87?

A. Yes.

Q. And then 88?

A. Yes.

Q. For reference, from the residence, State's 85 is Item 4. Looking at 90 and then 91, is that Item 5?

A. Yes.

Q. And do you -- also for reference, for State's 89, Item 5, in the photographs that's already in evidence. 86 -- I mean, State's Exhibit 93 and then 94, is that State's -- is that your Item No. 6?

A. Yes.

Q. Now looking at State's 92, for reference in the home, that's Item 6. And then looking at State's 95 and 96, is this your Item 7?

A. Yes.

Q. And back to State's Exhibit 92, Item 7, identified in the residence. Looking at State's 98, 99 and 100, is that your Item 8?

A. Yes, it is.

Q. And for reference, State's Exhibit 97, already identified as Item 8 from the residence. And then looking at 102 and 103, is this your Item 9?

A. Yes.

Q. And State's 101 for reference is Item 9. And I'm just going to go through your examination. Did you perform extractions on these devices, or were you -- did you receive all these devices to perform cell phone extractions on?

A. Yes.

Q. Of all the devices you received, can you tell me whether or not you received an IPhone associated with number [redacted]?

A. Say the phone number one more time. I'm sorry.

Q. [redacted]?

A. No, I did not.

Q. In looking at SLED Items 1, 2 and 3, can you tell me whether or not those devices were active?

A. They were, yes.

Q. Okay. And for SLED Item 1, do you have -- did you identify a phone number associated with that device?

A. I did.

Q. And what is that phone number?

A. For Item 1, it's going to be [redacted].

Q. Okay. And for Item 2, did you identify a phone number associated with the blue IPhone in this case?

A. [redacted].

Q. And as it relates to Item 3, the white or silver IPhone with the black case, did you develop a phone number associated -- as it relates to that phone?

A. I did, [redacted].

Q. And Item 4, did you develop a phone number as it relates to that device?

A. I do not believe I did, no.

Q. Okay. Can you tell me whether or not that device had any activity on it?

A. Not much. Not as much as a modern-day cell phone should. It was, I guess you can say, empty, barely -- mostly empty.

Q. Okay. And can you -- let me streamline. Was -- December 26, 2017 appeared to be the last entry in the device?

A. That is correct. It was -- a contact entry was made.

Q. Okay. Was there a call log?

A. Unable to pull a call log on that phone.

Q. Okay. For all intents and purposes, that phone or device appeared to be in use?

A. No, it did not appear to be in use.

Q. Looking at Item 5, the device that's under the Blu-Ray disc. Did you perform an extraction on that device?

A. I did. Oh, I'm sorry. I attempted an extraction on this device.

Q. What type of device is Item 5?

A. It's a Samsung SM-J100VPP.

Q. And is that a device that has a manufacturer's release date of May of 2015?

A. It does.

Q. Can you explain to the jury your procedure of attempting or conducting a cell phone extraction?

A. Yes. For this particular phone, when an item is brought to us -- a phone is brought to us, it's placed into evidence. Then when I'm ready to do the extraction on it, I take it out of evidence. I usually need to charge; I'll charge it. We power the phone on.

If we do not have -- if we have a password to the phone, we have to conduct a few steps on the phone to make it eligible to talk to the extraction machine, which is a little box like this that doesn't motion, and I do the software and everything on the computer itself that tells the box what to pull -- to pull the full extraction from the phone.

This particular phone was password protected.

We did not have the password available to us. The software and the hardware were unable to crack the password on this particular one, but it did contain a SIM card, and I was able to perform an extraction on the SIM card, which was in the phone.

Q. Okay. And did the SIM card have any data on it?

A. It did. It had the telephone number.

Q. Okay. And what's the phone number associated with that device?

A. It's going to be [redacted].

Q. Okay. And now looking at SLED Item 6 and 7, were you able to develop a phone number for those two devices?

A. For 6 and 7, yes.

Q. And what's the phone number for 6?

A. [redacted].

Q. And the phone number for 7?

A. [redacted].

Q. Okay. And these two devices appeared to be active?

A. I believe so, yes.

Q. Okay. And now looking at SLED Item 8, the other flip phone. Were you able to perform a cell phone extraction on that device?

A. I was not. It was not supported by the

Cellebrite UFED reader.

Q. Okay. What were you able to do with it?

A. The old-fashion way. I took cameras -- I took screen shots with the camera, just showing the contents of the phone.

Q. And was there much contents in it?

A. There wasn't. There was maybe some, like, Verizon-based contact information, maybe two or three contacts in there, and then that was about it. A pretty much empty phone.

Q. And looking at SLED Item 9, were you able to perform a charge on that device?

A. I was.

Q. And do you know when that device was last used -- in use?

A. I had a last use date of 5/27/2018, and I believe it was an incoming SMS.

Q. And do you have a phone number associated with that device?

A. [redacted].

Q. For preparing for today, were you asked to compare contacts amongst the device -- contacts or communications in the phone?

A. I was.

Q. Okay. And where you able to determine any

similarities in the contact dates among several of the devices?

A. I was.

Q. Okay. And so did SLED Items 1, 2 and 3, and I'll display them again, 1, 2, 3, along with 9, 8 and 4, have similar contacts saved in this device?

A. They do.

MS. FULLER: At this time, Your Honor, State seeks to introduce State's Exhibit 212, pursuant to state statute 19-5-520, and I believe it's without objection from the defense.

MR. BROWN: It is without objection.

THE COURT: 212 is in evidence.

(State's Exhibit No. 212 was entered into evidence.)

BY MS. FULLER:

Q. Agent, I'm going to hand you this document that's in evidence, and ask you to publish the name associated with this document.

A. Damien Ritter.

Q. And the address?

A. [redacted] Roberts Street, in Estill.

Q. And the phone number?

A. [redacted].

Q. Okay. And, for the record, this is a business record from an auto insurance. And that's the photo

we just published, [redacted]?

A. It is.

Q. And that's the phone number associated with Damien Ritter. I'm going to show you what's been marked as State's 192.

MR. BROWN: No objection, Your Honor.

THE COURT: Very good. State's 192 will be in evidence, then. Or are you using it demonstratively?

MS. FULLER: It's in evidence.

THE COURT: Okay. Very good. 192 will be in evidence.

MS. FULLER: Thank you, Your Honor.

(State's Exhibit No. 192 was entered into evidence.)

BY MS. FULLER:

Q. And, Agent, have you reviewed this document?

A. I have.

Q. And are the SLED item numbers of which phones you received associated with the appropriate number?

A. They are.

Q. Are you able to see this as well?

A. I am.

MS. FULLER: And, Judge, can you ask the jury if everyone can see that? I can move it around.

THE COURT: The podium is blocking the gentleman on the end. Maybe you can pull the podium

towards the Elmo a little bit and that might help. He's got it now.

MS. FULLER: Judge, may we approach for a moment?

THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Ladies and gentlemen, one of the lawyers needs a break. We're going to take a brief break. I'll get you back up here as soon as possible since -- they feel a little bit better, all right. Go somewhere and back down there, and we'll have you back up here really, really soon, okay? So sorry.

(Jury exits the courtroom at 4:29 p.m.)

(Recess taken.)

(Back on the record.)

(Jury enters the courtroom at 4:44 p.m.)

THE COURT: Have a seat, please. The jury is back and seated. Ladies and gentlemen of the jury, thank you for your continued patience and your understanding. Mr. Graham, if you will continue, please.

MR. GRAHAM: Thank you, Your Honor.

BY MR. GRAHAM:

Q. Agent Wasiak, let me show you three different

discs and ask if you recognize it. The first one is State's 219.

A. Yes, I do.

Q. And how do you recognize it?

A. I reviewed the items, and I initialed and dated it when I reviewed them.

Q. And what is this? What is it?

A. It's a digital copy of my -- my Cellebrite extraction for the cell phone.

Q. And very briefly, we've been using the word extraction. What is an extraction?

A. An extraction is basically the full -- the contents of the phone, and they're broken down into categories; your contents, your call logs, text messages, internet history, things of that nature.

Q. Specifically, on 219, what SLED item number was that?

A. I'm sorry. That's SLED Item 1, and that's going to be phone number [redacted].

Q. And let me show you State's 220, and again do you recognize this?

A. I do.

Q. Do you see your initials?

A. I see my initials, and the date I viewed the context of this disc.

Q. And which one is this an extraction for?
A. That's going to be for SLED Item No. 2, telephone number [redacted].
Q. And one more, State's 221, do you recognize that?
A. I do. I initialed it and dated it, and that's going to be SLED Item 3, phone number [redacted].
MR. GRAHAM: And, Your Honor, these are marked for ID at this time.
BY MR. GRAHAM:
Q. Agent Wasiak, let me show you some text messages and ask if you recognize the highlighted text messages as coming out of Item No. 3.
A. Yes.
Q. Okay. And Item No. 3, again, the phone number was what?
A. [redacted].
Q. Okay. And this is part of the printed version of the extraction; is that correct?
A. That is correct.
Q. So starting on the extraction line number 11829, what kind of message was it?
A. It was an instant message.
Q. And was it incoming or outgoing?
A. It was outgoing.
Q. And then what time was it sent?

A. It was sent at 1:15 p.m. on June 18, 2018.

Q. And what number was it from?

A. It was from [redacted].

Q. And who were the participants in that instant message thread?

A. [redacted], [redacted] -- [redacted]. I'm sorry.

Q. And was there a name associated with that [redacted] number?

A. Yes, Queen.

Q. And would you publish the contents of that text message?

A. "Black don't know my gangsta."

Q. The next line, 11830, and that's also an instant message, correct?

A. That is.

Q. Is it incoming or outgoing?

A. It is outgoing.

Q. The time on that one?

A. It's going to be 1:15 p.m.

Q. The same date?

A. On the 18th, yes.

Q. And what is -- who is this one from, and who are the participants in the thread?

A. It's from [redacted], and the participants are [redacted] and then [redacted], the Queen.

Q. And the contents of the message?

A. "He about to find out."

Q. The next line, 11831, also an instant message, correct?

A. Yes.

Q. This time it's an incoming to the phone number [redacted], correct?

A. It's -- I'm sorry. Say that again.

Q. It's an incoming text message to that phone number that belongs to Item 3, correct?

A. Oh, yes. I'm sorry. Yes.

Q. And what time is the message at?

A. 1:33 p.m., on the 18th of June.

Q. And what was that text content?

A. "Yes, really is going to find out."

Q. And then, finally, one more, the last one, 11832, also an instant message, also incoming, what was the time of that one?

A. 2:06 p.m., on the 18th again.

Q. And who are the participants in that thread?

A. The Queen, [redacted], and [redacted].

Q. And the contents of that?

A. "The hard way."

Q. Thank you, Agent. Going back to State's No. 192, this chart up here.

MR. GRAHAM: Would you mind, Your Honor, with your permission, can he step down and just publish ---

THE COURT: Sure.

MR. GRAHAM: --- the numbers and the colors and explain why they're this way?

BY MR. GRAHAM:

Q. If you would just explain -- come over here and face the court reporter, and just read that out so the jury can understand the color coding and the item numbers and the names associated with each one.

A. Yes, [redacted] is associated with the name Rodney Furtick. And [redacted], that's our SLED Item No. 6 that belongs to Elzie Mack; [redacted], that's item -- our Item 7, that belongs also to -- it's associated with Elzie Mack; [redacted], that is our SLED Item No. 1. That comes back to Samir Atkins, or is associated with Samir Atkins; [redacted], that is our Item No. 2, again Samir Atkins; [redacted], that's Item No. 3, belonging to Samir Atkins; [redacted], Damien Ritter, AKA Black; and [redacted], Damien Ritter, AKA Black.

Q. Thank you, Agent. If you would have a seat. Those numbers are also color coded; isn't that correct?

A. I'm sorry. Yes.

Q. Let me show you what's been marked as State's 218 and ask if you recognize this.

A. I do.

Q. And does it fairly and accurately depict communications from the extractions you took between Samir Atkins and Damien Ritter between the dates of June 21, 2018 and July 5th of 2018?

A. It does.

MR. GRAHAM: Your Honor, the State would move 218 into evidence at this time.

THE COURT: All right, subject to the previous objections and all previous rulings, it will be in evidence.

(State's Exhibit No. 218 was entered into evidence.)

MR. GRAHAM: Permission to publish, Your Honor?

THE COURT: You may.

BY MR. GRAHAM:

Q. So looking at 218, it's a communication between who? Are you able to see it from there?

A. It's a little ---

MR. GRAHAM: Your Honor, can he step down?

THE COURT: Yeah. Make sure you project your voice.

BY MR. GRAHAM:

Q. So who's this a communication between?
A. Samir Atkins and Damien Ritter.
Q. All right. What colors are associated with Samir Atkins?
A. Samir Atkins is going to be yellow, and then Damien Ritter is going to be red.
Q. And Damien Ritter also has another color as well?
A. Yes, yellow -- I'm sorry. Green, green.
Q. Green?
A. Yes. I'm sorry.
Q. All right. As we look across the top, the headlines for these are what? Explain the category titles.
A. All right. SLED computer crimes item number; that's our evidence numbers we talked about on evidence Items 1 through 9. The line number, that's a line number from the PDF report. I generate a report from the extraction, okay? The type; contacts, instant message, call, incoming and outgoing. Time stamp, that's the time that action happened on the phone, and that's going to be in our local time. It's already adjusted for local time. The parties involved, everybody; the sender, the receiver. And then, of course, the description, which would be length of call, whoever -- that contact was made, if it was

a text message, the content of the text message.

Q. Going through the very first entry on this, under the column SLED computer crime items number, what number is that?

A. That's Item No. 2.

Q. Okay. And so if we go back over to this chart, that would show us SLED Item 2 right there; is that correct?

A. That is correct.

Q. So the number associated with that is [redacted]?

A. That is correct.

Q. So when you did the extraction on that phone for Item 2, you pulled the items in the first column showing Item 2; is that correct?

A. Yes.

Q. The last one on this page has a 1, so what would that be?

A. That's from Item No. 1.

Q. So we would go back over here and see SLED Item 1, which is that number, correct?

A. Correct.

Q. The [redacted] -- or the [redacted] number?

A. Yes, correct.

Q. Now the time stamp, explain, like, the first one.

What's the date and time of that incoming text message?

A. It's going to be 6/21/2018 at 9:28 and four seconds our time.

Q. There's something in parenthesis that says UTC minus four, what does that mean?

A. Yes, that's Greenwich Mean Time. That's the standard for how the world's clock is set. At that time, we were four hours behind that. Your time change is at that point, so that's what it accounts for.

Q. So the time that we have, the 9:28:04 a.m., is that UTC, Greenwich Mean Time, or is that South Carolina?

A. That's South Carolina time.

Q. Okay. So who is sending the texts and who is receiving them?

A. [redacted] is sending it, and then the [redacted] is receiving it. So it would be Ritter/Black to Samir Atkins.

Q. All right. And what's the contents of the text that Damien Ritter, AKA Black, sent to Samir Atkins on that date and time?

A. "Man, cuz, you've got to give me some time to sell all the weed. If I sell all the weed in two or three days, I won't make no money for me or pay you what I owe you. I'd be making enough just to get a half

bag. I'm going to try to break it all the way down so I can pay you, brah. I have to borrow gas money, so you're shit can't be short."

Q. Moving down there to the next line, what does that line depict?

A. That depicts an outgoing phone call.

Q. It's from who and to who?

A. It's going to be from Damien Ritter to Samir Atkins.

Q. Let's look at -- so it goes to the red number ---

A. Oh, yeah, I'm sorry. It's to Damien Ritter from Samir Atkins.

Q. And then in the description column, what do we see there?

A. A telephone call that lasted 36 seconds.

Q. Okay. The next line down, line number 716, what do we see there?

A. We see the same thing, seeing an outgoing phone call to Damien Ritter from Samir Atkins.

Q. Okay. How long is that one?

A. That's another 36-second phone call.

Q. Moving down to line 751, what do you see?

A. We see an outgoing phone call.

Q. From who to who?

A. It doesn't say.

Q. So we're on SLED Item 2?
A. Yeah, it says SLED Item 2, that would be Samir Atkins.
Q. And it's made to?
A. Damien Ritter.
Q. On that [redacted] number in red, correct?
A. Correct.
Q. All right. And the length of that call?
A. Twenty-eight seconds.
Q. Another instant message?
A. Yes.
Q. Who is that from, whose device is it coming to?
A. It's from Ritter/Black -- I'm sorry. Damien Ritter, and it's going to Samir Atkins.
Q. All right. And what's the date and time?
A. "All right, cuz, my people is trying to get a half bag."
Q. And what's the time stamp on that?
A. That's going to be June 29, 2018 at 2:47 p.m.
Q. The last contact on this page is at what time and from who to who?
A. 6/29/2018, 2:50 in the afternoon, from Damien Ritter to Samir Atkins.
Q. So over in the first column, it's a 1. So we switched to Samir's devices; is that correct?

A. Correct, correct.

Q. So Damien Ritter is communicating with Samir Atkins on two different phones?

A. Yes.

Q. Moving to the next page, line 883, what does that tell us?

A. It's an instant message, incoming, from July 3, 2018 at 12:35 from Damien Ritter to Samir Atkins. It's an incoming instant message, and it says, "I got hit money for you, brah."

Q. Next line, 884?

A. Outgoing text message at 7/3/2018 at 3:47 p.m. from Samir Atkins to Damien Ritter, then it says, "Cousin."

Q. Line 885?

A. Incoming instant message, 7/3/2018 at 3:48 p.m. from Ritter to Atkins. It says, "What's up, brah?"

Q. Line 891?

A. Outgoing instant message, July 3, 2018 at 4:36 p.m., from Atkins to Ritter, and it says, "You on way?"

Q. Co-counsel just handed me a sheet, so you can go sit down, and we'll just do it this way.

A. Okay.

Q. It will make it easier and let you face the jury. All right. I think line 893, Agent Wasiak.

A. Line 893 is an incoming instant message from Ritter to Atkins, and it says, "No, not yet."

Q. Date and time of that one?

A. July 3, 2018 at 4:43 p.m.

Q. And the next page.

A. Line 894 is an outgoing instant message on July 3rd again, at 4:57 p.m. from Atkins to Ritter, "When are you going to slide so I'll know you be around?"

Q. The next line?

A. Incoming instant message on July 3rd from Ritter to Atkins, and the content is "In the morning."

Q. Line 905?

A. Outgoing instant message on July 3rd at 10:16 p.m. from Atkins to Ritter, "Okay, I'll be up."

Q. Moving onto the next day, July 4th, line 554, is that the same device the communication was on for the previous three, or a different device?

A. Let's see -- [redacted]?

Q. Yes. That's the same device or a different device from the three text messages we just had?

A. Oh, it's a different device.

Q. So that's line 554. What is that entry?

A. That's an outgoing phone call to Ritter from Atkins, 33 seconds in duration.

Q. And the date and time?
A. 7/4/2018 at 11:10 p.m.
Q. And the final one on this page, line 558?
A. An outgoing instant message on July 5th, at 9:48 a.m., from Atkins to Ritter, and it says, "Yo."
Q. And the date and time on that again?
A. 7/5/2018 at 9:48 a.m.
Q. And on the last page of this exhibit, line 562?
A. 562, that's an incoming instant message from Ritter to Atkins, "Them niggas bullshit me cuz I fell asleep" -- I'm guessing that's asleep -- "waiting on them niggas. You work today?"
Q. All right. Line 565?
A. Outgoing instant message on July 5, 2018, at 10:14 a.m., from Atkins to Ritter, "I off cuz."
Q. Line 567?
A. Incoming instant message on July 5, 2018, at 10:39 a.m. from Ritter to Atkins, and it says, "Okay."
Q. Line 636?
A. Incoming phone call on July 5, 2018 at two o'clock p.m. from Ritter on another device to Atkins, that's all zeros.
Q. And so what device is that phone call made,

or coming in from?

A. I don't believe -- it comes back associated with Damien Ritter.

Q. And that's the number on the handout that's in green, I think the 9589 number; is that correct?

A. Yes.

Q. And the duration on that call was how long?

A. Zero seconds.

Q. So the phone recorded that it happened, but there was no conversation?

A. Correct.

Q. So the next line, 637?

A. Incoming phone call on July 5, 2018, at 2:01 p.m., from Ritter to Atkins and 31 seconds in duration.

Q. And the last one on this one, line 638?

A. Incoming instant message from Ritter to Atkins on July 5, 2018 at 2:08 p.m., and it says, "Pulling up."

Q. So those last three entries you have are from which phone? So lines 636, 637, 638 have Damien Ritter's numbers. Which numbers were they made with?

A. Not one of the items we have, I don't believe.

Q. No, from the extraction, not a SLED number, but the phone number. So looking at the chart of your extraction, the phone number that all three of those last entries came from?

A. The phone associated with Damien Ritter?
Q. Yes. Which phone number?
A. The [redacted] -- that one?
Q. Yes, sir.
A. [redacted].
Q. That's the one that's in green on the chart?
A. Yes.
Q. Looking back through all of the other contacts that you found on Samir Atkins' phones, on Page 1, 2 and 3, starting with June 21st, and going up until July 5th, other than those three in green, which phone number was Damien Ritter calling from or texting from?
A. [redacted].
Q. The other number?
A. Yes.
MR. GRAHAM: And this is already in evidence, Your Honor, State's 218.
BY MR. GRAHAM:
Q. Agent Wasiak, let me show you another item and ask if you recognize it. This is State's 217.
A. I do.
Q. And do you recognize this as being content between Samir Atkins and Rodney Furtick on July 4th of 2018 that came off Item No. 3?
A. Yes, I do.

Q. And does it fairly and accurately depict what you found on the extraction between those parties and those; phone numbers on those dates?

A. It is accurate.

MR. GRAHAM: Your Honor, the State would move 217 into evidence.

THE COURT: Subject to the earlier objections, same prior objections.

MR. BROWN: That's correct, Your Honor.

THE COURT: It is in evidence.

(State's Exhibit No. 217 was entered into evidence.)

MR. GRAHAM: And I will publish those, Your Honor.

BY MR. GRAHAM:

Q. Agent Wasiak, let me hand you a copy of what's on the overhead. And can you publish, or explain to the jury, what this chart represents and what the contents are?

A. A communication between Samir Atkins and Rodney Furtick. Telephone number for Atkins would be [redacted], and for Furtick [redacted].

Q. You go ahead and publish what content you found on July 4th and 5th between these two numbers.

A. Yes, an outgoing instant message on July 4, 2018 at 10:37 a.m. from Atkins to Furtick, and the content

is, "Yo, my blue phone under your carpet."

Q. And the next line?

A. Next line is incoming instant message on July 4, 2018 at 12:10 p.m. from Furtick to Samir Atkins. The content is, "Yeah, brah, I'm going to bring it to you." Next instant message is outgoing on July 4, 2018, at 12:15 p.m. from Atkins to Furtick, and it's "Whenever you come out. No rush. I can meet as well. I'm off today." And then the final line is an incoming call on July 4, 2018, at 5:27 p.m., from Furtick to Atkins, and it's a kind of a -- duration of 53 seconds for that phone call.

Q. And one more chart, Agent Wasiak. I'm going to show you State's 216 and ask if you recognize those.

A. I do.

Q. And does that fairly and accurately depict the communication between Samir Atkins, Rodney Furtick, Elzie Mack and Damien Ritter on the date of July 5, 2018?

A. It does.

MR. GRAHAM: Your Honor, the State would move 218 into evidence.

THE COURT: 218 is already in ---

MR. GRAHAM: Excuse me, 216.

THE COURT: 216, all right. 216 is in,

subject to the same objections and pretrial -- same objections and rulings.

(State's Exhibit No. 216 was entered into evidence.)

BY MR. GRAHAM:

Q. All right. Agent Wasiak, this is in a format that we have been looking at already. It's just for the day of July 5, 2018 between the parties involved; is that correct?

A. That is correct.

Q. And would you go ahead and publish down, starting at the first line, combining SLED Item 3, SLED Item 1. I think that's it for that day. So starting at SLED Item 3, 15122, would you explain what's going on?

A. Yes. Excuse me. We have an outgoing phone call on July 5th at 9:35 in the morning from Rodney Furtick to Samir Atkins, duration of 39 seconds. Next one we have is an outgoing instant message on July 5, 2018, at 9:48 a.m. from Samir Atkins to Damien Ritter, the content is, "Yo."

Q. I'm going to stop you for just a second. On the first one you read, 15122, the direction, was it outgoing or incoming?

A. I'm sorry. That was outgoing.

Q. Okay. And if you'll continue on to line 562, the third entry.

A. Incoming instant message on July 5, 2018, at 10:14 a.m., from Damien Ritter to Samir Atkins, "Them niggas bullshit me cuz I fell asleep waiting on them niggas. You work today?"

Q. The next line, 565?

A. Outgoing instant message on July 5th, 10:14 a.m., from Atkins to Rodney Furtick, and it says, "I off cuz." Next one is going to be an incoming call on July 5th, at 10:30 a.m. ---

Q. Just one second.

A. I'm sorry.

Q. Back up to the line before the instant message that was outgoing, line 565, it was from who and to who?

A. From Samir Atkin to Damien Ritter.

Q. Okay. The next line, 15138?

A. An incoming phone call, July 5th, 10:30 a.m., from Rodney Furtick to Samir Atkins, and it's a phone call of a minute and 12 seconds.

Q. All right. The next line, 567?

A. Incoming instant message on July 5th, 10:39 a.m., from Damien Ritter to Samir Atkins, and it says, "Okay."

Q. The next line starting at line 585?

A. Okay. We have an outgoing SMS message on July 5th, at 11:49 a.m., from Samir Atkins to Elzie Mack.

Q. Line 592?

A. Incoming text message, 7/5/2018, 11:51 a.m., from Mack to Atkins.

Q. Line 594?

A. Incoming SMS message, July 5th, 11:51 a.m., from Mack to Atkins.

Q. Line 595?

A. Outgoing SMS message, July 5th, at 11:52 a.m., from Atkins to Mack.

Q. Line 596?

A. Outgoing SMS message July 5th, at 11:52 a.m., from Samir Atkins to Mack.

Q. Line 599?

A. Incoming SMS message, July 5th, at 11:53 a.m., from Mack to Atkins.

Q. Line 600?

A. Incoming SMS message, 7/5/2018, 11:53 a.m., from Mack to Atkins.

Q. Line 601?

A. It's going to be an outgoing SMS message on July 5th, 11:53 a.m., from Atkins to Mack.

Q. 602?

A. Incoming SMS message, July 5th, 11:53 a.m., from Mack to Atkins.

Q. And the last one on this page, 611?

A. Outgoing SMS message, July 5th, at 12:04 p.m.,

from Atkins to Mack.

Q. Moving to the next page, line 613?

A. Incoming SMS message, July 5th, 12:04 p.m., from Mack to Atkins.

Q. Line 615?

A. Incoming SMS message, July 5th, 12:04 p.m., from Mack to Atkins.

Q. Line 15178?

A. That's going to be an incoming phone call, July 5th, at 12:24 p.m., from Furtick to Atkins, with zero duration.

Q. The next line, 15180?

A. Outgoing phone call, July 5th, 1:07 p.m., to Furtick from Atkins, 29 seconds in duration.

Q. Next line?

A. Incoming phone call, July 5th, 1:20 p.m., from Furtick to Atkins, 16 seconds in duration.

Q. The next line?

A. Incoming phone call, July 5th, 1:51 p.m., from Furtick to Atkins, 14 seconds.

Q. Line 631?

A. Incoming SMS message, July 5th, 1:57 p.m., from Mack to Atkins.

Q. Line 633?

A. Incoming SMS message, July 5th, at 1:58 p.m.,

from Mack to Atkins.

Q. Line 634?

A. Outgoing SMS message, July 5th, 1:58 p.m., from Atkins to Mack. I'm sorry.

Q. The next line, 636?

A. Incoming phone call, July 5th, 2:00 p.m., from Damien Ritter to Atkins, with zero duration.

Q. The last one on this page, 637?

A. Incoming phone call on July 5th, at 2:01 p.m., from Damien Ritter to Samir Atkins, 31 seconds in duration.

Q. And then the last page?

A. Last page, we have an incoming instant message on July 5, 2018, at 2:08 p.m., from Damien Ritter to Samir Atkins, and it says, "Pulling up."

MR. GRAHAM: Thank you, Agent Wasiak. Please answer any questions the defense has for you, and that's 216 in evidence, Your Honor.

THE COURT: And, yes, 216 is in evidence. Mr. Brown.

MR. BROWN: May it please the Court.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Let me first ask you, Agent Wasiak, is this correct?

A. Yes. Yes, sir.

Q. Thank you. First, on that exhibit there, you already ID, that I just had ---

THE COURT: Twenty-one? Defendant's 21? I've got Defendant's 21 up here.

MR. BROWN: Oh, yes, sir. No, I'm looking for -- thank you, Your Honor. I didn't realize it was in the folder. Thank you so much.

BY MR. BROWN:

Q. All right. I just want to ask you about that sheet you went through, and I'm not going to go through the whole thing. But there was a page or two that had a header like this one, and it said communications between Samir Atkins with Rodney Furtick, Elzie Mack and Damien Ritter. Did you have any conversational threads on there where Mr. Ritter had a discussion at all with Mr. Furtick or Mr. Mack?

A. Just going by this piece of paper that we have?

Q. Or anywhere on there. Point I'm trying to make, trying to shorten it a little bit, it should say communications with -- between Samir Atkins and Rodney Furtick period, communications between Samir Atkins and Elzie Mack period, communications between Samir Atkins and Damien Ritter period, right?

A. Right.

Q. Those people aren't all in a group thread together, right? I mean, don't get me wrong. I mean, I'm just trying to get that point out that while, in some ways, it's true, it's grammatically ambiguous?

A. Correct. Nothing on this shows a multi-party, I guess, yeah.

Q. There you go. Fair enough, fair enough. It may be accurate, just trying to clear up that ambiguity. The next thing I wanted to ask you about is, and I'm going to hand up what's been marked as -- what will be marked, I believe, as 23 [sic.] for authentication. Let me get a number on it first.

(Defendant's Exhibit No. 22 was marked for identification.)

MR. BROWN: All right. I'm going to show you what's been marked as State's 22 [sic.], after I give a copy to Mr. Graham.

MS. FULLER: Defense.

MR. BROWN: Excuse me, defense. I appreciate that. Defendant's 22, and I'm trying to hurry things along, Your Honor.

THE COURT: Please, by all means do that.

MR. BROWN: Yes, sir, yes, sir.

BY MR. BROWN:

Q. And if I could just show you that, and it's just right now for this point, it's just for authentication. Do you see the page number down at the bottom, 286?

A. 286, yes.

Q. Yes, sir. Okay. I'm going to hand this to His Honor; I've got an extra one. And I'm just going to ask if you could confirm that that's contained in the cell phone records for the cell phone ending in [redacted] belonging to Samir Atkins?

A. I do see that that phone number is associated with it.

Q. Okay. And do you find that thread appearing in your Cellbrite extraction on Page 286 and Page 287?

A. I would actually have to look at 286 and 287 of the whole thing.

Q. And I don't know a good way to authenticate it, short of you doing that. I do have a second one that I can go ahead and give you and ask you -- I have three total that I can go ahead and hand you and ask you to authenticate. Can you do that? I have the extraction up. I even have it on the computer, if you would like.

A. Yeah, I just need to look -- yeah.

Q. You've got it. Yes, sir?

A. If you have it, I can just look at it.

Q. Fair enough. I apologize. I'm kind of fumbling,

just trying to go fast.

THE COURT: You're good.

(Defendant's Exhibit No. 23 was marked for identification.)

MR. BROWN: And I'm actually going to hand in what's been marked as Defendant's 23, also for authentication, and ask him to authenticate this, and I've got this one for Your Honor. I've got one for me before I give them all away.

BY MR. BROWN:

Q. And this is Defendant's 23, and Defendant's 23 is in, sir. I've got also what has been marked as Defendant's 21. And then I'm going to hand that -- all right, if I can hand that. And those are all on the same telephone, and I'm going to hand you a computer that should have it all loaded.

I'm going to hand you this real fast, and this is the extraction, all right, that way you could go through it. It's got page numbers, and it's set up on, I believe, the PDF, and get you to authenticate that. And, again, the page numbers are at the bottom. And I don't know that they're disagreeing with me, but I would like you to locate them.

A. Yeah.

Q. And I have a follow-up question. Also out

of that same -- after you have authenticated those on there, I've got a follow-up question. You can leave that there.

A. And these are all from the same report, correct?

Q. Yes, sir. Yes, sir.

A. Okay.

Q. And were all three of those located on the pages that's indicated on the exhibits?

A. Yes.

Q. Thank you, sir. And would you turn to Page 535?

A. 535 in my report?

Q. On that same report, yes, sir.

A. Okay.

Q. All right. And would you notice on Page 535 an entry regarding a text -- excuse me -- a contact, it's listed as 722?

A. Okay.

Q. And do you see that one with the name beside it?

A. I do.

Q. And do you see 724?

A. I do.

Q. With the name beside it. And do you know whether the phone number matches between those two contacts? One's a Facebook and Messenger contact, and one is a -- looks like a telephone contact.

A. Correct. It's Facebook Messenger, and then, I believe, a telephone.

Q. Okay. All right. And do you see a phone number associated with both, [redacted]?

A. Correct.

MR. GRAHAM: Your Honor, I hate to object. Can you tell us which exhibits? We're just trying to follow.

MR. BROWN: It's not an exhibit; it's 535 of that same Cellbrite extraction.

MR. GRAHAM: It's not on there.

MS. FULLER: We don't have the same.

MR. BROWN: I don't mind showing it to you. I've got a quick question. Yeah, I mean, I don't mind. I'm going to let you look at it while I ask him the question.

BY MR. BROWN:

Q. Do you see a phone number that I just read, [redacted]?

A. I do.

Q. Okay. And that appears on both of those entries, 722 and 724?

A. It does.

Q. Okay. And one's named Rob Wilson?

A. It is.

Q. And one's named Rob Killa?
A. It is.
Q. And that's Samir Atkins' phone that that appears on? You need the board?
A. Yeah, I'm sorry.
Q. Does that appear to be this number here? That's what that extraction is from, Samir Atkins' phone number, correct?
A. That's [redacted].
Q. Right. Is that not this extraction?
A. For line 722 and 724?
Q. Well, that's part of the extraction for that number, right? It's a 2,733-page extraction.
A. Oh, I'm sorry. Yes, yes, yes.
Q. Okay. So that number is listed for Rob Wilson under a Facebook contact and Rob Killa under a phone contact from Samir Atkins' phone?
MR. GRAHAM: Your Honor, I'm confused with what we're doing and why.
MR. BROWN: Well, I'm ---
THE COURT: I'm sure you'll tie it up.
THE WITNESS: I'm sorry. Repeat the question.
MR. BROWN: Yes, sir.
BY MR. BROWN:

Q. On -- this is Mr. Atkins', Samir Atkins', phone records for phone number [redacted] -- and I'll move so the jury can see, and I apologize. I put so much stuff up here. And so His Honor can see. The extraction, the 2,700-page extraction, from [redacted], correct?

A. Yes.

Q. And that's Samir Atkins, right?

A. Yes.

Q. And those two entries are in his contacts?

MR. GRAHAM: Objection. Relevance.

MR. BROWN: Well ---

MR. GRAHAM: He's trying to link up the numbers from the phone contact with no reason.

MR. BROWN: I asked Mr. Furtick if he knew Rob Wilson's nickname was Rob Killa.

MR. GRAHAM: And I'm objecting to relevancy.

MR. BROWN: And I can tie it up, Your Honor, under Investigator Deas.

THE COURT: You could answer the question. You did ask that question of him. You are correct.

MR. BROWN: Thank you.

BY MR. BROWN:

Q. And so both these contacts appear on Mr. Atkins' phone, is all I'm trying to get at.

A. Yeah, that's -- Rob Killa is the actual contact, and the other appears to be a Facebook friend.

Q. And Rob Wilson and Rob Killa have the same phone number associated with both of them?

MR. GRAHAM: Objection. Relevancy.

THE COURT: Do they have the same?

THE WITNESS: Yes, the same phone association.

MR. BROWN: You go it, and I apologize. That was all -- the only point I'm trying to make with this witness on that, and I am just trying to move it along. I apologize.

BY MR. BROWN:

Q. Now, the last thing I want to ask you about here is that thread that's listed in State's -- excuse me -- Defendant's 21. And it also has been ID-ed, I believe, because you've read several lines, and I want to go back over it. But I'm not trying to get you to read mine verbatim. I'm trying to get you to look at -- let's see.

And I'm not sure if that actually was even ID-ed. But I'm going to ask you to take a look at Page 199 and see if that's the same thread that you read on direct from the State, and it's the contact or the thread that dealt with a communication between Mr. Atkins on this

same number here, [redacted], and Queen?
A. Correct.
Q. Okay. And I do want to get you to read that, but before we go there, and, of course, I may have lost the sheet I was looking for already. I just wanted to make sure I've got that number down. Of course, I would have lost it. Let me just see if I can write it down one more time. And you've got the phone number in there listed for Queen?
A. Yes.
Q. And I could write this faster if my eyes weren't so bad. Let me see if this works. Is that the number you've got listed for Queen, in case the jury wanted to recall this at a later point in time?
A. It is the phone number.
Q. Because you don't know who Queen actually is right now, do you?
A. I do not.
Q. That's just a contact name associated with this number right here?
A. That's correct.
Q. That's Queen's number, according to that contact?
A. Correct.
Q. Assuming that's correct. All right. And one more time, Mr. Atkins says, "Black don't know my

gangsta"?

A. That is correct.

Q. "He about to find out"?

A. That is correct.

Q. All right. And then Queen says, "Yes, he really is going to find out the hard way"?

A. That is correct.

Q. All right. And then asked for -- it says, "All I need is my aunt's address." That would be Mr. Atkins just needs his aunt's address?

A. That is correct.

MR. GRAHAM: Your Honor, we object. That's not in context.

BY MR. BROWN:

Q. Excuse me. Mr. Atkins' portion of the text says, "All I need is my aunt's address"?

A. That is correct.

Q. Okay. All right. And the last thing I want to do, while we've got you on the stand here, is to go back briefly through that little thread to get a little context about the communication that began on July 5th. And on July 5th, do you see -- it's 216 that's already in evidence.

Now, if I can get you to look at this, and this is 216, State's 216. And if you look here, is that the

first text communication that day involving Mr. Ritter's number and a number from Mr. Atkins?

A. I would have to go back and ---

Q. If you look at this chart, this the State's chart you read?

A. Yes.

Q. Okay. And who makes the first contact that day?

A. Samir Atkins.

Q. And he writes and says, "Yo"?

A. Yes.

Q. And then Mr. Ritter says, "You work tonight?"

A. He does.

Q. And then Mr. Atkins then tells him that he's off?

A. Correct.

MR. BROWN: I don't have any other questions.

THE COURT: Thank you. Looks like they have some redirect. Go ahead, please.

MR. GRAHAM: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. Agent Wasiak, let me show you Defense's No. 22 they had you look at. Do you recognize it?

A. I do.

Q. And is that -- I think you identified it as an

extraction, and something that has to do with Rob Killa, that was what he was asking you about, right?

A. Yes.

MR. GRAHAM: Your Honor, the State would move Defense's 22 into evidence.

MR. BROWN: Without objection.

THE COURT: Without objection, Defense's 22 will be in evidence.

MR. GRAHAM: State's whatever.

THE COURT: Yeah, State's. We're at 200 and something now, I think.

MR. BROWN: Let me just get that number. Defense's 22 is now State's ---

THE COURT: It's going to be State's ---

MR. GRAHAM: 222.

MR. BROWN: 222.

THE COURT: 2-2-2.

(State's Exhibit No. 222 was entered into evidence.)

BY MR. GRAHAM:

Q. Can you read out loud and tell us what we're seeing?

A. It's a conversation between -- looks like Rob "Killa" Tyrrell and then Samir Atkins -- no -- yeah, Samir Atkins' telephone.

Q. And then also one other number?

A. Rock Ugly.
Q. So it's a group chat?
A. It is a group chat, yes.
Q. All right. Can you tell what the subject of the group chat is by looking at the start in the green? This is going to be whose phone?
A. This is going to be Samir Atkins.
Q. And what is Samir saying to his friends?
A. He says, "What's good, fellas. As I'm looking for a new home, I see some properties we can invest in that has a lot of potential to make us money."
Q. What was Rob Killa's response?
A. "What are you trying to do, brah?"
Q. And what did Samir say back?
A. "Invest in some properties."
Q. And the next line?
A. "There are some homes up for foreclosure and auction. We buy 'em cheap as fuck and sell them or rent them. Extra check coming in every month. My gun guy builds house for a living and fix them. I know he will not kill me on the remodeling."
Q. And what was Rob Killa's response?
A. "Foreclosure is the way to go."
Q. And what did Rock Ugly say?
A. "Hopefully the repair isn't more than the value

of the home."

Q. And what did Rob Killa say?

A. He emphasized. You know, the little emoji, probably whatever emphasis you have. He emphasized "Hopefully, the repair isn't more than the value of the home," and said, "Great point, Rock."

Q. And the final thing?

A. "Well put. Well, I'll let you in on my idea. It's what you all want to do with it."

Q. That's the last line, and that was from who?

A. That was from Samir Atkins.

Q. Thank you, Agent Wasiak. That's all.

MR. BROWN: One question.

RECROSS EXAMINATION

BY MR. BROWN:

Q. Do you know whether Rock Ugly is Rodney Furtick?

A. I do not know that.

Q. Thank you.

THE COURT: Sir, thank you for coming. Thank you. I'm glad we got to you today.

THE WITNESS: Thank you, Judge.

THE COURT: No worries. Take care of yourself. Safe trip. All right. Ladies and gentlemen, that's all for the day. I'm going to ask that you reconvene tomorrow morning at 9:30. And I do know,

Ms. Shealy, that we'll be having a conversation, see where things lie.

I'm going to ask the attorneys to come and assess where things are, and then give me an indication of that in the morning. But, golly, I know you want to see me in the morning, so I'm going to make you come back nonetheless instead of just calling you on the phone, okay, Ms. Shealy. Y'all have a great evening. Don't discuss the case tonight. Leave your tablets in your chairs, and have a very good evening. See you at 9:30. Thank you.

(Jury exits the courtroom at 5:40 p.m.)

(Proceedings adjourned until 9:30 a.m.)

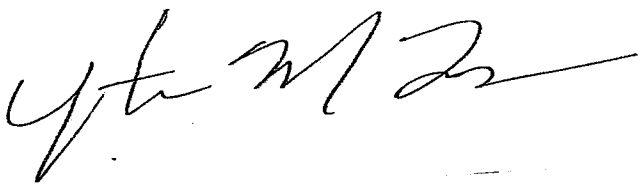
CERTIFICATE OF REPORTER

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 24th 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 COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON 2019-GS-32-02887-2893

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-)

) June 25, 2021 - Vol 5 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-193	Swabs		1051
S-214	DVR Disc		1163
S-224	Verizon Phone Records		1165
S-225	Verizon Phone Records		1165
S-226	AT&T Phone Records		1165
S-227	DVR - Ritter		1163
S-228	DVR		1163
S-229	DVR		1163
S-230	DVR		1163
S-231	DVR		1163
S-232	Phone Call		1159
S-234	Jail Call		1159
S-236	Presentation		1249
S-237	Gas Station Disc		1050
S-238	PowerPoint Version		1249
S-239	Store Photo		1053
S-240	Store Photo		1054
S-241	Store Photo		1054
D-24	Ledger	1074	
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THE COURT: Good morning. Have a seat. Thanks. Let's go on the record, if we may. I know that we're missing some folks from the State's standpoint, but I just want to try and talk logistics.

The one concern that we have, the clerk informed me that we do have a jury panel potentially coming in Monday on a civil case. And this was something that was in the back of my mind that actually slipped my mind, but I remember as now being one of the reasons I was looking at potentially maybe finishing this case today.

But we'll know more about whether we're going to have a civil case starting Monday. We should know more around ten o'clock or thereafter when the civil clerk finishes her assessment of the situation. But I'm not sure what kind of case it is. I'm told it's a two-dayer, but they will -- if they do have to pick a jury, they'll, of course, need this courtroom, which will either put us in 3C -- it will likely put us in 3C come Monday, which has space limitations, but I can work through it.

MR. BROWN: Is there a chance we can work on Saturday?

THE COURT: No. And what happens is, invariably, the jury has plans, and it's going to throw

a whole monkey wrench, and then I have to ask the deputies to come in. It's a staffing issue with the sheriff's department, and my experience is that very often jurors have plans, especially, this time of the year with travel. We've got a relatively young jury. I know they've got kids out there, and so we're just asking for trouble.

MR. BROWN: We understand. Your Honor, I would suggest as the sole person that can sign checks in my office, we are at checks next week, we'll be at the running the business mode in my office. We'll be financial paralyzed without, at least, some opportunity for me to be in Beaufort.

THE COURT: That's what I'm alluding to here with the segue into logistics. We've still got Nikki; we haven't been to Estill yet on this case, and the chief investigator -- how many more witnesses does the State anticipate needing to call for your case in chief?

MR. GRAHAM: Just one second, Your Honor.

THE COURT: Sure.

MR. GRAHAM: We should rest today, Your Honor. I would say we have four to five witnesses left.

THE COURT: Okay. Depending on how things play out, we'll just take it as it comes and see where

things stand. And maybe we'll have more information soon about the status of the jury pool on Monday.

MR. BROWN: Judge, at some point maybe this morning, we want to start discussing jury instructions in a general sense, so I can get copies made or whatnot?

THE COURT: Well, probably -- I want to hear the whole -- I kind of want to hear the whole case before we have that sort of discussion.

MR. BROWN: I only said that because my printer is not across the hall, and it takes some resources to get back to my jury instructions, not that we hadn't already talked about them personally, and, of course, obviously, as we prepared the case.

THE COURT: Right. Well, my clerk has already worked out some. If you want to e-mail me whatever it is that you have, that will be perfectly fine. Just e-mail it to my clerk and myself.

MR. BROWN: Yes, sir.

THE COURT: We could be taking a look at that during some of the trial that remains.

MR. BROWN: Yes, sir.

MR. PHILLIPS: Your Honor, the other two things was we've got the juror that was going on vacation tomorrow. I want to make sure, let's flush that out real quick because I know she's probably biting

her nails at this point.

THE COURT: Yeah, I'm going to release her is the decision I basically made when I was driving over. I think that there's a good chance we can finish the State's case today. But I'm assuming the lead investigator is still going to testify, and I expect that the direct and cross on him will take at least half a day.

And he usually -- I would expect he would testify maybe last to sort of tie up all the loose ends. So it may be the we are not in a position to get his testimony until next week, perhaps. I don't know. We'll have to see.

MR. PHILLIPS: The other issue still left from yesterday is we received the reports, kind of the Nikki Hicks discovery, sort of speak, if I'm paraphrasing, after Agent Greer's testimony. Now, again, there were two weapons found in that car.

There's a question I could have asked Mr. Greer. You know, I'm not saying the solicitor's office waited until after Mr. Greer testified, but I certainly didn't get it until after Mr. Greer testified. I just have one question based on the report.

THE COURT: Okay.

MR. PHILLIPS: And based on the police reports that we got.

THE COURT: From Nikki Hicks' stop?

MR. PHILLIPS: That's correct.

THE COURT: Right. Well, the Court may have Mr. Greer simply take the stand again. I'm assuming he's still around. I'm going to go ahead and flip a coin to see who's going to replace Ms. Shealy.

Obviously, I do have three jurors, but because we have Ms. Pelenski doing her oral surgery on Monday, I'm going to let her stick around. And if something should happen, and we drop below 11 over the weekend for whatever reason, illness, death, etc., then we would be looking at kicking this until Tuesday to finish it and might need Ms. Pelenski.

So, I'm going to kind of keep her on ice, and we'll be picking the alternates from -- it'll be Ms. Masse, Anna Masse, Juror 117, and Shanta Jackson, Juror No. 91. So heads it's Masse, tails it's Jackson, and it is tails. So it is Ms. Jackson, Juror No. 91, who will be replacing Ms. Shealy. All right. Next witness that the State is going to call is who?

MR. GRAHAM: Calling Ms. Swtea Patel. She is the manager of a convenient store down in Estill.

THE COURT: Okay.

MR. GRAHAM: Judge, if hypothetical, we finish and rest our case -- I don't know what the defense is doing or not. I know -- maybe they can address that. I don't want you to give up on potentially us finishing today.

THE COURT: I'm not giving up on potentially finishing today. I just want to see and take it as it comes. I'm getting the distinct impression, because the defense has not introduced any exhibit, that they're trying to preserve last argument, and if there's going to be a head fake on that, that'll be impressive, but that's what I'm expecting.

MS. FULLER: I guess the question is if we rested this afternoon, would you go straight into closing and charging, just want to know for, you know, planning.

THE COURT: Yeah, I do not know.

MS. FULLER: Okay.

MR. BROWN: We would be interested in that too, Your Honor. And I'll be honest, we get burned on five o'clock jury deliberations. I've been there on a week-long trial with Judge Mullen, and an 11 o'clock verdict on Friday night. But we would prefer to end the case today, presentation to the jury.

MR. PHILLIPS: If all the case closes today,

I think it's not advantageous as far as ensuring his right to a fair trial for the jurors to come back four days later, you know, three days later, on Tuesday, just for close.

THE COURT: I have a concern. I share your concern that there's a potential for the 48 hours, the weekend, to maybe affect their ability to recall and remember what was said.

At the same time, the last time that I did a case like this, and it was in Laurens County, and it was a double homicide and involved a police officer, and we pushed, like -- oh, we did everything that we possibly could do because I was supposed to go on vacation the following week, and another lawyer had vacation planned, or something like that, I can't remember. I was totally unavailable the next week, I remember that.

But we did that, I sent it to the jury. I got a note 15 minutes later, we are emotionally exhausted. We cannot continue, and we do not want to come back over the weekend, may we please have a break? And I said, yes.

And so from that point forward -- I tried that seven or eight years ago. And from that point forward, once the evidence was in, and everybody had

rested, I gave the jury the option. I would leave it up to them as to whether they want to keep going, or whether they would be inclined to come back.

MR. PHILLIPS: That's fair.

MR. BROWN: And the only thing we ask, if they do end, let's just say two o'clock or 1:30, if you can give us 30 or 45 minutes to ---

THE COURT: We're going to have to have a charge conference.

MR. BROWN: Yes, sir. We're getting our stuff.

THE COURT: Sure. We'll have to have a charge conference, you'll have to collect your thoughts. You'll have an opportunity to do that, obviously.

But what I do not want to do is get into a situation where the lead investigator testifies on direct, we break, we're at four o'clock or 3:30 or two o'clock, 2:30 kind of a thing -- well, that we're at 3:30 or whatever, when they finish with the investigator, and then we have to break because I know your cross on him is going to take at least an hour.

MR. BROWN: That's what we're expecting, an hour.

THE COURT: Yeah, that would be my --

then redirect, another 15 minutes, and that's going to put us at fighting the clock. But let's go ahead and have the jury. I'm going to kick Ms. Shealy off the jury, let her go on her holiday and replace her with Juror 91, Ms. Jackson.

(Jury enters the courtroom at 10:07 a.m.)

THE COURT: Ms. Shealy, don't take a seat. Stand over here. Ms. Shealy, sorry to single you out. I'm a man of my word. It's looking like there's a strong likelihood that this case may go into Monday. So, I know that you have plans. I have your work excuse here.

I want to thank you for your service here this week, and I appreciate you coming back, and there was a hope that -- it's 50/50 as to whether we're going to be able to finish this today. And I'm not going to have you sit through it when we have alternate jurors that can be hearing -- or an alternate juror that can be hearing the case in your stead.

And so I apologize for the last four days in making you come in here, but I'm going to go ahead and release you, so you can get things in order for your week-long vacation. Here's your work excuse. Your check is in the mail, and my clerk will meet you outside. I'm assuming you might be interested

in the outcome of the trial, perhaps.

MS. SHEALY: Yes.

THE COURT: Okay. He's going to get your cell phone number so that we can contact you when we ultimately find out what happens, okay?

MS. SHEALY: All right. Thank you.

THE COURT: All right. Thank you, Ms. Shealy. All right, safe travels now.

(Juror No. 169 exits the courtroom at 10:10 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. Prior to y'all coming out, of course, I was discussing logistics and other corners with the attorneys in terms of having more witnesses, et cetera. We have, and I went ahead and flipped a coin to determine who the alternate was going to be to replace Ms. Shealy once the decision was made to release her.

And who is Ms. Jackson? You're Ms. Jackson. Okay. Ms. Jackson, you're going to take Ms. Shealy's place. You were the lucky winner of the coin toss. So, you can stay there until we break, and then you can take another seat. Since you've gotten used to that chair, you can stay there, okay? Ms. Pelenski, I haven't forgotten about your situation either. That's been taken into account, all right.

Ladies and gentlemen, we're still on the State's case in chief. So, at this point in time, Solicitor, if you'll call your next witness, please, Mr. Graham.

MR. GRAHAM: Thank you, Your Honor. The State calls Swtea Patel.

MS. SWTEA PATEL was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Have a seat right up there. When you sit down, you can take your mask off. Speak up loud and clear. State your full name, spelling your last.

THE WITNESS: Hello. My name is Swtea Patel.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Ms. Patel, where do you live? What city do you live in?

A. In Estill, South Carolina.

Q. And do you and your husband manage a convenient store in Estill?

A. Yes, sir.

Q. What's the name of the store?

A. Three-Way Food Mart.

Q. And back on July 5th of 2018, did you and he also

manage the store then as well?

A. Yes, sir.

Q. And part of your job in managing the store, are you a records custodian for the security video for the store?

A. Yes, sir.

Q. I'm going to show you two discs and ask if you recognize these discs.

MR. GRAHAM: The first, Your Honor, is State's 237.

BY MR. GRAHAM:

Q. And do you recognize that as being security footage taken from your store on July 5, 2018?

A. Yes, sir.

Q. And you see your initials on that?

A. Uh-uh.

Q. And does it fairly and accurately show what happened in the store that day?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would move 237 into evidence.

THE COURT: No objection?

MR. BROWN: No objection.

THE COURT: 237 is in evidence.

(State's Exhibit No. 237 was entered into evidence.)

BY MR. GRAHAM:

Q. Ms. Patel, let me show you State's 193. State's 237, that had your security cameras. You have four security cameras, correct?

A. Yes, sir.

Q. State's 193 is a compilation of all of those security cameras on one screen so we can see everything that the cameras were seeing; is that true?

A. Yes, sir.

Q. And so it's a copy of the individual cameras here on State's 237?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would move 193 into evidence and ask to publish it.

MR. BROWN: Without objection.

THE COURT: 193 is in evidence. You may publish both.

(State's Exhibit No. 193 was entered into evidence.)

BY MR. GRAHAM:

Q. Ms. Patel, do you know the individual who we see on this, in a white tank top T-shirt?

A. Yes, sir.

Q. And what name do you know him by?

A. I know the nickname Black.

Q. Okay. And how long have you known the individual

that you know as Black?

A. I know since four to five years.

Q. Four to five years?

A. Yes, sir.

Q. In the video, there's a point where it appears that his phone is passed behind the counter to you or your husband. Did you see that?

A. Yes, sir.

Q. Can you explain to the jury what's going on when that phone -- his phone is passed back?

A. Okay. He came to the store and give phone to my husband and put the phone card, like, a new activation, do the activation, and put the phone card, like, minutes in a phone, so that's what my husband do.

Q. All right. So what we're going to watch is Black handing the phone back to your husband, and your husband was activating a new phone number and adding minutes?

A. Yes, sir.

Q. Thank you, Ms. Patel. The date and time that's on the screen on each of the individual cameras, are those accurate?

A. Yes, sir.

MR. GRAHAM: Apparently, the password is different than what we knew, Your Honor, so we're having to get somebody to come unlock it for us.

(Pause.)

BY MR. GRAHAM:

Q. Ms. Patel, let me show you -- while we're working on that, let me show you a couple of photographs and ask if you recognize these. This is State's 239, 240 and 241. Does that fairly and accurately depict your store?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would move 239 into evidence.

MR. BROWN: And, if I just may -- without objection.

THE COURT: 239 is in evidence.

(State's Exhibit No. 239 was entered into evidence.)

MR. BROWN: There's two more, Judge, trying to move along.

BY MR. GRAHAM:

Q. Let me show you 240 and 241. As far as the photo of your store, is that fair and accurate?

A. Yes, sir.

Q. And do these two photos depict the individual you know as Black?

A. Uh-huh.

MR. GRAHAM: Your Honor, the State would move 240 and 241 into evidence.

THE COURT: Any objection to 240 and 241?

MR. BROWN: Without objection, Your Honor.

THE COURT: 239 through 241 are in.

(State's Exhibit Nos. 240 and 241 were entered into evidence.)

MR. GRAHAM: Your Honor, the State would request permission to publish these to the jury.

THE COURT: You may.

MR. GRAHAM: 239 is the convenient store in Estill, South Carolina; 241 and 242 [sic.], her testimony of an individual in the white T-shirt as the individual she knows as Black. And the time indicated on here is 7:24 p.m., on July 5th, 2018. And now the video is playing, Your Honor.

(Video played for the jury.)

MR. GRAHAM: Thank you, Ms. Patel. Please answer any questions the defense has for you.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Ms. Patel, about how long did it take you to drive to the courthouse from Estill?

A. Two hours.

Q. Thank you, ma'am.

MR. BROWN: No further questions.

THE COURT: Ma'am, thank you. You can step

down.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MR. GRAHAM: The State calls Nikki Hicks to the stand, Your Honor.

MS. NIKKI HICKS was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Have a seat, ma'am. Once you're seated, you may remove your mask. State your full name, spelling your last, please.

THE WITNESS: Nikki Hicks, H-I-C-K-S.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Is it okay if I call you Nikki?

A. Yes.

Q. Nikki, back on July 5, 2018, what was your relationship with Samir?

A. I was his girlfriend at the time.

Q. Did you all live together?

A. Yes, we did.

Q. Can you come a little bit -- the microphone a little closer. You've get a soft voice and speak loudly.

A. We lived together.

Q. How long have you and Samir been together?

A. Five years.
Q. And how long have you lived in that apartment?
A. For about five years.
Q. Do you know the Defendant, Damien Ritter?
A. Yes, I do.
Q. And what name did you know him by?
A. Black.
Q. And what was his relationship to Samir?
A. His cousin is what Samir told me.
Q. And had he been to your apartment -- your and Samir's apartment before?
A. Yes, he has.
Q. About how many times?
A. I would say several times.
Q. Do you know what kind of car he drives?
A. Yes, I do.
Q. What kind of car was it?
A. A burgundy Tahoe.
Q. What was the relationship between Samir -- I know they were cousins, but did they have some kind of business relationship?
A. They did.
Q. Tell the jury about that.
A. He sold him marijuana.
Q. Who sold who marijuana?

A. Samir sold Black marijuana.

Q. Prior to Samir being shot and killed, did you become aware of whether money was owed between Black and Samir?

A. I was aware of it.

Q. Okay. Who owed who money?

A. Black owed Samir money.

Q. Do you know how much?

A. I don't know how much.

Q. The safe that we've been hearing testimony about, when were you allowed to go back into your apartment?

A. Whenever the apartment was released back to me.

Q. After the apartment was released back by the police?

A. Correct.

Q. Prior to the apartment being released, did you -- were you allowed to go into the apartment?

A. No, I was not allowed to go in the apartment.

Q. In conversations with the police, before you went back into the apartment, what, if anything, did you tell them about safes being in the house?

A. There was one under the bed, and one was in the closet.

Q. So there were two safes that should have been in the house?

A. Should have been.
Q. One under the bed and in the closet?
A. Correct.
Q. That's that hall closet?
A. The hall closet.
Q. Nikki, I know the defense has some questions for you, so I'm going to turn it over to them right now.
A. Okay.
THE COURT: Cross.
MR. PHILLIPS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PHILLIPS:
Q. Ms. Hicks, you said you lived in that apartment for five years?
A. Correct.
Q. And you knew there was drug dealing going on in the apartment?
A. Yes, I did.
Q. And you knew that there were cell phones throughout the apartment?
A. Yes, I did.
Q. There were guns throughout the apartment?
A. I did.
Q. Okay. And so as you heard -- you knew Damien Ritter as Black?

A. Correct.

Q. And Samir told you Damien's real name, is what you told police, a couple of weeks before this happened, right?

A. Correct, yes, sir.

Q. Okay. He had always called him Black, but then about a couple of weeks before, he said, that's Damien Ritter, my cousin?

A. He just said Damien; he never told me his last name.

Q. Okay. But you knew he was his cousin?

A. Yes.

Q. Okay. And you said as far as the residence is concerned, was it his daughter or your daughter, who lived in the residence?

A. It was his daughter. Me and Samir just lived there; his daughter never stayed there.

Q. Okay. But he had a room for her with the Peppa Pig pillow?

A. Yeah, when she comes to stay with him.

Q. Right. A little Frozen couch?

A. Correct.

Q. All right. And so with that, you know, as far as things are placed in the house, did he normally keep his AR-15 under her bed?

A. No.

Q. Okay. Did he normally keep his pistol in an air vent?

A. I don't recall that.

Q. Okay. And he had multiple phones, right?

A. Correct.

Q. And so one's like your family and contact phone, and one is your work phone?

A. Correct.

Q. For drugs?

A. Correct.

Q. And so he had guns, right?

A. He did.

Q. He had that, was it Gold Cup, like, that's like his prize pistol for the shooting range?

A. Gold Cup?

Q. It's like a 1911, a very nice pistol. Like, he had nice pistols that he took ---

A. This is a collectable.

Q. A collectable gun?

A. Yeah, a collectable.

Q. But he had nice guns he took to the gun range?

A. He did.

Q. Then he had guns that -- you can call it work guns that he kept in the vent?

A. I'm not sure about that.
Q. Now your number is [redacted]?
A. Yes, it is.
Q. And your contact -- your name in Samir's phone was Queen?
A. Yes, it was.
Q. So you were his queen?
A. That's what he called me.
Q. So in his phone where it says the contact Queen, that's you?
A. Yes, sir.
Q. And it ends in [redacted]?
A. Yes.
Q. Now you told police initially on July 5th -- excuse me -- make sure I'm telling you the right thing, on July 6th, the second time, because you spoke with police three times, or was it four times?
A. Three times, if I recall.
Q. Three times. So on July 6th, I think the second time you spoke to them, you said, he wasn't having any issues with Black?
A. I never told them that.
Q. You didn't?
A. No.
Q. So if there's an investigator's note that says

during the interview said, no issues with Black, that's not true?

A. That's not true.

Q. Okay. Okay. And so you told police that there was a phone call that Samir told you about, right, said Samir must be crazy, right?

MR. GRAHAM: Objection. Can you clarify who's crazy?

BY MR. PHILLIPS:

Q. That Samir said Black must be crazy?

A. Yes, Samir said that.

Q. Yeah, I mean, I'll definitely clarify.

A. Yeah, Samir said that.

Q. Okay. Now during that same phone call, I assume there was this conversation you had with him in a text message. You might remember it, where he said, "Black don't know my gangsta."

A. I remember that conversation.

Q. All right. So you admit Samir told you, right, you know, say, two weeks before all this happened, that Black don't know my gangsta?

A. He told me that.

Q. Okay. Let's kind of walkthrough that for a second.

MR. PHILLIPS: Your Honor, I'm going

to reference what's marked as Defendant's 21 for identification. It's what I'm referencing.

THE COURT: Sure.

BY MR. PHILLIPS:

Q. So Samir texted you and says, "Black don't know my gangsta"?

A. Correct.

Q. And then he says, "He about to find out"?

A. He said that.

Q. And you confirmed that, "Yes, he is really about to find out"?

A. Out of frustration. Samir was frustrated with Black not paying him his money. That's why Samir made that statement.

Q. And then you said, "The hard way"?

A. Yeah.

Q. That's right. Samir was a gangsta?

A. No, he wasn't a gangsta.

Q. He just goes gangsta on people?

A. No. He never said that he was going to go and hurt Damien at all. He just made that statement out of frustration.

Q. And he followed up with "All I need is my aunt's address"?

A. To go see, so he could go get his money back.

That's the only reason why, but he never accomplished that.

Q. Were you aware that Samir was the one who contacted Damien the day of July 5th?

A. No, I was not aware.

Q. You said it wasn't normal for Samir to have a gun in the house?

A. I never said that.

Q. Okay.

A. He carried guns, and he was a CWP holder. I never said that he never carried guns in the house.

Q. Okay. So if there's an investigator that wrote down notes that you said it's not normal for him to have a gun in the house, that wouldn't be true?

A. I don't recall.

Q. Let me rephrase. That's actually my fault. Not normal for him to have a gun on him in the house?

A. Like, if he's getting dressed, he has it on him in the house because he's about to go out. But if he's just sitting in the house, it's not on his hip.

Q. Okay. So it's not normal for him to just be wearing a gun and walk around the house?

A. No. If he's getting dressed to go outside, he has it on hisself.

Q. Okay. In case he needs to go gangsta?

A. No, he's not that type of person.

Q. You told police he was just selling weed to try and survive?

A. No, I didn't tell them that. He worked. He didn't just sell weed to survive.

Q. Again, so if there's an investigator that wrote down that you told him that he was just selling weed to survive, that would be a lie?

A. I don't recall telling nobody that.

MR. GRAHAM: Judge, I'm going to object. If he wants to specifically talk to her, I want him to identify the date, time, location and who the officer was. And if he's got a written statement, I would like him to show it her.

THE WITNESS: Yeah, because I don't recall saying that.

MR. GRAHAM: If he's got notes, I'd like him to show it to her.

THE COURT: These are statements made to the investigating officer?

MR. PHILLIPS: It's the investigator's notes. I mean, she wouldn't know what he wrote down.

MR. GRAHAM: Which investigator and what day and time?

THE COURT: If the notes reflect date and

time ---

MR. PHILLIPS: July 6, 10:36 hours.

THE COURT: All right.

MR. PHILLIPS: And I can say the -- I mean, it's in the State's discovery dated February 26, 2019.

THE COURT: Okay.

MR. PHILLIPS: Page 56.

THE COURT: Which investigator then?

MR. PHILLIPS: It is -- this is actually from the 1600-hour interview at West Columbia PD.

THE COURT: Okay. It was with the lead investigator?

MR. PHILLIPS: Yeah, I mean, to my knowledge, it would have been Investigator Deas, but I don't want to misrepresent.

THE COURT: Okay. Apparently, this was somebody with West Columbia that she made the statement to, you've got date and time. I'm assuming it was the lead investigator.

MR. GRAHAM: Thank you, Your Honor. Was there a written statement that you can show her, or notes that you can show her?

MR. PHILLIPS: Well, I can show her the investigator's note.

THE COURT: That will work fine. You can

read it, and then you can show her the notes where he wrote it down.

MR. PHILLIPS: We'll do that.

THE COURT: He or she. And, obviously, you can ask the question, and then show it to her.

MR. PHILLIPS: Okay.

BY MR. PHILLIPS:

Q. So you deny saying there was no issues with Black in a statement on July 6, 2018, at 10:36 hundred hours.

MR. GRAHAM: Can I see it, Your Honor, what he's getting ready to show?

(Pause.)

MR. GRAHAM: Thank you. Your Honor.

MR. PHILLIPS: Thank you, Your Honor.

THE COURT: No worries.

BY MR. PHILLIPS:

Q. All right. So you dispute that if an investigator wrote in his notes, as he talked to you on July 6th, that he didn't have any issues with Black, you didn't make that statement?

A. I don't recall telling an investigator that he didn't have no dealings -- no issues with Black.

Q. Now, as far as -- well, we covered that you said it wasn't normal for him to be walking around the apartment with a gun, probably because it's in the air

vent, right? That's the gun that's in the air vent?

A. I wasn't sure a gun was in the air vent.

Q. Said he was selling weed to survive. What about the 30 grams of cocaine?

A. I wasn't aware of 30 grams of cocaine in the house.

Q. Okay. Matt, the gun guy, you know him?

A. Matt, no.

Q. The gun guy. You don't know him? Okay. Now, you told -- now, this is your statement. You told the police that there was maybe five pounds of marijuana in that safe, right?

A. Yes.

Q. And there's cash in the safe, that he owns a safe?

A. Correct.

Q. Right. And that the safe -- the small safe was not the same safe that was in the closet?

A. Correct.

Q. Okay. And this ain't the first time you've seen our little safe right here, is it?

A. No.

Q. Because before the jury got here, the prosecutor's office had you come in and take a look at it?

A. Correct.
Q. Then they had you go back out and meet with them, right?
A. Right.
Q. What did y'all talk about?
A. We didn't talk about anything, like, the safe. That's it.
Q. They didn't ask you any questions about it? Had you come look at it, had you come in here, looked at it, and they didn't ask you any questions?
A. They did.
Q. Okay. What did y'all talk about?
A. Was it the safe? That's it. And was there a shelf inside the safe?
Q. And?
A. That's it.
Q. Looks like the safe, the one you get at Wal-Mart? Come on around, come on down.
A. Yeah, it looks like it, but I don't believe it's the same safe, you know.
Q. No, it's not it, no. We got this at Wal-Mart. But it looks very similar?
A. Similar.
Q. Okay. Thank you. You told the police that not only were there drugs in that safe, but there was around

$5,000 in that safe?

A. I told them money was in that safe. I'm not sure if I told them there's $5,000 in the safe.

Q. So if police then start putting in their report and arrest warrant $5,000, you don't know where they came up with that amount?

A. No.

Q. You also said, in addition to the money, that there were guns in that safe, right?

A. Yeah, I did told them that.

Q. Okay. Now let's go to July 18th, kind of a faithful day, right? You get pulled over by the police in Pine Ridge. That's where I grew up; I went to Pine Ridge Middle School. You got pulled over on Arborgate Road, a quarter mile from the middle school?

A. Correct.

Q. Okay. When you got pulled over by Pine Ridge, you had $5,900 on you?

A. Correct.

Q. And drugs?

A. But what ---

Q. And drugs?

A. Yes, I did.

Q. And guns?

A. I did.

Q. So you had drugs, guns and money?
A. Correct.
Q. And that money was where, that $5,900?
A. It was in the glove box, but what does my -- this have to do with anything because ---
THE COURT: You need to just answer his questions, ma'am.
THE WITNESS: It was.
BY MR. PHILLIPS:
Q. And so the police tells you there's been a shooting, they're giving you this information, and you make a point of that -- to tell them about a safe with drugs, guns and money?
A. I didn't tell them that.
Q. Mr. Furtick didn't tell them about it. You did.
A. You're talking about Pine Ridge Police Department. Yes, I did tell West Columbia, yes.
Q. That's right. But you get pulled over by Pine Ridge, and you have drugs, guns and money?
A. Correct.
Q. They actually gave you $1,000 back, didn't they?
A. They did.
Q. You signed a contract, like, a deal with them, right? They got to keep 4,900 bucks, and we'll give you $1,000 back?

A. Correct.
Q. That's a yes?
A. Yes.
Q. And then your charges were dismissed, right?
A. Correct.
Q. Because you were charged with possession of marijuana?
A. Correct.
Q. Possession of ecstasy?
A. Correct.
Q. I think they said you had -- the reason they stopped you was because you had too dark tint, right?
A. Windshield.
Q. Right. What happened to the red bag that was left in that house? You still live there?
A. No, I don't live there, and I'm not sure what happened to the red bag.
Q. Okay.
A. I moved.
Q. So you know about the red bag?
A. No, I don't know about the red bag.
Q. All right. Oh, so in the car -- I guess we can kind of do a little inventory. I forgot. They also found a U-Pass fake urine. You had some fake urine in there. What was that for?

A. I'm not sure.
Q. U-Pass urine. That's to pass a drug test?
A. But I'm not sure about the U-Pass in the car.
Q. Okay.
MR. PHILLIPS: Just a moment, Your Honor.
BY MR. PHILLIPS:
Q. That AK-47 wasn't in that red bag?
A. No, because I wasn't aware of the red bag.
Q. Okay. But you know it's normally not under that Minnie Mouse bed spread?
A. No.
Q. I mean, nobody would keep an AR -- a compact AR-15 under their kid's bed?
A. No.
Q. Unless you're going gangsta on people.
MR. PHILLIPS: Your Honor, I would like to mark as another one of our bound volumes as Defense's 24 for identification.
THE COURT: Very good. Go ahead.
MR. GRAHAM: Your Honor, can we approach?
(Off-the-record conversation held at sidebar.)
(Back on the record.)
THE COURT: Please continue.
MR. PHILLIPS: Thank you, Your Honor.
THE COURT: Let the record reflect, side bar

at 10:50 or thereabouts.

(Defendant's Exhibit No. 24 was marked for identification.)

MR. PHILLIPS: Your Honor, may I approach the witness?

THE COURT: Sure.

BY MR. PHILLIPS:

Q. Ms. Hicks, I want you to take a look at this. Tell me if you've ever seen it before.

A. Yes, I have seen it before.

Q. You have seen it?

A. That's Samir's handwriting.

Q. Military writing?

A. No, I said that's Samir's handwriting.

Q. Oh, Samir's handwriting. And what is it?

A. It's a ledger.

Q. A ledger?

A. Yeah.

Q. A ledger of what?

A. Of what people owed him, money.

Q. You actually told Investigator Aldridge you don't know anything about that?

A. I don't. I told him I knew two names, Black and Freak, and that was it.

MR. PHILLIPS: Your Honor, may I approach

her?

THE COURT: Sure.

BY MR. PHILLIPS:

Q. And these are investigator's notes. Can you take a look at that?

MR. GRAHAM: Your Honor, for clarification, I would like to know when she saw this, and when she knew about it, when she was shown this ledger and by who, whether it was ---

MR. PHILLIPS: Sure. I know. I mean, you didn't ask her any questions on direct, so.

THE COURT: If he doesn't cover it, I'm sure you can on redirect.

BY MR. PHILLIPS:

Q. So now that you had a chance to look over his notes when you spoke to him, do you remember -- he spoke to you. This is the third statement you gave, right?

A. Correct.

Q. Okay. But he asked you about amounts of names listed on documents that were confirmed in a ledger?

A. Correct, he did ask me that.

Q. And you denied having any and all knowledge of money?

A. I did.

Q. Or document amounts paid, or amounts owed,

or products being moved regarding narcotics. You denied any and all knowledge?

A. I did.

Q. And you were shown the documents, to which you denied knowledge of them?

A. Correct.

Q. And that was your third statement. You were actually at the apartment a few hours before this happened?

A. I did.

Q. Okay.

MR. PHILLIPS: We're wrapping up, Your Honor.

THE COURT: No worries.

(Defendant's Exhibit No. 25 was marked for identification.)

MR. PHILLIPS: Your Honor, I'm going to reference what's marked as Defendant's Exhibit 25 as identification purposes -- for identification purposes.

BY MR. PHILLIPS:

Q. Ms. Hicks, you've seen that red bag before -- well, maybe -- seen that red bag before?

A. Yeah, I have seen it before.

Q. Is that AK normally in that bag?

A. I can't recall because I've never seen it. I don't recall that.

Q. That AK is compact, right, small?

A. Yeah, but I don't recall it being in a red bag.

Q. Is that red bag normally right there, by the TV? No?

A. No.

Q. These keys on the table, that goes to another car, vehicle? What vehicle were you driving when you got stopped? It was a Charger, right?

A. Yeah, it was a Charger.

Q. Is that the keys to that Charger?

A. To the right where the card is, looks like it is -- right there. I can't tell if that's the Charger key or not.

THE COURT: Maybe the ones to the right?

THE WITNESS: Well, he was pointing --- the one to the right looks like the Charger key.

MR. PHILLIPS: Okay. Got it.

BY MR. PHILLIPS:

Q. And to be fair, you told them -- Investigator Aldridge, you didn't know anything about money being owed or drugs, or anything of that nature? There's actually text messages where Samir is telling you he's got $42,000 on the street he needs to collect?

A. Yeah, he told me that, but I've never seen it.

Q. And at the end of the day, you were the first person to tell the police that there were guns, drug and money in that safe, that there was a safe, and there was guns, drugs and money?

A. Yeah, because Samir told me that's what was in there.

Q. And you were pulled over on July 18th, and you had guns, drugs and money?

A. Correct.

Q. 5,900 bucks?

A. Correct.

Q. And the government gave you $1,000 back, so they can keep $4,900?

A. Correct.

Q. And your charges got dismissed?

A. Because I took PTI.

MR. PHILLIPS: No further questions, Your Honor.

THE COURT: Redirect.

MR. GRAHAM: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. Nikki, was Samir a gangster?

A. No, he wasn't a gangster.

Q. Was he a violent person?
A. No, not at all.
Q. He had guns, correct?
A. Correct.
Q. He had a CWP too, didn't he?
A. He did.
Q. You had a CWP at the time, didn't you?
A. I did.
Q. Samir had a job, and he lost it. When did he lose it?
A. Maybe a week prior to him being killed.
Q. He was selling marijuana, correct?
A. Yes, he did.
Q. The $42,000 out on the street, what was he going to do with that money?
A. Potentially buy a house, put it down for the house, and then selling it.
Q. You all were going to buy a house together?
A. Correct.
Q. After you were allowed back into the apartment, did you ever find $42,000?
A. No.
Q. Did you ever find any money at all?
A. No.
Q. Any idea where that $42,000 went?

A. No, I don't have no clue where it went.

Q. Let's talk about your car stop. That was on July 18th; is that correct?

A. Yes, that's correct.

Q. And you were asked about those charges being dropped. Were they dropped because you signed money to Pine Ridge Police Department?

A. No, I went to PTI, and they were dropped through that diversion program.

Q. You went through PTI?

A. Correct.

Q. And that's pretrial intervention?

A. Yes.

Q. And that's a program for first time, non-violent offenders?

A. Correct.

Q. And if you do the things you're supposed to, you can get your charges expunged; is that right?

A. That's right.

Q. Did you complete the pretrial intervention successfully?

A. I did.

Q. Did you get your charges expunged?

A. Correct.

Q. So when I say expunge that means that the record

was supposed to be gone; is that right?

A. Yep.

Q. Nobody is supposed to know about your arrest, are they?

A. Nobody.

Q. Isn't it true that the only reason that we know about your charges and your arrest is because you agreed to have those records released for this trial?

A. That's correct.

MR. PHILLIPS: Objection, Your Honor. That's not accurate.

THE COURT: I'll let you handle it on recross.

MR. PHILLIPS: Okay.

BY MR. GRAHAM:

Q. Nikki, did you give me consent to release -- to access those records so that I can access them and turn them over?

A. Yes, I did.

Q. Let's talk about the car stop. What car was it?

A. A Dodge Charger.

Q. Whose car was that?

A. Samir's.

Q. Samir's car?

A. Correct.

Q. On July 5th, there's a Honda -- a grey or silver Honda that's in front of the apartment. Whose car is that?

A. That's my car.

Q. Why were you driving the Dodge Charger that day?

A. Because when I woke up that morning to get dressed for work, I asked him what car do you want me to drive, and he told me to drive the Dodge Charger to work.

Q. So that's the car -- you were driving Samir's car that day?

A. Correct.

Q. And you kept driving Samir's car afterwards; is that right?

A. Yes.

Q. When we talk about drugs being in the car, if I said 3.2 grams or 2.4 grams of marijuana, does that sound about right?

A. Correct.

Q. Like less than an ounce?

A. Correct.

Q. And maybe one ecstasy pill, does that sound right?

A. That sounds right.

Q. When we talk about guns, there were two guns

in that car, correct?

A. Yes, it was.

Q. One of them was a Springfield 45 that was bought by Samir at Palmetto State Armory; is that correct?

A. Yeah, that's correct.

Q. The other one was a 40-caliber Glock that was bought by Samir at Shooter's Choice, correct?

A. That's correct.

Q. The money in the glove box, do you know where it came from?

A. No, I don't know where it came from, but I work.

Q. That's Samir's car?

A. Yeah, that's his car.

Q. Do you know where the money was found, do you remember?

A. I believe the glove box, if I'm not mistaken.

Q. And it was $5,980?

A. Yes, it was.

Q. Not $42,000?

A. No.

Q. You talked to law enforcement several times, didn't you?

A. I did.

Q. You were questioned about statements on July 6th, either Officer Aldridge or Officer Maggie Jones.

Do you specifically remember talking to them?

A. I don't recall, but I could have talked to them.

Q. You talked to a lot of police officers?

A. Yeah.

Q. You didn't write that many statements though, did you ---

A. No.

Q. --- handwritten statements? You were asked about no issues with Black. Do you remember telling the police officers that on July 6th?

A. No, I don't recall telling them that he didn't have any issues with Black.

Q. Do you remember telling that same officer that Black wasn't returning Samir's phone calls?

A. Yeah, I mean ---

Q. You do remember that?

A. Him not doing what now? Say that again.

Q. Black wasn't returning phone calls?

A. Yeah.

Q. The no issues with Black, you say you don't remember telling them that?

A. I don't recall that.

Q. What issues was he having with Black at the time?

A. Not answering the phone because he wasn't paying him for the marijuana that he gave Black.

Q. And you did tell them that on July 5th, didn't you?
A. Correct.
Q. And that's when you gave the written statement?
A. I did.
Q. Let me show you that document and ask you if you recognize this. And I think there's a couple of pages, if you'll flip through there.
A. Okay.
(Pause.)
BY MR. GRAHAM:
Q. That looks like your statement that you wrote to the police on July 5th?
A. Yeah.
Q. In that statement, you did tell the police that Samir sold weed, correct?
A. I did told them he sold weed.
Q. How many people did you say came by the house to buy weed?
A. One or two people.
Q. And how many -- how much drugs did you say that you knew of?
A. How much what?
Q. How much marijuana did you tell the police on July 5th that you thought might be there?

A. Maybe five pounds.
Q. And what, if anything, did you tell them about how much money was there?
A. I'm not sure how much money.
Q. And what, if anything, did you write down about the safe?
A. He owns a safe, not sure if weed was inside.
Q. That's what you told the police on July 5th?
A. Correct.
Q. What else did you tell them you thought was in the safe?
A. I'm not sure bullets and money was inside. He did ---
Q. Go ahead. What about guns? What did you tell them about guns?
A. He did have other guns, not sure if they were inside.
Q. I'm sorry. What did you say about guns in the safe to the police on July 5th? You just need to repeat because your voice is so soft.
A. I'm not sure bullets and money were in the safe -- inside the safe.
Q. How did you describe the safe?
A. Medium size.
Q. And on July 5th, did you tell them -- what did

you tell them about Black owing money?

A. That he owed Samir money.

Q. How about Samir and Rodney? What was their relationship?

A. They were best friends.

Q. Did Rodney deal drugs?

A. No.

Q. Did Rodney even smoke?

A. No, he did not.

Q. Thank you, Nikki. They're going to have a few more questions for you.

THE COURT: Recross.

MR. PHILLIPS: Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. PHILLIPS:

Q. Ms. Hicks, you said that $5,000 was Samir's money. The $5,900 that was in your car when you got pulled over on July 18th, that was Samir's money?

A. Yeah, it was in his car.

Q. Okay. You didn't know anything about it?

A. No.

Q. And the Glock 23, because there was two pistols in the car?

A. It was.

Q. The Glock 23, are you aware it can shoot

a 9-millimeter?

A. I'm not aware.

Q. Now the PTI, that's actually with this solicitor's office, right?

MR. GRAHAM: Are you asking a question, or stating a fact?

THE COURT: He's asking a question, it sounds like. Did you go through the PTI through the solicitor's office ---

THE WITNESS: Yes, I did.

THE COURT: --- 11th circuit program? Okay.

MR. GRAHAM: Can I approach, Your Honor?

THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Please continue.

BY MR. PHILLIPS:

Q. Are you aware that a 9-millimeter shell can fit inside a Glock 23?

A. No, I am not aware.

Q. Are you aware that a Glock 23 can be converted to shoot 9-millimeters?

A. I'm not aware of that at all.

Q. Now there was a question on redirect about the only way we would have ever known about this

was because you consented to let these records out. In fact, it's on the public index. That's how we found out about it.

Your forfeiture action, it's public. Anybody, even the jurors, could go online and type in your name and the 11th judicial circuit, and the forfeiture action pops up, a civil document that you signed for the money. That's how we know. It's not that you consented. Is that fair to say, it's public knowledge? You signed a civil action to give that $4,900 back, so they could give you $100 back -- $1,000 back? Excuse me.

A. I wasn't aware of that.

Q. Okay. The last question. That Glock 23 is registered and bought with -- that's Samir's gun?

A. Correct.

Q. And it was with the money?

A. Correct.

Q. Thank you.

MR. PHILLIPS: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. Nikki, when I asked about you giving consent, was I talking about the police report and the contents that described what happened during the traffic stop?

A. Correct, that's because ---

Q. Thank you, Nikki.

A. You're welcome.

Q. That's all.

MR. PHILLIPS: No further questions.

THE COURT: Thank you, ma'am. You could step down. Ladies and gentlemen, I've been here for about one hour and 40 minutes or so, and y'all have been here for one hour and 20 minutes. We'll go ahead and take our midmorning break at this point in time and reconvene right around 11:30 and keep going, okay? Don't talk about the case yet. I'll let you know when you can. Feel free to refresh yourselves. Thank you.

(Jury exits the courtroom at 11:17 a.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Thank you. Please have a seat. Go ahead and get the jury, please. The jury is moving, so Mr. Phillips, you had something?

MR. PHILLIPS: Yeah. Sutania noted that the next witness will be getting into the jail phone calls, so we'll have to address the legal argument.

THE COURT: Oh, shoot. Okay. Tell the bailiff to hold the jury. All right. The phone calls, you had some concerned. You indicated to me yesterday, Mr. Phillips, both (a), as to hearsay, and (b),

the automated message that plays whenever a phone call is made, you're receiving a call from the Lexington Detention Center, or this call will cost you $0.25 a minute. It will be recorded, blah, blah, blah.

MR. PHILLIPS: That's been redacted now.

THE COURT: Okay.

MR. PHILLIPS: So the State has taken care of that. They've redacted that out. I think our issues are handed up and provided the State a copy. I'm going to make some constitutional challenges in case we have to play long game. We can see what the appellate court say.

But before we get there, Your Honor, specifically, with the jail phone calls, one, the hearsay issues that any of the calls that deal with, obviously, where they have two people gathered, an adherent hearsay problem where, one, the isolated, just the Defendant's response in isolation, is not in context. And, two, we don't have -- we're now deprived of the right of confrontation of the witness on the other hand who made the statement.

And similar to the State's argument yesterday regarding text messages, I believe they said as much as they would love to have gotten text messages in, in other trials, but because there's two sides

to it, you have to have that inherent hearsay issue. So, that's one step, and we'll take it kind of one step at a time.

THE COURT: All right. What's the State's thoughts about that? And what are the substance -- what is the substance of the telephone call? That might be helpful. You have a transcript of some kind? Thank you.

MR. GRAHAM: If they don't have one, we may have to make copies, Your Honor. I only have one.

THE COURT: Give me a second. Let me look at what we're dealing with here.

(Pause.)

THE COURT: Apparently, there are three different audios, and I'll make the transcript a Court's exhibit, I guess, just so that we have a record of what I'm looking at. Apparently ---

MR. GRAHAM: And, Your Honor, I did notice a typo. I'm sorry. Audio number -- I mean, the jury will hear what they hear. But on the first line, it says about the tires, a mat. That's our -- mat, like a floor mat in the vehicle.

THE COURT: Okay.

MR. PHILLIPS: And, Your Honor, when you're done if we can get a copy. I apologize for that.

THE COURT: All right. Solicitor, can you explain to me what you maintain this conversation, as to your case, purports to be talking about?

MR. GRAHAM: Sure. The first conversation, you know, honestly the female only has two comments in there; it's uh-huh and right. He's talking about being in jail. And, basically, Your Honor, he's saying this is the life that we chose. So if he hadn't done anything wrong, that wouldn't have been a statement. So, we're saying it's a statement against interest, implicating him in this murder.

THE COURT: He was, like, "I promise you when you go back out there, you ain't going to be the same. You're going to be looking at something a jump different, and you're going to be taking a different aspect. I was, like, huh." He was, like, "I promise you, you will not be the same when you get back out there." You're talking about that part, about that's the life we choose, right? Is that kind of the ---

MR. GRAHAM: That's the part that I think is the most relevant, Your Honor. The second statement from Mr. Ritter, and the third, take it like a man.

THE COURT: I would agree that the female's statements are just kind of verbal tic; they're not really hearsay. It's simply listening and interjecting

the occasional uh-huh or right.

MR. PHILLIPS: For the first one.

THE COURT: Yeah, for the first one. That doesn't seem problematic to me. What's y'all's position on that?

MR. PHILLIPS: So, obviously, I'll make the constitutional issues last, and it's specifically to the first call. We would argue that it's not a statement in interest. Obviously, we would dispute that and argue, one, it's not relevant under 401, and its probative value is substantially outweighed by its prejudicial effect under 403. Outside of that, that's our objections as to the first call. And then, of course, subject to the constitutional arguments I'm making.

THE COURT: Sure.

MR. GRAHAM: If it's not relevant, I'm not sure how it can be prejudicial.

MR. PHILLIPS: Well, it's -- as with anything, you first argue 401. And if, Your Honor, deems it to be relevant, then it has to go through 403 analysis, is what we would argue.

THE COURT: Who's the "he" that's he's talking to? He was, like, "I promise you when you go back out there, you ain't going to be the same."

MR. GRAHAM: I believe it was the other inmate.

THE COURT: Oh.

MR. GRAHAM: I don't know that we were able to identify who that was.

MS. FULLER: Yes, Judge, this was towards the end. This was a 15-minute call. This was towards -- I believe this was towards the end of the call. So, he was just sharing with female number one what he has gleaned from being in there.

MR. PHILLIPS: And if I may, Your Honor, what's the date for number one?

MS. FULLER: Number one is July 23, 2018, at 22:59.

THE COURT: All right. Audio number two, what was the date of audio number two?

MS. FULLER: Audio number two was July 18 of 2018, at 20:51. And you will recall that's the same day that they executed the search warrant on his house.

THE COURT: All right. About the tire and the mat, is that a euphemism for the car?

MR. GRAHAM: Mat.

MS. FULLER: No, literally ---

MR. GRAHAM: Floor mat.

MS. FULLER: --- floor mat in the car.

THE COURT: Right. The tire.

MR. GRAHAM: The tire is the tire.

MS. FULLER: Literally, the tire on the Tahoe.

MR. GRAHAM: So the investigation revealed, Your Honor, that they went to ---

MS. FULLER: Hephzibah.

MR. GRAHAM: Hephzibah, Georgia. Thank you.

THE COURT: Spell that for me and my court reporter. H-E-P-H-Z-I-B-A-H.

MR. GRAHAM: Georgia. And that he recovered a tire, Your Honor, in the interview of Beverly McGruder. And Ms. McGruder told law enforcement, and phone tracking put Mr. Ritter going to that location immediately after the crime.

And, according to the witness, liked the tire that I believe is consistent with the Tahoe that was manufactured in 2007. And she talks about bullet holes in the glass, and the glass needed to be replaced and glass on the mat, and the mat -- that's my understanding. If I'm wrong, one of co-counselors or investigator would correct what I just told you.

THE COURT: Okay. But that's a witness who will be testifying?

MR. GRAHAM: So she -- we haven't made

a final determination on whether she will be testifying or not.

THE COURT: How are you going to explain the relevance of the tire and the mat then?

MR. GRAHAM: Through law enforcement, collecting the tire.

MS. FULLER: It's in evidence.

THE COURT: And you're going to link it to Mr. Ritter how?

MR. GRAHAM: Through the phone call and the cell phone that puts him there.

MR. PHILLIPS: We argue she's a necessary witness to link it.

THE COURT: I would tend to agree. If she's the one that says it came off of a burgundy Tahoe, and that it came from Mr. Ritter or somebody, at his bequest, I don't see how you're going to be able to get it in through an investigator without her. That screams hearsay in my mind.

MR. PHILLIPS: And this is the witness that was from out of state that they did the detainer on, who provides a self-defense, basically, explanation to law enforcement.

THE COURT: Whatever. I don't know.

MR. BROWN: She's the one that we filed

for a taint hearing.

THE COURT: That we're not doing though.

MR. BROWN: We weren't doing it, unless she was called.

THE COURT: Oh.

MR. GRAHAM: So, Your Honor, an issue we have with her, she is under subpoena. She's willing to come. She would be here today. We got notice that she has COVID. Does the Court have any protocol about dealing with this? But she is willing to come.

THE COURT: I anticipate that her testimony will be presented via WebEx, or some other medium in that case.

MR. BROWN: We would object strenuously because she's going to offer a confession of our client.

THE COURT: She is COVID positive?

MR. GRAHAM: She sent us a document saying that she was COVID positive.

MR. BROWN: This is not like a call to death witness.

MS. FULLER: And, Your Honor, we don't have to offer the confession of their client.

MR. PHILLIPS: Well, that's because we can get a self-defense charge.

MR. BROWN: And an explanation that it's

not his fault.

MS. FULLER: We don't have to ---

MR. BROWN: Which would change the jury instructions too significantly.

THE COURT: Well -- okay. Hold on. Let me ---

MR. PHILLIPS: There's a lot.

MR. BROWN: It's a lot.

MS. FULLER: Your Honor, if I may?

THE COURT: Sure.

MS. FULLER: Based on listening to this call -- I think that is appropriate testimony. Whether or not the call comes in, he can say based on his investigation, he heard Damien Ritter asking questions about the tire and the mat that prompted him to go to that location and see the tire and the mat in question, and the tire is marked. It's a 2007 Goodyear tire that is consistent with being issued on a 2007 Chevy Tahoe.

We can offer that without offering the witness's testimony. That's, I believe -- I mean, we've done that before. What prompted you to seize this evidence? And I think it is relevant, especially since the burgundy Tahoe is not here. We have never recovered it. So, I think it is relevant and highly probative to proving this case, or assisting in proving this case.

THE COURT: What is going to be the -- I agree with you that if it were to be presented as I heard the phone call, I then went to a location -- how do they know the location?

MS. FULLER: Because additional information, Your Honor. After Damien Ritter made the comment -- the person he called, Beverly McGruder, she is a stripper that he knows. She only knew him as Donte. So then from there, he asked her to call glass repair and body shops to repair his vehicle.

She's one of the first people that he contacts. So her number is the same number that's on the jail call. Law enforcement listened to it, and were able to make that connection. Phone records put them together in the Hephzibah area the night this happened. So it kind of naturally came together based on phone records, the jail calls, and law enforcement followup in this case.

MR. PHILLIPS: And our argument would be because the State has presented testimony, without objection, establishing that the red Tahoe is Mr. Ritter's, I mean, that's actually in evidence, not through only testimony, but also through exhibits, that it's 403 to have it not linked to that witness.

In other words, he goes, and he just comes

back with a tire, and there's no further explanations. So under 403, it's confusing to the jury.

THE COURT: Which was going to be my next question. Does the tire have a serial number, and is there documentation that demonstrates that that specific tire was linked to -- given to or put on that specific vehicle? How do you link the tire to the Tahoe? You indicated that you could do that.

MS. FULLER: I believe circumstantially you can look at -- so Chevy manufactures the car. The tire is Goodyear. It is -- when you look it up, the 2007 Chevy Tahoe, this is the tire that was issued. There's no way -- I don't think Chevy does, I don't believe. They don't have this tire was manufactured on this specific vehicle. No.

THE COURT: Right.

MS. FULLER: They just say that this is consistent with what would have been issued, or once it left the assembly line. And so I believe that's enough, and whether the weight of it, that's for the jury, I believe.

MR. BROWN: It's either hearsay or Marisa Tomei is missing from this.

MS. FULLER: I don't believe that. I respectfully disagree with that, Your Honor.

MR. PHILLIPS: My specific thing is without Ms. McGruder to connect the dots, it is highly misleading and confusing to the jury under 403, obviously, outstanding the hearsay objection that we already have. But if they just hear about him collecting some tire and roll a tire in here, where did he get the tire, how did he get the tire. That's a lot of questions.

MR. BROWN: And I'll be honest, I don't know that we -- they want to roll the tire in, we'll waive the jail call and have them roll the tire in.

MR. PHILLIPS: But, you know, I'm still ---

MR. BROWN: I mean, I don't know ---

MR. PHILLIPS: I'm still not even past that because I don't even know that they should be able to waive -- wheel the tire in. So, I would say my thing is it would be confusing for the jury of how they got the tire without the connection.

MS. FULLER: Well, Your Honor, I'll start it again. So this was July 18th of 2018, the day they go to Estill to search his home. That same day, he knows about it, and I've listened to the call, he's, like, I don't even know why they took that DVR. There's nothing -- it's around the same time frame that he's aware that law enforcement is in Estill.

Investigator Deas, he can testify and say, investigated the case, he looked into a number of calls, and in investigating the case, he reviewed a number of records. He saw a connection between a phone number that he's communicating with after this homicide and the jail call on that same day. He knows that person, he contacted her, he had spoken with her, he recognizes her voice. From there, he asked a question.

This statement is, like, about the tire and the mat on July 18th. He goes to the Augusta area, and seizes the tire and mat from the person he's talking to, from the person that he is talking to after the crime, and the person he's talking to the day they searched the house. I think we can make that link, Your Honor, without actually her saying that's the tire on the car.

If we called her, she would say that, that he left the tire at my house. But I think, considering the situation with her, she was willing to come. We booked the hotel for last night, probably lost the money on it, I'm sure, because she was, like, what time should I get on the road after she sent the results. We're, like, pause.

And so -- but either way, Your Honor,

our position is that it would not be hearsay. I think it would be relevant, and I think that circumstantially we can link it. And the jury can give it the weight they would. They can say, well, that's not the tire from the Tahoe, if they want to, or they can say, oh, it is. But it is consistent with being a spare tire issued on a Chevy Tahoe.

MR. PHILLIPS: So starting at the biggest -- in the bag would be the confrontational clause.

MS. FULLER: Oh, and -- sorry, Your Honor.

THE COURT: May I? Because here is the problem that I'm -- here's the problem that I'm dealing with. Generally, Ms. Fuller, I agree with you, okay?

MS. FULLER: Okay. Thank you.

THE COURT: Generally speaking, I agree with you. But the problem is not so much the call and what the investigator heard and his subsequent actions. That's all fine; that's all well; that's all good. Where we get into a problem is, okay, he testifies, and the Defendant also made a call to Ms. McGruder shortly after this incident. And having heard this, I then went to wherever, Georgia, and I seized the tire.

That raises the implication that, obviously, he had a conversation with the McGruder person, obviously, she gave him a tire, and she's not just going

to give any bullet-ridden tire. The implication is that she gave him a tire, which she took off of the Defendant's vehicle, and without that connection it would be very improper under 403 for the tire to come in or be mentioned, which takes us back to the initial thing, why are we even -- how can we even talk about the tire in a jail phone call if we're not going to be able to present the testimony, or we don't present the testimony of Ms. McGruder?

Now, the solution is, obviously, to present the testimony of Ms. McGruder, which, of course, she cannot come to the courthouse and testify because if I were to permit a person who had a COVID-positive case to come to this courthouse and testify, I would be assigned Marlboro County CPNJ for the rest of my judicial career, and I'm not willing to do that. That's reason number one. Reason number two, I'm quite certain it breaks every COVID protocol to bring someone with an active case into this courtroom.

Now, that leads us to the objection that the defense has. The case is from 2018. It is a pre-COVID case. I cannot remember the name of it; I think it's an Italian name. But the Court basically held that a witness was allowed to testify via Skype for purposes of convenience. They were out of state in Montana

or Michigan, or some state with an M, I think. And the Court held that even though it was harmless error, because the witness wasn't that ---

MR. PHILLIPS: It was collateral.

THE COURT: Yeah, it was a collateral witness, that depriving the Defendant of the truest form of confrontation was error for the Court. Now, that is a pre-COVID case. I've not specifically reviewed the chief justice's order to see what kind of leeway the Court has in terms of witnesses appearing via WebEx or closed circuit. I have not had to review that recently.

My understanding in family court is that they've been doing it, and they are still doing it, with witnesses appearing remotely. But that, of course, is a domestic action, as opposed to a criminal action, where in a criminal action you have right to confrontation, which is, obviously, going to be more substantial than any civil action.

So to the extent that the chief justice's order could be read to permit the witness to testify via WebEx over their objection, I do not know, and I would have to ruminate that -- on that. At the same time, apparently, she would be able to provide testimony as to a defense, if she were to be called to testify

by WebEx or whatever.

And I think the jury would understand the hesitancy of the Court to allow her to testify in person. Perhaps, the defense should reconsider their position, that they want the truest form of confrontation.

MR. BROWN: Judge, if I may put a little interplay here. The tire doesn't have a bullet hole in it. Now, I point this out because that probative value to the issue and dispute, as to the primary aggressor, has to be near nothing.

THE COURT: Say that again, please.

MR. BROWN: Who's the primary aggressor has almost nothing to do with a tire that's gotten ---

THE COURT: I agree.

MR. BROWN: I mean, it's almost something on the issue that we're now at. Four days ago, it was different. We now know where the issue is, who's the primary aggressor. To the witness being in court, it's subject to being examined with affidavit -- I mean, excuse me, statement and exhibits that we have to offer her.

I've done this before, and it's next to impossible. It's been terrible with WebEx. Nobody can hear. I can't give them a document.

I don't know if she has a fax machine or e-mail or a printer. Nothing personal, but it's not usually stock and trade for somebody who dances. And so how are we going to get her the stuff marked that we're going to examine her about, as to the crucial issue in the case of who's the primary aggressor? And that, to me, is different than the tire.

THE COURT: Mr. Graham, you have a thought?

MR. GRAHAM: Briefly, on a couple of things. For Your Honor to consider the relevancy of it, Rodney Furtick testified that he fired multiple rounds at the car. Cell phone tracking puts him at the location where Ms. McGruder was at, Matt Deas goes there, and he recovers the tire.

Through his investigation, he learns that the tire, which I believe says it was manufactured in 2007, a stocked tire that goes on the 2007 Tahoe. And the phone records of Mr. Furtick, it shows while he is there that he calls at least seven ---

MS. FULLER: Ritter.

MR. GRAHAM: I'm sorry, Ritter. When Mr. Ritter was in Georgia, at Beverly McGruder's place, he calls at least seven tire companies, like Tire King, Firestone. There's seven phone calls from him to tire -- so those phone calls make it more relevant as well.

MR. BROWN: And, Your Honor, in reply. I'm sorry ---

THE COURT: He was done.

MR. GRAHAM: So that's as far as the relevancy of the tire and how we believe it is relevant. The phone call makes it relevant because he's asking about a tire.

THE COURT: Go ahead.

MR. GRAHAM: Secondly, I would add, as far as Ms. McGruder, if Ms. McGruder testified, we're not going to ask her about the statements that he made. We're just going to talk about him coming there and leaving the tire. Those would be statements they would choose to give, which we would say is inadmissible hearsay because they want it in, and we don't, so we would object.

THE COURT: Yeah, you're probably aren't going to make ---

MR. GRAHAM: That's ---

MR. BROWN: Judge, that's a collateral that doesn't need to have a WebEx exception to the confrontation clause.

MS. FULLER: I mean, that's self-serving hearsay, Your Honor. They can't offer a witness to put up that case. He would have to take ---

MR. PHILLIPS: We didn't offer the witness.

MR. BROWN: That's our point.

MS. FULLER: Even if she's on the stand, like, that is self-serving hearsay. You can't cross-examine her and ask what did Damien Ritter say to you.

MR. BROWN: We agree with that, and we're saying, now she's collateral, why carve out an exception to the confrontation clause, or as he called it, the long game. I mean, that is -- there's no way I can ---

MR. PHILLIPS: Waive that.

MR. BROWN: I can't waive that. There's no way. I'm not going -- they've been saying it for several years, and try to justify that decision.

THE COURT: Right.

MR. BROWN: And we're ready. We have tighten our cross-examination of Investigator Deas. We've brought up Ms. McGruder before. She may not even be able to testify for them. We don't know anything about what happened with that order of detention. We've never gotten the Georgia order withdrawing that order.

THE COURT: Let Ms. Fuller finish.

MS. FULLER: And, Judge, in all candor, like, we were about to present the tire testimony

without her, because I do believe the way the investigation developed and the length, we do not need her to say anything. And that's just the way I foresee it.

Like, per the investigation, this is where it led. Her phone records; that's not hearsay. Her phone records calling tire companies, auto companies. His phone records putting him at her house, calling companies at seven o'clock in the morning, right after the homicide, the car not being here, I think explaining that to the jury, that law enforcement never recovered the car.

But the whole thing is law enforcement didn't do this, didn't do this, didn't do this. They drove to Georgia to try to find the vehicle, and all they could find is the tire that they heard a conversation about. I think it's highly probative and relevant to the case and where we are.

The biggest attack, every witness, you didn't do touch DNA in the blood, like, you didn't do this, you didn't do this. I don't see how I can respond to what they've been doing all day without presenting a full investigation. I think it helps the fact finders.

THE COURT: And I understand that. We all

acknowledge that the DNA and the fingerprints thing, that's common, that's a common argument that's made in practically every case that I try. So, I don't hold that against anybody, and it is a proper line of inquiry.

The problem that I've got is, again, what I'm going back to. Without Ms. McGruder testifying, I think that the investigators can say I overheard a jail call in which a tire was mentioned, or I overheard a phone call. Jail call is going to be a problem. I overhead a phone call in which a tire was mentioned. Based upon that, I checked some other records, I called around to some other tire stores, I ultimately drove down, in an effort to locate the Tahoe, to wherever, Georgia and leave it at that.

I don't know that he's going to be able to get into the fact that he seized a tire, or that he took possession of a tire that reportedly came off of the Defendant's Tahoe without that witness testifying that she took it off his Tahoe. I simply -- that creates so many issues, and that is what they have an issue with.

So without that witness, I don't know that you're going to be able to necessarily play this. He can testify that he heard it, and that he made every

effort to locate that Tahoe, and that he went down to wherever, Georgia looking for it, and looking for a tire. But he'll have to leave it at that.

And, of course, if they open the door with, well, do you have the tire? Yeah, I got the tire. It's downstairs in evidence. But I don't know that it's appropriate, and there are hearsay aspects of statement number two. But without that woman's testimony, I don't know that it's proper to play audio number two.

Can he testify generally about hearing telephone calls, and what he did as a result of those telephone calls, and there was something mentioned about a tire in that telephone call, and I called businesses A, B, C and D in Georgia to try to track all that down and run it down and locate the Tahoe, and I even went down there? I think he can testify as to that.

But that he seized the Tahoe [sic.], which reportedly came off of the Defendant's Broncho [sic.], no. We can't go there. And if we can't offer her as a witness, if she cannot testify, and it sounds like she is unavailable, then we cannot play audio number two. So let's move to audio number three.

MR. PHILLIPS: What's the date for number three?

THE COURT: Do we know the date for number

three?

MS. FULLER: I do. I'm just still -- I'm processing. I'm processing.

MR. GRAHAM: Could we do this, Your Honor. Play the phrase from Damien Ritter's voice about the tire, cut it off, have nothing else. We don't put the tire in, but we put the mapping in that shows he's looking for tires. So you've got Rodney Furtick shooting at the vehicle, you've got Damien Ritter asking a question about a tire on a call, and then you have the mapping showing he goes to Georgia, who the call went to ---

THE COURT: You can play -- I will permit you. That's fair. Because I will -- that would substantiate the fact that that's what he heard. If you want to play that clip about the tire and the mat, that is fine, but nothing further, because then we're getting into hearsay issues.

The female says what you told me to do, throw it in the trash. You're not able to confront the female about, okay, well, you had this prior conversation with Mr. Ritter about where he told her to, you know, toss it in the trash, what you told me to do. So just Mr. Ritter saying about the tire and the mat, that's fine.

MR. PHILLIPS: That one sentence.

THE COURT: That one -- one, two, three, four, five, those six words about the tire and the mat.

MS. FULLER: And, Judge, thank you for that. I guess my only problem, and I'm picturing the cross, and maybe they just won't go there, you know. You're allowing him to say he went to Augusta looking for this tire and the mat, he seized it, right, but he can't say that.

MR. PHILLIPS: If we cross on it, we open the door, and you can wheel the tire in.

THE COURT: Right. If they open the door on cross, and the tires come in, and I understand your position, Ms. Fuller. I have ruled, and the ruling I made was because it would be -- the implication would be that the tire was taken off the car.

If he starts talking about a tire or presenting a tire, it would be that the tire was taken off the car. He did not take that tire off that car. And, obviously, he's taking possession of that tire and marking it as an exhibit in this case because somebody said, oh, yeah, here's the tire they came off the Broncho when Mr. Ritter pulled up, and I sold him a new tire, and he paid $200 for it, and here's the old one that I took off it, Officer.

That's the only implication. That's not proper without that witness testifying. That's where we are. Number three, what was the date of number three?

MS. FULLER: Number three is -- that is July 27, 2018, at 22:58.

THE COURT: All right. Three lines.

MS. FULLER: And, for the record, Your Honor, this is literally probably as soon as it stopped doing the secured line, the first three lines of the call.

MR. PHILLIPS: We think it's, like, a 15-minute phone call.

THE COURT: Okay.

MR. BROWN: And after he's been in jail for two weeks.

THE COURT: Okay. So, Ritter, "Girly, you ain't know how much I miss you." She simply poses the question, which would be probably non-proffered. Ritter states nothing, I, presumably, have already F-ed up -- "F-ed around and got in some trouble -- done F-ed around and got in some trouble." At least he doesn't say F-ed up. Defense's thoughts on that one? I mean ---

MR. BROWN: If we ask if he's been arrested

-- we don't want to open the door to the fact that he's in jail. That's the problem because I don't mind asking. I mean, he asked around. He's in trouble. He's charged -- he came to my office. He's charged with two counts of murder. He's in trouble.

THE COURT: Well, yeah.

MR. BROWN: So we could offer -- we need a way to explain it without going into him being incarcerated.

THE COURT: Well, I'm terribly curious as to how everyone is going to be explaining to this jury that the police, all of a sudden, have recorded telephone calls, and there's no reference to a wiretap, or a warrant for a wiretap, or anything like that.

MR. BROWN: But you ---

MS. FULLER: And, Your Honor, we went up there, and you said, well, come up with what we're going to say, but that's the exact thing. I don't want the jury thinking we're wiretapping.

MR. PHILLIPS: We're not ---

MR. BROWN: And we will not sandbag.

MS. FULLER: Yeah, but they need to know something. And, Judge, you said you would think about it and how to phrase it. But that needs to ---

THE COURT: I can't think of any way to

phrase it, other than ---

MR. BROWN: Can you give them a little bit of instruction?

MS. FULLER: In other cases, it's just been published, even the -- like, the whole introduction has been published in prior cases.

MR. BROWN: Appellate cases -- and I can't speak for other lawyers.

THE COURT: Mr. Graham.

MR. GRAHAM: I was going to suggest that you announce that they're -- that they're legally ruled, and they're admissible for the jury's consideration, and they're recorded phone calls of the Defendant.

MR. PHILLIPS: I would rather not go as far as you telling the jury, yeah, these are admissible and all that. I mean, we can just, you know ---

MR. BROWN: Yeah, and we won't -- if we argue it in closing, you give a jury instruction to that effect. We won't do it, but we would agree in the jury instructions you correct anything I say in closing.

THE COURT: Well, the person you're going to call to authenticate this, I'm assuming, she is a deputy at the jail.

MR. GRAHAM: Actually, they're stipulating to ---

MR. BROWN: We're stipulating for authentication.

MR. PHILLIPS: To save a witness.

MR. BROWN: To save a witness. That's right.

THE COURT: All right. The first line, "Girly, you ain't know how much I miss you."

MR. BROWN: We don't mind that in there.

THE COURT: Say again?

MR. BROWN: We don't mind that part in there.

THE COURT: You don't mind that in there, even though it raises the implication that, obviously, something is preventing him from ---

MR. BROWN: Well, Judge, I told my wife that last night. I wasn't incarcerated.

THE COURT: Not in the strictest sense.

MR. BROWN: Just to the job.

THE COURT: You're obviously being detained.

MR. BROWN: That's correct.

THE COURT: All right. I don't see a big problem with number three. I realize you haven't made your constitutional argument, which you will be making shortly. And if I decide that your constitutional argument is valid, then maybe all of this will not come

in, so make your argument as quickly as you can.

MR. PHILLIPS: As far as the first one, Your Honor, I don't think we ever got a specific ruling on the first one because they can't do -- I mean, obviously ---

THE COURT: Yeah, I've been sort of thinking about that one.

MR. PHILLIPS: That's what's giving me -- that's the heartburn for me. If I'm looking at it, that's the one that gives me the heartburn because he's sitting there denied bond in jail, can't do nothing but take it like a man.

In other words, sitting in jail, denied bond. That's not an admission of guilt in it of itself. It would be different if he said I F-ed up or some other way. But can't do nothing but take it like a man. In other words, I've got to sit in jail because my bond is denied. It can definitely go both ways.

THE COURT: The first paragraph where Ritter is talking, you know, we do have that hearsay issue, assuming that the State is correct, that he was having a conversation with another inmate, and that's what -- that's who the "he" was, the pronoun, the subject pronoun of the first sentence of that first line. So that's a hearsay issue.

MR. PHILLIPS: Yes, Your Honor.

THE COURT: "Can't do nothing but take it like a man."

MR. GRAHAM: Your Honor, to speed it up, we could delete the first line where he's talking about somebody else.

MR. PHILLIPS: Well -- and if you actually read it in context, it next was -- and, I was, like, when he was, like, I promise you, you will not be the -- so it's the guy talking again in the third one.

THE COURT: Right.

MR. GRAHAM: I meant that whole ---

THE COURT: That's what he was ---

MR. PHILLIPS: Oh, okay.

THE COURT: That's what Mr. Graham meant.

MR. GRAHAM: It can start with Mr. Ritter's complete statement, "To get better before it gets."

MR. PHILLIPS: Take out "Can't do nothing but take it like a man," and then I think we're ready to go.

MR. GRAHAM: We believe that needs to stay in.

MR. PHILLIPS: Well, that's where our contention ---

MR. GRAHAM: He's taking responsibility

for the life he chose.

MR. BROWN: And, Judge, that's not 404(b); that is general character evidence.

MR. GRAHAM: It's just a statement for what he did in this case.

MR. BROWN: That's not ---

MR. PHILLIPS: So, in addition to, obviously, the other arguments, Your Honor -- I know you're reading, and I don't want to interrupt.

THE COURT: Go ahead. I'm just staring at it.

MR. PHILLIPS: Another issue that we are looking over is the implication of the life we choose does have that specific instances.

MR. BROWN: It's the opposite. It is not a specific ---

MR. PHILLIPS: It's general. Excuse me.

MR. BROWN: --- under 404(b). It's general character reputation of an accused. A pertinent trait of character offered by the accused, or to rebut us offering that he's a good character person, which we haven't offered good character, so that comes in. Under 404(a), general character, the life we lead, not a specific instance. I owe you money, I'm coming up there to pay you, you let that in under 404(b).

And not waiving the ruling, that's not the same. That's a specific incident. And, Your Honor, it's taken me 25 years trying to work through these rules to understand the interplay between the two.

THE COURT: Here's where I am on this one, okay? That's the life we choose, right, okay? I'm hearing echoes of Don Corleone when he's meeting with all the other bosses after his son had gotten gun downed, and he says, this is the business that we are in.

And, of course, you'll recall that in Godfather II, Hyman Roth basically says the same thing, you know, this is the life that we had chosen. I didn't ask any questions when they killed Moe Greene. I mean, that's the life we chose, right? I agree that the State -- I agree with the State that phrase does have probative value. It is some evidence of guilty actions or guilty knowledge.

As always, though, the problem is context. My biggest concern is that under 403 the prejudicial effect would outweigh any probative value because it is such a general statement. I could be in jail and say, you know, that's the life I chose. This isn't your typical jailhouse confession, or your typical audio confession, and that's what I usually hear played in

cases like this, more often than not.

Why people say that on a phone call when the first part of the phone call is everything you say is being recorded, I still don't know. But typically I have tried cases where the jail phone call was I'm glad I raped her. That's a genuine confession. I don't see where this is. I realize that it is probative of guilty knowledge or intent. But under 403, I think its admission would be improper because any prejudicial effect would clearly outweigh any probative value of that statement.

So first one is not coming in. We're limited to the first line of audio number two, and audio number three, I guess we're good with, even though the defense is objecting to it on constitutional grounds. Those are my rulings. Absent the lengthy ---

MR. PHILLIPS: I will be quick, Your Honor.

THE COURT: Go ahead.

MR. PHILLIPS: All right. So we have marked, I think improperly, as Court's Exhibit No. 2, we'll move it to a defense's exhibit, this law review article. It's the University of South Carolina School of Law. It's the annual survey of South Carolina law. It's a constitutional law, Can You Hear Me Now? The Impacts Of Prosecutorial Call monitoring On Defendants'

Access To Justice. It came out in the summer of 2019.

THE COURT: You'll be happy to know that I've read it in full during the pandemic when I did have time. I do subscribe to the law review, and with the exception of the one that came out this year just recently, I do read them. So, I have read it.

MR. PHILLIPS: My esteem colleague, is quoted. He was interviewed.

THE COURT: That is correct, Mr. Graham, under one of the rules, 801 or something, I think he was quoted.

MR. PHILLIPS: Yeah, several footnotes.

THE COURT: Yeah.

MR. PHILLIPS: So we are making the arguments that was raised in that law review article that Your Honor is aware of. And, specific, it says, it implicates the First Amendment's freedom to expression, the Fourth Amendment's freedom from unreasonable search, and the Sixth Amendment's right to counsel.

We're raising it on those issues, as they are addressed individually in that law review article, specifically, as to the First Amendment, prosecutorial or monitoring of detainee's phone calls can fringe upon. And in this case, we argue it does infringe upon

First Amendment rights of both -- of Mr. Ritter based on chilling the exercise of free speech.

As to the Fourth Amendment, as Your Honor knows, the touchstone of the Fourth Amendment is reasonableness. We argue that generally speaking reasonableness requires the police to have an "individualized suspicion of wrongdoing" before conducting a search or seizure. We're arguing that that narrow exception to the rule is not permitted here because we don't have that individualized suspicion of wrongdoing.

And then under the Sixth Amendment challenge, by monitoring inmates' phone calls and allowing them to come in, the prosecutor's office compromised the Sixth Amendment rights of pretrial detainees, specifically Mr. Ritter, by diminishing the efficacy of their counsel and discouraging them from participating in their own cases and undermining the sanctity of attorney/client privilege.

THE COURT: I'm trying to recall if the law review article touched on the exclusive -- the specific right to privacy under the South Carolina Constitution and the implication for a two-way phone call.

Perhaps, the Defendant may have less of a protected interest in privacy because he is being

detained. But, obviously, the person on the other end of the phone has some interest in being able to communicate with the detainee in a private way.

MR. PHILLIPS: And to preserve that, I argue -- South Carolina Supreme Court, Article 1, Section 10 of the South Carolina Constitution does have that higher level of unreasonable invasions of privacy that's not contained under the Constitution -- the Fifth Amendment.

THE COURT: The federal constitution.

MR. PHILLIPS: And through that, that higher level of protection should be granted as well in this case, as far as the search is concerned. So Article 1, Section 10, has that higher level against unreasonable invasions of privacy, and we make it under that as well.

THE COURT: I appreciate your position. Existing statutory -- existing case law permits the introduction of the phone calls. Your objection is noted, both on federal and state grounds, all amendments under both constitutions. I will permit the phone calls to be played, as I have limited them in my earlier remarks.

MR. PHILLIPS: Thank you, Your Honor. I appreciate you giving me that leeway.

THE COURT: Not a problem. What if I were to explain to the jury, ladies and gentlemen of the

jury, you're about to hear audio recordings of the Defendant and just leave it at that?

MR. PHILLIPS: Yes, Your Honor.

MR. BROWN: Yes.

MR. GRAHAM: Have they been admitted into evidence?

THE COURT: That are being introduced into evidence, yes.

MS. FULLER: Are you going to say that when they walk in?

THE COURT: Just as a preface to what they're about to hear.

MS. FULLER: Well, it's not the first thing. It's probably, like, an hour later. I've got a lot of questions, so I'll try to get there.

MR. GRAHAM: When she goes to offer it, yes, Your Honor.

MS. FULLER: When I go to offer it, I guess.

THE COURT: All right.

MR. BROWN: And we're predicting about 30 minutes of cross, Your Honor. We have narrowed it. Then, we have the jury's instructions. We brought the -- substantial evidence charge.

THE COURT: You're using that one?

MR. BROWN: Yes, sir. I haven't been

through your charges yet. State v. Manning, reasonable doubt.

THE COURT: Look at what I did first. Let me -- let's look through this before we get to charges.

MR. PHILLIPS: I heard an hour. I'm going to slip out.

THE COURT: Okay. Well, hold on. We're at 12:30. This next witness is who?

MS. FULLER: The investigator, Judge.

THE COURT: Okay.

MS. FULLER: Can we get started, please?

THE COURT: So you're going to play the recordings through the investigator? That's probably a good idea. We may want to go ahead and take a break for lunch then because if you're going to take -- if you're going to be an hour with him, that puts us at 1:30. We're going to have people passing out. Your cross is going to be what?

MS. FULLER: They said 30 minutes.

MR. PHILLIPS: We're going to keep it tight. And our case is pretty much out there at this point.

MR. BROWN: That's correct. And there are some things we want to kind of tie a loop, but honestly, we've developed our case.

THE COURT: Gotcha. That will be your final

witness?

MS. FULLER: No, Your Honor.

THE COURT: Who else do you have after that?

MS. FULLER: The FBI agent.

THE COURT: How long is he going to be, do you think, or she?

MS. FULLER: Not terribly long.

THE COURT: Not terribly long?

MS. FULLER: Thirty minutes.

MR. GRAHAM: For us.

MS. FULLER: It's the mapping.

THE COURT: Oh, the mapping. Okay. That won't be too bad for you guys.

MR. PHILLIPS: I think what we'll ---

MR. BROWN: Yeah, we don't even know if he's ---

MS. FULLER: I'm trying to get to the jury.

THE COURT: I understand. We shall see. And after that, that's your final witness? Okay. Let's have the jury, please. We will break for lunch.

MS. FULLER: Do we want to order them lunch?

THE COURT: By the time we order them lunch and it gets here, that will be one hour and 30 minutes from now.

MR. BROWN: Same with Beaufort.

MR. PHILLIPS: We're doing 1:30, Your Honor?

THE COURT: It's probably going to be 1:45.

MS. FULLER: And, Judge, for the record so this goes seamlessly, also with Investigator Deas, we are doing the DVR footage. That's been stipulated to in terms of the chain. We are moving it in clips, but going to be publishing directly from the DVR that's going to remain as ID because it's three months' worth of footage.

THE COURT: Gotcha. Right.

MS. FULLER: Also, for the record, we have served notice. I don't believe there's any objection to the business records for Elzie Mack, AT&T, Verizon, of the Defendant's phone, and then Rodney Furtick's phone.

THE COURT: Mr. Brown is nodding in agreement.

MR. BROWN: That is correct, and we discussed that. And we don't have an other objection to the DVD of the Night Owl recorder, except for our previous ones, Your Honor.

THE COURT: Of course.

MR. BROWN: Which, I'll just pop up then.

THE COURT: Right. That objection, of course, is noted, and it will be renewed

as appropriate.

MR. BROWN: Yes, sir.

MS. FULLER: And then, for the record, it will just be ID since it didn't come in. 243 and 244 is Hephzibah, Georgia photo of the home and the map. So it will just be for identification, I guess, for the record.

THE COURT: Okay. 243 and 244 are ID only.

(Jury enters the courtroom at 12:32 p.m.)

THE COURT: Ladies and gentlemen, do not get too comfortable. I know that when we took a break I said it was going to be pretty quick. And when I came back out here, I actually sent down for you, and then told the bailiff to hold because I was informed that we had a number of legal matters that I had not anticipated when we took that break, and I've been working through those, ultimately made the rulings that are appropriate on those particular legal matters.

And because I anticipate that the direct of the next witness may take an hour, and since we're at 12:35 at this point in time, and I know cross would probably take a piece of time as well, we're going to go ahead and take a lunch break. Again, sorry to keep you waiting, but again it was one of those things where I was -- I think they gave me a heads up, but I had

forgotten it. It was something we needed to address before the next witness.

So, we'll go ahead and take a lunch break. If you could, be back here at a quarter of two, all right. A quarter of two, please be back in the jury room. That hopefully should give you enough time to grab a bite to eat. I'll see y'all at 1:45. And, of course, don't talk about the case yet. Thank you. All right.

(Jury exits the courtroom at 12:34 p.m.)

THE COURT: I'll see y'all in about an hour and ten minutes from now. Thanks.

(Recess taken.)

(Back on the record.)

THE COURT: Thank you. Have a seat.

MR. PHILLIPS: And, Your Honor, the matter of ---

THE COURT: We'll go back on the record. Defendant is present with counsel. You had a quick matter, Mr. Phillips?

MR. PHILLIPS: In the matter of judicial efficiency and interest to justice, we're not going to recall Paul Greer.

THE COURT: Okay.

MR. BROWN: And that's assuming we're trying

to close today.

THE COURT: All right.

MR. PHILLIPS: We're trying.

THE COURT: I understand. It will be the jury's option as far as that's concerned. That's a good way for me to lead into what I was going to mention. We have the investigator who's going to be testifying here in a moment.

Depending on how long the direct takes, we may or may not take a break between that and cross. Assuming we take a break and then go into cross and deal with the GPS witness, or whoever it is that's going to be the last for the State, the State will rest after that.

And instead of taking a break to handle the motions, what I'm going to do is it's going to be automatically understood that the defense is moving for a directed verdict, and that they are renewing all prior motions after the State rests, but before the defense rests. And that's assuming that the defense is not putting up a case.

So that if -- what I'm saying is, that way I can give the jury the option of coming back tomorrow, or coming back Monday, or continuing to work tonight, and whatever they decide is what we will do.

And in the interim, we can do the charge conference and actually hear motions, assuming that they will be looking at coming back on Monday.

But, obviously, it will go without saying that the motion for directed verdict and all prior motions are renewed in the interval between when the State rests and when the defense rests. Obviously, I'll simply turn to the defense, and if you do rest, just say as much.

MR. BROWN: Yes, sir.

THE COURT: But I just wanted the record to reflect that so that everyone -- the defense was protected on that.

MR. BROWN: And we have spoken to our client about testifying and his right not to testify. We've also spoken about the right to present a defense and not just, you know, this week but over the course of representation. So, Your Honor, we have done that. At the right time, we will address that with Your Honor.

THE COURT: Very good. Well, unless you feel like there's a need for me to independently address it, I'm assuming that y'all have adequately explained to Mr. Ritter his Fifth Amendment rights and the benefits and perils of him testifying and presenting a defense. I'm correct on that?

MR. BROWN: That is correct, Your Honor.

MR. PHILLIPS: In detail, Your Honor, yes.

THE COURT: Mr. Ritter. Mr. Ritter, your lawyers are informing me that you've already had a discussion with them about the right that you have to testify and not testify. Do you have any questions about that? Are you comfortable with their discussions?

THE DEFENDANT: I'm comfortable with it.

THE COURT: Okay. The way I always leave it, Mr. Ritter, is if you decide that -- or if the strategy is for you to testify, I'll simply assume that one of your lawyers called you as a witness in your case, that you will have waived your Fifth Amendment rights. Is that fine to leave it like that?

MR. PHILLIPS: Yes, Your Honor.

THE COURT: Okay. Very good, Mr. Ritter. Let us have the jury, then.

MR. GRAHAM: For the record, your draft charge, you have self-defense. We don't believe self-defense is appropriate, and I don't want them relying on that in his decision not to testify.

THE COURT: The instructions that I had my law clerk e-mail to you was a kitchen sink sort of approach, okay? I know that that's going to require additional discussion, but I wanted to go ahead and get

that in there prior to that discussion taking place. And understanding he was -- he started working on these on Tuesday, so. How the case was going to shake out was not, obviously, as clear on Tuesday as perhaps it is now.

MR. GRAHAM: And, for the record, Your Honor, I'm not sure if Paul Greer is here so Your Honor can call him up to the stand. We are not recalling him.

THE COURT: They're waiving.

MR. PHILLIPS: Yeah.

THE COURT: So if he needs to go about his day, he can go about his day.

MR. PHILLIPS: I mean, I guess ---

MR. BROWN: If you want to put him up, it's, like, two questions.

MR. PHILLIPS: It's two questions.

MS. FULLER: I mean, we literally left lunch and sped here.

MR. PHILLIPS: Okay. Just two questions.

MR. BROWN: Let's call him.

THE COURT: Okay. Very good.

MS. FULLER: Oh, if they're waiving, that's fine.

THE COURT: Apparently, since he's here, he may as well party. Welcome to the party again.

(Jury enters the courtroom at 1:55 p.m.)

THE COURT: The record will reflect that the jury is back and seated. Ladies and gentlemen of the jury, in light of the testimony and some of the information that came in through the last witness, the Court is going to be recalling the 16th witness who testified yesterday, Paul Greer, just for a few additional questions. So if Mr. Greer could come up. Officer Greer, if you would come forward, please and just have a seat.

THE CLERK: He's still under oath, Your Honor.

THE COURT: And, of course, he is still under oath.

MR. PAUL GREER was called as a witness, being previously sworn, was examined and testified as follows:

THE COURT: And thank you for coming back. Sorry for the inconvenience.

THE WITNESS: Yes, sir.

RECROSS EXAMINATION

BY MR. PHILLIPS:

Q. Good afternoon, Agent Greer.

A. Good afternoon.

Q. Thanks for coming back.

A. Yes, sir.

Q. Is it possible that a Glock 23 shoot a 9-millimeter bullet?

A. It's possible that a Glock 23, which is commonly chambered in a 40 Smith and Wesson caliber, could fire a 9-millimeter Luger caliber bullet.

MR. PHILLIPS: No further questions, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. Mr. Greer, when you testified yesterday, you had from Rodney Furtick, a Glock 40, I think it was a model 23; is that right?

A. That is correct.

Q. So the one that you already analyzed was a model 40 Glock 23?

A. A model 23 and 40 Smith and Wesson.

Q. I'm sorry, yes.

A. Yes, sir.

Q. Same as the question he just asked you?

A. Yes, sir.

Q. All right. And you ruled out this Glock from firing the three projectiles that were found, two in the floor, the 9-millimeter projectiles, and one that was found outside, correct?

A. The 9-millimeter Luger cartridge cases are projectiles.

Q. Okay. And the things you used to rule them out were what? How did you rule out those 9-millimeter cartridge cases from that 40-caliber Glock?

A. The 9-millimeter Luger caliber cartridge cases exhibited a difference in caliber, first of all. So that was one thing that we were looking at in order to determine those were not fired by this 40 Smith and Wesson pistol.

Q. So the firing pin -- when I say firing pin, what's a firing pin?

A. The firing pin is the portion of the gun that travels through the breechface area to strike the primer of the cartridge to ignite the cartridge so that it will be fired.

Q. All right. The firing pin indention or marks, did you look at those on those 9-millimeter casings?

A. Yes, sir, I did.

Q. Can you describe to the jury what the 9-millimeter firing of the one found on scene, the two casings in the house, and the one out in the parking lot, what the firing pin impression looked like?

A. The firing pin impression on the 9-millimeter cartridge cases were hemispherical, and that is kind

of a circular, just impression, if you will.

Q. Okay. A Glock 40 caliber model 23 does not have that kind of firing pin, does it?

A. That particular item, Item 4, did not have that type of firing pin impression. That had a firing pin impression, and when we test fired it, we observed it to be elliptical, which is kind of more oval shaped and also had a square or rectangular aperture shape around the firing pin impression on those test specimens.

Q. And that is a common firing pin for Glock; isn't that true?

A. Yes, sir, that's correct.

Q. The projectile that came out that was fired in the house, that you looked at, that was collected from the kitchen cabinet that had the wood splinters on it. Do you remember that item?

A. Yes, sir. I believe that was SLED Item 25.

Q. Item 25. When you looked at that, you were able to say that it was not fired from this Glock model 23, correct?

A. That is correct.

Q. But you talked about lands and grooves at some point, and those are the individual marks and impressions that are created on a projectile when it's

fired, correct?

A. Yes, sir. The lands and grooves are imparted onto that bullet wound that travels down the barrel.

Q. So how many -- what kind of lands and grooves did you find on the projectile that you looked at?

A. On the projectile submitted to SLED, Item 25, I observed three partial lands and grooves. That bullet had been damaged, so we were only able to observe three of those lands and grooves. Those were going to the right. So if you imagine they were spinning a right-hand twist around the bullet. And they exhibited a conventional-type rifling, which is one of the two common types of rifling that we see.

Q. And what kind of standard rifling is on a Glock 23?

A. Typically, we would expect to see polygonal-type rifling on a Glock pistol.

Q. And how many lands and grooves?

A. That can vary between different models of the Glock.

Q. Thank you, Mr. Greer.

MR. PHILLIPS: Just one question.

THE WITNESS: Yes, sir.

FURTHER RECROSS EXAMINATION

BY MR. PHILLIPS:

Q. Did the government give you a Glock 23 that was seized from Nikki Hicks on June -- excuse me, July 18th of 2018, seized in her possession?

A. As for this case, submitted to the SLED lab, I received the -- one item for a Glock pistol. That's the only Glock that I was given to examine.

Q. Okay.

MR. PHILLIPS: No further questions.

THE COURT: Sir, thank you for coming back. Take care of yourself. Sorry to inconvenience you again.

THE WITNESS: Yes, sir.

THE COURT: All right. Solicitor, if you'll call your next witness, please.

MS. FULLER: Thank you, Your Honor. State calls Matt Deas.

MR. BROWN: Judge, there was a matter that you ruled on previously, and we want to renew it. I think there's a case that says we can renew it right before it's introduced.

THE COURT: That is correct. And you're referencing -- I'm trying to remember the date of the hearing, but my ruling on that, we did it previous ---

MR. BROWN: April 14th.

THE COURT: April 14th. The objections

and the results of the hearing from April the 14th, of course, still stand. The objection is renewed.

MR. BROWN: And there were some subsequent ones later this week.

THE COURT: Correct. Those same motions made, same rulings as before.

MR. BROWN: Thank you, Your Honor.

INVESTIGATOR MATTHEW DEAS was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Have a seat. Once you're seated, you can remove your mask. State your full name, spelling your last, please.

THE WITNESS: Matthew Deas, spelled D-E-A-S.

DIRECT EXAMINATION

BY MS. FULLER:

Q. Investigator Deas, how long have you been with the West Columbia Police Department?

A. For about 13 years.

Q. And how long have you been an investigator?

A. For about seven to eight.

Q. And your name has been mentioned, and you've been at the table all week. I'm just going to go straight into it. You're the lead investigator in this case?

A. Yes, ma'am.

Q. And back on July 5th of 2018, at Glenn Street here in Lexington, did you arrive on scene?

A. Yes, ma'am.

Q. And were you on scene prior to or after first responders?

A. It was either just before they got there, or as they were getting there.

Q. Can you describe the scene that you saw when you arrived?

A. I showed up and stepped inside while there were multiple law enforcement officers outside and inside. And I observed Mr. Atkins on his back in the kitchen with his feet closest to the sink. And I saw Mr. Mack face down close to his head.

Q. Okay. And then, for the record, do you know how old Samir Atkins was?

A. I believe that he was 26.

Q. And how about Elzie Mack?

A. I believe he was 41.

Q. Did you see Rodney Furtick on scene when you were there?

A. Yes, ma'am.

Q. And can you describe your encounter with Rodney?

A. When I first encountered Mr. Furtick, he was already in the back of the ambulance. They had -- EMS

had cut the pants leg off the leg that had been shot.

Q. Okay. And was he receiving treatment at the time?

A. I don't recall if they were actively working on him, but there were EMS workers on the back of the ambulance, and he was on a gurney.

Q. Okay. And did you have an opportunity to speak with him?

A. I did.

Q. And what -- how would you describe his state of mind while you were speaking with him?

A. He was breathing rapidly. He had what I would describe as kind of like a deer in the headlights look, almost like a look that looked like someone who's incredulous or in disbelief.

Q. And were you able to ask him any questions?

A. I did.

Q. And what did you ask him?

A. I just asked him to tell me what happened.

Q. And did he tell you what happened?

A. He did.

Q. And what did he tell you?

A. He told me that he was friends with Samir Atkins, that he had either been at a club or a shooting range, and that he had Mr. Atkins' phone, and that his purpose

of coming over there today was to return it.

Q. Okay. And what else -- did he tell you about what happened?

A. Yes.

Q. Okay. Can you please let the jury know what he shared with you in the back of the ambulance?

A. He told me that when he got there, shortly thereafter, Mr. Atkins received a phone call. He didn't pick it up, saying that he didn't know the number. But that phone number called right back again, so Mr. Atkins picked it up. After he got off the phone, Atkins told him that that was his cousin, and that he was coming over. Shortly thereafter, he said that the cousin came over, and he gave me a description of the cousin.

Q. And what did he say the cousin did when he came over?

A. He said that the cousin went into the kitchen with Mr. Atkins and that a shot rang out.

Q. Did he also tell you what happened after that?

A. Yes. He said that he ran to the back of the apartment, that the cousin met him with a gun, and ordered him back into the kitchen and to lay down.

Q. Okay. And then what happened -- did he tell you what happened after that?

A. Yes. He told me that he was asked, you know, where's everything at. And he was faced away, and that he heard the cousin say to someone else, here, take the gun, hold him here, and he heard this voice telling him if you don't do anything, everything is going to be fine, something to that effect, and he heard rummaging around.

And then a period of time later, he heard the cousin saying -- just heard him saying -- because he's faced away, saying, get down on the ground. And he heard someone saying, I'm getting down, I'm getting down. He heard a gun shot. He turned over and looked, and that he saw the cousin putting the gun over to him and pulled the trigger, but it clicked.

Q. Okay. You mentioned that he also gave you a description. How did he describe the cousin?

A. He said that he was a dark-skinned black male. I believe he said around 21 years of age, said he had a low-temp fade haircut, and he had a gold grill. He said that he was wearing a red shirt, black shorts, and what he described as Jordan 14s shoes.

Q. And are you familiar with Jordan 14s?

A. I am.

Q. Okay. Did Rodney stay on scene, or did he leave the scene?

A. Did Rodney stay on scene?

Q. Uh-huh. After you spoke with him.

A. Oh, he -- after I got that information, the ambulance took him off to the hospital.

Q. Okay. You described observing Rodney's injury. Why was the projectile from Rodney not collected into evidence in this case?

A. Because it was still in him.

Q. Also on that day, did you have an opportunity to speak with Nikki Hicks?

A. Yes, I did.

Q. And when did you speak with her?

A. I spoke with her at the police department, I would estimate sometime around four. I would have to look specifically.

Q. Okay. And when you spoke with her, can you tell me whether or not she told you during that conversation that about 30 days ago Samir had a conversation with Damien about Damien owing Samir money; is that accurate?

A. You said that was about how long ago?

Q. Thirty days.

A. Yes, that's accurate.

Q. Okay. And during that first encounter with her, did she also tell you that Samir said that Black must have thought that he was crazy?

A. That's correct.

Q. And so she volunteered that information during that first encounter?

A. That's correct.

Q. And you said around four o'clock on July 5th?

A. I can tell you exactly. Yeah, it was exactly at four o'clock when I spoke with her.

Q. Okay.

A. In the afternoon.

Q. Now moving further along in the investigation, on July 6th, did you have an opportunity to look at any of Samir's phones?

A. I did.

Q. And what was the purpose of doing that?

A. Based off of the account that Mr. Furtick gave us, I was interested in finding out who this number was that called him and wasn't picked up and then called him again, and then found out it was the cousin.

Q. And did you determine what that phone number was?

A. I did.

Q. And what was that number?

A. That phone number that called him, he didn't pick up and then called him again, was [redacted].

Q. Okay. And that's the number that was associated with Damien -- that you determined to be associated with

Damien Ritter?

A. That's correct.

Q. And also while you were looking at his phone, did you also see another number, say, for Black in this device?

A. I did.

Q. And what was that number?

A. That phone number was [redacted].

Q. And did you see any communication between Elzie Mack in the phone?

A. Yes.

Q. With Samir Atkins?

A. Yes.

Q. Did you review any of those communications?

A. I did.

Q. And did you determine anything based on those communications?

A. That they had talked just shortly before this incident occurred.

Q. Okay. On that day, can you explain to the jury your steps of identifying Damien Ritter as the cousin and the shooter in this case?

A. Yes, ma'am. So, I spoke with Nikki Hicks. After I was given a physical description and the identifier as the cousin, I spoke with Ms. Hicks,

and she told me that Damien or Black was Mr. Atkins' cousin, and that he had a gold grill and had a burgundy Tahoe, and described him in a similar fashion that Mr. Furtick had.

Q. And then what did you do with that information?

A. So after -- shortly after she gave me that information, I left the interview and began speaking with Towanna Ashford, who is Mr. Atkins' mother.

Q. And were you able to determine a name for the cousin, now Black, now Damien?

A. Not just yet. The way that I got to that was that she told me that there was a cousin named Damien, and I believe that she gave me an aunt and the mother's name.

Q. Okay.

A. And a phone number.

Q. And is that how you developed -- did you make contact with ---

A. Well, actually, I don't think the mother gave me the phone number. I took that information to Mr. Atkins' aunt. She gave me the phone number -- Mr. Atkins' grandmother. She gave me the phone number.

Q. Okay. And at what point did you determine -- did you identify Damien Ritter?

A. The next morning, which is July 6th. At 8:48,

I called Loretta Maxwell, and I didn't get her right then. But I did end up, I believe, speaking with his mother at 9:33 and got the last name of Damien Ritter.

Q. And then what did you do with that information -- what information did -- what did you do with that information?

A. I checked the South Carolina Department of Motor Vehicles and saw that Damien Ritter had a 2007 Chevy Tahoe registered to him.

Q. And on July 6th, did you also determine the color?

A. Yes, we determined that it was burgundy.

Q. How did you determine that?

A. There were LPR hits. LPRs stands for license plate reader. They're on the back of cars, some police cars. You might see them in shopping malls on security guards, and they run plates, and they take pictures.

Q. Also on the 6th, once Rodney was released from the hospital, he came in for an interview. Were you present?

A. Yes, ma'am.

Q. And were you present when he was presented the photo lineup?

A. Yes, ma'am.

Q. When he identified Damien Ritter, how long did

it take him to do that?

A. About two seconds.

Q. Did you also go back to the apartment that day as well?

A. Yes, we went back for another walkthrough.

Q. And what was the purpose of going back?

A. So that morning, on the 6th, we were -- another investigator was interviewing Ms. Hicks, and we learned about the larger safe, the medium-sized safe, and the possibility of there being more firearms in the house. And so we went back over there with a second search warrant to secure those items.

Q. And do you recall the time on the 6th when you received the information about the second safe? If I said it was around 10:36, would that sound about right?

A. That's accurate because it was after a meeting with investigators about the information. It was around that time that we were -- Ms. Hicks was being interviewed.

Q. Were you also present when Rodney learned that Elzie Mack was the other individual that was deceased?

A. Yes.

Q. Okay. And how did he learn that information?

A. So, at that point in time, Mr. Furtick had told

us that his head was turned. He didn't know who this other person was that got shot. So, we asked him the question, do you know who that was? He said, no. And we said what if we told you that was Elzie Mack? And he started to tear up and cry.

Q. At any point in your interactions with Rodney, did he ever say that the person that held a gun on him was Elzie Mack?

A. No, no.

Q. And so there are misstatements or errors in search warrants in this case. That wasn't because Rodney told any officer that?

A. No.

Q. Okay. I want to go a little bit into this investigation. During the course of the investigation, you obtained a number of search warrants in this case, correct?

A. Yes, ma'am.

Q. Do you remember approximately how many? If I said ---

A. I estimate an upwards of 30 or more.

Q. Around 30?

A. Yeah.

Q. Okay. And those were for the phone records, right?

A. Mainly, yes.

Q. And what was the purpose of obtaining them for phone records?

A. I wanted to get phone records to see if I can determine location information for identities.

Q. Were you also looking for information as to who else participated in this crime?

A. Correct.

Q. In the course of your investigation, did you have an opportunity to speak with a Tyrone Davis?

A. I did.

Q. And what led you to speaking to Tyrone Davis?

A. Tyrone Davis was either the first or second phone number that was called by Mr. Ritter after the incident.

Q. Okay. And why was that of interest to you?

A. There were multiple calls to him. And when I secured additional search warrants for Mr. Davis's phone records, I saw that not only -- I saw that his phone traveled down to the Estill area after the incident.

Q. But he wasn't at the incident location when this happened, based on the phone records you received?

A. Correct.

Q. And did you have -- you did speak with him, correct?

A. I did.

Q. And without telling me what he said, what did you ask him?

A. I was trying to find out the reason that this happened.

Q. Okay. And what was the question you asked him?

A. I asked him, you know, I want to know -- well, the first question that I asked him before that was asking him what the purpose was of this conversation, when Damien Ritter called ---

MR. BROWN: Your Honor ---

MS. FULLER: And did he answer that ---

MR. BROWN: --- to the extent, it's going to elicit implicit hearsay, which is recognized, I believe, in Mr. Collins' [ph.] book from, like, 1995, the evidence book. It talks about different types of hearsay. There can be implicit hearsay, and if they're trying to imply what the response was by dancing around the question, that's a little different ---

THE COURT: Let's talk over here for a second.

MR. BROWN: Yes, sir.

THE COURT: Just for a moment.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Sustained.

MR. BROWN: Thank you, Your Honor.

BY MS. FULLER:

Q. And as a result of that conversation, were you able to do anything else in the investigation?

A. No, ma'am.

Q. Also in the investigation, did you have an opportunity to listen to recorded conversations between Damien Ritter and a stripper named Beverly McGruder?

A. I did.

Q. And did you determine -- what of significance did you glean from ---

MR. BROWN: Your Honor, that's clearly asking about at least something somebody, who's not in this courtroom, said.

THE COURT: Okay.

MS. FULLER: What did -- I apologize.

BY MS. FULLER:

Q. What did you do as a result of hearing this conversation?

A. I requested additional phone records.

Q. Okay. And then what did you do with that information? What were you able to determine from the phone records?

A. I was able to determine from the phone records

that this too was a phone number called right after the incident by Damien Ritter. And so I pulled her phone records and began analyzing them.

Q. Okay. And what did you determine from reviewing her phone records?

A. That shortly after receiving this phone call from Damien Ritter, Beverly McGruder began calling glass repair companies, car repair companies, things of that nature.

Q. I'm going to show you what's been marked as State's 232 and 234.

MS. FULLER: Well, I believe -- these are the calls, Your Honor. I believe they're admitted already.

THE COURT: Right. They are admitted without -- they are admitted subject to earlier objections.

(State's Exhibit Nos. 232 and 234 were entered into evidence.)

THE COURT: Ladies and gentlemen, you're about to hear audio recordings of the Defendant, which have been introduced by the Court -- have been authorized to be introduced into the record by this Court, subject to Defendant's objection.

MS. FULLER: Thank you, Your Honor.

BY MS. FULLER:

Q. And you mentioned that you listened to a phone call that prompted the additional information?

A. Correct.

Q. Publishing.

(Audio recording is played for the jury.)

BY MS. FULLER:

Q. Could you hear it, sir?

A. Yes, ma'am.

Q. And you were able to identify that voice as Damien Ritter?

A. Yes, ma'am.

Q. And did you listen to other recorded conversations as well?

A. Yes, ma'am.

Q. At this time, publishing 234.

(Audio recording is played for the jury.)

BY MS. FULLER:

Q. And do you recognize the voice that's on that recording as well?

A. Yes, ma'am.

Q. And who is that voice?

A. The male voice was Damien Ritter.

Q. And did you hear clearly what he said?

A. Yes.

Q. And what did he say?
A. After expressing that he missed the girl, and she asked, I believe it was what's going on, he said, done fucked around and got in some trouble.
Q. On July 18th of 2018 -- sorry. I'm trying to go through it. Did you have an opportunity to go to Estill to execute a search warrant on Ritter's home?
A. I did.
Q. And did you notice a DVR surveillance system?
A. I did.
Q. And did you collect that item?
A. I did.
MR. BROWN: Judge, I'm just making sure again. Thank you.
THE COURT: Still subject to all pretrial rulings.
BY MS. FULLER:
Q. And this is going to be marked, for the record, as a whole for identification as 223. Do you recognize this?
A. I do.
Q. And can you explain to the jury the contents of this bag?
A. So this larger box right here is a DVR. If you've ever seen a home video system, it kind

of looks like a cable box. There's cords, like an HD mic or a mouse. And then this is the original hard drive that came within it that was there on July 18th. But I took that to a specialist with the Secret Service, and he cleaned that DVR, put the clean DVR here and put the original right here.

Q. Okay. So, for the record, marked as a whole, unless Your Honor requests it separately, is the original hard drive, the clean copy, as well as the actual DVR and the accessories with it as well?

A. Yes, ma'am.

Q. Okay. And then, for the record, I'm handing you -- showing you the clip. You had an opportunity to review these?

A. Yes, ma'am.

Q. Okay.

MS. FULLER: And, Your Honor, for the record, State's 227, 228, 229, 230, 231 and 214 will be the actual exhibits from the DVR that will be submitted in evidence to the jury. For the purpose of publishing, we'll publish from the actual DVR.

MR. BROWN: And as previous ---

THE COURT: Subject to all pretrial rulings and exceptions, those are in evidence, 227 through 231 and 214.

(State's Exhibit Nos. 214, 227 through 231 are entered into evidence.)

THE COURT: What was that exhibit number again? Can you read that red sticker?

THE WITNESS: Yes, sir, it's 223.

THE COURT: 223. All right. And Exhibit 223 is simply for ID. And you can publish whenever you want.

MS. FULLER: Thank You, Your Honor.

BY MS. FULLER:

Q. And just to explain, the item was at SLED originally?

A. Originally, yes.

Q. And then you retrieved it back -- well, the West Columbia Police Department retrieved it back?

A. That's correct.

Q. And then you took it to the Secret Service to be copied?

A. Yes, ma'am.

Q. Okay. And that was after being able to bypass the password and access it?

A. Yes, ma'am.

Q. What was the purpose of seizing the DVR at that point when you executed the search warrant?

A. The purpose of it was because I felt like there

was going to be material evidence on here that would help answer some questions in this case.

Q. And did you notice that it was active at the time?

A. I did.

Q. And is the date stamp on the DVR accurate?

A. It is not.

Q. And how were you able to determine the accurate time of the DVR?

A. So when I went down to Estill that day and went to Mr. Ritter's house, I had to have someone let me in the house. I didn't want to damage the property getting in. So -- the warrant came over, it's Damien Ritter's aunt. When she got there, I noted the time. And so when I went back to play the DVR, I can see myself arrive. I noted the time that it says on the time stamp and calculated the difference.

Q. Okay. And how did you calculate the difference?

A. There's a website, a time and date website. It's simple. I guess an algorithm that someone made to be able to -- the time difference.

Q. Okay. And what was the conversion that you utilized?

A. So using the time from when I got down there and then this website, I was able to calculate that

the DVR is slow by 317 days, 12 hours and 18 minutes.

MS. FULLER: Beg the Court's indulgence. Permission for the witness to step down. I pretended like I knew what I was doing.

BY MS. FULLER:

Q. While that's getting set up, I'm going to ask you a couple of questions. Do you recognize State's 224, 225 and 226?

A. Yes, ma'am.

Q. And what are these?

A. These are phone records.

Q. And these are some of the records you obtained in this case?

A. That's correct.

MS. FULLER: Your Honor, pursuant to state statute 19-5-520, we served notice and are moving in, for the record, Verizon phone records for [redacted] as State's 224. And 225, will be Verizon records for [redacted] and [redacted]. And then 226 will be AT&T records for [redacted], I believe without objection.

MR. BROWN: That is correct, Your Honor.

THE COURT: All right. Without objection, 224 through 226 are now in evidence.

(State's Exhibit Nos. 224 through 226 were entered into

evidence.)

BY MS. FULLER:

Q. And I'll ask you a couple of questions too. Did you have an opportunity when you went back to the home to note the condition of the residence?

A. Yes, ma'am.

Q. When you testified you said Rodney indicated that there was rummaging. Does this appear in these photographs, for State's 144 and 146?

A. Yes, ma'am.

Q. Okay. And you noted this on July 5th and 6th, or July 6th?

A. Yes, ma'am. I believe it was mainly July 6th that I was able to observe this condition.

Q. And that's what I'm displaying now?

A. Yes, ma'am.

Q. And 145?

A. Yes, ma'am.

Q. You talked about going back to look for the safe. Did you have an opportunity to look at State's 43, this closet?

A. Yes, ma'am.

Q. As well as 42?

A. Yes, ma'am.

Q. Would that be the shaded area? Did you observe

it in person as well?

A. I did.

Q. And did it appear to be a shaded, or non-shaded area?

A. Yes, ma'am, there's a clear difference.

MS. FULLER: And, Your Honor, the State is going to move also State's Exhibit 215, which are photographs or still shots from the DVR that was previously provided to the defense as an exhibit as well.

MR. BROWN: Subject, Your Honor, to the same.

THE COURT: Subject to the same exceptions. Did you say 216 or 215?

MS. FULLER: 215.

THE COURT: 215. Okay. 215 will be in evidence then.

MS. FULLER: Disregard, Your Honor. It looks like Justin is not making that possible. I mean, I'll publish what's printed, 235, which is basically what's on the PowerPoint. First, going through -- Matt, can you cue it up -- do you need the mouse over there, or can you see the TV?

THE WITNESS: If it's possible because of having to select dates and times and stuff, it's kind

of fine print, would I be able to be closer to the TV?

THE COURT: Just step down there.

MS. FULLER: Okay.

MR. BROWN: Without objection.

MS. FULLER: I guess from State's counsel table.

THE WITNESS: That's fine.

THE COURT: You'll need to move the podium maybe or maybe not. Whatever.

BY MS. FULLER:

Q. And if you first can take us through the installation of the DVR.

A. Can you be more specific?

Q. The beginning footage.

THE COURT: And you're going to need to really, really speak up if there's not a microphone over there so that the court reporter can hear, okay?

MS. FULLER: The microphone is there. Is it not picking up?

THE WITNESS: I can speak louder.

THE COURT: Hold on. She's getting it.

MS. FULLER: And, Your Honor, can you inquire from the jury if they can see this TV.

THE COURT: If you can't see it, raise your hand. Okay, two of them can't. Maybe pull it back just

a little bit, and Ms. -- whatever her name is that was just the alternate a moment ago.

MR. BROWN: Jackson.

THE COURT: Jackson. Yes, Ms. Jackson.

THE CLERK: I think that the mic on your desk is working now.

THE COURT: I think it's working now.

BY MS. FULLER:

Q. And can you describe to the jury while you're accessing the DVR?

A. Yes, ma'am. So, I'm putting in the password for it. In order to gain access, I had to go through the Night Owl company, and they were able to get me access to it, and I changed it to this password.

Q. And you're looking for April 26, 2017, at 12:28 a.m. Can you describe -- do you see the DVR camera there?

A. Yes, ma'am.

Q. And publishing Page 2 of Exhibit 235 on the document reader, can you describe to the jury the significance of freezing it on this frame?

A. It shows an image of Damien Ritter.

Q. And anything about his teeth?

A. Yes, it's a gold grill that's in his mouth.

Q. Thank you. And then now can you go to camera

time September 3, 2017, at 10:12 p.m. roughly, showing your law enforcement arrival as well as the beginning of the search warrant and the ending footage to show the jury the conversion time. Can you describe it to the jury, please?

A. Yes. This vehicle, I believe it's a Chevy, pulling up is Loretta Warren coming after we contacted her. And in the blue Crown Vic is myself and Investigator Griffin meeting her to begin executing the search warrant.

Q. And is this the time that you had documented in your notes?

A. Yes, ma'am.

Q. And this is the time that you based your calculations on?

A. That's correct.

Q. And so your DVR time is September 3, 2017, at 10:12 p.m., the actual time was July 18, 2013, at 10:30 a.m. when the search warrant was executed?

A. Yes, ma'am.

Q. Okay. For preparing for today, did I ask you to review footage of two weeks' worth of observing the burgundy Tahoe at Damien Ritter's home?

A. Yes, ma'am.

Q. Can you go through the times and publish them

for the jury?

A. Yes, ma'am. I went through the DVR and observed the DVR dates of August 8, 2017, at 1:08 a.m., August 9, 2017, at 3:24 a.m., August 10, 2017, at 3:24 a.m.

Q. Can you, as you go through it, publish each one ---

A. Yes, ma'am.

Q. --- if that's possible?

A. This video is showing Mr. Ritter's 2007 Chevy Tahoe showing up at his residence.

Q. And looking at that conversion, do you also see Damien Ritter coming out of the Tahoe?

A. It will show that.

Q. And that would be actual time, June ---

A. That -- I'm sorry.

Q. That would be actual time, June 21, 2018, approximately 1:26 to 1:31?

A. That's correct.

Q. Okay. You can pause it. I think for the interest of time, it makes sense to publish the raw clip and go through the day of.

MR. BROWN: Without objection.

BY MS. FULLER:

Q. So, we'll switch back to that momentarily, but for the in between shots ---

THE COURT: I noticed one of the jurors seems to be a little bit warm. If you want to move down to that seat right there, it's closer to the AC vent. It might be cooler there than where you're sitting, ma'am, and then again it might not be. But if you want to try a different chair, feel free. It might be better, I don't know. You can try. They cut down the air too, ma'am.

BY MS. FULLER:

Q. So displaying the times that will be on the TV, and, Matt, was that correct, that's the image you were just looking at that's on the projector, August 8, 2017, actual time, June 21st?

A. That's correct.

Q. And then the footage of the Tahoe; is that correct?

A. That's correct.

Q. And the next day as well, actual time June 21st?

A. Are you referring to August -- the DVR time of August 9th?

Q. Yes, on the projector. Can you see it?

A. Yeah, the clip from August 9, 2017 at 3:24 a.m. is June 22, 2018, at 3:42 p.m.

Q. And the next day as well?

A. Yes, DVR time August 10, 2017 is June 23, 2018.

Q. Okay. And then looking at the next day on the document reader, that's also what you pulled as well observing the Tahoe?

A. That's correct.

Q. And that was Damien Ritter?

A. Correct.

Q. And the next day?

A. Correct.

Q. And you can publish the date.

A. The next day ---

Q. Actual time.

A. Actual time is June 25, 2018.

Q. And is that also the next day, June 26th?

A. That's correct.

Q. And then June 27th?

A. Yes, ma'am.

Q. And you observed the Tahoe there again on June 28th?

A. That's correct.

Q. And on June 29th?

A. Yes, I found it there on that night as well.

Q. June 30th?

A. Yes, ma'am.

Q. On July 1st as well?

A. Yes, ma'am.

Q. July 2nd?
A. Yes, ma'am.
Q. July 3rd?
A. Yes, ma'am.
Q. The day before as well on July 4th?
A. That's correct.
Q. The early morning hours of July 5th?
A. That's correct.
Q. Now looking at the actual day, on July 5th of 2018, while you were watching this footage, what did you observe?
A. On the true time of July 5, 2018, 11:40 a.m., I observed Mr. Ritter exiting his residence and get into his Tahoe.
Q. Okay. Did you pull that footage as well?
A. I did.
Q. And this is on the morning that this occurred?
A. That's correct.
Q. And on July 5th of 2018, around 11:39 a.m., what did you observe Ritter to be wearing as he left his house?
A. He was wearing a red shirt, black shorts, and from the distinct look of them, Jordan shoes.
Q. And did you observe him carry anything out of the residence with him?

A. Yes, here in a moment, he'll actually be returning back to his porch, and you'll see him carry to his car a circular saw.

Q. Did you also observe Damien Ritter return to his residence?

A. I did.

Q. And what time did you observe him returning to his residence?

A. The true time that he returns back is July 5, 2018, at 5:30 p.m.

Q. What kind of vehicle just pulled up at the residence?

A. It's a Toyota sedan.

Q. And have you ever looked into that vehicle?

A. I have not.

Q. Did you attempt to look for that vehicle?

A. I did.

Q. And do you notice the trunk open in that vehicle?

A. I do.

Q. And that's just another camera angle?

A. Correct. The two front camera angles to the residence.

Q. Can you describe to the jury what's happening here?

A. So, Damien Ritter gets out of the vehicle.

He's wearing the same clothes that he left in, minus the red shirt, and he gets out, looking in a disheveled state and limping.

MR. BROWN: Your Honor, we object to the editorial characterization.

THE COURT: Sustained as to the editorial. The jury is instructed to disregard it.

BY MS. FULLER:

Q. After Damien is dropped off this date, did you watch more footage?

A. I did.

Q. And did you ever see the burgundy Tahoe again?

A. From 11:40 a.m. on July 5th, that was the last time I ever saw the Tahoe on the video footage.

Q. And have you looked for that burgundy Tahoe?

A. I have.

Q. And what was the purpose of looking for that Tahoe?

A. Rodney Furtick stated that he shot at that Tahoe, and I wanted to find it to see if I can secure items from it.

Q. In watching surveillance footage, did you observe Damien Ritter ever return to the residence?

A. After this time, he did return one more time. He returned July 5th, the same day, at 9:18 p.m.

And I didn't see him return back until July 12, 2018, at 5:43 p.m.

Q. On this footage, is the clip of his last return on this disc? What's the DVR time?

A. The DVR time is -- when he is there at 9:18 p.m. on July 5th is August 22, 2017, at 9:00 a.m.

Q. I'm not seeing it on this disc, so you're going to have to queue it up.

A. I think there's an issue with the wireless mouse, the lag time, so if I stand up here.

Q. Okay. And that's Damien Ritter leaving?

A. Yes, ma'am.

Q. And, for the record, again July 5, 2018, at 9:18 p.m.

MR. BROWN: Without objection to the demonstrative.

BY MS. FULLER

Q. Do you recognize State's 191?

A. Yes, ma'am.

Q. And what is this?

A. This is showing the time conversion from the DVR, as well as showing the dates of when Mr. Ritter left his residence and returned.

Q. And this is just so that the jury -- if you can just publish it.

A. It says real time column on the left, and DVR time on the right. Underneath it is the time conversion showing that to the DVR time. You need to add 317 days, 12 hours and 18 minutes to the DVR time. So that means that the real time, July 5, 2018, at 11:39 a.m., is DVR time of August 21, 2017 at 11:21 p.m., and July 5, 2018, at 5:30 p.m., is DVR time August 22, 2017, at 5:12 a.m. And, lastly, the real time of July 18, 2018, at 10:30 a.m., is September 3, 2017, at 10:12 p.m.

Q. On the DVR?

A. Correct.

Q. Thank you. And in terms of the surveillance footage, earlier in the trial we published footage of Damien Ritter going to the gas station. Do you recall that?

A. Yes, ma'am.

Q. Do you observe Damien on the surveillance footage leaving his residence around -- at seven o'clock to go to the gas station?

A. No. You last see him on the DVR at 5:30 p.m.

Q. So you see him coming, but you don't see him leaving again until the nine o'clock time?

A. Correct.

Q. In watching the store footage, did you recognize Damien Ritter on that footage?

A. Yes, that's correct.

Q. So he did go there?

A. Yes, ma'am.

Q. What did you observe in going through all of the DVR footage about how the camera system is set up and how it works at his residence?

A. The device, after looking at it, appears to be recording based off of motion only. It's not a full-time record. And so there are times when a car will suddenly appear, but you didn't see it pulling up, and so sometimes it misses some motion.

Q. Did you watch footage of that vehicle that dropped Damien off come back to the residence at all on that day?

A. I did.

Q. And do you have footage of it actually arriving?

A. No. So it drops him off, and then about 20 minutes later it just suddenly appears back at the residence. And you see it turning around, I believe, and leaving, but you don't see it pulling up.

Q. Okay. What day did Damien Ritter turn himself in?

A. He turned himself in on July 13th.

Q. And in between that time period, did you even see him on the DVR again prior to July 13th?

A. Yes, he showed up the day before on July 12th back at the residence.

Q. And on July 6, 7, 8, 9, 10, 11 and prior to his arrival on the 12th, did you notice anybody else coming and going?

A. Yes, I noticed several times that there was an individual that came over, I think was in a blue car, that kept coming over, and it would go back to where the dogs were, and was there just very briefly, and that person would leave.

Q. And when you do observe Damien coming to his residence on July 5th, could you tell where he was coming from?

A. When he returned back to his home on July 5th?

Q. On July -- sorry -- on July 12th?

A. On July 12th. So looking here at the camera angles, the one on the left is facing -- like, if this is his residence, and this is the main door, the right camera is facing down the road this way. And the one closest to the porch is further down here. The one on the right close to the porch, you just see him suddenly appear at the side of the house in between those trees and then walk up to his residence.

Q. And so that the jury has a visual of the home, State's 242 ---

MR. BROWN: No objection.

BY MS. FULLER:

Q. You can point to it for the jury so they know where the cameras are on State's 242.

A. Yes, ma'am. So the screen that you're looking at -- well, I'm looking at the screen. The one on the left is going to be that camera right here, and it shoots off this way down the road. And then the other camera, that's kind of between the tree and the porch, is right here, shoots down here to the driveway area.

Q. And when you said you saw Damien Ritter here on July 12th, where does he appear from?

A. (Indicating.) He appeared from right here.

Q. Is there any footage of him appearing at the side of the residence on any of the other cameras or the back cameras?

A. No. I looked at the back cameras, and you don't see him coming from the back at all.

Q. So when you do see him it's just like he just appeared there?

A. That's correct.

Q. I believe that is all. I will -- give me one second.

MS. FULLER: No further questions.

THE COURT: Mr. Phillips, cross?

MR. BROWN: I'm handling cross.

THE COURT: Sorry.

MR. BROWN: I asked Mr. Phillips to move the TV set.

MR. PHILLIPS: I'm just the muscle.

MR. BROWN: May it please the Court.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Investigator Deas, you know there's no better place to start than asking if you want to give it a go on picking up the safe.

A. If it's mandated that I do.

Q. Okay. I'm just asking if you wanted to give it a try.

A. Optional, only if it was mandated.

Q. Okay. Fair enough. Let me ask you a little bit about some of the stuff you had gone over and covered, and I'm going to try to be as brief as I can and do a good job. So, I'll ask if everybody can go to this little map. And I'm going to kind of start in asking you, one of the things you do as a lead investigator is you're in charge of making sure that things are fully and thoroughly investigated?

A. Yes, sir.

Q. All right. Details were important?

A. Yes, sir.
Q. Multiple officers involved in this case?
A. Yes, sir.
Q. How many officers you think?
A. Perhaps about 14 or 15.
Q. Okay.
A. From small to large parts.
Q. And everything that they did got filtered through you, correct?
A. I'm sure just about all of it did.
Q. Okay. And some of the information with which you used when it was decision time about, let's say, approaching a judge for an arrest warrant?
A. Yes, I've used all available information that I have when establishing probable cause to a judge.
Q. Okay. And, likewise, if you testified before the grand jury to obtain an indictment as well?
A. If I were to testify before the grand jury.
Q. Okay. And you did, in fact, at least testify to at least one of the indictments that's before this Court, correct?
A. To which court?
Q. One of the indictments that is now before this hearing.
A. Are you saying that I testified to the grand

jury?

Q. Yes, sir.

A. I don't think I did.

Q. Let me ask you, how about on -- well, let's see. How about on the arrest warrant numbered -- when I can get to it -- how about the one that ends in 2890? Would you like me to hand you ---

A. Maybe I signed all of them, but if you could show me just to make sure, please.

Q. Sure. Let me just hand you up -- and it's just a Xerox copy.

A. Sir, are you talking about when actually acquiring the warrant?

Q. It wasn't a warrant; it's an indictment.

A. Right.

Q. Did you testify before the grand jury for that?

A. I don't think that I did. It's been -- it's been a while if it went before the grand jury. So maybe I'm not remembering correctly, but I don't think I presented this to the grand jury.

Q. This was not my line of questioning, but I do have to ask you, does it not have a sworn statement on one side and -- the grand jury is put under oath, and then this presentation was made that lists you as a witness, and solely you as the witness on that?

A. I do not recall testifying at the grand jury.

Q. Okay. Well, while we're looking at that indictment, the one I've handed you is the one for armed robbery; is that correct? And that's one of the ones that's before this jury for a decision?

A. Yes, sir.

Q. Okay. And would you note in there what has been alleged to be the subject of the theft?

A. Give me a moment to read this.

Q. Yes, sir. It would be on the second page.

A. Yes, sir. It says the object of the theft is listed as a safe and other personal item.

Q. Okay. And that's not the first time that a sworn statement about what's been stolen in this crime was made in a legal charging document, wasn't it?

A. Probable cause, an affidavit for my original arrest warrant, so, I've listed items that were stolen.

Q. You got it. Okay. And I'm going to come back and go over that with you in just a second because one of the questions is what items were stolen, correct?

A. Correct.

Q. All right. So do you have a copy of the arrest warrant for armored robbery?

A. I imagine that I could probably track one down. If you have one.

Q. Let me see if I've got one for you.
A. Thank you.
Q. Yes, sir. If I can hand you what's been marked as Defendant's 10 for ID, and I'm going to ask you to look in that volume, which is marked as Volume 1, and you've got to turn it sideways to get to the page. But the page for the armed robbery warrant would be Volume 1, Page 4, and there's an index in front.
A. I have it.
Q. Okay. And would you read what was alleged to have been stolen from which person?
A. It says while armed with a handgun robbed the victim, Samir Atkins, Elzie Mack and Rodney Furtick of cell phones, a safe containing approximately $5,000, and other items.
Q. Okay. So cell phones is with an "S"?
A. Correct.
Q. And it's got three people on there?
A. Yes, sir.
Q. And it's got $5,000?
A. Yeah, I guess.
Q. And it's got a safe?
A. Yes.
Q. Okay. And it has "And other items"?
A. Yes.

Q. Okay. Do you know what those other items are?
A. As Ms. Hicks testified, she told us that there was marijuana, cash, and possibly guns in the safe.
Q. Okay. Was it $5,000-worth of cash, or is that some other $5,000, other than the cash we're referencing?
A. She said it was somewhere -- that it was somewhere between $3,000 and $5,000.
Q. Okay. So the $5,000 is not the other items? And I'm not trying to nitpick you; I'm trying to get to the truth.
A. Sure. No, I listed the money independently.
Q. Okay. Fair enough. So the other items was marijuana or guns?
A. That's fair, yes.
Q. Okay. What guns were listed as being missing?
A. I do not believe that I have a detailed list of what exact guns were taken.
Q. Is there any way to tell what gun was alleged to have been there, but later not found there?
A. None that I can think of.
Q. Okay. So we're done with the guns?
A. She said that guns were stolen. We're done with being able to specifically identify it.
Q. She said guns were stolen, or she said guns

were in the safe, and the safe was missing?

A. The latter.

Q. Okay. She never actually says I can tell you that there was a silver-plated -- I can't remember exactly -- Colt Special 1911 Gold Trophy?

A. Correct. It wasn't detailed, no.

Q. Okay. She just said there's guns in the safe, and the safe is not there?

A. Correct.

Q. You have no other details about guns?

A. Correct.

Q. Nobody said, I remember this weapon, and it's missing?

A. Not a particular weapon like you're describing, no.

Q. Okay. Where did she say any weapon was missing, besides saying there were weapons in the safe?

A. Could you repeat that one more time?

Q. Where did she say that there were weapons missing, besides her saying there were weapons in the safe? When did she ever make a statement about weapons?

A. So, I didn't take any written statements from her. I was present for a portion of one interview with Ms. Hicks.

Q. So you don't have any knowledge of her making

an independent statement to that effect?

A. There is a statement where she said that she -- that guns were -- that there could be guns in that safe.

Q. Right. Nothing independent of being in the safe?

A. Right.

Q. All right. So these guns that are missing would be contingent on the safe actually having been taken that day?

A. As I understand it.

Q. Okay. And while we're here, you had a clip of something -- you had a clip of a Toyota black car leaving with the trunk up?

A. Yes, sir.

Q. All right. And you could see the blue sticking out the trunk?

A. I saw that.

Q. Okay. Blue?

A. It appears to be blue, yes.

Q. Okay. And you studied it pretty good, right?

A. I spent a lot of time looking at the DVR, yes, sir.

Q. All right. Anything blue on this safe? I'm going to push it on over, so the jury ---

A. No ---

Q. All right. Then, I don't need to push it over

for the jury. Okay. Fair enough. And how did she describe the marijuana that was in the safe so that we could determine whether or not that was marijuana that was an other item that was actually stolen?

A. Can you be more specific on how she's ---

Q. That's exactly what I'm trying to get you to tell us.

A. Without going back to look at my notes, I believe what she said is that there could be, I think, between three and five pounds of marijuana inside.

Q. So it's somewhat speculative because she also didn't know about his drug dealing business, and he just did it to get by?

A. I don't believe that was her testimony.

Q. Okay. He was doing it for more than just getting by, right? His mother said he's been dealing drugs since 2012?

A. I can't answer that.

Q. She told you that?

A. No, that last question. I was referring to -- you asked two questions. What was the last question you asked?

Q. Whether his mother said that he's been dealing drugs since 2012?

A. She did say that he had been dealing marijuana

in the past.

Q. Since 2012?

A. I would have to check the date.

Q. Sure. Well, I think it's actually in the book that I just gave you, and if you'll ---

A. In 2012.

Q. She did?

A. Yes, sir.

Q. Okay. Because that's on Page 26 of that same volume I gave you.

A. Well, hold on. I may have answered too soon.

Q. If you look at Volume 1, Page 26, Defendant's ID No. 10 that I gave you at the top where it says 16:40 hours, I spoke with Mr. Atkins' mother?

A. What page number was it again, sir?

Q. Yes, sir, Volume 1, 26, please -- Volume 1, Page 26.

A. Okay. And what time are you referring to, sir?

Q. 16:40.

A. Yes.

Q. Sounds about right?

A. Yes, sir.

Q. All right. Now, let me ask you a little bit about the witnesses you interviewed. Rodney Furtick?

A. Yes, sir.

Q. Nikki Hicks?
A. Yes, sir.
Q. Kris Webber?
A. I did.
Q. All right. Rob Wilson?
A. Yes.
Q. Kris Webber, he actually claimed to have some eyewitness information, didn't he?
A. He did.
Q. And Rob Wilson, what do you know about Rob Wilson?
A. I believe he was a friend that lived in the same apartment complex.
Q. All right. And did y'all take some notes about your interview with Mr. Wilson?
A. I did.
Q. All right. What was Mr. Wilson's other name?
A. Are you referring to Rob Killa?
Q. Is that his name?
A. I can't sit there and say that's his name.
Q. Okay. Did you ever ask him about that?
A. I did not.
Q. All right. And let me ask you a little bit about Samir carrying a gun.
A. Yes, sir.

Q. And if you'll look at, and I think I've got it up here as well. I'm going to ask you, do you have your notes from July 10th, at 9:32 a.m., interview with Rob Wilson at the West Columbia Police Department?

A. I can track it down, sir. You said July ---

Q. And if not, I've got a copy I can give you.

MR. BROWN: And I apologize, Your Honor, I'm going fast.

THE WITNESS: I have my notes, sir.

MR. BROWN: Okay. Yes, sir.

BY MR. BROWN:

Q. All right. Well, if you look at those notes, does it have an interview with Mr. Wilson?

A. Yes, sir.

Q. At the West Columbia Police Department?

A. Yes, sir.

Q. And when you go down to the bottom right -- and I only do that because it looks like the sentence is incomplete. At the bottom it says, no anger, just talking, and that's talking about such and such has been owing me money for a while?

A. You're talking about 7/10, at 9:32, where it says, "I'm with Robert Wilson, West Columbia Police Department," and I'm looking for where it says no anger. You said it's towards the ---

Q. Yeah, it's like the last two lines, such and such owing money?

A. I see.

Q. And such and such, he didn't mean cousin, did he, or did he say?

A. I believe when he told me such and such in conversation, the way that he was referring to that is that in general he would hear, oh, such and such, meaning, he doesn't know who he's referring to that owes him some money.

Q. Okay. And earlier, he said he never heard of cousin or Black?

A. He said that he had never heard of Black.

Q. Okay. But he said he had heard such and such owes me money?

A. Yes.

Q. All right. And then the next -- very next line on the next page, what's the discussion with Mr. Wilson and you about Mr. Atkins, following the question about people owing him money? In fact, there's three lines starting with, "He always had a gun."

A. It is factually correct that in my notes I said -- I wrote down in my notes I would hear such and such been owing me money for a while, no anger, just talking. And then it is factually correct that on the next paper

-- the next bullet point it says that he always had a gun on him, always, never known not to have it on him.

Q. He always had a holster on him with it?

A. Correct.

Q. And did you take the notes out of order, or is that the order that y'all were having this discussion? So and so owed money, Samir always had a gun on him?

A. Just by the -- and I remember this conversation. Bullet notes in here indicate that you talk about something for a little bit, and then you move onto a new topic, and you make another note. So the two aren't necessarily connected.

Q. They're chronologically connected, but you're saying there's nothing else more about that?

A. That's the next note that I took, is talking about asking him, well, does he usually have a gun.

Q. They're connected by the timing in the interview, but not connected by the subject matter?

A. I would say that's correct because, after all, it says on here, when it says I would hear such and such been owing money for a while, and he says no anger, just talking. So, it's an exclusive statement when he starts talking about him having a gun.

Q. What does it mean to go gangsta?

A. I wouldn't want to speculate to that.

Q. Let me ask you. And I'm getting a little bit ahead of myself, but I'm going to go ahead and do this for the point of moving this along. You did interviews, and there's two of them I want to ask you about in particular, and one of them is about Ms. Hicks. And I want to ask you a little bit about the interview about Ms. Hicks and your discussion with her of the text message thread.

So, you don't want to speculate about going gangsta. What did Ms. Hicks tell you that she and Samir meant when they said they were going to go gangsta, that Black was going to learn the hard way?

A. I never had a conversation with her about that text.

Q. Did you ever see that text?

A. I have seen it.

Q. When did you see that text?

A. It wouldn't have been too long after receiving the phone initially. I don't have an exact date of when I first saw those. I don't know.

Q. Was it during your review of the phone in your hand, or was it after, I think his name was Agent Wasiak's, extraction of the cell phones?

A. I believe that would have been when I got the extractions back.

Q. Okay.
A. And going through the text messages.
Q. Okay. And so roughly how long after the case developed, did you get the report from Agent Wasiak?
A. I don't recall the date.
Q. Roughly the last 34 months, like five months in, or 25 months in?
A. I would say it was -- I really couldn't say. It was at least probably -- it was at least six months.
Q. At least six months?
A. I don't know the date.
Q. All right. Let me ask you this: Have you been in here for the entire trial?
A. Yes, sir.
Q. And I'm assuming you were in the meeting this morning where there was a discussion with Ms. Hicks about the safe?
A. I don't remember being present for a discussion for that safe.
Q. Okay. Have you been in some of the preps? Do you know if she was over there being prepped today?
A. I've been over there, yes.
Q. Did you know she was being prepped as a witness today?
A. Yes, I did know she was going to be testifying

today.

Q. Okay. And you knew that the going gangsta text had already been brought up before this morning?

A. I heard it, yes.

Q. Okay. And you did not go over there and ask her what that meant?

A. I did not ask her that.

Q. What do you think it means that he's going to learn the hard way, in the context of a man with an AR-15 and a gun on his hip, who's been selling drugs for six years?

A. I can't speak as to what was in her mind when she said that.

Q. Fair enough. You're training experience doesn't give you any information from which you can infer that information?

A. It's my job to deal with facts and law and not to make opinions.

Q. Only the facts, that sound right?

A. My job is largely to look at facts.

Q. All right. Let's talk about some of the facts then. Do you have the phone records related to the phone number [redacted]? I believe they were entered into evidence.

A. I don't have them on me up here, but I did

request them.

Q. And they didn't just enter those records?

A. Yes. I apologize. She did bring up DVD or CDs with phone numbers on them.

Q. Oh, okay. They didn't actually enter the actual record?

A. She brought up a disc.

Q. From Verizon?

A. I did see one from Verizon, yes.

Q. And you reviewed the records. Do you know, in fact, and -- let's see. If we look at what's been marked for ID, State's Exhibit 192, and I'm just going to get my co-counsel here to maybe just hold it. And I don't have the pointer, but I'll race over here, keep it moving along, and we'll look whose number, and I'm going to give you a hint. Whose number would be [redacted]?

A. That belongs to Rodney Furtick.

Q. All right. And did you review those records?

A. Yes.

Q. All right. Because, in fact, I asked you a question at a hearing at the end of August 2018, and asked you about your investigation of Mr. Furtick as the person who actually stole that safe, or the person who's actually the perpetrator that day.

Do you recall that?

A. And what was the date again?

Q. It was late August 2018. I'll give you the exact date.

A. At the preliminary hearing?

Q. That's correct.

A. I remember being with you in that preliminary hearing.

Q. This topic came up then. This isn't a surprise, right, that I raised the question about Mr. Furtick being the perpetrator?

A. I don't recall you asking that question, but if you say you asked it.

Q. The reason I'm asking is, didn't you have a chance to review his record?

MR. BROWN: May I approach, Judge? I'm going to mark as Defendant's 24 -- 26. I apologize. Thank you.

(Defendant's Exhibit No. 26 was marked for identification.)

BY MR. BROWN:

Q. I'm going to hand you -- excuse me -- marked, and ask you to take a look at that.

A. Okay.

MR. BROWN: And, Your Honor, I have extra.

THE COURT: Thank you.

BY MR. BROWN:

Q. And trying to move it along. Have you had a chance to kind of familiarize yourself with how to interpret such records, including the idea that there's a GMT or a UTC time with a negative zero or a negative four?

A. I'm familiar with reading records, yes, sir -- or cell phone records, yes, sir.

Q. You got it. Okay. And when you're dealing with a negative four number, what does that make it? Does that make it eastern standard time?

A. Negative four is usually UTC.

Q. So that's still -- you've got to change the phone?

A. It's important to read the instructions that come with cell phone records to make sure that you're reading them accurately.

Q. That's correct. But GMT and UTC has either a minus zero or a minus four indicator on that, does that sound right?

A. That's what I'm seeing here.

Q. Okay. And can you take us to the time on these phone calls where, let's say, Mr. Furtick may have called Mr. Atkins when he's on his way up? And that

would be July 5th, and you've got to turn the page over a little bit, gets an earlier time. And, by the way, these are the record y'all requested, right?

A. We requested records on Mr. Furtick.

Q. And this looks like those records, correct?

A. I -- it's been a while since I've looked at them. I can't remember what's on it.

Q. And do you see where it's got a phone call with a negative zero time of being 18:51, which mean that's really UTC time, right?

A. Again, like I said, I would have to see the full instructions on that.

Q. And Officer Wasiak testified that minus four made it South Carolina time, and minus zero would be four hours difference, that would be UTC time, right? And the jury could either replay his testimony, or recall from their dates that UTC minus four time was South Carolina time, correct?

A. Right.

Q. All right. Fair enough. So minus zero time, you have to take four hours off of it?

A. Okay.

Q. All right. So if you look at an entry, and by the way, the first entry on the second page that has a GMT minus zero, which is 18:51 hours military time,

that would be 14:51 hours South Carolina time. So that would be 2:51, right, 14:51 military time is 2:51 p.m.?

A. That's correct.

Q. All right. And you see a phone call that's an incoming call to Mr. Furtick's number, and then actually from an [redacted] number?

A. I mean, for me to be able to say that they're incoming, again, I would have to see the key for the cell phone records.

Q. Let's flip over to the other page, and it's got called number, right, and that tells you which number was called ---

A. Okay. I see it.

Q. --- on that column and then the other side, because you've reviewed these records before, right?

A. I believe that I have. I don't remember the contents of them.

Q. Okay. Fair enough. I'm going to kind of run through it a little bit. And you've got, it looks like, that [redacted] number being the other column and Mr. Furtick's number being the called number column. And let's count how many, if you don't mind, after the shooting and starting at 2:51 p.m., with the shooting at 2:15. Do you see that [redacted] number in there?

A. I see it.

Q. Ten times?

A. After 18 -- well, according to this, 18:51 hours, ten times after that?

Q. That's correct.

A. I see that number listed there. It's my understanding that doesn't necessarily mean that there were actually ten attempts to call that.

Q. Fair enough. But you see the number listed ten times?

A. The number is listed ten times.

Q. Okay. And someone, like Agent Wasiak, could probably go through ---

A. I didn't see.

Q. Okay. Short version, you could ask Mr. Wasiak to help you interpret this, if he was around when you were doing this investigation before trial, right?

A. What was your question?

Q. You said that's the way to read that.

A. Yes.

Q. And I said if you would have asked him about these records before the trial, he could have given you information about what that meant?

A. I'm sure that he could accurately explain this.

Q. All right. But, nonetheless, we've got a number of [redacted]s listed ten times after that?

A. I see that number listed ten times.

Q. All right. And that number is the same number Nikki Hicks gave you in her written statement for her phone number, isn't it?

A. Do you have a page number?

Q. Let's find it, yes, sir. I mean, it's in a different book of mine. Okay. Look at the report, which, by the way, is in Defendant's ID 10, Volume 1, Page 25. That's that big book you got there.

A. Volume -- Page 25?

Q. Yes, sir. And you remember that entry where you notate the four o'clock interview that you had, I believe that's on July 6th?

A. I see that that's the number that she gave us.

Q. That's the number she gave. All right. And then I'm going to pass you up another item that's going to be, I believe, 27.

(Defendant's Exhibit No. 27 was marked for identification.)

MR. BROWN: I have one for Your Honor, and one for the State.

BY MR. BROWN:

Q. I'm going to pass you up the one that's marked for Defendant's ID 27 and ask if you could look briefly at that and see if you can recognize that as a text

detail.

A. That's what it appears to be.

Q. All right. And if you look at the -- there's two entries on that text detail, isn't there?

A. Yes, sir.

Q. All right. And the top entry has a time message send date of 14:56, does that sound right? That's the time and the date, July 5, 2018, right?

A. Yeah, it says message send date July 5, 2018, 14:56 hours, which is 2:56 p.m.

Q. And that's after that phone call? Looks like five minutes after the first phone call from Ms. Hicks to Mr. Furtick?

A. The numbers as they're written here, that's correct.

Q. And the origination number for this text was Ms. Hicks' number?

A. Yes, it says originating address, and it shows Ms. Hicks' number.

Q. And the destination number is this number from Mr. Furtick?

A. Correct.

Q. All right. And it actually says that that text was delivered as well, although the next day?

A. Yes.

Q. All right. July 6th?
A. Yes.
Q. All right. When you went over the phone records with Ms. Hicks, I would say this morning, what did she tell you that message said.
A. I didn't go over any phone records with Ms. Hicks today.
Q. Okay. How about any day in the last 34 months?
A. I don't think I've gone over any phone records with Ms. Hicks.
Q. Did you take her phone and dump that phone, or request Verizon to give you any of her records?
A. I didn't dump the phone, and I don't think I requested any for her.
Q. Now tell me about requesting the cell site location records for Mr. Furtick's phone?
A. Could you be more specific?
Q. Yes, sir. Are there location records so you could see where a phone pings to track the phone?
A. Yes.
Q. All right. How would you refer to those, so we're on the same page?
MS. FULLER: Your Honor, may we approach for a minute, please?
THE COURT: Sure.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Please continue.

BY MR. BROWN:

Q. So, let me go back and ask you about the cell location records that you requested for Mr. Furtick's phone.

A. Yes.

Q. Okay. You sent a search warrant to Verizon for those records?

A. Yes.

Q. And did you get those records?

A. Yes.

Q. All right. And where do they show his phone traveling after the shooting? I'm not talking about the emergency ping; I'm talking about the cell location.

A. By the time that I requested them, Verizon no longer had those records.

Q. All right. You requested them on December 17, 2019?

A. That sounds correct.

Q. All right. So that would be approximately 17 months after this incident?

A. Yes.

Q. And you had already sworn in a statement, leading

to my client's arrest, that might client was charged with stealing that cell phone?

A. Yes.

Q. All right. That's significant because you made a big deal -- and I've already lost the pointer. But you made a big deal in this case about tracking Mr. Ritter's phone number to Mr. Ritter's phone number with cell site tracking location, correct?

A. Correct.

Q. All right. But you didn't look for the stolen item?

A. I did -- we were able to get RTT records.

Q. All right. Let me show you some RTT records. Well, let me just show you and ask you if what I'm -- it's not an RTT record. I apologize for that. Let me just show you if this is similar to what you might have looked at when you all reviewed this.

(Defendant's Exhibit Nos. 28 and 29 were marked for identification.)

BY MR. BROWN:

Q. Now, let me show you what's marked as Defendant's 28 and what's going to be marked as Defendant's 29. And I'm going to hand that to you and His Honor one of each, the prosecutor one. And it's a simple map photo off of Google Maps, so I won't tell you what it's about,

but I'm going to ask you if you looked at the location because y'all got an emergency ping on that phone, didn't you?

A. We did get an emergency ping.

Q. One ping?

A. So, I did not get that information, another investigator got it.

Q. And you reviewed all the information from all the investigators in this case before you made the charging decisions, didn't you? It's the first thing I asked you about, besides asking you if you wanted to move the safe.

A. So, I can't sit here and say that I heard every single piece of information. There's no way of knowing that I knew everything that had happened in the experience of all the other officers.

Q. And you sat in here when Detective Morris testified that they got a ping at 2:17 p.m. off of a tower at 207 Congaree Drive, Cacey, South Carolina. Does that sound right?

A. I remember Investigator Morris saying that they got a ping on the phone.

Q. And that sounds about right, doesn't it?

A. That address that you gave?

Q. That's correct.

A. That's what he said.

Q. And if you actually looked, there is no 207 Congaree Drive, Cacey, is there?

A. It appears to be 2207.

Q. Bingo. All right. And then 2207, if you look at what's been marked as Defendant's 29, does it actually have a photo of a cell tower at the location of 2207?

A. Yes, I see the cell tower.

Q. All right. And the ping time was 2:17 p.m., and I stand corrected if I'm wrong on the exact time because the cell phone call went at 2:15?

A. I don't recall the exact time.

Q. And the record is obviously truthful? If I misstated it by a minute or two, certainly, I hope the jury doesn't hold that against me. I guess they could look as well, but let me -- look at Google distance map between [redacted] Glenn Street and 2207 Congaree Drive. Do you disagree with the distance listed on that map?

A. I mean, I didn't type it in myself, but I have no real reason to disagree with it.

Q. Because you're familiar with this area, generally?

A. Um ---

Q. And that's the -- that's not driving, is it?
A. That seems like it could be correct.
Q. And it says 1.2 miles?
A. Yes.
Q. All right. And, generally speaking, if you're out in the country -- I'll save that question for another witness. Let me ask you a little bit about the lineups that you did. There has been some discussion here after the question about two guns jamming, or one gun jamming, and there have been some questions about potentially maybe a revolver. Do you recall that?
A. I recall these discussions.
(Defendant's Exhibit No. 30 was marked for identification.)
BY MR. BROWN:
Q. All right. And I'm going to ask you about what's been marked as Defendant's 30. If I may hand a copy up for His Honor, and then Defendant's 30, and ask you if you recognize what's been marked as Defendant's 30 for ID only.
A. I recognize this.
Q. All right. And it says handguns, all caps, bold and underlined, doesn't it?
A. Yes, sir.
Q. And then below it, it has two subtypes of

handguns, doesn't it?

A. Correct.

Q. And one subtype is?

A. Semi-auto.

Q. And one is?

A. Revolver.

Q. And who signed at the bottom of this as being the witness who this was presented to?

A. I believe this is Rodney Furtick.

Q. All right. And which gun in the semi-automatic did he pick out?

A. From the left, he picked the second one.

Q. All right. And which revolver did he pick out as the other gun we've never heard about in any report until this trial?

A. He didn't pick out a revolver.

Q. And who did pick out a revolver before there was some questions about a revolver jamming?

A. You're asking who picked a revolver?

Q. Yeah. Where do you have a revolver in your notes?

A. No one has picked a revolver in this case.

Q. All right. Before we were in this trial, nobody has ever said a revolver until somebody had the idea maybe it was a revolver that the second person had?

A. No witnesses have ever told us that there was a revolver.

Q. And they actually said the exact contrary?

A. This is the gun that Rodney Furtick picked out. He was the only one in that apartment that made it.

Q. All right. Did you ask Ms. Hicks about the red bag?

A. I never asked Ms. Hicks about the red bag.

Q. All right. And you never did a safe lineup?

A. I did not.

Q. All right. But unequivocally she said that is the same kind of safe?

A. I believe her testimony was that it was similar.

Q. A similar safe?

A. Yes.

Q. And she looked at it. She didn't have anything to say that's distinctive?

A. I saw her look at it.

Q. I'm sorry?

A. I said I saw her look at it.

Q. All right. And let's go through -- and I apologize. So, I want to go back briefly. Did you interview Rob Wilson about his relationship with Atkins and the gun guy?

A. No, I don't think so.

Q. Did you ever ask Mr. Furtick about the gun guy?
A. No.
Q. All right. Did you ever ask questions about whether that AR-15 was being possessed or used during the commission of a federal drug trafficking felony related to the 30 grams of cocaine?
A. No.
Q. Did you ever tell him you can charge him with that, if he knew and desired to possess those items?
A. No.
Q. And did you ever ask him -- and I'm curious. I saw reference in the notes to a probation violation arrest warrant. Who got arrested at the scene for a probation violation?
A. I don't know the name of that individual. It's something that was ---
Q. Not one of these people we've talked about?
A. That is -- that had nothing to do with this case. It was a -- I believe it was a mistake that got put in to the CAD.
Q. But it's one of the people I asked if you've interviewed?
A. I do not know who the individual is that got arrested for the probation violation.
Q. Okay. It's not Mr. Wilson, Mr. Furtick,

Ms. Hicks or Kris Webber?

A. No, sir.

Q. All right. Fair enough. But y'all did make an arrest out there that day?

A. No, it's my understanding that Lexington County did, but it was -- it should not have been in that CAD. There was a mistake.

Q. It was a bad arrest?

A. No, it was a mistake that it was put in there as a paperwork mistake.

Q. All right. Fingerprinting done inside that house?

A. I can't speak as to what was done, you know, and to say what was in the mind of an investigator when he was processing that house. I didn't process it.

Q. Who was in charge of this investigation?

A. This was my investigation.

Q. And y'all didn't just go there once, you kept the scene secure and went back at least one more time?

A. That's correct.

Q. And nobody fingerprinted anything?

A. I do not believe that any fingerprint was done inside there.

Q. And so let me make sure I understand this,

y'all did fingerprint the cars?

A. I did.

Q. To see whether somebody went inside the cars?

A. We fingerprinted the cars to see if we would find fingerprints on there. I wouldn't necessarily say that we were doing that to see if anyone went inside of them.

Q. All right. And you said you did fingerprint it, but you don't mean you personally?

A. I did fingerprint Mr. Mack's car.

Q. Did you do anything inside the home?

A. No, the only crime scene processing that I did out there was processing that one car and then that's it.

Q. And did y'all have a discussion about fingerprinting the car? And I've got to ask this: Have you ever decided not to fingerprint inside the house because you would rather not know the answer?

A. No, I just made the decision to fingerprint the car because when I process a vehicle that's what I typically do.

Q. And who made the decision to fingerprint the other car?

A. I only know about the one car that I processed. I didn't ask anyone else's decision making about what

they did that day.

Q. And when were you placed in charge?

A. I don't think it was that first day. I think that I was told that I would be handling the case the next day, but I'm not sure what time, but I don't think it was that first day.

Q. All right. And tell me about the decision to do touch DNA on the AR-15.

A. I never did touch DNA on the AR-15.

Q. Tell me about the decision not to do touch DNA on the AR-15.

A. It was -- it didn't seem ---

Q. Out of place in the room with the child's bed?

A. It didn't seem to be part of the crime.

Q. Tell me about the red bag Nikki Hicks said she didn't see there before.

A. What about it, sir?

Q. Tell me about that connection to the AR-15.

A. Other than hearing testimony and seeing the evidence, that type of rounds are the same type of rounds that would go into that gun. I don't know about their connection.

Q. How about the color being the same?

A. The what being the same, sir?

Q. The color.

A. I don't ---
Q. Are they not tan on the drum and tan on the AR-15?
A. I remember what the AR-15 looked like. I don't have a good memory as to what the drum looked like.
Q. All right.
A. If you say it was tan.
Q. And Ms. Hicks had been over there that morning?
A. On which morning, sir?
Q. On July 5th?
A. Yes, she was there.
Q. All right. And she testified she didn't see the red bag in that location when we asked her this morning?
A. I don't remember exactly what her testimony was, but she did say that she didn't know about that bag being there.
Q. And it was there when y'all showed up after the shooting?
A. Yes.
Q. And the AR-15 wasn't in the bag?
A. No, there was no AR-15 in the bag.
Q. All right. And she said that the AR-15 was not normally kept under the child's bed?
A. She said that.
Q. All right. Did Mr. Furtick tell you that anyone

took an AR-15 to steal it and ran to the back bedroom with it and hid it under the bed?

A. Mr. Furtick never told us any involvement with an AR-15.

Q. All right. And y'all never asked him about it?

A. I never did.

Q. At all?

A. No, sir.

Q. And you didn't take a red bag into evidence so we can even test here today?

A. I can't speak as to, you know, why it wasn't taken. I heard the investigator say that he just took the rounds out of the bag and left the bag there.

Q. Buck stops with your desk, right, on this case?

A. Absolutely.

Q. All right. So wouldn't it be nice to have that test today?

A. I don't think that it's relevant to the case.

Q. I understand that. But if the jury did, they would be deprived because of that decision you made?

A. I -- again, the scene was released on the 6th. But at the end of the day, it's my case.

Q. But you took the stuff out of the bag before you released the scene?

A. I did not take stuff out of the bag.

Q. The stuff was taken out of the bag before law enforcement released the scene?

A. That's correct.

Q. All right. Fair enough. But nobody took the bag?

A. Correct.

Q. So we can't go back and test it now?

A. That's correct. The bag has been tainted.

Q. Fair enough. And who else went over there between the time Nikki Hicks left that morning and the time Mr. Furtick showed up?

A. Kendra Brown was also there.

Q. Did she bring the red bag with the AR-15 over?

A. I ---

Q. Probably not?

A. --- didn't ask about that.

Q. Probably not, huh?

A. I would be speculating as to whether or not she did. I never asked her that.

Q. Moving it along here. And when you went in, you didn't take the other shell casings out of the kitchen and put them somewhere, did you?

A. No.

Q. All right. And any crime scene sketches, besides the little one that was drawn, it looks like

by Mr. Furtick, in your interview?

A. I think I actually drew that, and I asked him about it. Like, I asked him how was it, and I think I drew that.

Q. And I'm going to be honest, I'm going to share a little secret here. My co-counsel gave you a list of items that -- DNA and fingerprints, but y'all didn't do any fingerprinting inside at all?

A. I don't believe any fingerprints were done inside the residence.

Q. All right. And you didn't do touch DNA on the AR-15, door handle, the red bag, the ammo drums, the drugs or the empty holster?

A. Accurate.

Q. That sounds right?

A. Yes, sir.

Q. And I kind of want to go back now. You listed cell phones that were taken from Samir Atkins and Elzie Mack, does that sound right?

A. Listed where?

Q. In the arrest warrant.

A. Yes, that was listed on the arrest.

Q. All right. And upon the phone extraction, you actually recovered three cell phones belonging to Samir Atkins, two cell phones belonging to Elzie

Mack?

A. The dumping -- three belonged to Samir Atkins, and two belonged to Elzie Mack.

Q. And Mr. Mack's widow testified that those were his two cell phones?

A. So, we got that information after those arrest warrants had been done.

Q. And that no longer appears in that indictment that you -- excuse me -- your name is on but somebody else swore out? It doesn't say Mr. Mack's cell phone is on there, does it?

A. It does not say that.

Q. All right. And that's not what you're currently alleging in that indictment, are you then, because you said personal items meant something else, like, what, marijuana and $5,000 and some guns?

A. Yes.

Q. All right. So cell phones aren't in play anymore?

MS. FULLER: Objection, Your Honor. I called the case.

THE COURT: You can fix it on redirect.

BY MR. BROWN:

Q. The cell phones for Mr. Mack are not in issue anymore, are they?

A. The evidence appears as though -- Kenyetta Moorer said that he had two phone numbers, and that both of his phones ---

Q. Let me ask you kind of differently. What evidence would you want the jury to consider to decide whether or not Mr. Mack's cell phones are, in fact, still missing?

MS. FULLER: That's not proper, Your Honor.

BY MR. BROWN:

Q. What information can you present to this Court -- I'm sorry. I'll withdraw the question.

THE COURT: Rephrase.

MR. BROWN: Yes, sir.

THE COURT: I know what you're getting at. Go ahead.

MR. BROWN: Yes, sir.

BY MR. BROWN:

Q. What information or evidence do you have to show the identity of Mr. Mack's missing phones? You've got two that's been recovered. What phones are missing?

A. I can't think of any other phones.

Q. All right. How about the phones of Mr. Atkins that are yet missing?

A. I can't -- I don't -- he had several phones in there, but, you know, I recovered three. I can't --

I don't have an identity of oh, this cell phone right here is missing.

Q. And actually it was more than three wasn't it? You actually recovered nine phones in the home, two were Mr. Mack's?

A. That's right.

Q. So you got seven of Mr. Atkins' cell phones?

A. I know for sure that three of them were connected to him, but the rest of them were ---

Q. Seven of them were in his house, aren't they?

A. Right.

Q. And you didn't ask Ms. Hicks if they were hers, did you? Who else was living there?

A. I believe it was just her and Mr. Atkins.

Q. All right. So you've got seven cell phones of Mr. Atkins found in the house?

A. Again, the only ones that I could for sure say belonged to him were those three listed on that.

Q. And then that actually leaves, gosh, if I do the math right ---

A. We've never found ---

Q. --- that would be four extras?

A. We've never found Mr. Furtick's.

Q. Never found -- the phones that you didn't track, the Cellbrite records?

A. So, we requested those pings. We got information, request for RTT records.

Q. Seventeen months later.

A. About the time that we requested those 17 months later, the records were -- you know, the cell phone -- they were no longer there.

Q. Had you called Verizon that day ---

THE COURT: Hold on. Hold on.

MS. FULLER: Just so the record is clear, in the question you said Cellbrite.

MR. BROWN: Excuse me. So your site location records. I apologize.

MS. FULLER: Just making sure he's answering the right question.

THE COURT: I think we understand it. Please continue.

BY MR. BROWN:

Q. And you did call Verizon that very day, like, within 30 minutes of the shooting?

A. I didn't call them, but, yes ---

Q. Law enforcement called Verizon about that cell phone within 30 minutes of the shooting?

A. Yes, sir.

Q. And you obtained 30 search warrants in this case, including, what, a handful, a dozen, within days?

A. Yeah, that sounds about right.
Q. And they told you the retention period is 365 days, didn't they?
A. Yeah, they said that they keep those for a year.
Q. For one year?
A. Yeah. When I requested them, they said we only keep them for ---
Q. So just like the touch DNA off the red bag, we now have no information to present to the jury so they can determine whether Mr. Furtick's phone tracks somewhere in Estill or somewhere. Whatever else in the world it might have gone, we don't know where?
A. I don't have the cell tower records.
Q. Because you didn't follow that up. Now ---
MR. BROWN: Beg the Court's indulgence.
BY MR. BROWN:
Q. All right. No description of the second suspect?
A. Correct.
Q. All right. Now, there's been talk, and I'm going to be brief, but there's been talk about a third suspect, hasn't there, in this courtroom? One is holding the gun on Mr. Furtick, and then somebody else is taking the gun from Mr. Ritter or giving the gun to Mr. Ritter, and then two other people are running back to get the safe? We heard that this week.

A. I can only go off of the evidence that I have from inside there when speaking with Mr. Furtick, and his eyes were facing away where he couldn't see how many people were in the apartment.

Q. All right. Here's my question. What was the description of the third suspect?

A. Again, there's no description given. The only description Mr. Furtick gave was of Mr. Ritter.

Q. And he didn't tell you that it was Black male's voice, it was the second suspect ---

A. Right. He said that he could barely make out -- or hear this guy's feet while he's fighting with Mr. ---

Q. Doesn't note shoes; doesn't note skin color, just heard the voice?

A. While he was fighting for his life with Mr. Ritter, yes.

Q. He hears them talking about guns and the conversation about taking the gun back and forth and the clicking of the gun?

A. Well, at that time, he was being held down at gunpoint and told to face away.

Q. Right. The same traumatic experience that led him to remember all the details about what he heard, but he didn't give any details about what he saw at two

o'clock in the afternoon?

A. I would venture to say, if I was in a fight for my life with an individual, I would be focusing on him and hiding myself and not trying to find out particulars about who was -- who this other person was, just trying to protect myself.

Q. So where in any of these voluminous police reports is a reference to a third suspect at all? When have we ever heard a third suspect in the house with the second suspect, carrying the safe out, while the first suspect holds the gun? When have we ever heard that until we are in this courtroom 34 months later?

A. Like I answered just a little bit ago, the only thing I can do is go off of the witness's testimony that I have from Mr. Furtick when I interviewed him.

Q. I think that means never.

A. An identity of a third suspect and a description was never brought up, no.

Q. All right. Now, let me ask you this: Ms. Hicks has $5,000 that she's found with on July 18, 2018, $5,980?

A. Yes, sir.

Q. That's the money she said was stolen, isn't it?

A. No, not to my knowledge.

Q. How do you know it's not?

A. Because in speaking with Ms. Hicks I believe what she's told me.

Q. That that was Samir Atkins' money in the console of the car, and she didn't even know it was there?

A. I never had any reason to doubt Ms. Hicks before.

Q. She said that, didn't she? You don't doubt her veracity?

A. No.

Q. You believe she's truthful?

A. I've never doubted her veracity.

Q. All right. And she told Pine Ridge Police Department she didn't know the $5,900 was there, it was Samir Atkins' car, and it was his money, she didn't know it was in that car? And didn't, in fact, she testify that she had switched cars with him that morning?

A. What she testified to was that she asked her boyfriend which car he wanted her to take, and he told her to take the Charger.

Q. They switched cars, the $5,000 was missing, but the whole time it's sitting in the Charger that y'all never searched?

A. No, I never searched her Charger.

Q. The trunk of that Charger hold this safe?

A. I can't speak as to the size.

Q. Did you ever follow up after the July 18, 2018 seizure of the money and drugs from Ms. Hicks?

A. The first time I ever heard about that was Mr. Phillips when he said it, or I forget which one of you brought it up, but that was the first time I ever heard about it.

Q. You never even knew she got arrested, caught with money and drugs and guns, the same items mentioned in that safe within 13 days of this?

A. No, I didn't know that until this week.

Q. Because you don't think she made $5,000 in 13 days, do you? That's, like, $130,000 a year.

A. I have nothing to do with that Pine Ridge case. I don't know -- I don't know anything about where that money came from.

MR. BROWN: Your Honor, I don't have any other questions.

THE COURT: Redirect.

MS. FULLER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. FULLER:

Q. Just to clear up a few things. Looking at what the defense showed you, this handgun photo lineup.

A. Yes, ma'am.

Q. Can you explain to the jury what the purpose

of that was?

A. When we interview someone for an armed robbery or murder or shooting, we show them a standard form for West Columbia Police Department which has different types of handguns.

If they said it was a rifle, we give them rifles. And we give him the simple instructions, please take a look at all of these and pick out the one that most accurately represents the one that you saw, and then we allow him to pick out a handgun, which he had told me it looked like a small compact black handgun when I spoke with him, and that's the same type that he picked out.

Q. And that was consistent with a 9-millimeter?

A. Yes, this is -- yeah, this is consistent with what a 9-millimeter would look like.

Q. Okay. So when counsel was asking you vague questions about that, it was out of context, asked about what guns committed this crime?

A. Right. The only one that Furtick saw was the one that he described here.

Q. Okay. Defense counsel asked you about witnesses you spoke to and solicited hearsay statements from you about what they said. I believe that allows me to go a little bit further into some of this. How many other

witnesses in this case did you speak with?

A. Witnesses -- approximate maybe 15.

Q. Okay. What's one of the -- let's go through it. Name one. What's another witness you spoke with?

A. Beverly McGruder.

Q. Okay. And who is Beverly McGruder?

A. Beverly McGruder is a ---

MR. BROWN: Hearsay.

THE COURT: Sustained. We can't go there for the reasons I have explained previously, Solicitor. You understand that.

MS. FULLER: Okay. And, for the record, he asked questions and solicited ---

THE COURT: I understand. You can ask him -- you can ask him names, proper names of other witnesses he has spoken to. But for obvious reasons, we cannot go there.

MS. FULLER: Okay.

BY MS. FULLER:

Q. Did you speak with Kobrandum Bostick?

A. I did.

Q. And why did you speak with him?

A. I spoke with Kobrandum Bostick -- his name was brought up as ---

MR. BROWN: Hearsay.

THE COURT: Sustained.

BY MS. FULLER:

Q. How did your investigation lead you to speaking with Kobrandum Bostick?

A. I apologize. If I can find my report, trying to locate my memo to when I spoke with Kobrandum Bostick.

Q. Do you remember off the top of your head why you spoke with him?

A. Yes.

Q. What led you to speak to him?

A. I apologize. I requested -- that's what it was. I apologize. I got cell phone records from Kobrandum Bostick.

Q. And why did you get those records?

A. Because of the communications between him and Mr. Ritter.

Q. And what communication did you observe?

A. That they communicated the day of that incident.

Q. Okay. And on the day of the incident when Damien Ritter was leaving his home at 11:39 a.m. that morning, who was he communicating with?

A. Kobrandum Bostick.

Q. And did you review records of Bostick?

A. Yes.

Q. And what did they reveal?

A. They revealed that he traveled up to the area of the incident location at the same approximate time.

Q. And how about after the incident?

A. They traveled back in the same manner.

Q. And did they reveal anything else later that night?

A. Yes, that he traveled to Hephzibah, Georgia, again in the same manner as Mr. Ritter.

Q. Okay. And in the course of the investigation, did you speak with Kobrandum Bostick?

A. I did.

Q. And did you inquire about his travel?

MR. BROWN: Objection. Hearsay.

MS. FULLER: Okay. That's fine. I'll move on.

THE COURT: Sustained. Please do.

BY MS. FULLER:

Q. Also on cross, defense was asking you about the investigation, and what you did and did not do in this case.

A. Yes.

Q. How many man hours do you think you put into this case?

A. Hundreds.

Q. And you interviewed tons of witnesses in this

case?

A. Correct.

Q. And you've traveled for this case?

A. I have.

Q. You've traveled down to Estill for this case?

A. Correct.

Q. How long did it take you to drive down there?

A. About an hour and 45 minutes from the incident location to Estill.

Q. What route did you take, do you remember?

A. I took -- I believe I was taking 321 most of the way down there.

Q. And how many times did you travel down there?

A. Three or four.

Q. And that was in effort to interview witnesses and look for evidence of this crime?

A. That's correct.

Q. And in going to Estill, did you also look for the Tahoe while you were traveling down there?

A. I did.

Q. And how extensive did you search for it?

A. Just about every single person that I interviewed about this case, I asked them where that Tahoe was, and I've never been able to find it.

Q. And did anyone ever reveal that they ever had

any information about the location of the Tahoe?

A. No.

Q. Did you in the investigation listen to any calls that revealed information about the Tahoe?

MR. BROWN: Your Honor, at some point, there's going to be some hearsay.

THE COURT: Yeah, sustained.

MR. BROWN: Thank you.

MS. FULLER: Okay.

BY MS. FULLER:

Q. But throughout the investigation you did do lots of other followups?

A. I did.

Q. And you explored different avenues in this case?

A. Yes.

Q. Okay. Much of it was presented today?

A. Yes.

Q. Okay.

MS. FULLER: I think that's it, Your Honor. Thank you.

THE COURT: Recross.

MR. BROWN: No further questions, Your Honor.

THE COURT: Investigator, you can step down. If there's a defense exhibit, just kind of stick it

here. All right. Ladies and gentlemen, before we get to the next witness, y'all been out there for two hours and ten minutes by my watch. So, we're going to take a break, and then we're going to address the next witness. Feel free to pop downstairs, refresh yourself, et cetera, et cetera, and I'll have you back up here in about 10 or 15 minutes, okay, folks? Thank you for sticking with us.

(Jury exits the courtroom at 4:06 p.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Thank you. Please have a seat. Go ahead and get the jury moving, please. Folks, I don't see us getting this to the jury today, I'm just going to tell you flat out. And I'm not quite 100 percent -- I'm not quite sure what's going on, but we'll discuss instructions once I release them and have them come back Monday. I'm going to have them come back maybe around ten o'clock Monday. That's just where we are.

MR. BROWN: But the State is going to close today?

THE COURT: The State, I anticipate finishing their case today, yeah. They've got one more witness is what I'm hearing. Mr. Brown, I'm assuming

you're still not going to be putting -- you're still not going to be putting up a case, am I correct? I don't want to turn to you to rest and then get a major head fake and your client ---

MR. BROWN: Certainly. And let me just say this. The way it seems right now, we're not presenting a defense.

THE COURT: I understand.

MR. BROWN: And I don't mind showing that right now. I only have one witness, and I do not predict that to change.

THE COURT: Okay.

MR. BROWN: Based on his subject matter.

THE COURT: Okay. If that were to change, just ask for a sidebar.

MR. BROWN: And otherwise, we would be willing to also rest.

THE COURT: Right.

MR. BROWN: In other words -- both rest today.

THE COURT: And then we do motions and charging.

(Jury enters the courtroom at 4:31 p.m.)

THE COURT: All right. The record will reflect that the jury is back and seated. Solicitor,

call your next witness, please.

MS. FULLER: Thank you, Your Honor. State calls FBI agent, Clayton Simmonds.

SPECIAL AGENT CLAYTON SIMMONDS was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: Once you're seated, you can remove your mask. State your full name, spelling your last.

THE WITNESS: Robert Clayton Simmonds, S-I-M-M-O-N-D as in David-S.

DIRECT EXAMINATION

BY MS. FULLER:

Q. And I apologize, it's Supervisory Special Agent Simmonds?

A. Yes, ma'am.

Q. And can you introduce yourself to the jury briefly, please?

A. I'm -- everybody calls me Clay, Clay Simmonds with the FBI. I'm a supervisory special agent with the FBI. I work for a specialized unit within the FBI called the Cellular Analysis Survey Team, we call it CAST, as an abbreviation.

I have been a special agent, been employed by the FBI since 2002, so a little over 19 years, and I've been

looking at cell phone records probably 10 or 12 years through my own personal cases, but certified as a CAST member since August of 2015. I became a supervisor two years ago with this unit.

Q. Thank you, Agent -- Special Agent. And on the unit team, are you familiar with cellular -- cell phone records with various providers?

A. Yes, ma'am.

Q. And can you explain and describe that to the jury?

A. Sure. So for us to be certified by the FBI to be members of CAST, we go through several phases of training. The initial stage of training is just what are cell phone records, how do you get them, how are they useful, what can we use in an investigation? And so we present a class on that. How to obtain them, getting the cases -- apply the cell phone records so you can visually display what the records look like on maps.

The next kind of stage or phase is kind of an advanced cell phone record class where you might have some anomalies in the record, such as times were in UTC or GMT, military -- Greenwich Mean Time, Universal Time Coordinated, UTC.

So that means for here, during daylight savings

time, those records are four hours ahead, during standard time, they're five hours ahead. So you've got to subtract those hours out to get to the local time for you to analyze the records.

Again, we give you cases to plat [ph.] and visually depict what those records look like on a map. After that, we go down to a class in Florida where we learn how to use the records to basically find a search area for cell phones. And then we use a piece of equipment called Cell-Cite Stimulator, and we go out where they previously placed phones, and we turn on that piece of equipment and direct us to the location to find the phones.

We take a skills presentation class because we're required to teach these methods to state, local and federal law enforcement agencies, our own employees, during that time.

During our CAST days that we are certified with CAST, we then have what they call a field training exercise. Basically, we put you into a command post kind of situation, all simulated, and say, hey, there's a missing kid, there's a police officer that's been shot, there's an active shooter, whatever the case is, and phones are related to it, and we ask you to initiate maps and present those and where you may start looking

for an individual, or prove or disprove if that person used the tower and sector that would generally cover the area of that particular crime.

Afterwards, we go through our two -- we have two two-week sessions of certification. The first section of the first two weeks is that we have a professor come in and talk to us about radiofrequency, how it works, how cell phones utilize those records -- utilize those signals to communicate with the towers, how the towers then take and process through a switch so everybody can communicate through text, voice or nowadays on the internet. It's going through things that are on the internet. And we have a professor come in and teach us about those things.

The second week of the first two-week session is that we have all the service providers come in; T-Mobile, Verizon, AT&T, and even U.S. Cellular, Sprint. Sprint and T-Mobile have now merged together. We have all those guys come in. We have individuals from their respective law enforcement relations groups, so the individuals that we interact with. We ask for records to be issued to us so we can visually display them on maps.

And then the engineers from the local market will come in and talk to us, how the network is set

up, why they set up the networks the way that they do, again how the stuff gets processed through the towers and the switch and out into the cellular world so we can stay communicating with each other.

At the end of that, we would go out, and we actually view the tower and the switch. So we go out and talk to the guys who maintain the towers, why they maintain them, how quickly they respond if things go down on those towers, that they're trying to constantly be at the 90 percentile of towers being serviceable because it affects their bonuses, their take-home pay, and things of that nature. And then we go through the switch and see how it gets processed through that mechanism again so we can communicate with each other.

And then the second certification, two-week certification session, is us learning about the expert witnesses. So we go in, and we have individuals tell us what we can and cannot do as expert witnesses, what opinions -- how our opinions are to be viewed by the jury and the Court, things of that nature.

We are provided with a practical problem or another case to present. We then create our maps and our presentations for a moot court session. And then the second week is that we bring in attorneys from all across the country to serve as prosecutors,

defense attorney and judge, and they let us present our case, like I'll be doing here later today, and then we are critiqued.

So each one of these stages of training, we are graded, and if we make a successful score we continue moving on until we're finished with moot court and we're certified to testify as experts on historical cell-site records.

MR. BROWN: We'll concede he's an expert, Your Honor.

THE COURT: Very good. I assume you're offering him as an expert in that field?

MS. FULLER: Yes, Your Honor.

THE COURT: All right. Ladies and gentlemen, again, Agent Simmonds has been -- the parties agree that he's an expert in the field of historical cell-site records, so he can give opinion testimony in that area that you may use as you deem appropriate.

MS. FULLER: Thank you, Your Honor.

BY MS. FULLER:

Q. Agent Simmonds, were you -- did you receive a number of records to review and map in this case?

A. Yes, ma'am. I received four or five telephone records associated with this particular case?

Q. And I'm going to hand you these records marked

as State's 224, 225 and 226, and ask if these are some of the records that you reviewed.

A. Yes, ma'am. This State's 224 are records for [redacted], the Verizon records. I reviewed them last week. They're the same ones that were provided to me earlier in the investigation. I received also records for [redacted] and [redacted], also both Verizon records, which I reviewed last week and the same as I received earlier. And then for telephone number [redacted], which are AT&T records. And, again, State's 226 is the AT&T records, and the last one, [redacted] and [redacted], is State's 225.

Q. Thank you, Agent. And for court today, did you prepare those maps?

A. Yes, ma'am. So after I received those records, I visually displayed where the phones with towers and -- on most of the maps what towers and sectors were utilized when the phone interacted and visually displayed the general location of the phones.

Q. And can you generally explain to the jury, because I kind of just jumped in, what exactly in the records that are provided by the cell phone company allows you to conduct the analysis that you did in this case?

A. Sure. So when you ask for cell site records

from a provider, they provide you with the date, the time, some companies do it local time, of the transaction. Some do it in the UTC or GMT time. That's when you have to subtract the hours off of it that's appropriate for the time period. The date, the time, the transaction, that's when you flip two numbers that took place, the duration of those calls.

And then they provide us, like, the switch, which is kind of like the group of towers, it's kind of, like, a zip code, saying, hey, these towers are located here in the West Columbia zip code or the Lexington zip code. And then they provide us with a tower number and the sector, which is kind of like your address, like, the street that you're on and the address, like, 123 Main Street.

So, the tower acts as the street, and the sector is kind of, hey, we're using this side of the tower for this transaction to take place. And because towers are generally laid out in three sectors here in South Carolina, each one of them is about 120 degrees. And to give us 360-degree coverage, there are three different sectors on there. And so those records will tell us what side of the tower they're used on.

When we get those records and marry those up with the tower list that's also provided by the service

providers, the tower list tells us the latitude and longitude location of that particular tower and then how the sectors are divided. And they're divided through a term called azimuth. That just means that the side where the radiofrequency is coming off of that tower.

And so if you sit up there and had an azimuth at 60 degrees, you think of 60 degrees, two o'clock on a clock, and so every hour is 30 degrees. So, two o'clock, it's at 60 degrees. And to give us our 120-degree coverage, you've got 60 degrees to the left of 60, and 60 degrees to the right of it to give us our 120-degree sector.

Q. Thank you, Agent. And I'm going to hand you what's been marked as State's Exhibit 236 and ask if you recognize this.

A. Yes, ma'am. This is the presentation I made and provided to your office for this case.

Q. Okay.

MS. FULLER: At this time, Your Honor, the State seeks to introduce State's 236 into evidence.

MR. BROWN: I'm not sure what it is.

THE COURT: 236 is the ---

MS. FULLER: What I handed you the other day.

MR. BROWN: Without objection.

THE COURT: Without objection, 236 is in evidence.

(State's Exhibit No. 236 was entered into evidence.)

MS. FULLER: I'm going to hand this one back to you. And then, for the record, 238 is just a PowerPoint version of that for purposes of this court today. And I will seek to move that into evidence at this time, Your Honor and publish.

MR. BROWN: Which number?

MS. FULLER: 238.

MR. BROWN: And that's the report?

MS. FULLER: Yes.

THE COURT: No objection to 238?

MR. BROWN: No objection, Your Honor.

THE COURT: It is in evidence as well.

(State's Exhibit No. 238 was entered into evidence.)

BY MS. FULLER:

Q. And I'm going to hand you the laser pointer. And, if you may, can you just walk us through what you prepared for court today.

A. Sure. So this first page is just the cover page that tells you who I am, where I work, what unit I work for, that I'm down in Charleston, and these are the four numbers that I was asked to analyze, [redacted], which

is a Verizon telephone, [redacted], which is another Verizon telephone, [redacted], again another Verizon, and [redacted].

Q. And, Agent Simmonds, looking at State's 192, do you see four of those numbers on this exhibit?

A. Yes, ma'am.

Q. Okay.

MS. FULLER: And, Your Honor, can you inquire the jury if they can see?

THE COURT: If anybody can't see, raise your hands. Everybody can see it.

MS. FULLER: Perfect.

BY MS. FULLER:

Q. And the first one in your report is [redacted], and can you publish who that number is associated to?

A. Damien Ritter.

Q. And the next one is [redacted]. Who's that number associated with?

A. Again, Mr. Ritter.

Q. And [redacted]?

A. Rodney Furtick.

Q. And [redacted]?

A. Elijah Mack -- Elzie Mack.

Q. Elzie Mack.

A. Elzie Mack.

Q. Thank you. And if you can take us through.

A. So, the first page just tells you who I am. The second one basically tells you what I was asked to -- what records I was asked to analyze for the time frame of July 5th and July 6th of 2018, the methodology, how we go about it; we obtained those records, we get the tower list, we marry those together, and then we visually display the transactions that took place, and that the maps will be on the following pages.

So, this is kind of a visual explanation of what I was just saying about explaining what the azimuth is and how we determine what side of the tower it is. We look at the tower list, and it provides sectors divided up as one, two and three, or A, B and C, or alpha, beta and gamma. And we go in there and look at it, and if the azimuth is 60 degrees, again we go 60 degrees to the left of it, 60 degrees to the right of it to give us our 120 degrees because most towers in South Carolina are three-sided towers.

And so this is here to explain to you that this is how -- when the phone uses a tower and sector, how it will display what side it was on, and that the phone could be anywhere between the two and not necessarily in this highlighted area right here. The highlighted area there is just showing you the direction

of the energy for that side of the tower when this phone interacted with the network.

Q. And, Agent, I have a question about that. When you describe energy, what does energy actually mean?

A. It's the radiofrequency that comes -- that is communicated between the cell phone and the cell tower.

Q. And when you look at the tower -- the frequency here in orientation, how far out in this example, potentially, would a user's device -- is that just within the V area, or could it be beyond?

Q. Well, it depends on how that network is laid out. So when cell phones -- cell phone networks are laid out, they're laid out similar to a sprinkler system you may have on a farm or in a yard or anything in that nature. So, you'll have one tower that's over here on the right, one tower that's over here on the left, and it may shoot in the same direction.

Well, you want them to go a little bit further past of each other so you don't have a dead patch of grass in the middle of it, and so you have that overlap in there. So each one of them overlaps just a slight bit. So when you travel from tower to tower, you don't lose that phone call because phone companies realized that makes you mad, you want better service, you

disconnect, you go to another provider that provides a better service, and these companies are in it to make money for a profit business.

So they try to eliminate as much dead spots as they can, just like your sprinkler system tries to eliminate any dead grass that may be in your yard. So every network, or every market, is going to be different. So the market in New York City, because there's 10, 15 million people up there, will have a smaller range for their towers because they'll put more towers up to provide the coverage that is needed for the demand that's on the network.

While coming here to South Carolina, it may be spaced out a little bit further. And if you get to the rural areas of South Carolina and the upstate or Berkeley County, in the area that I'm from, you might have them spaced out a little bit further than what you would in downtown Columbia or in downtown Charleston.

Q. Thank you, Agent Simmonds. And from this case, what was the area of interest that we asked you to look at?

A. West Columbia.

Q. Okay.

A. Estill, West Columbia, back to Estill, and then over into Georgia.

Q. Thank you. Looking at the first map that we asked you to look at -- I apologize, the area of interest.

A. So these are the areas of interest. So when I'm asked to analyze phone records, I need some basic information of location of the crime scene, the date and time that needs to be analyzed, anything else that may be significant, like residences, alibi locations, anything of that nature.

And so this map just basically shows you these are the areas of interest that were on there. This is basically the way the AT&T and Verizon networks look in the Columbia, Estill and Augusta, Georgia market. The red dots represent Verizon towers; the blue dots represent AT&T towers because those are the two companies whose services were utilized by these folks.

Q. Thank you, Agent. And looking at the first map that we asked you to generate in this case as it relates to Elzie Mack, [redacted], can you describe this map to the jury, please?

A. Sure. So the time range that I was asked to look at for this particular phone was between 1:00 p.m. on July 5th and 3:00 p.m. -- takes it up to 2:59. So, at the time, the phone used Tower 61620, which is in the Pelion area, just kind of southwest of [redacted] Tom Lucas

Lane. And eventually it moved up to the area near the crime scene at [redacted] Glenn Street, utilizing Tower 80020 at 2:36, 2:37 and 35 seconds and 2:37 and 42 seconds.

Q. Thank you. And do you recall if those were incoming calls?

A. I would have to look at the records again to tell you whether they're incoming or outgoing calls.

Q. Okay. And then for the next map that you were asked to review, were these records for Rodney Furtick, [redacted]?

A. Yes, ma'am. So these were records for [redacted]. And the only records that were available is -- Verizon has records called RTT. It's called range to tower, and these records are used by the engineers to optimize the network to see if they're providing the best possible service to them.

And the thing with RTT records is they're perishable. If you don't ask for them within seven days without preserving it, or asking for them through some exigent circumstance, these records will be gone in about a week, give or take a week.

So the records that I was provided for this particular phone was RTT. And all that means is the phone had some sort of transaction with the network,

or the network initiated some sort of transaction on it, and it says, hey, phone where are you, and the phone says, hey, I'm over here. And then whatsoever tower asked where that phone was, how long it takes for that signal to go back to the tower, they give us the tower and sector that was used, and then how far away from that tower and sector they're estimating that phone is.

So sometimes it can be tenths of a mile; sometimes it can be six, seven, eight, nine miles, depending on what tower asked for that information. And so then we stood up there, and we draw an art on our maps to say that phone is somewhere on that art at that particular moment in time.

And if the phone is moving, of course, it will move accordingly. But we draw that art to say at this particular time, this phone was on this tower and this sector on this art. So if it's further away from the base of the tower, we're probably not going to look there. We're going to look right there on that art.

Q. And looking at this one specifically in terms of RTT, does RTT also capture call data and messaging, or is it just the network sends the signals to the device?

A. So it's -- some sort of transaction has to take place. It could be a data session, internet traffic,

it can be text messaging or calls, or it can be -- sometimes they can do a self-initiation of it, especially if you're active on it, and you really want to know where's that phone, they can initiate that transaction at law enforcement's request. Generally, it's just some sort of activity that has taken place on the network.

Q. And so it does include activity that is not user generated; is that correct?

A. If you're on it actively. I mean, if you didn't ask for this data in an emergency situation, it could not be there. It would have to be something a clone generated.

Q. Thank you. And going through this, starting from the top, can you explain here? It says RTT from 1:08 to 1:47, with a distance range of .39 to .44 miles. What, if anything, does that indicate?

A. So, again, RTT records are generally kind of like call-detail records that we usually use to locate phones, general locations of the phones. So they give us the date and time that it took place. And then they give us the tower and sectors that was used, whether it's the beginning and the end, and how far away it is from that tower.

So between 1:08 and 1:47 and 29 seconds on July

5th, 2018, this particular phone was anywhere from .39 to .44 miles away from this particular tower.

Q. And looking on there, we have the Mai Thai Cuisine Restaurant on there, if that device was at that restaurant would it be in that range, if you had -- on the map?

A. So, basically, what the dark area -- would constantly be hitting over that, if that was an area of interest at that particular time between 1:08 and 1:47, that started at the restaurant to find that particular device.

Q. And you say started at the restaurant, how do you use RTT in the normal course of an investigation?

A. So, normally, we're getting it because something bad has happened; a kid has gone missing, there's an active shooter out there, there's a violent felon that may need to be caught. And so we sit up there, and we ask for RTT to be provided, in this particular case, by Verizon. Not everybody provides this particular data, but Verizon does.

And we ask for that data to be provided to us, and so every few minutes, they'll give us -- give it to us. And what we're looking for is -- we're either looking for a consistent overlap of RTT in the same area, and then try to find the location of interest.

Like, if you're in a hotel district, you might want to see what hotels are in the area, if it's a fugitive that's gone missing.

Or what we really would like to see, or what I really would like to see, is an RTT that's from one tower, and then an RTT that comes from another tower, and it kind of gives you an X marks the spot kind of situation. And, hopefully, that is over something of interest that would be important to us. And then we would really like to see that constantly going over. Sometimes you only get one or two, but if the phone is stationary for a period of time we might get a bunch of them.

Q. And how often do you rely on RTT information?

A. Anytime I can use it. I mean, anytime I can use it, I use it to find fugitives, missing kids, evidence left behind after a crime scene. I mean, you name it. Anytime we can get our hands on it, especially active, when there's a current situation going on. I love RTT.

Q. And how is RTT different or similar to a mobile ping?

A. So RTT -- I don't particularly care for the word ping, but I get what people are saying. So RTT is just giving -- it's on that art, while a ping kind of gives you latitude and longitude on it, but that's not GPS.

That is basically the company's best guest of where that phone particularly is, and sometimes they put it just on that azimuth.

So if that azimuth is at 60 degrees, and they say the phone is three quarters of a mile, they may put it directly three quarters of a mile on that 60-degree mark, but it could be 60 degrees to the left or 60 degrees to the right of that. So that's why we draw the art when we want to see where the art lays out.

Q. Moving along with this map, can you then explain after 1:47, where does it appear the device to be traveling towards?

A. So after 1:47, this phone appears to start moving this way. These arts kind of intersect all right here between 1:51 and three seconds and 1:53 and 19 seconds. They start coming down here, and the phone eventually goes southbound towards the crime scene with a range of arts at 1:53 and 22 seconds to 1:59, almost two o'clock, down there covering the crime scene.

Q. And based on the information you received, at what time would that device have been close to or at the crime scene?

A. As early as 1:53 and 22 seconds, as early as that. And then it appears that it stayed around that general area until almost two o'clock.

Q. Okay. Thank you.

MR. BROWN: Your Honor, we have an issue we need to bring up. I apologize.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Ladies and gentlemen of the jury, I hate doing this to you, especially at five after five on a Friday, but I do have a matter of law that I have to take up with the attorneys. And I swear to the God that made me, ladies and gentlemen, I have nothing but the fullest respect for your time, and it's just necessary that we address this issue that apparently has come up with this witness.

So please adjourn downstairs, and I will have you back up here as soon as I determine either whether we can break, or whether we have to continue, or what we're going to do, okay? I apologize again for this. Please try and understand. Thank you very much and don't discuss the case, obviously.

(Jury exits the courtroom at the 5:06 p.m.)

THE COURT: Okay. So that the record is clear, at sidebar Mr. Brown indicated to the Court that, and I'm looking at the historical cell site analysis for the phone that ends in [redacted], and he indicated at sidebar that the RTT data that's in the lower left-hand corner

of the current PowerPoint slide was not provided to him, that he was told by Verizon that he could not get it, or words to that effect. He also did take issue with the fact that the slides were not provide until when?

MR. BROWN: We never got the slides, but we got a copy from the table.

THE COURT: So they ---

MR. BROWN: The previous one, Judge, do not have Mr. Furtick's phone.

THE COURT: Okay. The previous one that you had did not have Mr. Furtick's phone?

MR. BROWN: That's correct. That's why we had that -- I said are you talking about this one, and he said, no, the final report, which doesn't say it's not a final report. It just doesn't have the fourth phone number.

THE COURT: Okay.

MR. BROWN: And I've wrestled with Verizon and had to -- you had to suggest maybe a Verizon member had to be held in contempt of court to provide me some records. They overnight it, and it came to my office four days later through overnight mail from Verizon for this phone. For this phone.

And let me tell you, it's somewhere in

the 3,000-page phone dump for one phone and 3,000 pages of protocols for SLED's DNA lab, and all that stuff. I missed a line of data on that. It's me, and if it makes a difference in the trial, I was ineffective, and I have no strategy for that. And Mr. Ritter ought to go after me for that because that is not the way court is supposed to be played.

THE COURT: Well, let us handle it this way. Ms. Fuller was confident that the material was provided to you, and she said it would take a moment for her paralegal to go to the back and obtain the material. So, obviously, I'm going to be taking a break here in just a moment to determine if it was provided to you.

MS. FULLER: Judge, we grabbed our binder. I'm going to pop this in myself to make sure, but it says made Defendant copy.

THE COURT: Okay. Well ---

MR. PHILLIPS: And as far as that, I'll just add further for PCR ineffective assistance that we should have objected to this evidence. We also should have stated that we needed time to have our expert review the maps. So, we'll put that on the record too, of course.

THE COURT: Well, I'm going to let her -- we're going to take a break, and I'm going to let her

demonstrate to y'all and see where we are. I don't know that this is necessarily a PCR sort of an issue at this point. Of course, that is not a concern for me because I can't really -- as it relates to Mr. Furtick, I don't know that the information there is terribly damning or otherwise awfully harmful for the Defendant's case, but that's obviously a question potentially for another day.

It presumes that the jury would find the Defendant guilty of these charges. So, we'll take a break and just answer the first question, verify that it was provided, and we will take it from there as things stand. You are unavailable Monday?

THE WITNESS: I'm supposed to be leaving for Florida tomorrow.

THE COURT: I understand you are certainly unavailable Monday. When we resume with this witness, Ms. Fuller -- Ms. Fuller. Ms. Fuller.

MR. PHILLIPS: Sutania.

MS. FULLER: Oh, I'm sorry.

THE COURT: Never mind. I asked you three times, and you didn't respond.

MS. FULLER: I didn't hear you.

THE COURT: Mr. Graham, when we resume, can we please be sure that we move expeditiously

with this witness and get to the meat of this instead of the niceties and the window dressing. And if there's some conclusion that he can reach with the slide promptly that shows where people are tracking, I think the jury and myself would take his word for it. So perhaps we could focus on that.

I assume such a slide exists. He's smiling like it does. I'll be back in a moment. And, again, I'm not feeling well, so the sooner we get me out of here, the happier everyone will be, okay? Thank you. Obviously, step down, can't talk about your testimony. You know the deal.

THE WITNESS: Yes, sir. Thank you.

THE COURT: Not your first rodeo.

(Recess taken.)

(Back on the record.)

THE COURT: Go ahead and have a seat. Thank you. We'll go back on the record. My law clerk indicated to me that apparently the information that's at issue here, his reading of the tea leaves, indicates that perhaps it was provided.

MR. BROWN: Two things. There' some raw data that was provided on February 24, 2020 -- February 25, 2020. And it's on this thumb drive, which we would like to mark. It is what I would refer to as raw data,

means very little to me, and so this is the raw data we received. We received a report that looks almost just like the one that they're putting up, minus Mr. Furtick's phone.

Now, we made a point of arguing regarding the phone, and they mentioned an emergency ping, which I had a note in an investigator's report about, says 207 Congaree Drive. We made a point with Investigator Deas to point out how the tower is at 2207 Congaree Drive. That was emphasized right before this witness took the stand.

It appears somewhere during our review of the evidence that we could not review last week, that took place during the break between the two jury panels, the prosecutor's office e-mailed us this map. And now this map, Judge, turns Greek into English, okay? I need an expert witness. And if I were to hire an expert on Monday at 12:47 when we get this -- but we were instead looking at the evidence that we asked to look at months ago, that I drove to Columbia to look at last week, wasn't able to work out, then what would we have done then?

THE COURT: Okay. Can I inquire because I'm trying to understand why the -- that particular box on the PowerPoint that I referenced a few moments

ago before I took a break, what is so crucial, and why is it so damning?

MR. BROWN: I'm going to put it up on the Elmo. If I could get the screen up, it would be easier for me to show you there because I want to make the $64,000 question they haven't asked of this witness for the State. I'm going to try to make their argument.

And, by the way, this is -- I don't know Greek, but I know a little bit of English. And, essentially, there's a cell tower that we talked about at 2207 Congaree Drive, which is one mile from roughly the shooting location, which is -- the shooting location is here, the tower is a mile away. We've got that established; that's good for us.

Except it only sends a signal in one-third sectors, and the one-third sector that this signal pinged off of at -- I've got to get the other map up there -- at 2:17:23 and 2:17:34 was on this side of the vector [sic.], which their argument would be, it would on the path that Mr. Ritter was taking.

And that third of the vector, or whatever the phrases are, would not include the one mile back up to this street that I just had. It would not include this because it's including this. And, in fact, even more detail, it would be right here and right

here at the same time that his car is passing by there, and Mr. Furtick's phone is in that car. And it's pretty probative evidence. It certainly would be an argument I wouldn't make if I would have known about it after my expert would have reviewed it.

But, Judge, I mean, I'm going to tell you, there's easily 10,000 pages of documents in a spreadsheet that has dots and blips. It's next to impossible for me to read and understand. And there's so many phones extracted. I mean, this is an endless chase, and we're in the modern age, and we probably found 1,000 surveillance videos out there.

But this guy was on their list to come a long time ago, and he gave us a report that has every number but this number on it. This data, and it's my understanding, it's only available for seven days. But Verizon keeps this emergency ping data forever if police have requested it. Now, they wouldn't talk to me, except about what we actually put, and you're going to love this, Judge, they didn't, they did not, obey your court order.

And even after you said bring them in, they then conceded that if I sent a subpoena, that they would send me overnight records which, Judge, I've never put my fingers on because they overnight it on Thursday,

and it arrived in my office Monday after I was here.

Now, they would only give me what I put in the subpoena. So let me go back. I subpoenaed the cell location records, not emergency ping records. All right. And they wouldn't tell me what they had. Verizon said that the officer who requested the search warrant had to okay it and not Your Honor. And I told Verizon that I thought they would get burned one day on this. And so I could only subpoena what I knew to ask for because they wouldn't tell me what they had. So, I'm stabbing in the dark, Judge.

And so short version, I tried for two weeks, I had a spreadsheet. I have no doubt this agent is very qualified. I'm not -- nothing about him. He took that data and made something of it. He probably has been to law school, and probably did better than I did, can do contracts and everything else because they've all been to law school.

I didn't go to cell tower training. And short version, I can interpret this, but I got it Monday at 12:47. And what would have happened if I had come in and said, Judge, I need an expert witness.

THE COURT: Okay. So to summarize, basically, the slide that we were just looking at, the one that apparently follows it, would be proof

that the Defendant was in possession of Mr. Furtick's cell phone.

MR. BROWN: That's correct.

THE COURT: And the defense has basically been ---

MR. BROWN: That's all it was offered for, yes, sir.

THE COURT: And the defense has basically been maintaining that there's an absence of proof of that.

MR. BROWN: The theft of anything. The only thing missing was the phone, yes, sir. And we actually argued in opening, the only thing missing was shell casings, the gun in the holster, and Mr. Furtick's phone. And that argument wouldn't have been that way Tuesday morning. We crafted that argument for at least a month.

THE COURT: When did you receive ---

MR. BROWN: The map at 12:45 on June 21st, and we were downstairs reviewing evidence.

THE COURT: 12:45, June 21st.

MR. BROWN: And between the panels.

THE COURT: And that did include the cell phone data?

MR. BROWN: The data -- the underlying data

is on that thumb drive, yes, sir.

THE COURT: Let me rephrase that. The map is -- the map that you received on June 21st is precisely what has been shown here or did it -- did it or did it not -- did it include what you received on June 21st? Did it include the Furtick cell phone data?

MR. BROWN: Yes.

THE COURT: Okay. It did include the slide that we were just seeing here?

MR. BROWN: Yes, sir, and I'm going to mark that.

(Defendant's Exhibit No. 32 was marked for identification.)

MR. BROWN: This is what we were e-mailed, in part. This is the entire cell analysis that he's putting up. If I can staple. I'm going to let her staple it because I can't operate a stapler.

And it's 32, Your Honor, and I'm going to hand it to Your Honor. And specifically -- this is my copy, and that is on Page 16 of 21. Now it starts on 6 of 21, and my last page is 15 of 21 on this one I've got. And so 6 of 21, Your Honor, on Defendant's for ID, Exhibit 32.

THE COURT: What relief are you seeking of the Court?

MR. BROWN: I don't know, Judge. I would say a mistrial -- strike his testimony or disallow it. Late discovery is too late.

THE COURT: Solicitor, what's the State's position on this?

MS. FULLER: Thank you, Your Honor. The State's position is that the record, just like any other cell phone record, were provided on February 25th of 2020. Court exhibits are -- these are just court exhibits. The record is there, so I -- I want to show you the record because I've looked at them, and I can make sense of this.

THE COURT: I doubt I can. I can barely make sense of what was up there. If that's raw data, you're ---

MS. FULLER: Well, I don't want to say raw data in the sense of -- the issue is there were tons of cell phone records reflected in this case. That has been provided; it's always been provided. And so I'm not -- I'm confused, I guess, at the actual argument that this is late discovery because court exhibits is not considered discovery.

All I did was take the data and create an exhibit, just like we take anything in a case and create a summary or create -- it's been provided.

And to suggest that this was just late discovery, I think is contrary to what this is because the cell tower information with Ritter's phone had been provided.

That needs to be interpreted just the same as this data. It's the same data; it's just classified differently. So it's kind of confusing, the suggestion that this is late discovery because it's not because all the maps ---

THE COURT: And I understand that. Here's the problem that I'm faced with, okay? And I'm just putting it out there in a nutshell. They have consistently argued that there was no evidence that Mr. Ritter took possession of Mr. Furtick's cell phone, with the exception of the testimony of Mr. Furtick, okay?

And so the question is do we wait for this to come back on PCR, or do we try to fix the problem now? Because if we don't fix it now, then we'll be retrying the case four years from now, assuming that the Defendant is convicted. That is what I am saying.

MR. BROWN: And, Judge, we would also cite Rule 5(a)(1)(d) because it's our position that this is the report. Now, I don't know what date the report was generated, and I think the person to your right might know that. I do know the date I got it.

THE COURT: Do you recall when the report was generated?

THE WITNESS: When I received the RTT records that was in June. I presented some draft maps, and as we worked through, you know, the final version, my final version was June 19th.

THE COURT: Okay. So June of this year was when you were working through the draft maps, then June 19th you provided the final version, and that's what we're looking at now?

THE WITNESS: Yes, sir.

MR. BROWN: And, interestingly, I filed a similar motion to exclude Brady -- exclude witnesses who I have not gotten Brady material by lunch on June 18th because of the very same issue of coming in here, pick a jury, and being dumped a bunch of stuff that I'm supposed to look at one side at this and do a job on the other side of that, and they did it June 19th. If they did it June 19th, there had to be a cutoff date for discovery.

Judge, I was involved in a products liability appeal to the fourth circuit, which was not successful, in part, because the evidence to survive the summary judgment was not given to the other side until after the discovery deadline. And the fourth circuit

was clear and cited that, like, five times. I was not the trial lawyer, but, Judge Gergel, that had been his order, and that was almost the entire reported -- I mean, the unreported appeal opinion was about the deadline. They did not really look at the evidence.

THE COURT: I have similarly -- in a civil case, I basically struck the defense of the college, including tort claims and everything else. It was Presbyterian College because information was provided post deadline. They were looking at unlimited liability where usually their liability is capped.

So, I understand your position. So June -- Sunday -- sorry. Saturday, June 19th is when the final version was -- you did it Saturday? This past Saturday.

THE WITNESS: Yeah. To give you a clear.

THE COURT: Yeah.

THE WITNESS: I testified in Spartanburg, drove down here and met with them, got changes that needed to be made. The president signed for June 19th for a federal holiday, that Friday, so I just went in on Saturday ---

THE COURT: Gotcha.

THE WITNESS: --- and made the changes.

THE COURT: Yes, that would make sense. Juneteenth, okay. Mr. Graham.

MR. GRAHAM: We just want to point out, Your Honor, the only thing that I've heard about Rodney's cell phone is Rodney testified that it was stolen and gone. They've asked questions of no witness about a cell phone. They made the comment in opening that missing from the scene was a 9-millimeter shell casing, the murder weapon and Rodney's cell phone.

They haven't said what they're doing with that evidence or not doing with that evidence. They've offered nothing about where the phone was or where it is. I don't even see how it's impacted their trial strategy. It's the State's position that we finish the case, we let this witness testify. They can say all they want about PCR, and we let the Court decide it after the fact.

They got the discovery. I understand it's a lot of discovery. I understand that they said they didn't hire an expert. It was there. The question is what they would have done differently.

MR. BROWN: Hire an expert.

MS. GRAHAM: And there's nothing to show that they've fallen below the standard, nor that it would have made a difference.

THE COURT: I think they would have hired an expert so that the expert can tell them don't make

the argument at trial. The phone was in the possession of -- that Mr. Furtick's phone was in the possession of the Defendant as he was leaving the scene.

MR. GRAHAM: They have not made that -- they haven't said one way or another. In fact, their opening, and Your Honor referenced it earlier, the phone -- I mean, their opening, I heard it put the Defendant there. But that is not -- I don't believe that that's necessarily accurate. They're not going to admit that he's there, I don't believe.

MR. BROWN: We've argued that he was the victim of the robbery, and the point made there was nothing stolen, or a cell phone is the only thing left, if something was stolen -- or missing. That's our argument, and we've reinforced it with this last witness. There has to be a limit to when they gave us a report.

THE COURT: What were you anticipating, Mr. Brown, this witness testifying to?

MR. BROWN: To tracking our client's 305 number. That they track -- and I'm going to use the phrase, not conceding anything, they tracked his normal phone and his work phone, as Mr. Phillips referred to it, up and down the highway together. So the person who called, said, "I'm pulling up" on the 305 number

was one and the same as the person using that number normally associated with Damien Ritter on his records for his insurance and stuff like that because that's -- Judge, that's what the previous report said.

And I think the witness was shaking his head because the previous report involved phone numbers of our client and not Mr. Furtick.

THE COURT: He's nodding his head along those lines, the witness is rather.

MR. BROWN: And that's why we -- in fact, we were a little puzzled why Deas would go first, and he would go last to prove our client drove to Glenn Street.

MR. PHILLIPS: We had that conversation.

MR. BROWN: Yeah, we've had that conversation here today, like, wonder why it's out of order. In fact, we were even implying maybe he wasn't available until Monday, and they were trying to make the five o'clock clip, so he can get here Monday. And, in fact, we're a little puzzled that they were still beating that drum about whether our client was at Glenn Street. That's why we had this argument at the time we did.

THE COURT: Well ---

MR. BROWN: Because, Judge, again -- and

we think that part of your analysis needs to be whether this was a report or an examination under Rule 5(a)(1)(d), if I'm reading the subparts correctly. And if they got it on the 19th, they gave it to us within two days, but it's, you know, it's 1,000 days before that, which is -- I think the exact argument I made about the Brady material.

They put a witness up. They gave us Brady material the day of the trial. It's just too late, 12:45 Monday that we get this report, the cell tower -- the RTT. And I made a similar motion to try to avoid the juggling act.

THE COURT: Well, the Court's options are as follows: I could declare a mistrial, finding that the report should have been provided in a much more timely manner seeing as how four years has gone by since this case started. I can see if the State would be inclined to limit their examination of this witness as to the tracking of Mr. Ritter's cell phone down the interstate, presumably to Estill, and then all over heck and creation.

I could exclude -- the third option would be to exclude the testimony in its entirety because of the Rule 5 violation, finding that Monday is too soon before trial. And at the very least so as to avoid

the possibility of a future PCR and having to try this case again, it would have been certainly courteous of the State to maybe point out that they're barking up the wrong tree when they're talking about the cell phone site.

And, four, from what I'm hearing, if I don't do any of the prior three, I will then be ensuring that the case is tried again, and somebody will be seeing y'all four years from now, as soon as they've waived their direct appeal and -- well, actually, he's not going to do that because they do have appellate issues with the search and everything.

So, the appeal would go first, and then they'll do the PCR, and then the PCR will be granted, and it'll probably be granted and probably be affirmed. And I like to make sure that cases are tried as cleanly as possible. So which option sounds most appetizing to the State?

MS. FULLER: Judge, to be honest, I do -- but I do want to clarify one thing. When they were going there, for the record, I did say, why are you going there? I thought it was just fluff, like everything else.

MR. PHILLIPS: And, Sutania, she did ask me, she was, like -- she did say, what are doing?

And I was, like, well, it's just the one. We thought it was the one ping.

MS. FULLER: And, Judge ---

THE COURT: I appreciate you giving them the heads up. Thank you.

MR. PHILLIPS: That was after ---

MR. BROWN: That was yesterday?

MR. PHILLIPS: That was after one of my cross-examinations, yeah.

MS. FULLER: But, Judge, I do want to state the State's position is generally in terms of cell phone -- every time I have used it, I've never regarded them as Brady. I've never referred to them before. I didn't believe that they were -- they're just court exhibits, interpreting data, just like showing Ritter traveling up and down. You need an expert to interpret that as well. It's no different, in my opinion. But in terms of your ultimate question, I do need a minute to step out and talk ---

THE COURT: That is fine. I would suggest that you simply confirm with Mr. Graham there.

MS. FULLER: Yes, that's what I said.

THE COURT: Yeah. I mean, I've given y'all -- y'all have a minute if you need to talk about it, but I've given you three options, and I've not

decided what I'm going to do.

MR. GRAHAM: Are they acknowledging that they were aware of the ping?

MR. PHILLIPS: The ping is in the notes, and so we had the ping, and that was testified to. We've been building a defense with that, and we flushed it out, so the one ping, yes.

MR. BROWN: And we did have a report -- we had a report regarding our client going up and down the highway that explains it in a way I can understand, and it's not something we were contesting. But we have contested the issue that's contained in the report we got Monday. We have been contesting that.

MR. PHILLIPS: That's right.

MR. BROWN: And that's the Furtick number. That's the one we did not have until Monday, and we have been contesting it, which I can interpret it, because I'm the one that said Mr. Phillips, we need to interpret. We need to raise the issue. I see where this is going.

MR. GRAHAM: Your Honor, may I ask the witness a question?

THE COURT: Sure.

MR. GRAHAM: Which one on your Page 10 is the ping? Which RTT points ---

THE WITNESS: Which tower?

MR. GRAHAM: I guess which entry on 10 is the ping?

THE WITNESS: I mean, y'all's definition of ping -- 2:17 pings are ---

THE COURT: Shh. Y'all, she's trying to take it down. It doesn't help when y'all are talking, so go ahead.

THE WITNESS: The two 2:17 RTT hits are these two right here, which comes off of this tower and this sector.

THE COURT: Okay.

THE WITNESS: And so for yours, it's 2:17 and 23 seconds; 2:17 and 34 seconds are these two, off of this tower and that sector.

MR. GRAHAM: The one, 2:18:41 ---

THE WITNESS: 2:18 ---

MR. GRAHAM: --- isn't that the ping?

THE WITNESS: Well, that is another RTT, but it did not have any distance to it, so there's no art to be drawn it. But based on information that was provided to me, I included it because there was evidence saying that the phone was continuing south at that particular time.

THE COURT: I understand.

THE WITNESS: But there's no distance for me to draw off in the records.

THE COURT: I've got to take charge of this situation here.

MR. GRAHAM: Can we have five minutes?

THE COURT: Y'all still got 30 minutes with this witness; they've got 30 minutes with this witness. We haven't talked jury charge; we haven't talked directed verdict.

Here's where I am, okay? One of the first cases I tried was -- I was prosecuting it. This was in 1994, 1995, and I think the judge was either Keesley or Johnson. I can't remember because the two of them were interchangable because they were joined at the hip, and they had the exact same attitude about the case. Cop came to me one week before we're going to strike a jury and say, why are we even trying this, the Defendant confessed to me.

A confession was nowhere in the incident reports, nowhere in the -- nowhere, nowhere, and the cop wasn't even the lead investigator. He was a guy who was driving with the person to the detention center, and I was shot down faster than anybody. And whether it was Kessley or Johnson who told me it, they said, a piece of evidence like that has to be provided timely.

Eve of trial, no. You do not get to use it. I don't care if he confessed to being a mass murderer, it does not matter. Timely providing -- providing that information in a timely manner is your responsibility, so that the Defendant can assess the strengths of the State's case.

I understand the raw data was provided. I gotcha 100 percent on that. I'm looking at either mis-trying this case now, which I'm assuming nobody really wants, including the defense. I'm looking at either that option; I'm looking at it coming back four years from now, or I can limit the State in its presentation of this evidence to what the Defendant anticipated, and that is the cell phone tracking up and down, I guess, I-26 and I-95.

The report clearly could have been generated; the PowerPoint clearly could have been generated sooner; the information clearly could have been provided sooner. I wish that the Defendant and his counsel had noted this, but the only way that I could see to remove this issue from a PCR standpoint, and if you don't want to try it again, you know, six months from now or a year from now, I'm assuming you certainly don't want to try it again four years from now, and perhaps witnesses are going to be moving on or dead

or whatever the case may be.

So that will be the Court's ruling. This witness's testimony will be limited to the cell phone tracking data of the Defendant and no other data. I'm basing this on Rule 5, and I'm preventing, a, a mistrial, b, a PCR, as tempting as it might be to simply say, let's just mis-try this thing and go home, but I'm not going to do that. And I'm not going to put this case in a posture where you all are simply having to try it again four years from now where you get the conviction, but we all know it's coming back.

MR. GRAHAM: Note the State's objection for the record, and I do want to make a comment about a conversation that I just had with the defense.

THE COURT: Sure.

MR. GRAHAM: They acknowledge that in handwritten notes from the police officers and initial discovery that they were aware of the ping and the ping location, although it has a wrong address of 207 Congaree, which Mr. Phillips and Mr. Brown acknowledged.

They did tell me in a side conversation that there's also GPS location, that they platted that GPS location, and it does fit, consistent with the tower that -- and they knew this -- the tower that Mr. -- Agent Simmonds testified to, and they knew the distance

from that tower.

So even not buried in all the information, specifically, brought out to him on the specific ping, it puts it in that location, and they were aware of it. They told me they were.

THE COURT: And I understand. But my understanding of the witness's testimony here just a few moments ago when you were asking him questions was that he simply included that ping, as opposed to -- because it was a data point that he could include and not the other material.

Folks, you saved the best for last. There's a reason they serve dessert well after the salad, okay? And from a prosecutorial standpoint, as well as from a plaintiff's attorney standpoint, you save your best and your strongest witness for last. And if that's -- that's a smart tactic. But providing the mapping to them on Monday, a day late and a dollar short.

Their objection is under Rule 5. I will sustain the objection, and I will allow this case to go forward because my other two options are simply to end it now, or let it be retried four years from now. I find both of those very unpalatable, so that is the reason for my decision.

Let us have the jury, please. I'm assuming

that y'all can pick up where you left off and simply move straight to Mr. Ritter's phones, and then we will allow you to modify the exhibit in some way, shape or form before it goes to the jury on Monday. So that' what I expect will happen.

MR. BROWN: So the item is also modified because it's been moved into evidence.

THE COURT: Yes, something -- somebody is going to have to clean it up.

MS. FULLER: Your Honor, so ---

MR. GRAHAM: For clarity, Your Honor, we're being prevented from putting up any RTT information? I just want to make -- my co-counsel wants to make sure that she pulls the right slides.

THE COURT: Okay. Yes, you're allowed to present information that relates to the Defendant's cell phone being tracked from Columbia down to Estill. That is what you are limited to.

MR. GRAHAM: Anything to do with Mr. Furtick's phone is not being allowed. Gotcha.

MS. FULLER: I can go to Augusta.

THE COURT: Mr. Ritter's phone is fair game You can go to Augusta, so long as we do it expeditiously. I don't think we were far enough along in this witness's testimony, Mr. Brown, that a curative

instruction would be warranted.

MR. BROWN: I don't believe that it was referenced.

THE COURT: Okay.

(Jury enters the courtroom at 6:02 p.m.)

THE COURT: The record will reflect that the jury is back and seated. Solicitor, please continue with the examination of the agent.

MS. FULLER: Thank you, Your Honor.

BY MS. FULLER:

Q. Agent, looking at this map, that's the cell site information for [redacted] and [redacted]; is that correct?

A. Yes, ma'am.

Q. And on this map, can you explain to the jury what they're looking at here, please?

A. Basically, this is cell site activity that occurred on these two phones during the daytime range between 11:00 a.m. and 2:15 on July 5th, 2018. Basically for this, I just wanted to show the movement of the phone leaving the area of Estill and traveling up to the Columbia and West Columbia area market at that particular time. So that's why you don't see the triangle high wedges on there.

I'm just showing you that during these particular

times the red dots represent the [redacted] using a tower and sector as it's traveling up towards Columbia, and then the green dot represents the tower and sector of [redacted], but I'm not displaying the sectors. I'm showing you that particular tower.

Q. Okay. And looking at Tower 5 -- I think it's 5083, is that -- what does that indicate there, that tower location?

A. So tower 508, sector 3, would have been the side of the sector that would have been used, is one that provides service to the crime scene, and it was used somewhere around two o'clock, if I remember correctly. I can't see that far away.

Q. And I apologize. I can zoom in. Also, of note here, for the [redacted] number, do you have -- can you explain to the jury the map there in terms of the 2:14?

A. Sure. So at around 2:14, the phone used the tower and sector that was in the West Columbia market and no longer in Estill.

Q. Okay. Now -- I forget where I started. I should start from the bottom of this. Starting at the bottom, which is already in the record, the Defendant's residence, [redacted] Roberts Street in Estill, South Carolina. Can you tell me whether or not this map essentially represents that device traveling from Estill up to the

West Columbia area?

A. Correct. So the last time that phone used the tower that service the Estill market was around 11:39 a.m. And as you see on the map, at around, I think that's 12 -- is that 12:42? And that's 154452, 12:49 and then 12:50, it used a tower, a tower just right outside of Denmark, and it continuously moved on up towards Orangeburg and then eventually up in the Columbia market around 2:14.

Q. Thank you. Looking at this map of cell site activations for devices associated with Damien Ritter, looks like you provided information from 2:19 to 5:29; is that correct?

A. Yes, ma'am.

Q. And can you describe to the jury what they're looking at on this map?

A. Sure. Again at 2:22, the phone -- yeah, I'm just trying to show movement that the phone is leaving the Columbia area and traveling back down to Estill.
So at 2:22 it used tower 154061 and started going down basically through Saint Matthews, Bowman area, and then eventually returning to Estill using a tower at 5:21 and 19 seconds, tower 159242.

Q. And, of note, and based on your review of the record, do you have any more information regarding

the 305 number?

A. Sure. So looking at the records, the last time that phone interacted with the Verizon network was at 2:48 and 24 seconds. After that, looking at the records and everything, there's no tower information anymore. So that was the last activation that took place on that phone.

Q. Looking at this next map, can you describe to the jury what we're looking at here?

A. Sure. Again, I was just trying to show movement of this phone, [redacted], leaving the Estill area and traveling basically into the Augusta, Georgia area. It last used the tower at approximately 8:49 and 22 seconds that evening for the Estill market, and then eventually arriving up into Augusta at around 10:00 p.m. that night.

Q. And as you prepared for today, were you asked to also map activity for July 6th?

A. Yes, ma'am.

Q. And can you explain to the jury what we see on July 6th?

A. So again this is July 6th from basically the whole day, midnight until 11:59 p.m. This phone basically stayed up in the Georgia market around Augusta, Georgia, utilizing these towers and sectors

that are displayed on there. So it moved throughout that market throughout that day.

Q. And in regards to the [redacted] number, did you have any records beyond 7:33 p.m.?

A. Yes, ma'am, we did, but that was the last time there was any tower information. Everything else went to voicemail as the phone was no longer -- appeared no longer being used.

Q. While in the Augusta area, were you asked to look at call detail history between 7:15 and 7:37 a.m.?

A. Yes, ma'am. So when I look at phone records, I will usually do an analysis, what we like to call hot numbers. What phones was the target phone, or the phone in question, was looking -- talking to and communicating with throughout the time period in the records that we have.

I then take those, what I call hot numbers, and run them through a public database service to see if there's any known subscribers that are associated with the numbers that the target phone has been in contact with to possibly help with the identification of witnesses, or anybody that might be familiar with this particular individual utilizing the phone.

Q. And for the time frame of 7:15 and 7:37 a.m., where was this device located?

A. In the Augusta, Georgia area.

Q. And, of note, can you publish the description of the businesses that this device contacted?

A. So each one of the numbers that this phone was in contact with that are listed above there were all related to some sort of auto repair shop, whether it be Pep Boys, tire service, Firestone, complete care where you get your oil changed, and things of that nature, and then the last one was a paint and body shop.

Q. Looking at court exhibit 240 that's already been admitted into evidence, and I'll zoom in here. We already received testimony, we can note the surveillance footage time at the 3-Way in Estill was July 5th, 2018, at 19:23:22. Did you have an opportunity to actually review the phone records and compare the time stamp on the camera with the phone records provided?

A. Yes, ma'am. That's technically a portion of the phone record provided by Verizon showing communication with that device.

Q. Okay. And on the 19:22:23, do you also see a call on a device associated with Damien Ritter?

A. Yes, ma'am.

Q. And is that what's highlighted on this document?

A. Yes, ma'am.

Q. And in this image does it also appear that he is on the telephone at the same time?

A. Looks to be a phone up to his ear, up to his right ear.

Q. Thank you. I want to ask you a couple of questions based on previous testimony. I'm not sure what defense number it was, but when the investigator was on the stand were you in the courtroom?

A. Yes, ma'am.

Q. And I'm going to hand you a printout of Rodney Furtick's, it looks like the [redacted] number, and ask you to take a look at it.

A. Yes, ma'am.

Q. Have you reviewed these records previously?

A. Yes, ma'am.

Q. Can you describe to the jury what exactly you're looking at?

A. So basically these are call detail records for this particular phone, [redacted]. They list the date and time of the calls, who the calling parties were, if it was an incoming or outgoing call, and the duration of the phone calls. The only thing that these records don't have, and I would normally get to analyze, location data on the cell phone. There's no tower and sector associated in these records for the calls.

Q. And looking at those records, defense counsel was asking about the -- I think the GMT minus zero and minus four?

A. Yes, ma'am.

Q. What does that indicate?

A. So Verizon provides for their 4G LTE service on their phones. They provide these records in GMT, what I talked about earlier. That's four hours ahead during daylight savings times, or five hours ahead during standard time. And so they provide them in GMT.

Oftentimes, they will convert the time to a local time when there's an interaction with their network that would provide a tower and sector. Sometimes it doesn't always work, so I just take the records and convert it into local time.

Q. And if you would direct your attention to the screen publishing -- one second. And I'll publish the actual item. It's already in evidence. Does these appear to be what I handed you to look at, or do you need to zoom in?

A. You're fine. Yes, ma'am.

Q. Okay. Can you explain to the jury again, now that they can also see the records, what each column represents and where the GMT minus zero is?

A. Sure. So the first column is the search value,

just tells you what you asked for, what phone number you asked Verizon to look for. The next one is the record, open date and time. All these are in GMT because it's minus zero. The next one is the actual time, record time being in GMT, the direction of whether it's incoming, outgoing, mobile forwarding, if the calls were forwarded from voicemail and terminated at that particular device.

So that's the DR, is the direction -- is basically just the phone number, again, that you asked for. The called number, self-explanatory. It's the number that was called. The calling party, the CPN, it's called the calling party number, and that's who called in on this, just the duration of that particular call, and then start getting into the RAT and the Verizon endpoints and stuff. That is basically the switch and the tower that was utilized, which weren't available in these records.

Q. Now, looking at column B here, what does the GMT minus zero indicate considering that this device was on eastern standard time?

A. That time in column B is still in GMT. It did not convert it to local time.

Q. And what does that indicate about the device?

A. That everything was -- didn't have an interaction

-- to me, it didn't have any interaction with the cell tower, with the network, and everything was being forwarded to voicemail, which could be that the phone was shut off at the time.

Q. Looking at column B, the direction, what does MF indicate?

A. So that's mobile forwarding. So if you look at the first two lines, slides two and three, you see that the time and date down to the seconds are the same for it. So this is -- these records are showing you the legs of the calls, that telephone number [redacted] attempted to call [redacted]. The phone didn't answer, so it forwarded to its voicemail.

Q. Okay.

A. And so that's why you have two lines, and it's showing you each leg of the call within the records.

Q. So that would actually indicate incoming unanswered phone calls?

A. Correct because the call terminated with the device you searched for.

Q. And just so it's clear for the record, that's outgoing calls?

A. All these -- mobile forwarding to mobile terminating are all incoming calls.

Q. Now scrolling down, which should be -- I'm

not sure if yours were printed in reverse order, but I believe it might be at the bottom of defense's exhibit, but it is in evidence -- or a State's exhibit. Looking at the shaded information that is converted -- well, I'm testifying. I apologize. Is that information converted?

A. Yes, ma'am. So Verizon took the liberty of converting the time to local time in column B, taking out the four hours.

Q. And what would that indicate about the device?

A. Well, first of all, that it's on because you have such calls with such long durations of, you know, 1,000 seconds, 350 seconds, 31 seconds, so it gives me every indication that the phone is on. And since none of them are being forwarded anywhere, it's either originating on the device in question, or terminated to the device in question. It appears to be the phone is on.

Q. Now right above that at Line 49, it looks like it's not converted. If it was converted, what time would that be in eastern standard time?

A. Is that the 18:51:03?

Q. Correct.

A. That would be 2:51 p.m. and three seconds p.m.

Q. So ---

A. On July 5th.

Q. So on July 5th, 2018, after 2:51 p.m., the device is no longer connecting to the network?

A. Correct. It seems after that the phone is off, and everything is being forwarded since these are in reverse order.

Q. Now, I'm going to open another document. There was another document that defense -- I'm not sure what exhibit number it is, but they handed it up to the previous witness. Is that also displayed here?

A. Yes, ma'am, it's what's up there.

Q. And can you explain to the jury what they're looking at on this document?

A. So this is the text messages that were sent with this particular device, the dates and times that it was sent or received, and then the date and time it was received by the device in question. Verizon does not provide the location data, cell site and sector for text messages.

Q. And what information -- what does this indicate about, one, the device, and, two, the direction of the message?

A. So all of these were mobile terminated. So that means the message was sent to [redacted]. One message was sent at 14:56, was not received, 14:56 is 2:56 p.m., on July 5th, but it was not received until seven o'clock

on July -- seven o'clock p.m. on July 6, 2018. And the same thing for the next message. It was sent at 3:05 p.m. on July 5, 2018, but it was not delivered until September 6th -- July 6, 2018, at 7:00 p.m.

Q. And so based on these records, if the phone number reactivated on a new device would that be when the delivery time ---

A. It could be, or it's when -- if it's the same device, you cut the phone back on, and that's when your phone received the message.

Q. And defense handed up another exhibit, which I don't have, looking at this tower information, and there is a second map regarding the distance.

A. Sure.

Q. Does that give you any information in terms of where the device was?

A. Not off of these two different things. It's just -- I'm not sure what the second point on the map is down here. I don't know if that's latitude/longitude from records that were provided or anything of that nature. It's just -- I'm assuming the first -- the first dot here is the location of the tower, and the second dot is something that was reported to them, and it happened to be 1.2 miles away.

Q. Okay. But based on -- I guess, if you just had

latitude and longitude and a tower address, what could you determine from that?

A. Repeat the question again.

Q. Like if you -- if the cell phone company is providing you with a tower address, as well as direction that it was .84 miles from the tower, and latitude and longitude coordinates, what information could you do -- what could you do with that information? Sorry.

A. Are the latitude and longitude coordinates for the tower, do you know? Or is it latitude and longitude for the device that you asked for?

Q. Good question. It's just handwritten notes, though.

A. So now that I have -- yeah, so this bottom dot here is 2207 Conagree Drive, and the orange dot up here is [redacted] Glenn Street. So we always use latitude and longitude for the location of towers because an address that they provide to you may be the building where the lease agreement was made, or where the property owner gets his check every month or year, however they structure it out for leasing the property on there.

So we would use the latitude and longitude. So Verizon gave me an address for a tower. I would refer to the tower list to find the latitude and longitude and draw the distance out from there.

Q. By simply using Goggle wouldn't that give you that information?

A. No, you would have to have the location of the tower and then the latitude. That's all they gave you, latitude and longitude of the device in question to draw it out.

Q. I believe that's it. Thank you, Agent.

THE COURT: Cross.

MR. BROWN: Your Honor, we don't have any questions of this witness.

THE COURT: Agent, thank you for coming.

THE WITNESS: Yes, sir.

THE COURT: Enjoy your holiday, okay?

THE WITNESS: Thank you very much.

THE COURT: Yes, sir.

THE WITNESS: Do you want me to just leave this here?

THE COURT: Yeah, just leave that stuff there. We'll get it later. Thank you. All right. Ladies and gentlemen of the jury, here's where we are. We are -- I'm going to tell you that we are very, very close, okay? But at the same time, it is very, very late.

So we are going to go ahead and take a break for the evening. I'm going to ask that you be back

in the jury room, please, on -- 13 of you will be back on Monday at -- please, be back in there at 10:30, okay? So 10:30 Monday morning is when I want you back.

We would go into tomorrow but some of the court personnel have things going on that they cannot reschedule, and maybe that's the same situation some of you guys are in. So, we're not going to move forward tomorrow, but we will be looking at continuing this case on Monday.

Now special instructions for Ms. Pelenski, okay? Ms. Pelenski, I'm not releasing you yet because, obviously, I have to have 12 jurors. If something should transpire over the weekend, we're currently at -- if something should transpire over the weekend with one alternate, we're still good because we've still got another alternate that we can use.

If we lose two alternates, that would be probably very careless on your part, all 13 of you. So if we lose two alternates, we'll have to kick it until Tuesday, and you'll have to rejoin us, okay? So what I'm going to do is have my law clerk and the clerk of court go outside and get your cell phone number from you, and we'll contact you Monday at some point in time, assuming that we are able to continue with the case because we have enough jurors.

If we lose somebody though, it may be necessary, or we lose two people, it may be necessary that we kick it to Tuesday, and then you rejoin us on Tuesday after oral surgery, which I hope you have a pleasant, positive experience with. In terms of your notebook, you've got your name written on the back or something?

THE JUROR: My number, yes.

THE COURT: Your number, perfect. Okay. If for some reason you're not going to rejoin us, and we're able to move forward on Monday, with your permission, I'll simply take possession of your notes. I won't look at them. I'll put them in an envelope to you, and I'll send them to you, if that's cool?

THE JUROR: Yes, sir.

THE COURT: All right. Very good. That's what we will do. Ladies and gentlemen, I hope you have a pleasant weekend. Do have a good time. I don't know what the weather is going to do, but maybe there'll be some sun. If not, can't help it, all right. Only certain things are within my control. And, as I said on Monday, man plans, God laughs. We gave it the old college try, a good college effort. We will continue with the case on Monday, and I'll see y'all then at 10:30 downstairs, all right. Thank you all.

(Jury exits the courtroom at 6:28 p.m.)

THE COURT: Intentionally, I did give the option of the State resting in the event that over the weekend you think that perhaps of an additional witness or two that might be good to call or something like that, so I did not want to hang y'all in with that. Excuse me.

As much as I would very much enjoy the opportunity to review with all of you the various motions, there's a reason I ask that they show up at 10:30. Here's how we're going to hand that. Y'all be here at 9:30 on Monday, please. We will address the Defendant's motion for a directed verdict, assuming there's no additional testimony.

Even if they're going to call some additional witnesses, we're going to go ahead and do the DV at 9:30, and we're going to finalize, finalize, finalize the jury instructions. You don't have to do it tonight, but over the weekend -- please hear me out. Over the weekend send me whatever you have -- whatever you have, whatever you want, and give me your thoughts on what I have previously sent to you, the extremely, rough, rough, rough draft that my clerk put together. And I think maybe the last time his fingers actually touched it was maybe Wednesday, or he may have done