

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Brian M. Gibbons, Circuit Court Judge

App. Case No.: 2022-000026

Brandon Berry, 352671,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME I of III

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1 State of South Carolina

Court of General Sessions

2 County of Richland

5 State of South Carolina)

Transcript of Record

6 vs.)

2015-GS-40-00015

2015-GS-40-00017

7 Brandon Joseph Berry,)

2015-GS-40-00018

8 Defendant.)

2015-GS-40-00020

2015-GS-40-05062

10 November 30 - December 4, 2015
11 Columbia, South Carolina

12 B E F O R E:

13 The Honorable Howard P. King, Judge; and a jury.

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1 (Whereupon, the following proceedings were held on
2 November 30, 2015, beginning at 12:31 PM.)

3 **BAILIFF:** Court come to order. All rise, please.

4 **THE COURT:** Thank you. Please be seated.

5 All right. Ms. Campbell, what's the first matter?

6 **MS. CAMPBELL:** May it please the Court, Your Honor,
7 the State calls the State versus Brandon Berry. Your
8 Honor, after discussing matters with my co-counsel, at this
9 point we will be going forward on the charges of attempted
10 murder, attempted armed robbery, resisting arrest, unlawful
11 conduct towards a child, and those would be the extent,
12 Your Honor. The only one -- there were some direct
13 presentments in this case. The only direct presentment
14 we'll be going forward on at this point would be the
15 attempted armed robbery, which was actually direct --
16 directly presented because the original charge was armed
17 robbery, so I don't think there would be a notice problem
18 on that charge.

19 **MS. ZMROCZEK:** That's correct, Your Honor.

20 **THE COURT:** Say again. You don't --

21 **MS. ZMROCZEK:** I don't have a problem.

22 **THE COURT:** You don't have a problem?

23 **MS. ZMROCZEK:** I don't have a problem with that.

24 **THE COURT:** Okay. All right.

25 **MS. ZMROCZEK:** And then -- so there were several gun

1 charges, Your Honor. I needed to -- are they --

2 MS. CAMPBELL: We will not be going forward on those.

3 THE COURT: Go ahead with the rest of the charges,
4 Ms. Campbell.

5 MS. CAMPBELL: The rest of the charges, Your Honor, I
6 believe were a gun charge, possession of a crime of
7 violence, and a gun charge involving having been convicted
8 of a violent crime.

9 THE COURT: Failure to stop?

10 MS. CAMPBELL: Failure to stop we're not proceeding
11 on.

12 THE COURT: Not proceeding on?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: All right. But you are on the unlawful
15 carrying of a pistol?

16 MS. CAMPBELL: Yes.

17 THE COURT: We've got unlawful carrying of a pistol,
18 plus the possession by certain people, unlawful -- I'm just
19 trying -- I'm just gonna keep the indictments that we're
20 going on. And then you've got -- you've actually got three
21 weapons charges.

22 MS. CAMPBELL: Yes, sir. If I could just look at
23 those, I'm sorry, I don't have a copy of them, to make sure
24 I'm not informing the Court incorrectly. We will only be
25 going forward on the unlawful carrying of a pistol. We

1 will not be going forward on the possession of a crime of
2 violence and the threat of violence. So these two we will
3 not go forward on, Judge, and --

4 **THE COURT:** Just give those back to the clerk. And
5 also this failure to stop, give that back to the clerk.
6 And then we've got attempted murder, the unlawful carrying
7 of a pistol, and I'll put the numbers on the record in just
8 a moment, and then apparently two attempted robbery
9 charges?

10 **MS. CAMPBELL:** There's one armed robbery and one
11 attempted armed robbery and we'd go forward on the
12 attempted armed robbery because when we spoke to the victim
13 at a later time, he found the phone, it was not missing.

14 **THE COURT:** So the other robbery charge --

15 **MS. CAMPBELL:** We would not be going forward on.

16 **THE COURT:** That's --

17 **MS. CAMPBELL:** 2015-0019.

18 **THE COURT:** Okay.

19 **MS. CAMPBELL:** Does that comply, Amy?

20 **MS. ZMROCZEK:** Right. So it's --

21 **THE COURT:** All right. And what did you say about the
22 resisting arrest and the unlawful neglect?

23 **MS. CAMPBELL:** We're going forward on those two
24 charges.

25 **THE COURT:** Okay. So the ones that I have -- I have

1 five charges. You tell me if this is the right ones. Let
2 me put them in numerical order. 2015-015 is the unlawful
3 carrying of a pistol. 2015-018 is the resisting arrest.
4 2015-2 -- 020 is attempted murder. 2015-017 is unlawful
5 neglect of a child. And 2015-062 is the attempted armed
6 robbery. Those are the five that I have. Is that the ones
7 you're gonna go forward on?

8 **MS. CAMPBELL:** Yes, sir.

9 **THE COURT:** Okay. So are we together on that,
10 Ms. Zmroczek?

11 **MS. ZMROCZEK:** Yes, Your Honor. Those are the five,
12 yes, sir.

13 **THE COURT:** Okay. All right. Madam reporter, do you
14 have those numbers that we're gonna go forward on?

15 **THE COURT REPORTER:** Yes.

16 **THE COURT:** All right. Now -- I'm sorry. I left off
17 a couple. How about -- let's see. We've got 15, 18 --
18 okay. I know from our pre-trial conference that there are
19 a number of motions pending in this matter. What I propose
20 to do, and I think counsel is in agreement with this, is to
21 go ahead and bring the jury panel up and let's go ahead and
22 strike the jury and then we will excuse them for the rest
23 of the day and spend the rest of the day taking care of the
24 motions. Is that agreeable with the State?

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** With the defense?

2 **MS. ZMROCZEK:** It is, Your Honor. My only concern is
3 that I do have the motion to sever some of these charges,
4 so if all of them get read out --

5 **THE COURT:** Okay. Maybe we better take care of that
6 first before we get the panel up here because that might
7 make a difference with regard to that.

8 Let me hear from you, Ms. Zmroczek.

9 **MS. ZMROCZEK:** Thank you, Your Honor. As I told you
10 in chambers, this actually arises out of two different
11 incidences and, as you can see, the indictments that you
12 have in front of you, which I have some issues with their
13 clarity, but we'll talk about those later. But from what I
14 gathered, Your Honor, is that at -- on July 29th of 2014
15 around 4:35 in the morning the Richland County Emergency
16 Dispatch receives a call saying that someone -- that
17 multiple calls actually, seven of them from different
18 people -- that they had heard two gunshots and seen people
19 fighting and flee -- and saw one person flee and that,
20 Your Honor, the police arrived by --

21 **THE COURT:** Wait just a moment. Okay. I just want to
22 make sure that's not the jury coming in. Go ahead.

23 **MS. ZMROCZEK:** Thank you. And that, Your Honor, the
24 police arrived by 4:48 that evening and leave by 5:15 that
25 morning with -- collecting a bunch of evidence. And those

1 are the -- that's the incident, Your Honor, for which the
2 attempted murder and the now attempted armed robbery arise
3 from.

4 And then six hours later, according to the camera --
5 now they may disagree, but the camera that they provided
6 me, the dash cam from the stop, says that at approximately
7 10:35 on Tuesday morning, which all of this happened on
8 Tuesday morning, it was the 29th of --

9 **THE COURT:** The same day.

10 **MS. ZMROCZEK:** Yeah, right, just a much later time.
11 We have a completely separate unrelated stop by Officer
12 Pennington who says that he sees a co-defendant, who is not
13 on trial, and my client in the car and they put their
14 seatbelts on in the middle of the road and he pulls them
15 over in an apartment complex, which is where they were
16 headed, and he walks up to the car and he gets their
17 licenses and notices a two-year-old in the back seat and
18 says that she's supposed to be in a car seat.

19 And then, Your Honor, the substantive motion will come
20 later, but, anyway, there's a discussion, another officer
21 arrives. They pull the driver out of the car. Even though
22 both of the defendants came back clear, they pull the
23 driver out and at some point Mr. Berry slides over into the
24 passenger seat and makes three turns and parks his car and
25 grabs the diaper bag and -- and jumps the fence and that --

1 or tries to jump the fence and gets tased. And in the
2 diaper bag, Your Honor, is where they found the gun, which
3 we're not going forward on, but that -- that comprises the
4 unlawful conduct toward a child, the resisting arrest and
5 the -- oh, yeah, so they're going forward on an unlawful
6 carrying of a pistol.

7 **THE COURT:** Right.

8 **MS. ZMROCZEK:** And so, Your Honor, just reading the
9 case law that talks about joinder and severance, Your
10 Honor, it says that even though there are times when
11 joinder is appropriate, Your Honor, it's our position that
12 in this instance it's absolutely not appropriate. All it
13 does is -- just because it's the same person, Your Honor,
14 in fact, it more prejudices the client because they see two
15 separate incidences. The one has nothing to do with the
16 other.

17 Like I said, the second stop later on that afternoon
18 which comprised resisting arrest, the child and the
19 unlawful carrying, arise from a seatbelt violation, Your
20 Honor, and the -- the courts have given us instances of
21 proper and improper consolidations and under the improper
22 consolidations, Your Honor, they say that when the crimes
23 aren't -- are not so closely connected or related that they
24 have to be tied together, then that's when the defendant's
25 rights are prejudiced, Your Honor.

1 And in this case they're extremely prejudiced because
2 he leaves because he has a gun and he -- that flight could
3 be reflected on the attempted murder and the attempted
4 armed robbery even though one has nothing to do with the
5 other, and, Your Honor, that is highly prejudicial to his
6 rights, it's highly prejudicial to due process under the
7 Fourteenth Amendment, and that's what our concern is; that
8 he's going to be prejudiced based on one set of facts
9 versus a much more serious set of facts, which they later
10 try to tie together.

11 **THE COURT:** All right. Ms. Campbell?

12 **MS. CAMPBELL:** Your Honor, if I might just point out
13 a few things. The first event did occur about 4:30 in the
14 morning and according to the dash cam, after reviewing it,
15 it did occur about 10:30, so you're talking about around a
16 six-hour difference between the two events, between the
17 traffic stop --

18 **THE COURT:** All right.

19 **MS. CAMPBELL:** The part she left out about, and the
20 courts have held, and I'd hand you State versus Rice and
21 I'm getting you State versus Simmons. Your Honor, those
22 two cases are on point. What she didn't mention about the
23 second stop when he's carrying a pistol is that pistol is
24 then tested to a shell casing that was from the scene
25 of the attempted murder that morning and it matches

1 forensically, Your Honor, to -- and that would be the gun
2 that he threw in the diaper bag as they were chasing him.

3 Additionally, Your Honor, subsequent to that they were
4 able to get consent to search from the Defendant's -- the
5 mother of his child where -- and got information that she
6 was able to give them about the clothing that he was
7 wearing and in the consent to search after the traffic stop
8 they go to her house and are able to locate clothing which
9 has the victim's blood on it and that clothing belonged to
10 the Defendant.

11 So I don't know how you could exclude the second from
12 the first because those events we have to go into anyway
13 because that's how we get our evidence that links him back
14 to the original -- the initial thing. In addition to that,
15 Your Honor, under Simmons, these happen within hours. It's
16 on the same day. There's not even, you know, an overnight
17 period which traditionally, you know, they're not tied
18 together, but there's not even like a passage of a night
19 between them, it's just merely hours.

20 **THE COURT:** All right.

21 **MS. ZMROCZEK:** And just briefly.

22 **THE COURT:** Ms. Zmroczek, yeah. Yes, ma'am.

23 **MS. ZMROCZEK:** Thank you, Your Honor. Just briefly
24 on reply. In McCrary v. State, which is 249 S.C. 14, which
25 is a 1967 case, it says, Your Honor -- and the courts have

1 held this since then, that normally a defendant cannot be
2 made to face charges on two completely separate incidences.
3 Additionally, Your Honor, in State v. Jones, 395 S.C. 310,
4 which is the 1996 case that describes the offenses which
5 arise out of the same nature but not a single chain of
6 circumstances or events, and these -- the fact that he was
7 pulled over coincidentally for a seatbelt violation, Your
8 Honor, we think -- regardless of six hours, two hours,
9 ten hours, the time is not important. What's concerning
10 with his due process rights, Your Honor, is the completely
11 different set of circumstances from which he's charged
12 with --

13 **THE COURT:** Well, that's true, but the fact of the
14 matter is that the weapon -- and I haven't ruled on this
15 yet, I want to look at the cases -- but the fact of the
16 matter is that the weapon that was recovered in the second
17 stop or the first stop, the first arrest, is connected to
18 the crime in the -- the original crime. Is that not
19 correct?

20 **MS. ZMROCZEK:** They do find evidence that connects it,
21 that's correct, Your Honor, which would be the motion of
22 suppression later, but I just felt like before we presented
23 this to the jury --

24 **THE COURT:** I understand.

25 **MS. ZMROCZEK:** -- I wanted to make sure that I made

1 that argument.

2 **THE COURT:** All right. Give me just a moment to
3 review these cases.

4 (Pause in the proceedings.)

5 **THE COURT:** All right. The Court has reviewed the
6 cases that have been submitted to it and heard the
7 arguments of counsel. The Court has considered State
8 versus Simmons found at 352 South Carolina 342, a 2002
9 case, and also State versus Rice, 368 South Carolina 610,
10 a 2006 case. The motion that the Defendant sever the
11 charges, the two charges in indictment numbers 020 and 062
12 from the charges in 015, 017 and 018, is a motion that has
13 been made by the defense, this is -- a motion to sever
14 charges is a matter that is addressed to the discretion of
15 the Court and the general case law is that joinder offenses
16 in one trial is proper if the offenses are of the same
17 nature or character and spring from the same series or
18 transactions are committed by the same defendant and
19 require the same or similar proof. As has been held in a
20 number of cases, charges can be joined in the same
21 indictment and tried together whether they arise out of a
22 single chain of circumstances and are proven by the same
23 evidence or of the same general nature and no real right of
24 the defendant has been prejudiced.

25 Three of those four elements are present in this

1 case. That is, they do arise out of a single chain of
2 circumstances all within a few hours of each other, they
3 are provable by some of the same evidence, especially with
4 regard to the weapons that were used -- that were found on
5 the -- in the later stop and allegedly used in the armed
6 robbery and attempted murder, and there is no real right
7 of the Defendant that has been prejudiced. They are of a
8 different nature to some degree, even though armed robbery
9 and attempted murder as they arise in this case, do involve
10 the use of a pistol and one of the charges in the second
11 offense is the use of a pistol.

12 So in my view, the -- no real right of the Defendant
13 has been prejudiced, the more serious charges are in the
14 earlier charge, and the proof of the matters for the stop
15 at around 10:00 or several hours later is out of the single
16 chain of circumstances and does involve proof of the same
17 evidence. There is a some general nature, especially of
18 the weapons charge, and in my view no real right of the
19 Defendant has been prejudiced. The motion to sever is
20 denied.

21 Okay. Ms. Zmroczek, anything now before we bring the
22 jury panel up?

23 **MS. ZMROCZEK:** The only thing is, Your Honor, now that
24 -- when she said five and five, I looked it up at the break
25 and, Your Honor, the way that I read it, it says any person

1 who is arraigned for the crime of murder, manslaughter,
2 burglary, arson, criminal sexual conduct, armed robbery,
3 and then it goes on. My concern is now that they've
4 changed it to attempted armed robbery, does that then make
5 it back to five and five because otherwise it would have
6 been five and ten if it were armed robbery?

7 **THE COURT:** Now wait. Say that again.

8 **MS. ZMROCZEK:** If it's armed robbery, we have ten
9 strikes.

10 **THE COURT:** Right.

11 **MS. ZMROCZEK:** So -- but with now it's changing to
12 attempted I think that probably solves my problem. I just
13 wanted to make sure that the Court --

14 **THE COURT:** I think the only ones you get ten strikes
15 under are the ones that is specifically allowed by statute
16 and attempted murder and attempted armed robbery are not
17 two of those.

18 **MS. ZMROCZEK:** Right. And before we came up here it
19 was armed robbery, so that's why I had looked it up.

20 **THE COURT:** So my ruling would be that both sides are
21 entitled to five strikes, okay?

22 **MS. ZMROCZEK:** Perfect. Thank you.

23 **THE COURT:** All right. Anything else before we bring
24 the panel up, Ms. Campbell?

25 **MS. CAMPBELL:** I think we've just been handed some

1 voir dire by the defense.

2 **THE COURT:** Yeah, hand it up, please.

3 **MS. ZMROCZEK:** And I had to handwrite it, Your Honor,
4 and I will type it and present it to the Court properly at
5 lunch.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** But I want to -- I did not want to slow
8 us up any more, I just grabbed the wrong computer, but I
9 will make sure that the court reporter gets a copy as well.
10 And I have provided a handwritten copy to the State.

11 **THE COURT:** All right.

12 **MS. CAMPBELL:** Your Honor, we're getting our
13 witnesses. I apologize. I thought my paralegal was in
14 here.

15 **THE COURT:** All right. We'll go ahead and have the
16 jury start coming up while we're waiting to get that
17 information.

18 **MS. CAMPBELL:** Your Honor, the only thing we would
19 ask, if you do the if anyone's been a victim of a violent
20 crime, that we make it reciprocal. Or ever accused of a
21 violent crime.

22 **THE COURT:** Victim or accused. Okay.

23 **MS. CAMPBELL:** Or charged with a violent crime.
24 Accused or charged.

25 **MS. ZMROCZEK:** Yes, I meant to do that.

1 **THE COURT:** The last name we have on here is Watkins.
2 I can't read the first name.

3 **MS. ZMROCZEK:** Chris Watkins. Christopher Watkins.
4 He's a private investigator.

5 (Whereupon, the jury panel enters the courtroom at
6 1:02 PM.)

7 **BAILIFF:** Jurors seated, Your Honor.

8 **THE COURT:** All right. Thank you very much.

9 Good morning -- actually good afternoon, ladies and
10 gentlemen. My name is Howard King. And I know you have
11 already met Judge Lee, who qualified the jury this morning.
12 I am from Sumter and I am actually a retired circuit court
13 judge. I formerly was a resident judge in the Third
14 Judicial Circuit. The State of South Carolina is divided
15 into sixteen judicial circuits. Richland and Kershaw
16 counties are in the Fifth Judicial Circuit. Sumter, Lee,
17 Clarendon and Williamsburg counties are in the Third
18 Judicial Circuit, and I was formerly a resident of the
19 Third Circuit. My home is in Sumter.

20 There are sixteen circuits in this state and we are
21 called circuit court judges because we do exactly that, we
22 ride the circuits. In the eighteen years that I have been
23 in this position, I have been in all -- I've held court in
24 all forty-six counties in this state. And we rotate and go
25 around the State and go wherever we are assigned by the

1 Supreme Court. I gave up my residency a number of years
2 ago, but have been continuing to serve at the request of
3 the Supreme Court in a retired active capacity, and I have
4 been assigned to preside over this term of General Sessions
5 Court for Richland County.

6 We are about to try the case of the State versus
7 Brandon Joseph Travon Berry and what I'm going to tell
8 you now is not evidence in this case. It is simply the
9 allegations of the indictments, but I tell you this so you
10 can determine if you know anything about the case or
11 anything that would prevent you from serving as a juror in
12 this case.

13 But there are five charges that we will be dealing
14 with and they are contained in the indictment, which is not
15 evidence of anything. It is simply the charges that are
16 brought by the State against the Defendant, but as I say,
17 I tell you this so you can determine if you know anything
18 about the case.

19 The State does allege that Brandon Joseph -- Brandon
20 Joseph Travon Berry did, in Richland County, on or about
21 July 29th of 2014, did with intent to kill, attempt to
22 kill, Michael Keith with malice aforethought, either
23 express or implied, and the charge is one of attempted
24 murder.

25 Also, the second charge, is one of attempted armed

1 robbery. That Brandon Joseph Berry did, in Richland
2 County, on or about July the 29th, while armed with a
3 deadly weapon, attempt to carry -- take and carry away the
4 personal property from the near presence of Michael Keith
5 with intent to deprive him of possession, and the charge is
6 one of attempted armed robbery.

7 The next charge is that the Defendant -- the State has
8 charged him with is the charge on that same date, July 29,
9 2014, of unlawfully carrying a pistol. And another charge
10 on July the 29th of 2014; Brandon Joseph Berry, while
11 having charge or custody or being a parent or guardian or
12 being responsible for the welfare of a minor child, [REDACTED]
13 [REDACTED], age two years, did place the child in unreasonable
14 risk of harm affecting the child's life or physical or
15 mental health or safety, and the charge is one of unlawful
16 conduct toward a child.

17 And then the fifth charge is one of resisting arrest.
18 That on or about July the 29th, 2014, Brandon Joseph Berry
19 did knowingly and willful oppose or resist the efforts of
20 an officer to make a lawful arrest.

21 **MS. ZMROCZEK:** Your Honor, sorry. I hate to
22 interrupt. May we approach real quickly?

23 **THE COURT:** Yeah.

24 (Proceedings held at the bench; not reported.)

25 **THE COURT:** All right. Ladies and gentlemen, the

1 lawyers met at the bench to advise me that there was an
2 error in the indictment about the unlawful conduct toward
3 a child. The minor child's name is [REDACTED] and it was
4 agreed that the indictment will be amended to that effect.

5 All right. Now that you know what the allegations
6 against the Defendant are, we need to go through with the
7 qualification process for this case only. I know it is
8 close to the lunch hour, but I wanted to go ahead and get
9 the jury drawn for reasons that will become apparent in a
10 little bit before I released you for lunch, so we are going
11 to go forward with the selection of the jury at this time.

12 Ms. Zmroczek, I'm going to ask if you would stand and
13 introduce yourself to the jury and have your client stand
14 and introduce him to the jury as well.

15 **MS. ZMROCZEK:** Thank you, Your Honor. My name is
16 Amy Zmroczek. I'm member of the South Carolina Bar. I
17 practice in Richland, Lexington, Aiken -- I practice all
18 over the state. I mostly do criminal offense. This is my
19 client. His name is Brandon Berry.

20 **THE COURT:** Thank you. The State of South Carolina is
21 represented by Ms. Luck Campbell. Ms. Campbell, would you
22 stand and introduce yourself to the jury and the names of
23 any lawyers with whom you will be working.

24 **MS. CAMPBELL:** I'm Luck Campbell. I'm with the Fifth
25 Circuit Solicitor's Office. With me is Meagan Walker and

1 John Steadman, who are also lawyers in my office that will
2 be participating.

3 **THE COURT:** All right. Thank you.

4 All right. Ladies and gentlemen, before we select the
5 jury, I need to ask you a number of questions to determine
6 if you have any conflicts. Please listen carefully to
7 these questions and if any of them apply to you, then
8 respond accordingly.

9 Is there any member of the jury panel related by
10 blood, excuse me, or connected by marriage to the
11 Defendant, Brandon Joseph Travon Berry? If so, please
12 stand.

13 The following individuals may appear as witnesses in
14 this case. This is a rather extensive list, so give
15 careful attention to the numbers -- or to the names of
16 these witnesses. Michael Keith, Kristen Settles, Terry
17 Gleason, Amanda Metz, David Collins, John Carwell, Brendan
18 Pennington, Kevin Griffin, Nickilous Wallace, Lourisa
19 Katio, K-A-T-I-O, Henry Owens, Jamie Owens, Stan Richards,
20 Sidara, S-I-D-A-R-A, Allen, Dr. Thomas Jones, Todd White,
21 Sergeant Hendrix with the Richland County Sheriff's
22 Department, Clay Short, Trevor Holt, Lonnie Roberts Tow
23 Service, or a representative of that company. EMS Keels
24 and Sassaman, CMD Niles, Kimber, Sumter and Hutcheson.
25 Trisha Odom, Harold Bouknight, Thomas Stetson, Teresa

1 Cronise, C-R-O-N-I-S-E, Melody Galinski, G-A-L-I-N-S-K-I,
2 Steve MacDoogal, Diana Bodie, Steven Cox, Ashley Dixon,
3 Kerri McClary, Kayla Geiger. N-A-U-L-K, what's the first
4 name on that, Ms. --

5 **MS. ZMROCZEK:** You've already called his name,
6 Nickilous Wallace.

7 **THE COURT:** All right. Nickilous Wallace, Destiny
8 Katio, and Chris Watkins.

9 Is any member of the jury panel connected by -- or
10 related by blood or connected by marriage to any of the
11 proposed witnesses? If so, please stand.

12 **MS. CAMPBELL:** We have one additional witness,
13 Dr. Gray Amick.

14 **THE COURT:** Ma'am?

15 **MS. CAMPBELL:** Dr. Gray Amick would be an additional
16 witness that's not on the list.

17 **THE COURT:** Okay.

18 **MS. ZMROCZEK:** And Linda Houck who, I believe, was on
19 the list.

20 **THE COURT:** Additional witnesses would be --

21 **MS. CAMPBELL:** Dr. Gray Amick.

22 **THE COURT:** -- Dr. Gray Amick. And who did you say,
23 Ms. Zmroczek?

24 **MS. ZMROCZEK:** Linda Houck, with Richland County
25 Sheriff's Department.

1 **THE COURT:** Okay. Is any member of the jury panel
2 related by blood or connected by marriage to either of
3 those witnesses or any of the other witnesses? If so,
4 please stand.

5 The State of South Carolina is represented by the
6 Fifth Circuit Solicitor's office, and you have met the
7 assistant solicitors. Is any member of the jury panel
8 represented now or have been represented in the last ten
9 years by any member of the Fifth Circuit Solicitor's
10 Office? If so, please stand.

11 You've also met defense counsel in this matter,
12 Ms. Zmroczek. Is any member of the jury panel represented
13 now or been represented in the last ten years by
14 Ms. Zmroczek? If so, please stand.

15 Is there any member of the jury panel close personal
16 friends of any of the parties, of the lawyers or any of the
17 witnesses whom I have read off to you? If so, please
18 stand. Thank you.

19 Does any member of the jury panel know anything about
20 the facts of this case as I have briefly recited them to
21 you? If so, please stand.

22 Has any member of the jury panel or member of your
23 immediate family -- and I define immediate family as
24 spouse, parent, brother, sister, or child. Has any member
25 of the jury panel or member of your immediate family been

1 the victim of or accused of a violent crime? Either a
2 victim of a violent crime; that is a crime of violence, or
3 been a victim of a crime violent crime. If so, please
4 stand.

5 (Juror stands.)

6 **THE COURT:** All right. Come forward, please, sir.

7 (The following proceedings were held at the bench out
8 of the hearing of the jury panel.)

9 **THE COURT:** Come on up. Come up here for a second.
10 Which witness? What's the name, Madam Clerk?

11 **THE CLERK:** Number 8, Amaker.

12 **THE COURT:** Number 8. All right. Mr. Amaker, come on
13 up, please. All right. What's your situation?

14 **POTENTIAL JUROR:** I was robbed last -- October 14th.
15 Armed robbery.

16 **THE COURT:** Was anyone arrested for that?

17 **POTENTIAL JUROR:** Yeah.

18 **THE COURT:** And were they prosecuted?

19 **POTENTIAL JUROR:** I'm pretty sure they did. I
20 wasn't --

21 **THE COURT:** You didn't have to come?

22 **POTENTIAL JUROR:** I wouldn't even recognize them now.

23 **THE COURT:** Okay. Would you be able to put that fact
24 aside and decide this case based upon the evidence?

25 **POTENTIAL JUROR:** I'm pretty sure I --

1 **THE COURT:** I can't have pretty sure. Would you be
2 able to decide this case?

3 **POTENTIAL JUROR:** Yes. Yes, I can.

4 **THE COURT:** Would you do that?

5 **POTENTIAL JUROR:** Yes.

6 **THE COURT:** Thank you, sir.

7 (Bench conference concluded.)

8 **THE COURT:** Is any member of the jury panel or member
9 of your immediate family employed by or been employed in
10 the last ten years by any law enforcement agency such as
11 the Richland County Sheriff's Department or SLED or
12 Richland County Police Department? Anybody presently an
13 employee or been an employee in the last ten years, either
14 a juror or a member of your immediate family, with a law
15 enforcement agency? If so, please stand.

16 **THE COURT:** All right. You can stand right there.
17 This kind of information I can get from here. Go ahead and
18 give me your name, please.

19 **POTENTIAL JUROR:** My name is McEachern and
20 I --

21 **THE COURT:** All right. Wait just a moment. What
22 number is she?

23 **POTENTIAL JUROR:** 190.

24 **THE CLERK:** 190.

25 **THE COURT:** All right. Tell me about who it is and

1 what the employment is.

2 **POTENTIAL JUROR:** I was previously in the last ten
3 years an employee of SLED in the narcotics department as
4 administrative assistant.

5 **THE COURT:** Okay. But you're not so employed now; is
6 that right?

7 **POTENTIAL JUROR:** No, I'm not there.

8 **THE COURT:** How long ago was that?

9 **POTENTIAL JUROR:** Oh, 2006, 2007.

10 **THE COURT:** Okay. Would that fact prevent you from
11 giving to both the State and the Defendant a fair and
12 impartial trial based on the evidence?

13 **POTENTIAL JUROR:** Yes.

14 **THE COURT:** It would?

15 **POTENTIAL JUROR:** Uh-huh.

16 **THE COURT:** All right. Thank you, ma'am.

17 Is any member of the jury panel a member of an
18 organization such as MADD, SADD, The Innocence Project or
19 any organization whose primary purpose is the advocacy
20 of strict law enforcement? If so, please stand.

21 Has any member of the jury panel formed or expressed
22 an opinion as to the guilt or innocence of the Defendant
23 in this case, Brandon Joseph Travon Berry? If so, please
24 stand.

25 Is any member of the jury panel -- other than what has

1 already been disclosed to me, is any member of the jury
2 panel aware of any interest, any bias or any prejudice for
3 or against the Defendant, Brandon Berry? If so, please
4 stand. Thank you.

5 Again, other than what has been disclosed to me, can
6 each member of the jury panel give to the State and the
7 Defendant, Brandon Berry, a fair and impartial trial? If
8 not, please stand. Thank you.

9 Other than what has been disclosed to me, does any
10 member of the jury panel know of any reason whatsoever why
11 he or she should not serve as a juror in this case? If so,
12 please stand.

13 All right. Counsel come up just a moment, please.

14 (Proceedings held at the bench; not reported.)

15 **THE COURT:** Other than our discussions at the bench,
16 Ms. Campbell, are there any additional questions on behalf
17 of the State?

18 **MS. CAMPBELL:** None from the State, Your Honor.

19 **THE COURT:** On behalf of the defense?

20 **MS. ZMROCZEK:** None from the defense, Your Honor.

21 **THE COURT:** All right. Madam clerk -- first of all,
22 I'm going to give to the court reporter this document here
23 that is the voir dire questions and have you mark it as
24 Court's Exhibit Number 1. We'll get to that in just a
25 minute, but we'll make that a part of the record.

1 Madam Clerk, can I see you for just a moment?

2 **THE CLERK:** Yes, sir, sir.

3 (Discussion between the Court and the clerk.)

4 **THE COURT:** All right. Ladies and gentlemen, the
5 procedure for selecting a jury in a criminal case is that
6 the clerk will call your name and your number -- or just
7 your name probably and ask you to come up. Come to the
8 closest aisle, whichever one is closest to you, up to the
9 front right here by the microphone, turn around, face your
10 back back here and face out. If you are acceptable to the
11 State, the State will indicate "present the juror". If
12 you're acceptable to the defense, the defense counsel will
13 state "seat the juror", and you would have a seat in the
14 jury box to my right. If either side excuses you, you
15 would have a seat back out with the remainder of the jury
16 panel.

17 Each side has a certain number of what we call
18 preemptory strikes, which means that they do not have to
19 put a reason for that strike on the record. And as I say,
20 if either side excuses you, you have a seat back out with
21 remainder of the jury panel. We will go through that
22 process until we have selected twelve principal jurors
23 and two alternates and on the alternates, counsel, it will
24 be one for the State, two for the defense on each
25 alternate.

1 All right. Madam Clerk, you may call the jury.

2 THE CLERK: Yes, sir. When you come forward, please
3 bring any personal belongings with you. Number 296,
4 [REDACTED] Wiggins.

5 (Whereupon, [REDACTED] Wiggins, a black female, was
6 called forward.)

7 THE CLERK: Would you state your name.

8 POTENTIAL JUROR: My name is [REDACTED] Wiggins.

9 THE CLERK: What says the State?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the defense?

12 MS. ZMROCZEK: Please -- excuse me. Please seat the
13 juror.

14 THE CLERK: Please have a seat in the jury box.

15 THE COURT: You don't need to give your name. That's
16 all right. By now they have a list, so they know who you
17 are, but everybody else, if you'll just come up and just
18 stand there for an moment until the State makes a decision
19 as to whether to present them.

20 THE CLERK: Number 26, [REDACTED] Brady.

21 (Whereupon, [REDACTED] Brady, a white male, was called
22 forward.)

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 **MS. ZMROCZEK:** Please seat the juror.

2 **THE CLERK:** Please have a seat in the jury box.

3 Number 182, [REDACTED] Malseed.

4 (Whereupon, [REDACTED] Malseed, a white male, was called
5 forward.)

6 **THE CLERK:** What says the State?

7 **MS. CAMPBELL:** Please present the juror.

8 **THE CLERK:** What says the defense?

9 **MS. ZMROCZEK:** Please seat the juror.

10 **THE CLERK:** Please is have a seat in the jury box.

11 Number 204, [REDACTED] Myers.

12 (Whereupon, [REDACTED] Myers, a black female, was called
13 forward.)

14 **THE CLERK:** What says the State?

15 **MS. CAMPBELL:** Please excuse the juror.

16 **THE CLERK:** Please have a seat in the back of the
17 courtroom.

18 Number 57, [REDACTED] Cooper.

19 (Whereupon, [REDACTED] Cooper, a black female, was called
20 forward.)

21 **THE CLERK:** What says the State?

22 **MS. CAMPBELL:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MS. ZMROCZEK:** Please seat the juror.

25 **THE CLERK:** Please have a seat in the jury box.

1 Number 231, [REDACTED] Randall.

2 (Whereupon, [REDACTED] Randall, a white female, was
3 called forward.)

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MS. ZMROCZEK:** Please seat the juror.

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

9 Number 54, [REDACTED] Connaker.

10 (Whereupon, [REDACTED] Connaker, a white male, was called
11 forward.)

12 **THE CLERK:** What says the State?

13 **MS. CAMPBELL:** Please present the juror.

14 **THE CLERK:** What says the defense?

15 **MS. ZMROCZEK:** Please seat the juror.

16 **THE CLERK:** Please have a seat in the jury box.

17 Number 254, [REDACTED] Shealy.

18 (Whereupon, [REDACTED] Shealy, a white male, was called
19 forward.)

20 **THE CLERK:** What says the State?

21 **MS. CAMPBELL:** Please excuse the juror.

22 **THE CLERK:** Please have a seat in the back of the
23 courtroom.

24 Number 315, [REDACTED] Phipps.

25 (Whereupon, [REDACTED] Phipps, a white female, was called

1 forward.)

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the defense?

5 MS. ZMROCZEK: Please seat the juror.

6 THE CLERK: Please have a seat in the juror box.

7 Number 168, [REDACTED] Lewis.

8 (Whereupon, [REDACTED] Lewis, a white female, was called
9 forward.)

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MS. ZMROCZEK: Please seat the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Number 139, [REDACTED] Jackson.

16 (Whereupon, [REDACTED] Jackson, a white male, was called
17 forward.)

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MS. ZMROCZEK: Please excuse the juror for this trial.

22 THE CLERK: Please have a seat in the back of the
23 courtroom.

24 Number 246, [REDACTED] Ross.

25 (Whereupon, [REDACTED] Ross, a black male, was called

1 forward.)

2 THE CLERK: What says the State?

3 MS. CAMPBELL: That was 246?

4 THE CLERK: Yes.

5 MS. CAMPBELL: Thank you. Please excuse the juror.

6 THE CLERK: Please have a seat in the back of the
7 courtroom.

8 Number 126, [REDACTED] Head.

9 (Whereupon, [REDACTED] Head, a black male, was called
10 forward.)

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MS. ZMROCZEK: Please excuse this juror.

15 THE CLERK: Please have a seat in the back of the
16 courtroom.

17 Number 17, [REDACTED] Beaty.

18 MS. ZMROCZEK: I'm sorry, what number?

19 THE CLERK: 17.

20 (Whereupon, [REDACTED] Beaty, a black female, was
21 called forward.)

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the defense?

25 MS. ZMROCZEK: Please seat the juror.

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

2 Number 189, [REDACTED] McDougale.

3 (Whereupon, [REDACTED] McDougale, a white female, was
4 called forward.)

5 **THE CLERK:** What says the State?

6 **MS. CAMPBELL:** Please present the juror.

7 **THE CLERK:** What says the defense?

8 **MS. ZMROCZEK:** Please excuse the juror for this trial.

9 **THE CLERK:** Please have a seat in the back of the
10 courtroom.

11 Number 8, [REDACTED] Amaker.

12 (Whereupon, [REDACTED] Amaker, a black male, was called
13 forward.)

14 **THE CLERK:** What says the State?

15 **MS. CAMPBELL:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MS. ZMROCZEK:** Please excuse the juror for this trial.

18 **THE CLERK:** Please have a seat in the back of the
19 courtroom.

20 The strike count is four for the defense, three for
21 the State.

22 Number 96, [REDACTED] Gantt.

23 (Whereupon, [REDACTED] Gantt, a white female, was called
24 forward.)

25 **THE CLERK:** What says the State?

1 **MS. CAMPBELL:** Please present the juror.

2 **THE CLERK:** What says the defense?

3 **MS. ZMROCZEK:** Please excuse the juror for this trial.

4 **THE CLERK:** Please have a seat in the back of the
5 courtroom.

6 Number 95, [REDACTED] Gantt.

7 (Whereupon, [REDACTED] Gantt, a white female, was called
8 forward.)

9 **THE CLERK:** What says the State?

10 **MS. CAMPBELL:** Please present the juror.

11 **THE CLERK:** Does the defense challenge for cause?

12 **MS. ZMROCZEK:** We do not.

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

14 Number 37, [REDACTED] Buchanan.

15 (Whereupon, [REDACTED] Buchanan, a white female, was
16 called forward.)

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please present the juror.

19 **THE CLERK:** Does the defense challenge for cause?

20 **MS. ZMROCZEK:** We do not.

21 **THE CLERK:** Please have a seat in the jury box.

22 Number 150, [REDACTED]-Robinson.

23 (Whereupon, [REDACTED]-Robinson, a black female, was
24 called forward.)

25 **THE CLERK:** What says the State?

1 **MS. CAMPBELL:** Please present the juror.

2 **THE CLERK:** Does the defense challenge for cause?

3 **MS. ZMROCZEK:** We do not.

4 **THE CLERK:** Please have a seat in the jury box.

5 Please proceed to strike your first alternate.

6 Number 131, [REDACTED] Holton.

7 (Whereupon, [REDACTED] Holton, a white female, was
8 called forward.)

9 **THE CLERK:** What says the State?

10 **MS. CAMPBELL:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MS. ZMROCZEK:** Please seat the juror.

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

14 Number 155, [REDACTED] Kapp.

15 (Whereupon, [REDACTED] Kapp, a white female, was called
16 forward.)

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please present the juror.

19 **THE CLERK:** What says the defense?

20 **MS. ZMROCZEK:** Please seat the juror.

21 **THE CLERK:** Please have a seat in the jury box.

22 **THE COURT:** Anything with regard to the selection of
23 the jury on behalf of the State, Ms. Campbell?

24 **MS. CAMPBELL:** No, sir.

25 **THE COURT:** On behalf of the defense?

1 **MS. ZMROCZEK:** No, nothing, Your Honor.

2 **THE COURT:** All right. Ladies and gentlemen of the
3 jury panel selected for the trial of this case, the reason
4 I said I wanted to go ahead and go into the lunch hour and
5 get the jury selected is that we've got a number of things
6 that we need to do before we're ready to go forward with
7 the trial of this case.

8 So I'm going to excuse you for the rest of the
9 afternoon while we take care of all these pre-trial
10 matters, I didn't want you to keep you waiting in that
11 little room by yourself while we tended to all those, and
12 be ready to start this case tomorrow morning.

13 So I am going to excuse you in just a minute. I'm
14 gonna ask you to go with the bailiff to the jury room and
15 he'll show you where the jury room is and show you how to
16 get back in here tomorrow morning.

17 Counsel, because of the hour and because of the things
18 we've got to attend to, I think I'll bring the jury back at
19 11:00 tomorrow, rather than 10:00 tomorrow. So I'm gonna
20 ask that you be back in your jury room, please, tomorrow
21 morning at 11:00. And, as I say, the bailiff will show you
22 where the jury room is.

23 Just several precautionary matters over the evening
24 recess. First of all, do not discuss the case with anyone
25 while you're away from the courthouse. I know that you do

1 not know anything about the case except what I've told you
2 the allegations of the indictments are, but it would be
3 improper for you to discuss it with anyone, including your
4 family, your friends or anyone else that you might see.
5 And the reason for that is pretty apparent. You've got to
6 decide this case based upon what you hear in this courtroom
7 and not on the basis of what anyone else might say.

8 Also do not allow anyone to discuss the case with you.
9 If anyone should approach you or try to talk with you about
10 the case over the evening recess, please report it to the
11 bailiffs tomorrow when you come in. They will report it to
12 me and I will deal with it then.

13 And also do not discuss the case among yourselves when
14 you're reassembling in the jury room tomorrow. In fact,
15 this admonition, and all these admonitions, will apply
16 throughout the trial of this case, but it would be improper
17 for you to discuss this case among yourselves at any time
18 until all of the evidence is in, until you've heard the
19 arguments of counsel and the instructions on the law by the
20 Court. Any discussion about the matter prior to that time
21 would be premature. So do not discuss the case among
22 yourselves while you're in the jury room. You can talk
23 about anything -- the weather, sports, children,
24 grandchildren, anything at all, but don't talk about this
25 case until I tell you it is appropriate for you to do so.

1 Now later on in this case, I will allow the twelve
2 members of the principal jury who are all seated in the
3 first three rows here to select from among yourselves a
4 person to be the foreperson of the jury. When I select
5 that person, the foreperson should always sit in the first
6 seat here on the front row. The rest of the seats in the
7 jury box are not reserved and it does not matter what order
8 you come and go from the courtroom. I would simply ask
9 that you go all the way down so it wouldn't be a situation
10 of crawling over one another, reserving the first seat on
11 the front row for the foreperson when that foreperson is
12 selected.

13 But you don't need to go through the selection process
14 yet, we'll probably do that sometime tomorrow, but I'll
15 allow you to select a foreperson and the twelve of you
16 should select that foreperson from among yourselves. The
17 alternates should not participate in the selection of the
18 foreperson. The two alternates should always sit where
19 they are seated on the back row. Other than that, they're
20 the only ones -- and the foreperson are the only ones that
21 have reserved seats in the jury box, but you should always
22 sit back there on the back row as the alternates in this
23 case.

24 Finally, I will tell you not to read any newspaper
25 stories or any printed media stories or listen to any

1 broadcast media stories about this case. With all due
2 respect to my friends in the media, they don't always get
3 things exactly right as to what happened in court and
4 you've got to decide this case based upon what you hear
5 in this courtroom and not on the basis of what you might
6 read in the news media or hear on the television. So if
7 anything does come on about this case, just turn it off or
8 do not read that article or do not listen to that and keep
9 your mind free of the matter completely and come in and be
10 prepared to listen to the evidence and decide the case
11 based upon what you hear in this courtroom.

12 With that then, I am going to excuse you now, allow
13 you to go with the bailiff, they will show you where the
14 jury room is, and I will ask you to be back in your jury
15 room tomorrow morning at 11:00. We hope to have everything
16 finished by then and be ready to go forward with the
17 evidence.

18 Thank you and have a pleasant day and I'll see you
19 tomorrow.

20 (Whereupon, the jury exits the courtroom at 1:44 PM.)

21 **THE COURT:** All right. Ladies and gentlemen not
22 selected in the trial of this case, I'm going to ask you to
23 go back down to the jury room. The administrative judge
24 will take care of whatever instructions need to be given to
25 you about the rest of the day or tomorrow or whatever the

1 case is, but I'm gonna ask if you would please now report
2 back to the jury assembly room. Thank you very much.

3 (Whereupon, the remaining jury panel is excused at
4 1:45 PM.)

5 **THE COURT:** All right. I'm going to give,
6 Ms. Zmroczek, the handwritten list to the court reporter
7 of your requested voir dire questions which reflects the
8 two that I did not ask, but I will allow you to list all
9 of the questions on a typed sheet if you want to and
10 substitute it for this Court's exhibit so that the record
11 will be a little bit cleaner, okay? We'll do that, all
12 right?

13 **MS. ZMROCZEK:** Thank you, Your Honor.

14 **THE COURT:** Anything before we break for lunch,
15 Ms. Campbell? My proposal would be to break now for
16 forty-five minutes, so until 2:30, and then we'll start
17 with motions this afternoon. Does that suit you?

18 **MS. CAMPBELL:** It suits us, sir.

19 **THE COURT:** Is that all right with you?

20 **MS. ZMROCZEK:** Yes, Your Honor. Just one thing. I
21 wanted to correct the spelling on the -- I spoke with my
22 client and I meant to mention it before and it just slipped
23 my mind, Your Honor. It's [REDACTED]. It's --
24 [REDACTED] is his daughter's name, and so -- just so that
25 gets corrected before.

1 **THE COURT:** So that should be on the indictment for
2 unlawful conduct. It's spelled how?

3 **MS. ZMROCZEK:** It's spelled [REDACTED].

4 **THE COURT:** Okay.

5 **MS. ZMROCZEK:** And I had noticed that -- it doesn't
6 change anything in the indictment, Your Honor. I believe
7 that they just put the mother's name instead of the child's
8 name.

9 **THE COURT:** All right. Under Gentry I think that the
10 indictment is sufficient. The State -- the defense does
11 not object to it. We will make that change to the
12 indictment to show the correct name of the victim in the --
13 in Indictment Number 017.

14 All right. Anything before we break for lunch?

15 **MS. CAMPBELL:** No, sir.

16 **THE COURT:** Anything?

17 **MS. ZMROCZEK:** Nothing, Your Honor.

18 **THE COURT:** All right. Thank you. We will be in
19 recess until 2:30.

20 (Court's Exhibit Number 1, Defendant's Voir Dire, was
21 marked for identification.)

22 (Whereupon, a luncheon recess was taken.)

23 **BAILIFF:** Court come to order. All rise, please. If
24 you have a cell phone or electronic device, make sure
25 they're turned off.

1 **THE COURT:** Thank you. Be seated.

2 All right. We're back on the record now with regard
3 to the matter of the State versus Berry. Mr. Berry is
4 present with his counsel and the State is present and
5 represented by the Fifth Circuit Solicitor's Office. We
6 want to address pre-trial motions and see what we need to
7 do to get those taken care of this afternoon.

8 Ms. Zmroczek, your motions. I'll be glad to hear from
9 you.

10 **MS. ZMROCZEK:** Thank you, Your Honor. During the
11 break I spoke with Ms. Campbell because we were trying to
12 -- a few of my motions that had to deal with some of the
13 indictments that have been -- now that are not being
14 called, so I'm trying to streamline this in the best way.
15 I guess what I'll do is address the Brady or the discovery
16 issues first.

17 **THE COURT:** All right. That will be fine.

18 **MS. ZMROCZEK:** Okay.

19 **THE COURT:** Your motion is under Brady and Rule 5?

20 **MS. ZMROCZEK:** Yes, Your Honor.

21 **THE COURT:** Okay.

22 **MS. ZMROCZEK:** On --

23 **THE COURT:** What's your motion first of all?

24 **MS. ZMROCZEK:** My motion, Your Honor, is to suppress
25 any -- to suppress any DNA evidence regarding -- regarding

1 the rapid hit DNA. This case was a case in which they used
2 a brand new technology and one of the things that I was
3 missing, Your Honor, were I had requested specifically the
4 bench notes from the rapid hit DNA. They've just provided
5 them to me today and it's -- Your Honor, this -- it's all
6 of this. I was provided a report that was dated
7 August 20th of 2015. I was provided that on August 24th.
8 My concern is that they arrested Mr. Berry because of what
9 they claim to be a rapid DNA hit. It's my understanding
10 that we need testimony on this and I need time to look
11 through what they've given me. So unfortunately because I
12 just received it, Your Honor, and I certainly don't want to
13 ask for a continuance, but I would certainly ask for time
14 to be able to see what they've provided me so that I can --

15 **THE COURT:** Well, I'm not sure I understand your
16 motion, first of all. You're moving to -- to suppress the
17 DNA evidence?

18 **MS. ZMROCZEK:** Correct.

19 **THE COURT:** And what are the grounds for that?

20 **MS. ZMROCZEK:** Well, Your Honor, the grounds are
21 that --

22 **THE COURT:** You were given the report on August 24,
23 2015.

24 **MS. ZMROCZEK:** Right.

25 **THE COURT:** So you've had it for several months.

1 **MS. ZMROCZEK:** I've had that report.

2 **THE COURT:** Okay. What else do you need?

3 **MS. ZMROCZEK:** Well, I needed the bench notes, Your
4 Honor, because -- it's convoluted, but I'll explain how it
5 went. When my client was arrested, they arrested him
6 because they found the victim's -- they claim that they
7 found the victim's DNA on the shoes and I kept repeatedly
8 asking -- in fact, I sent on January 30, 2015, a specific
9 letter to Ms. Campbell outlining -- numbering one through
10 nine of things that I needed and these bench notes were
11 some of the things I needed because I was asking for the
12 comparison between my client's DNA and any other DNA that
13 they had found on the items of evidence.

14 Your Honor, at that time Mr. Steadman from the
15 solicitor's office informed me that they didn't have my
16 client's DNA and that they needed to schedule a Schmerber
17 motion. We were in trial, I asked him to schedule it, but
18 coincidentally the next day he gets arrested on a 2011
19 burglary from a CODIS hit. My concern, Your Honor, is the
20 taint from -- I don't know where they're getting this DNA
21 from and I don't -- I wasn't provided -- the first initial
22 rapid hit I was never provided that report until today.

23 **MS. CAMPBELL:** That's not true.

24 **THE COURT:** Well -- all right. I'll hear from you,
25 Ms. Campbell. I'm not sure exactly what the motion's based

1 on, but she's making a motion to suppress the DNA evidence
2 in this case on Rule 5 and Brady and has advised me that
3 you sent her a report on August 24th --

4 **MS. CAMPBELL:** Which included that.

5 **THE COURT:** -- containing that information.

6 **MS. CAMPBELL:** Yes, sir. And that was -- we had
7 gotten it just -- I mean, that was within a day or two of
8 us getting it providing it to the defense. There's no
9 question she asked for the DNA results earlier. We just
10 didn't have them to give them to her. Once we got the
11 report, we gave it to her immediately, and that would have
12 been in August of this year. The report, I believe, she
13 said was dated August the 20th of 2015 and she stated she
14 received it on the 24th.

15 **THE COURT:** Okay. And what is it you claim you have
16 not gotten timely under Brady and Rule 5?

17 **MS. ZMROCZEK:** Your Honor, these 83 pages that they
18 just handed me.

19 **THE COURT:** Well, let me see it.

20 **MS. CAMPBELL:** Your Honor, those were the bench notes
21 that have been available. We also met with defense counsel
22 last week, Ms. Walker did in my office and she could
23 address this better, and went over everything and made sure
24 that she had everything she needed. Ms. Zmroczek before
25 has asked in some cases for the bench notes and in some

1 cases has not and we were not aware that this was a point
2 of contention. Those were available for her inspection.

3 **THE COURT:** Well, as I review this, this looks like to
4 me, and I just looked at it, it looks like to me it's the
5 lab technician's or the chemist's steps or reports in
6 deciding what the DNA was. It would seem like to me that's
7 a factual matter. It's a matter for cross-examination. I
8 don't see whether there's any violation of Rule 5 or Brady.
9 You knew early on you had the right -- you knew early on
10 what the DNA results were and you could have gone and
11 talked with the witnesses at any time.

12 **MS. ZMROCZEK:** But, Your Honor, I specifically on
13 January 30, 2015, sent an e-mail outlining specific --
14 because I said "Please consider this list a clarification
15 and/or supplement to my Rule 5 motion filed in January of
16 2015 regarding Brandon Berry. Number 8 says, "specifically
17 any and all DNA, blood results, reports, including bench
18 notes, regarding the shoes and pants". That was in January
19 of 2015 and I received them today.

20 **THE COURT:** Well, a couple of things. I guess you
21 consider these base notes. Is that what you consider them?

22 **MS. ZMROCZEK:** The bench notes.

23 **THE COURT:** All right. And I don't know at what
24 point the State got these, but I guess they came from the
25 sheriff's department forensic lab, but once you got the

1 report you knew who the chemist was and everything that
2 needed to be. There was nothing to prevent you from
3 talking to that witness at that point. Where is there any
4 surprise about not getting this? I mean, why couldn't you
5 have gone and interviewed the witness if you needed this
6 and gotten that information from him? It wasn't like they
7 were trying to hide the witness or hide the results.

8 **MS. ZMROCZEK:** Well, Your Honor, I did issue a
9 subpoena at which point Ms. Campbell told me that I was
10 to request specifically only from the State and not to
11 subpoena SLED.

12 **MS. WALKER:** SLED isn't involved in the DNA in this
13 case.

14 **THE COURT:** SLED's not involved, it's Richland County.

15 **MS. ZMROCZEK:** Right.

16 **THE COURT:** Let me see what you furnished, Madam
17 Solicitor.

18 **MS. CAMPBELL:** As far as the report, Your Honor?

19 **THE COURT:** Yes.

20 **MS. CAMPBELL:** She also asked and had specific
21 dealings on this matter with my co-counsel, Your Honor, in
22 which she also requested specifics about the --

23 **MS. WALKER:** And, Your Honor, just to clarify, I did
24 meet with -- my name is Meghan Walker. I'm sorry, Your
25 Honor. To clarify, I did meet with Ms. Zmroczek last --

1 last week to go over the physical evidence in the case,
2 asked if there was anything else she needed. I was not
3 aware at that point in time that she wanted and had not
4 received bench notes. I sent her another text message last
5 night, "Hey, is there anything else you need, I can meet
6 you first thing this morning", and she did not indicate any
7 -- any of this at that point, Your Honor.

8 **THE COURT:** Okay. I just wanted to see what was --
9 what was furnished. She said she has the reports and she
10 got them back on August the --

11 **MS. ZMROCZEK:** Your Honor, I have a copy. I can hand
12 it up.

13 **THE COURT:** Okay. All right. The Court finds that
14 the report dated August the 20th, 2015, and identified as
15 Case Number 1407-017729 for an incident date of July the
16 29th of 2014 was furnished timely to the defense counsel
17 under Rule 5 and Brady. That report identified the --
18 what's referred as the Richland County Sheriff's Department
19 DNA Analysis Section, Forensic Analysis Report, and it
20 gives all of the information as to what the results of the
21 tests were. The notes that Ms. Zmroczek refers to refer to
22 the same case number. It would be the Court's position
23 that the State has furnished what it had in reply to Rule 5
24 and -- or in response to Rule 5 and Brady.

25 In addition to meeting with the defense counsel to

1 find out if there was anything else they needed, the
2 defense counsel had plenty of opportunity to initiate a
3 further response if they needed these notes that were made
4 by the chemist and what his base notes were. I don't think
5 a failure to furnish the base notes when the report was
6 given is a violation of Rule 5 or Brady. The motion to
7 suppress DNA is denied.

8 **MS. ZMROCZEK:** Thank you. And, Your Honor, simply for
9 clarification, as far as other things that I've requested,
10 I did meet with Ms. Walker on Wednesday. They provided me
11 color photos today, so I can check that off my list, even
12 though I also asked for that back in January. And then
13 they also provided me a video, but realized that they had
14 copied the same video twice, and it's my understanding that
15 they're going to provide me the correct Statewide Security
16 video.

17 **MS. CAMPBELL:** Yes, and we do not intend to offer it,
18 but we'll make sure --

19 **THE COURT:** Slow down. We've resolved the DNA matter
20 for now. One of the motions that you indicated to me by
21 e-mail was a motion to exclude photos. You don't -- what's
22 the status of that?

23 **MS. ZMROCZEK:** Well, Your Honor, Ms. Campbell and I --
24 since they just handed me the color photos today, advised
25 me that -- if we can meet in the morning -- that if I could

1 meet with her in the morning prior to court starting, so I
2 told her I was amenable to that.

3 **THE COURT:** Okay.

4 **MS. ZMROCZEK:** Your Honor, I can address the two
5 indictment issues that I have left, and if you don't mind
6 if I grab that DNA off the bench --

7 **THE COURT:** No, you can have the whole thing.

8 **MS. ZMROCZEK:** -- I'll lose it. Thank you. The
9 remaining indictment issues that I have left, Your Honor,
10 deal with indictment numbers 15 and 17.

11 **THE COURT:** All right. I have both of those. That's
12 the unlawful carrying of a pistol and unlawful conduct
13 toward a child.

14 **MS. ZMROCZEK:** Correct.

15 **THE COURT:** Okay.

16 **MS. ZMROCZEK:** Your Honor, for an indictment to be
17 valid, due process requires to state the offense with
18 sufficient certainty and particularity to enable -- to let
19 the Defendant know what he's facing. With regards to
20 Indictment Number 15, unlawful carrying of a pistol, and
21 they refer -- they say on or about July 29, 2014. It's
22 my understanding that -- as we've heard testimony, both
23 of these incidents happened on July 29th. From this
24 indictment, Your Honor, we don't know if they're talking
25 about was he unlawful carrying the night of -- or was he

1 unlawful the night of the shooting or was he unlawfully
2 carrying at the -- in the vehicle, and they say that
3 pursuant to 16-23-20, Your Honor, and I've -- I've gone
4 through all of the sections and he was -- if they're
5 referring to -- well, I don't know what they're referring
6 to, first of all, so I don't know which time they're saying
7 he unlawfully carried a pistol, so I need clarification on
8 that.

9 And then I have an argument based on whichever time
10 they choose, I guess. I need -- I just need to know how to
11 be able to defend this charge.

12 **THE COURT:** Well, as I understand it, and this is a
13 pre-trial conference, and y'all will correct me if I'm
14 wrong, he was not arrested or apprehended on the earlier
15 charge, the morning charges, until the occurrence of the
16 subsequent charges when he had the child in the car and
17 that's when he was actually taken into custody and he was
18 taken -- and that's when the pistol was found.

19 **MS. ZMROCZEK:** Correct.

20 **THE COURT:** So that's when he had the pistol on him
21 and I don't see how they could charge him with unlawful
22 carrying of a pistol on the attempted murder or the armed
23 robbery if they didn't arrest him and catch him with it at
24 that time. Am I right, Ms. Luck -- or Ms. Campbell?

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** Okay.

2 **MS. ZMROCZEK:** And then specifically under which
3 section of 16-23-20 are they referring that he's in
4 violation of?

5 **THE COURT:** Well, I don't have the codes right in
6 front of me, but let me look and see. One's the --

7 **MS. CAMPBELL:** It's just one section. Then it talks
8 about the exceptions.

9 **MS. ZMROCZEK:** Exceptions, correct.

10 **THE COURT:** All right. I'll overrule it. The
11 sentencing range in 16-23-20 is the one year, a thousand
12 dollar fine, CDR Code 0044, but is there an A or B section
13 of that, Ms. Campbell?

14 **MS. CAMPBELL:** Your Honor, it's my understanding that
15 the initial paragraph is the part that talks about it and
16 then it talks about the exceptions for people that can
17 carry.

18 **THE COURT:** Right. That's what I thought. It's just
19 -- it's just the statute makes it unlawful and then except
20 certain people.

21 **MS. ZMROCZEK:** Okay. And since the -- okay. Before
22 this morning, Your Honor, I had a lot of gun charges, so
23 that's why I had these motions filed because I -- when they
24 withdrew a lot of those charges, it obviously cleared up a
25 lot of questions that I had, so I just wanted to confirm

1 that. At this time we have no problems as long as we
2 understand that that's with the car stop and the pistol
3 that was found outside of the vehicle, and we're okay with
4 that.

5 **MS. CAMPBELL:** I mean, it's --

6 **MS. ZMROCZEK:** We just wanted it clarified.

7 **MS. CAMPBELL:** I don't -- I don't want to limit myself
8 by saying that it's not the same pistol he was carrying
9 when he shot the guy.

10 **THE COURT:** I think -- I think it's kind of premature
11 at this time --

12 **MS. CAMPBELL:** Yes, sir.

13 **THE COURT:** -- Counsel, until we know what the
14 testimony is and the evidence is. And if they don't prove
15 the carrying at any time during the process, the whole
16 thing, then you'd be entitled to a directed verdict, but
17 I'm not gonna limit them to whatever they can prove, but I
18 don't think that there's anything that would justify the
19 dismissal of the charge. And I think the indictment is
20 sufficient to -- under Gentry to apprise the Defendant of
21 the nature of the charges against him. So that would have
22 to do with the Indictment Number 2015-015. That's the
23 motion -- the unlawful carrying, so whatever motion is
24 there at this time I'm gonna deny it because I don't know
25 what the testimony is. We'll just have to wait and see.

1 **MS. ZMROCZEK:** And I think the same goes for 17 as
2 well, so.

3 **THE COURT:** 17, the unlawful conduct towards a child?

4 **MS. ZMROCZEK:** Right. We'll reserve it to see what
5 the testimony is.

6 **THE COURT:** Okay. All right. We'll just have to wait
7 and see what the testimony is.

8 All right. So looking at your e-mail -- and let's
9 look over the motions just to make sure we've covered
10 everything you had. The first thing you had on there
11 was the motion to quash the indictments. What was that
12 about?

13 **MS. ZMROCZEK:** Well, Your Honor, that dealt with a lot
14 of the direct presented indictments that they ended up --

15 **THE COURT:** So that doesn't --

16 **MS. ZMROCZEK:** That -- that no longer applies.

17 **THE COURT:** There's nothing to be considered by the
18 lawyers. We've taken care of the motion to sever. Motion
19 pursuant to Franks versus Delaware, what's that?

20 **MS. CAMPBELL:** On which search warrant?

21 **MS. ZMROCZEK:** Your Honor, that's -- at this time
22 based upon their withdrawal of the motions, we're
23 withdrawing that motion -- or the withdrawal of the
24 indictments, we're withdrawing that motion.

25 **THE COURT:** All right. We've taken care of the

1 Brady --

2 MS. ZMROCZEK: We dealt with that.

3 THE COURT: -- and Rule 5. We've taken care of the
4 motion to suppress the DNA. How about the motion to
5 suppress the evidence on the search warrants -- or the lack
6 of a search warrant?

7 MS. ZMROCZEK: Right. And that I think we're
8 ready to go forward on. I think that they're prepared
9 to present testimony. My first issue, Your Honor, it
10 breaks it down -- as you are well aware now, and maybe
11 we'll have to wait and see what the testimony is, but it's
12 my understanding that when they were pulled over for the
13 seatbelt violation --

14 THE COURT: Well, that's going to require an
15 evidentiary hearing --

16 MS. ZMROCZEK: Exactly. Exactly. So I think that
17 they should -- yes --

18 THE COURT: -- to take care of that.

19 MS. ZMROCZEK: -- go ahead and present testimony and
20 it will make it more clear.

21 THE COURT: Why don't we talk and see what else we've
22 got to address? How about the video? Is that the video in
23 the police car, is that what you're talking about, during
24 the traffic stop?

25 MS. ZMROCZEK: I'm sorry?

1 **THE COURT:** The motion to suppress.

2 **MS. ZMROCZEK:** Yes, that's correct, Your Honor.

3 **THE COURT:** Okay. And then you've got a motion to
4 exclude firearm testimony. What kind of firearm testimony?
5 Is that ballistics?

6 **MS. ZMROCZEK:** Correct. And, Your Honor, I would
7 ask that if -- if the Court wants to wait to hear testimony
8 on that, if they would provide me with -- with any expert
9 qualifications because I haven't been provided with any
10 of their people who are gonna testify. I mean, I can
11 subpoena them this afternoon.

12 **THE COURT:** All right. The same thing with the
13 footwear?

14 **MS. ZMROCZEK:** Correct.

15 **THE COURT:** Okay. And then you mentioned -- you said
16 that the photos -- what's the story on those?

17 **MS. ZMROCZEK:** We're gonna -- we're gonna get together
18 and we may be able to agree in the morning on those, Your
19 Honor.

20 **THE COURT:** Okay. And how about the chain of custody?
21 What's the question on chain of custody?

22 **MS. ZMROCZEK:** There's one issue -- there's one item,
23 Your Honor, and I don't know if they have it marked yet,
24 but there was a bullet located in a vehicle several months
25 -- well, the information was turned over to me several

1 months -- well, just recently, but a bullet was found
2 inside of a vehicle. Some residents at the apartment
3 complex took their car and -- just took it to some auto
4 mechanic's place and apparently they're trying to --

5 **THE COURT:** That wouldn't destroy the admissibility.
6 The only thing you've got questions about the chain of
7 custody is when you've got fungible items, but if you've
8 got a non-fungible item that can be identified by a witness
9 as this being a certain thing --

10 **MS. ZMROCZEK:** And I guess as long as they lay that
11 foundation, Your Honor.

12 **THE COURT:** As long as -- well, yeah, because all
13 they've got to do is say this is the gun or this is the
14 bullet or this is whatever. It doesn't matter whether this
15 chain -- because there could be a lot of gaps in the chain
16 of custody if they can identify it because that's not --
17 okay.

18 **MS. ZMROCZEK:** Yeah, and I guess it's just -- we'll
19 wait to lay the foundation. And then there is no Jackson
20 v. Denno. They're not gonna try to -- there are no
21 statements to introduce. And then, of course, just the
22 main --

23 **THE COURT:** All right. Motion to sequester, where do
24 you stand on that, Ms. Campbell?

25 **MS. CAMPBELL:** Your Honor, I think that the witnesses

1 in this case have provided statements; however, sometimes
2 we just limited it to a motion to -- well, sequester the
3 lay witnesses, if you prefer, but usually law enforcement
4 and experts are allowed in.

5 **THE COURT:** How do you feel about not sequestering
6 experts, Ms. Zmroczek? I mean, there will be different
7 experts on different subjects. There wouldn't be like
8 three experts on DNA. You're talking about one expert for
9 DNA, another one for the footprint and --

10 **MS. CAMPBELL:** Right.

11 **MS. ZMROCZEK:** Right, and I'm okay with that, Your
12 Honor. I would just ask that they provide you their
13 credentials at the appropriate time.

14 **THE COURT:** Okay. I will require that the factual
15 experts who are witnesses be sequestered with the exception
16 of your primary witness --

17 **MS. CAMPBELL:** The victim.

18 **THE COURT:** -- the victim and the officer in charge,
19 the primary police officer.

20 **MS. CAMPBELL:** So you want all other law enforcement
21 to be excluded as well?

22 **THE COURT:** If they're gonna testify, yeah. I think
23 the other police officers who haven't testified except for
24 your primary one and I would grant that to that extent.

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** All right. So the matter that we do need
2 to address then is the motion to suppress the search
3 warrant -- or not the search warrant, but the search of the
4 vehicle and of the home, the warrantless search. So the
5 motion having been made, Ms. Campbell, you may present
6 whatever testimony you wish to present regarding those
7 issues.

8 **MS. CAMPBELL:** Thank you, Your Honor.

9 (State's Exhibit Number 1 and 2 were marked for
10 identification.)

11 **MS. CAMPBELL:** Your Honor, the State would call
12 Sergeant Carwell.

13 **THE COURT:** All right. Come around, please.

14 JOHN CARWELL,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Thank you. Please have a seat on the
17 witness stand and state your full name for the record.

18 **THE WITNESS:** It's John Carwell.

19 DIRECT EXAMINATION (In-Camera)

20 BY MS. CAMPBELL:

21 Q. Sergeant Carwell, where are you employed?

22 A. Richland County Sheriff's Department.

23 Q. What do you do there, sir?

24 A. I am a sergeant over the burglary unit at this time.

25 Q. I want to turn your attention back to July of last

1 year. Were you also working at the sheriff's department
2 then?

3 A. I was.

4 Q. What did your duties include?

5 A. I was assigned to the robbery unit and also was a
6 primary homicide investigator.

7 Q. During the early morning hours of July the 29th, I
8 believe it was, did you become aware of an attempted murder
9 and robbery that had taken place?

10 A. I learned of this case when I arrived that morning at
11 8:30 when we are assigned our cases for that morning.

12 Q. And you were actually assigned to this case to be the
13 lead investigator, I guess, is the way to put it?

14 A. I was.

15 Q. And subsequent to that, did you become aware of
16 circumstances that ended up being relevant in this case?

17 A. I did.

18 Q. And what were those circumstances that you found out
19 about later that morning?

20 A. I was contacted by Investigator -- Deputy Owens and
21 Pennington a couple of hours after this, say around
22 11:30-ish. They stated they were on a traffic stop and
23 they had two bags; one bag contained items that would be
24 related to armed robberies. And, like I said, I worked
25 armed robberies at the time. And there was also a separate

1 bag, a diaper bag, with a Glock pistol in the bottom of it.

2 Q. And the traffic stop that they were referring to where
3 they found the mask and the gun, what area of town was this
4 in?

5 A. This was actually Broad River Road at [REDACTED]

6 Q. And was that close in the area to where this robbery
7 and attempted murder had happened the night before?

8 A. No, it's a little ways down I-20.

9 Q. Down I-20?

10 A. Correct.

11 Q. But at that point you were aware of what had happened
12 the night before?

13 A. I was.

14 Q. And how did you proceed, sir?

15 A. I responded to the scene of the traffic stop, spoke to
16 both deputies. They kind of explained to me how they got
17 to the point they were at and from there it was basically
18 -- I just needed to put the pieces together.

19 Q. And that day did you become aware that there was a
20 small child that had been found in the car?

21 A. Yes.

22 Q. And were steps taken to locate the actual mother of
23 the child?

24 A. The mother was already on-scene once I arrived.

25 Q. So that had been done prior to you getting there?

1 A. Yes.

2 Q. And when you got there, did you make contact with her?

3 A. Yes.

4 Q. What was her name, do you remember?

5 A. Ms. -- Katio was last name.

6 Q. Katio?

7 A. K-A-T-I-O.

8 Q. And approximately how old was the child that was there
9 at the scene?

10 A. She was two.

11 Q. And once you made contact with Ms. Katio, did you get
12 certain information from her?

13 A. Yes.

14 Q. And specifically did you ask her for her permission to
15 do anything?

16 A. She actually volunteered for me to come back to her
17 apartment. She stated that Brandon Berry had been to her
18 house around 5 AM that same morning after being out with a
19 friend of his, Nickilous Wallace.

20 Q. After being out with a friend, Nickilous Wallace?

21 A. Yes.

22 Q. And was Nickilous Wallace the other young man that was
23 detained there at the scene of the traffic stop?

24 A. Yes, he was the owner of the -- the car that was
25 stopped during the traffic stop.

1 Q. And when you said she actually volunteered for you to
2 go -- that he had been there the night before at her house,
3 what, if anything, were you looking for at that point?

4 A. Anything to help me connect this shooting to the two
5 guys that were in this car.

6 Q. And did you memorialize Ms. Katio's giving you
7 permission to do that?

8 A. Yes. She gave me a consent to search on a written
9 form from the sheriff's department that we use. She stated
10 that she lived there with her daughter, her two-year-old
11 daughter, but the apartment was actually in her
12 grandmother's name and her grandmother was actually
13 on-scene as well when I first arrived at the apartment.

14 Q. But she was the one that actually lived there?

15 A. Yes.

16 Q. And I want to show you what's been marked as State's
17 Exhibit Number 2. Do you recognize that?

18 A. Yes, this is the consent to search form.

19 Q. And is that the form that you actually filled that out
20 that day?

21 A. It is.

22 Q. And who's signature is that on the bottom?

23 A. L. Katio.

24 Q. At any time did you threaten her or her grandmother,
25 who's also on the lease?

1 A. No.

2 Q. Was Brandon Berry as far as you knew on the lease to
3 that apartment?

4 A. He was not.

5 Q. And, in fact, did he -- he did not live there, it was
6 just the child's mother?

7 A. No. I did ask just to clarify that.

8 Q. Okay.

9 **MS. CAMPBELL:** Your Honor, may I approach?

10 BY MS. CAMPBELL:

11 Q. At any point did you threaten her to get her consent?

12 A. No.

13 Q. Did you promise her anything to make her consent?

14 A. No, I didn't.

15 Q. And, in fact, did she go with you when you went back
16 to the house to actually look?

17 A. Yes, and she provided a written statement.

18 Q. And how did you actually get inside the residence?

19 A. She actually drove her own car and I followed her to
20 her apartment and she allowed us in. She was there with us
21 the whole time.

22 Q. And once you got there, did you actually search for
23 any items that may have to do with your armed robbery
24 shooting from the night before?

25 A. Yes.

1 Q. And what, if anything, did you find that was
2 significant?

3 A. I found a pair of black Levi jeans and pair of Nike
4 shoes that were gray and black.

5 Q. And, in fact, was she able to identify whose jeans
6 those were and whose shoes those were?

7 A. Yes, she did.

8 Q. And who did she identify those belonging to?

9 A. Brandon Berry.

10 Q. There's also -- there was a car involved in the car
11 stop as well?

12 A. Yes, there was.

13 Q. And at some point did you get permission to actually
14 look in that car as well?

15 A. I did.

16 Q. And I want to show you what's been marked as State's
17 Exhibit Number 1. Do you recognize that?

18 A. Again, it's a consent to search form.

19 Q. And what's the date on the top of that one?

20 A. August 5th of 2014.

21 Q. So that took place at a later time?

22 A. Yes.

23 Q. And, specifically, who did the car belong to?

24 A. Nickilous Wallace.

25 Q. Did it belong in any way to the Defendant here?

1 A. No, it didn't.

2 Q. And, in fact, did he give you permission?

3 A. He did.

4 Q. And when you searched that vehicle, did you even come
5 up with anything of significance?

6 A. The lab, I believe, went out and processed it and
7 photographed it, but nothing was found.

8 Q. As far as any items of evidence?

9 A. Correct.

10 Q. But it was processed pursuant to a lawful consent?

11 A. Correct.

12 **MS. CAMPBELL:** Your Honor, may I approach?

13 **THE COURT:** Yes, ma'am.

14 BY MS. CAMPBELL:

15 Q. Finally, I want to show you -- Your Honor, I haven't
16 marked this yet, but just a document which is a three-page
17 written statement. Do you recognize that?

18 A. Yes, ma'am.

19 Q. And who does that written statement belong to?

20 A. Lourisa Katio.

21 Q. And, in fact, is that your handwriting?

22 A. That is.

23 Q. And whose signature is on the bottom of every page of
24 that?

25 A. Hers, Lourisa Katio.

1 Q. And in the course of that, does she identify the
2 clothing, as who it belongs to?

3 A. Yes.

4 Q. And when her, I guess, boyfriend had shown up the
5 night before around 5:00?

6 A. It does.

7 Q. And that statement was taken on what date?

8 A. January -- or, I'm sorry, July 29th.

9 Q. That same day that --

10 A. That's correct.

11 **MS. CAMPBELL:** Your Honor, may I approach?

12 **THE COURT:** Yes.

13 **MS. CAMPBELL:** Do you have a copy of this?

14 **THE COURT:** Ms. Zmroczek, have you seen this
15 statement?

16 **MS. ZMROCZEK:** I have.

17 **THE COURT:** Do you object to it?

18 **MS. ZMROCZEK:** Not for purposes of this hearing, Your
19 Honor.

20 **THE COURT:** All right. We'll give it to the court
21 reporter to mark it.

22 **MS. CAMPBELL:** I think I'll mark this as a Court's
23 exhibit so it won't get mixed in.

24 **THE COURT:** That will be State's -- actually we had
25 one State's 1 already.

1 **MS. CAMPBELL:** I had 1 and 2 already. Do you want to
2 do it as State's 3? Or I was gonna do this as a Court's
3 exhibit because it wouldn't be admissible.

4 **THE COURT:** Okay. That will be fine. It's not
5 admissible. Make it Court's 2.

6 **MS. CAMPBELL:** Thank you, Your Honor.

7 (Court's Exhibit Number 2, Statement of Lourisa Katio,
8 was marked for identification.)

9 BY MS. CAMPBELL:

10 Q. So based on the information you were able to get from
11 Ms. Katio, the Defendant did not live there, he was not on
12 the lease, and she was the one that gave you permission?

13 A. That's correct.

14 **MS. CAMPBELL:** Thank you. That's all I have, Your
15 Honor.

16 **THE COURT:** Cross-examination.

17 **MS. ZMROCZEK:** Thank you.

18 CROSS-EXAMINATION (In-Camera)

19 BY MS. ZMROCZEK:

20 Q. Investigator Carwell, you stated that you arrived at
21 1:30?

22 A. I don't recall saying that.

23 Q. Okay. What time do you recall -- what time do you
24 recall arriving at the traffic stop?

25 A. I believe I said 11:30.

1 Q. 11:30?

2 A. My follow-up. Let's see. I arrived at -- I'm sorry,
3 it's 12:55. I was notified around 12:15-ish.

4 Q. Okay. And it's your testimony that when you arrived
5 the mother of the infant said come search my house?

6 A. Yes. She was on-scene.

7 Q. Okay. Investigator Carwell, didn't you tell her that
8 if she didn't allow y'all in her house that she could pick
9 her baby up from DSS?

10 A. No.

11 Q. Did you meet with her this week in preparation for --
12 or last week in preparation for this testimony?

13 A. I did not.

14 Q. You took several other statements from her that day?

15 A. I took one.

16 Q. Okay. She described the shoes that Mr. Berry was
17 wearing?

18 A. She described a pair of white and black Air Force Ones
19 as what she saw when he left the day -- the night before to
20 go out.

21 Q. And, in fact, those were the same ones that he had
22 on --

23 A. During the traffic stop, but she also confirmed that
24 the gray and black shoes that were in the bedroom beside
25 the black pants also belonged to Brandon Berry.

1 Q. Didn't you tell her that you were searching to make
2 that the house was safe because the child was found with a
3 gun?

4 A. No.

5 Q. Who else was present when you spoke with her?

6 A. Jamie Owens.

7 Q. Okay. And her sister, Destiny Katio?

8 A. I remember her grandmother being there.

9 Q. And her grandmother?

10 A. Right.

11 Q. You don't remember her sister being there?

12 A. No.

13 Q. So it's your testimony that you received consent,
14 never mentioned anything about DSS or the child?

15 A. That's correct.

16 Q. And never said you were doing a search to make sure
17 that the property was safe because of a gun?

18 A. No.

19 Q. Okay. You searched the car pursuant to consent five
20 days later?

21 A. Yes. Nickilous Wallace came to my office with his
22 attorney and I was provided written consent.

23 Q. And you're aware that the mask and the zip ties were
24 found in the car?

25 A. No, those were found in the two bags that Brandon

1 Wallace {sic} grabbed when he jumped out of the vehicle and
2 threw them when he was being chased.

3 Q. And there are pictures of the locations of those bags?

4 A. The bags were picked up by the two deputies I spoke of
5 and brought back to the scene of the traffic stop and
6 that's when where I observed them.

7 Q. So where were the bags when you observed them?

8 A. In the parking lot of the apartment complex where the
9 traffic stop ended.

10 Q. Had pictures already been taken of them?

11 A. Not, I don't believe, where they were found.

12 Q. Were pictures taken after you had stopped them?

13 A. But, yes -- yeah, I took pictures of them and I took
14 custody of both of the bags.

15 Q. So you took pictures -- you were the one who took the
16 photographs?

17 A. Yes.

18 Q. Okay. And you -- it's your testimony that you took
19 photographs of the diaper bag with the gun?

20 A. Yes.

21 Q. And the other bag with the other items in it?

22 A. Yes.

23 Q. And you provided all those pictures to the solicitor's
24 office?

25 A. Yes.

1 Q. Okay.

2 MS. ZMROCZEK: Your Honor, for the purposes of this
3 hearing, that's all I have for this witness.

4 MS. CAMPBELL: I don't have anything further.

5 THE COURT: Anything further, Ms. Campbell?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right, sir. You may step down.

8 (Witness excused.)

9 THE COURT: All right. Ms. Campbell, you may call
10 your next witness. Do you have any other witnesses on this
11 issue?

12 MS. CAMPBELL: Not on this issue, Your Honor.

13 THE COURT: Okay. All right. Ms. Zmroczek, you have
14 the right to present any testimony or evidence that you
15 wish to present, including the testimony of the Defendant,
16 without waving his Fifth Amendment rights if you would like
17 to present anything.

18 MS. ZMROCZEK: Your Honor, I have actually advised
19 Ms. Katio that she needed to be here at 2:30 and she
20 responded back that the State told her she didn't have to
21 come.

22 THE COURT: Did you subpoena her?

23 MS. CAMPBELL: Your Honor, she's under subpoena for
24 us. We didn't know about this hearing until -- at 10:26
25 last night, the defense counsel contacted through text

1 Ms. Walker, who was not here at the office at the time last
2 night, and requested that we have her here. We had told
3 her originally if we were gonna use her -- because she
4 works, she actually has a job, that we wouldn't need her
5 until Wednesday, and that was just us not knowing that she
6 wanted her at that point. That was information we gave her
7 last week. So I don't -- I don't want to say that we were
8 trying to hide her or anything. I can contact her and see
9 if she can be here in the morning.

10 **MS. ZMROCZEK:** Your Honor, I would ask --

11 **MS. CAMPBELL:** I had a conversation with her last week
12 and we turned over the content of that conversation. She
13 is the mother of his child and has remained in contact with
14 him.

15 **THE COURT:** And the mother of the child that was
16 involved in this incident?

17 **MS. CAMPBELL:** Involved in this.

18 **THE COURT:** All right. Okay.

19 **MS. ZMROCZEK:** The information that they turned over
20 to me, Your Honor, verbally was that the -- Officer Carwell
21 told her that they would not give her child back.

22 **THE COURT:** Well, we'll find out when we hear from
23 her. I'll give you an opportunity -- we will -- I will not
24 make a decision on this -- since we're not bringing the
25 jury in until 11:00 tomorrow, I won't make a decision on

1 this until in the morning, but if you want to make sure
2 that she's here to testify -- while Ms. Campbell, she
3 doesn't have any duty to --

4 **MS. ZMROCZEK:** No, I have her under subpoena as well,
5 Your Honor. She just did not respond.

6 **THE COURT:** Okay. You better have her under subpoena
7 for 9:30 in the morning because that's when we're going
8 forward on this matter and if she's not here then, then
9 we're going to take action against her, okay?

10 **MS. ZMROCZEK:** Thank you, Your Honor.

11 **THE COURT:** All right. So with regard to the motion
12 to suppress, let me see if I understand what you wish to
13 suppress as a result of the search warrant or lack of a
14 search warrant. Do you -- the first thing I noticed was
15 two bags that were taken from the car. One was the items
16 that the State contends are related to the armed robbery
17 or attempted murder that was associated with an armed
18 robbery or -- or attempted murder and the other was a Glock
19 pistol in the diaper bag. Are those --

20 **MS. CAMPBELL:** But they were not in the car when they
21 were recovered because when he jumped out of the car and
22 ran from the police, he took both those items with him and
23 then discarded them before --

24 **MS. ZMROCZEK:** Your Honor, I think we need testimony
25 on that, not just from Ms. Campbell, because Mr. --

1 Investigator Carwell said that they -- that had already
2 happened by the time --

3 **THE COURT:** All right. So we've still got the -- you
4 still object to -- tell me what item --

5 **MS. ZMROCZEK:** I don't object to the gun, Your Honor,
6 and the diaper bag. We object to the masks and the other
7 bag.

8 **THE COURT:** All right. Okay. All right. So there's
9 no objection to the Glock pistol found in the diaper bag?

10 **MS. ZMROCZEK:** Correct.

11 **THE COURT:** What are the other items, Ms. Campbell,
12 that were found?

13 **MS. CAMPBELL:** The only other items that were found
14 was a separate bag with the masks in it.

15 **THE COURT:** What are they?

16 **MS. CAMPBELL:** What are the items?

17 **THE COURT:** Yeah.

18 **MS. CAMPBELL:** There was a bag with masks in it --

19 **THE COURT:** A bag with what?

20 **MS. CAMPBELL:** -- and zip ties. It has masks, zip
21 ties and gloves.

22 **THE COURT:** Oh, okay. Okay. And that's what you
23 object to?

24 **MS. ZMROCZEK:** Correct, Your Honor.

25 **THE COURT:** All right.

1 **MS. ZMROCZEK:** And I think that we need testimony from
2 whoever recovered --

3 **THE COURT:** Do you have those witnesses present,
4 Ms. Campbell, or can you produce them?

5 **MS. CAMPBELL:** They're here.

6 **THE COURT:** All right. So we've got that. She
7 doesn't object to the pistol, that's not anything. She's
8 objecting to the items; the mask and all that sort of
9 stuff. And then we will hear -- I assume that you are
10 objecting to the items that were seized in the house based
11 upon lack of consent of the owner. Is that basically where
12 we are?

13 **MS. ZMROCZEK:** That is correct, Your Honor.

14 **THE COURT:** We'll hear from the owner tomorrow. Okay.

15 **MS. CAMPBELL:** And, Your Honor, to be clear, too, we
16 may try to go get the lease. This is a common issue. We
17 weren't aware of this until today because our position is
18 he doesn't have standing to even contest it regardless.

19 **THE COURT:** I'm sorry?

20 **MS. CAMPBELL:** He didn't live there, it's not his
21 house --

22 **THE COURT:** Right.

23 **MS. CAMPBELL:** -- so he doesn't even have standing to
24 contest it, but we'll bring up that issue later. We can
25 argue that.

1 **THE COURT:** Okay. So there was -- your position is
2 that in addition to having consent that she has no standing
3 to object to it because he had no ownership interest in it
4 or no -- no expectation of privacy really is what he had.

5 **MS. CAMPBELL:** Correct.

6 **THE COURT:** What about that matter? What about that,
7 whether -- regardless of what this lady says, why does he
8 have any expectation of privacy of something in her house?

9 **MS. ZMROCZEK:** Well, because, Your Honor, I think that
10 what her testimony will show then, and obviously it will
11 come from her, but it's our position that she will testify
12 that they had a child in common, that he -- not only did he
13 stay there, his friends stayed there, he had a multitude of
14 his personal items there, that's where he stayed. In
15 addition, Your Honor, there are -- the Government provided
16 numerous text messages and telephone calls that talk about
17 the bills that they paid there, the -- you know, you need
18 to buy the food, you need to -- you know, you left me with
19 the light bill. Obviously, it's our position that he did
20 live there.

21 **THE COURT:** Well, that may all be true from the
22 standpoint -- from a factual standpoint, but from a legal
23 standpoint he has no -- except for the child together, he
24 has no legal connection to her.

25 **MS. ZMROCZEK:** Well, they do have a child --

1 **THE COURT:** They're not married.

2 **MS. ZMROCZEK:** Correct. Right, they were not married,
3 Your Honor; however, he was -- he did stay there more than
4 -- more than half the time of the year, so we would -- we
5 would --

6 **MS. CAMPBELL:** I'm just basing this --

7 **MS. ZMROCZEK:** And I'll -- and I'll find the case law,
8 Your Honor, that would --

9 **MS. CAMPBELL:** And I'm basing this on the information
10 she gave me last week in addition to saying that she was
11 told that she would -- the child would go to DSS. And
12 she doesn't say that Investigator Carwell said that. She
13 didn't say specifically who said that, to clarify that
14 point.

15 **THE COURT:** Well, I don't have to approach this and
16 make the decision about the expectation of privacy or the
17 standing to make this decision if she testifies that she
18 gave consent. That takes care of that.

19 **MS. CAMPBELL:** And that's what she told us. She did
20 give consent.

21 **THE COURT:** All right. We'll take care of that in the
22 morning.

23 **MS. CAMPBELL:** Okay.

24 **THE COURT:** So that matter is --

25 **MS. ZMROCZEK:** Were they gonna -- I believe they were

1 gonna present testimony from --

2 **THE COURT:** Pardon?

3 **MS. ZMROCZEK:** I thought they were gonna present
4 testimony from the officer who located the second bag.

5 **THE COURT:** Yes, that's right. We've already got the
6 -- we'll come back to that tomorrow, but with regard to the
7 first -- the items that were seized, the items that were
8 seized related to the armed robbery, have you got that
9 witness here, Ms. Campbell?

10 **MS. CAMPBELL:** Yes, sir.

11 **THE COURT:** Okay. Go ahead.

12 **MR. STEADMAN:** The State calls Deputy Brendon
13 Pennington.

14 **BRENDON PENNINGTON,**
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Thank you. Please have a seat on the
17 witness stand and state your full name for the record.

18 **THE WITNESS:** Brendon Pennington.

19 **DIRECT EXAMINATION (In-Camera)**

20 **BY MR. STEADMAN:**

21 **Q.** Sir, where are you employed?

22 **A.** Richland County Sheriff's Department.

23 **Q.** How long have you been working for the Richland County
24 Sheriff's Department?

25 **A.** It will be nine years in January.

1 Q. And in what capacity do you work for the Richland
2 County Sheriff's Department?

3 A. Right now I'm with Special Teams.

4 Q. And what capacity were you working for the Richland
5 County Sheriff's Department back on July 29, 2015?

6 A. I was on the Community Action Team.

7 Q. And what were your duties and responsibilities for the
8 Community Action Team?

9 A. With the Community Action Team we're responsible for
10 going to basically all of the community meetings in our
11 designated area identifying crime trends and other ways to
12 combat crime.

13 Q. And does that also require you to patrol the Broad
14 River Road area and make routine traffic stops?

15 A. Yes. My area of responsibility was Broad River.

16 Q. And were you patrolling the Broad River area the day
17 of July 29, 2014?

18 A. Yes, I was.

19 Q. And at some point did you stop Nickilous Wallace and
20 Brandon Berry for a traffic violation?

21 A. I did.

22 Q. Can you, please, describe that?

23 A. I observed a vehicle with two occupants about to take
24 a left onto [REDACTED] and Broad River. When they noticed
25 me, they both put their seatbelts on and proceeded down

1 [REDACTED] and that's when I initiated a traffic stop.

2 Q. And how did you initiate the traffic stop?

3 A. I got behind the vehicle and turned on my blue lights.

4 Q. And did they eventually pull over?

5 A. They pulled over into [REDACTED] Apartments.

6 Q. And who was the driver of that vehicle?

7 A. The driver was Nickilous Wallace.

8 Q. And where was Brandon Berry located?

9 A. He was in the passenger seat.

10 Q. So once you pulled over the vehicle, what did you do
11 next?

12 A. I pulled over the vehicle and I made contact with
13 Mr. Wallace and requested his driver's license,
14 registration and insurance.

15 Q. Did you also request Brandon Berry's information?

16 A. As I recall, I did.

17 Q. And after you requested their information, what was
18 the next step on the traffic stop?

19 A. Both of them had their ID's on them, so I returned to
20 my vehicle and began to check them through our DMV system
21 and also run them for warrants.

22 Q. And how long does that process usually take?

23 A. Depending on how fast the warrant division is,
24 anywhere between -- it could take five to ten minutes.

25 Q. Did any other officers assist you that day?

1 A. Deputy Owens.

2 Q. When did he show you up?

3 A. He showed up a few minutes after I returned to my car
4 when I was running their information.

5 Q. And did you speak with Deputy Owens at all?

6 A. I did.

7 Q. And what is the normal interaction with you and Deputy
8 Owens on a traffic stop like that?

9 A. Just basically whoever gets there second usually is
10 the primary backup officer, you know. So normally if I
11 were to respond to his traffic stop, I would go up to the
12 vehicle and just observe activity inside the car.

13 Q. And once you ran their information, what did you do
14 next?

15 A. After I ran their information and they were clear with
16 warrants, I went and made contact back with Mr. Wallace.

17 Q. And at this point what did you observe, possible
18 violations?

19 A. Violation-wise, Mr. Wallace was not able to offer his
20 insurance information. He did not have -- he was not in
21 possession of the insurance card from what I recall and
22 also there was a -- I guess I would say a toddler in the
23 back seat not secured either in a seatbelt or a car seat.

24 Q. So lack of insurance, a toddler, no seatbelt. Any
25 other possible violations that you observed?

1 A. Not as I recall violations. I recall their -- some of
2 their actions.

3 Q. Describe their actions.

4 A. Both of them were extremely nervous. Mr. Wallace was
5 visibly shaking, as well as Mr. Berry. Mr. Berry also was
6 doing the majority of the talking when I was -- when I
7 first made initial contact with them, he was doing most of
8 the talking, and being a passenger I found that as odd.

9 Q. The Defendant was doing most of the talking over
10 Nickilous Wallace, the driver?

11 A. Yes.

12 Q. And, quickly, are you familiar with Brandon Berry or
13 Nickilous Wallace?

14 A. I was not familiar with Nickilous Wallace, but,
15 however, I was familiar with Brandon Berry.

16 Q. How were you familiar with Brandon Berry?

17 A. At the time of this traffic stop, we were basically
18 given several people to, I guess, look out for around the
19 area, they were a person of interest in a shooting trend
20 that was going on on Broad River Road, and Mr. Berry was
21 one of them.

22 Q. And who were you given that information by?

23 A. From what I recall, it was the gang task force.
24 Richland County Gang Task Force.

25 Q. And this was based on a series of shootings going back

1 and forth in that area?

2 A. Yes, in the Pine Valley, [REDACTED] area. Basically
3 we were told they were gang-related shootings.

4 Q. And based on their behavior, the nervousness, him
5 doing all of the talking, did you have any suspicion that
6 there may be other crimes afoot?

7 A. Yes. I mean, it did raise my suspicions. I also
8 informed my partner that Mr. Berry was in the car. We were
9 both familiar with Mr. Brandon Berry at that time.

10 Q. Deputy Owens was also familiar with Brandon Berry?

11 A. Yes.

12 Q. So going back to the traffic stop, you ran their --
13 Nickilous Wallace and Brandon Berry's information through
14 the system, you then go back to the driver's side. Did you
15 at some point before that speak with Deputy Owens?

16 A. Yes, I did.

17 Q. What was the nature of that discussion?

18 A. I spoke to him at the rear of the vehicle and
19 basically -- a lot of times the backup officer can observe
20 things that maybe I didn't observe, so we take a quick a
21 five or ten seconds to talk about if he saw anything and
22 that's what we talked about at the back of the car or the
23 rear of the vehicle.

24 Q. And did he relay to you what he observed?

25 A. Yes, he did.

1 Q. And what did he observe?

2 A. He told me he observed the same nervousness from both
3 of them and also he said that he -- there was possibly
4 maybe marijuana shavings in the center console -- on the
5 center console in plain view, as well as a pair of tweezers
6 as sometimes is commonly used when you use marijuana. And
7 he also told me he believed there was a gun in the car as
8 well.

9 Q. Did you or -- I'll just focus on you. Did you observe
10 any signs of impairment by the driver?

11 A. I did. Once I had Mr. Wallace -- once I told him to
12 get out of the car.

13 Q. What were the signs of impairment that you observed?

14 A. I guess he had just really bloodshot eyes, just
15 talking very slow. Nothing, you know, as far as -- I
16 didn't get to go into too much depth.

17 Q. Now I want to go to the two-year-old child in the back
18 seat. Did you observe a car seat in the back seat?

19 A. I did not.

20 Q. How was the child sitting in the back seat?

21 A. From what I recall, the child was not sitting in the
22 back seat at all. When I walked up, it was kind of in the
23 back seat just moving back and forth. You know, it wasn't
24 buckled in from what I recall or anything.

25 Q. Not restrained in any way?

1 A. No.

2 Q. So at some point you got Nickilous Wallace outside of
3 the vehicle. Can you describe what happened then?

4 A. I asked Mr. Wallace if he minded talking to me outside
5 the car and he said he didn't and he stepped out.

6 Q. Let me real quick -- you asked him rather than
7 ordering him out?

8 A. Yes, I asked him to step out.

9 Q. Once you asked him out of the vehicle, what was the --
10 what did you talk to him about?

11 A. I asked him about his bloodshot eyes, you know, and
12 asked him is there a reason they were so nervous -- or he
13 was so nervous. I did question him about if he maybe used
14 marijuana or smoked marijuana in the vehicle or in the
15 past, stuff like that.

16 Q. And once you asked him about the impairment, the
17 insurance, did you ever get his insurance or figure out
18 whether he was insured?

19 A. I did not.

20 Q. And after you asked him that series of questions, what
21 did you talk to him about next?

22 A. I asked him if he had anything illegal inside of his
23 car, which he replied no, he did not. I asked him if he
24 had anything illegal on his person and he said he did not,
25 and then I requested if he minded if I made sure, and he

1 said he did not mind.

2 Q. He provided -- did he provide consent to search his
3 vehicle?

4 A. Yes, himself and his vehicle.

5 Q. And at that point what happened?

6 A. When I went to search Mr. Wallace, I could see my
7 partner kind of yell my name and I observed Mr. Brandon
8 Wallace -- or, excuse me, Brandon Berry get from the
9 passenger side of the vehicle into the driver's side of the
10 vehicle and he took off.

11 Q. How fast would you say he took off?

12 A. It took me a second to catch up with him. It wasn't
13 slow. I'd say he got up to thirty-five, forty miles per
14 hour inside the apartment complex.

15 Q. And did you lose sight of him at any point during
16 this?

17 A. I could -- not really. I could see the turns he made
18 and then once I got up with the car, I could see him
19 running.

20 Q. Once you got up to the car and you could see him
21 running out of the vehicle, could you see him carrying
22 anything?

23 A. It seemed like he had his hands in front of him as he
24 was -- as if he was carrying something, but I don't --

25 Q. Once you observed him running, what did you do next?

1 A. I got out of the vehicle and chased after him.

2 Q. How far a behind were you when you were chasing him?

3 A. Probably anywhere between -- I would say between ten
4 and thirty yards, you know, during the whole entire foot
5 chase.

6 Q. And you had eyes on him the whole time?

7 A. Yes.

8 Q. And what did you observe during the foot chase?

9 A. I observed him discard a black object, you know, maybe
10 a -- I don't know what it was. It was just a big, black
11 object. It looked like a bag. He threw it over a fence
12 behind the

13 Q. So you saw him toss a black bag. Did you see where it
14 landed?

15 A. I didn't see where it landed. I just saw it go over
16 the fence.

17 Q. Okay. And once you saw him toss that bag, what did
18 you do next?

19 A. I continued chasing him. We went around several
20 buildings. I attempted to deploy my TASER and it was
21 ineffective and he jumped over -- tried to jump over a
22 fence and I was able to get on top of the fence with him
23 and basically I just grabbed his lower body. We were
24 struggling on top of the fence for a little while until
25 backup arrived.

1 Q. Okay. Were you able to place him under arrest?

2 A. Yes.

3 Q. Did Deputy Owens assist you with that arrest?

4 A. He didn't assist me with the chase. He stayed with --
5 stayed with Wallace.

6 Q. Once you placed him under arrest, what did you do
7 next?

8 A. After I placed him under arrest, I went back to
9 retrieve -- I went back to the area where I saw him throw
10 the object. I observed, from what I recall, a black bag on
11 the ground that I recovered.

12 Q. And that was in the same area in which you saw him
13 toss the bag?

14 A. Yes.

15 Q. Did you secure that bag?

16 A. I did.

17 Q. Did you take any pictures of it at that time?

18 A. I did not. I don't believe so.

19 Q. What was inside that bag?

20 A. Inside of that bag was, from what I recall, two masks,
21 zip cuffs, like, I guess, zip ties, gloves and shirts.

22 Q. And did you recover any other bag?

23 A. There was another bag that was on top of the balcony
24 that me and Owens recovered later on.

25 Q. Y'all recovered that together?

1 A. Yes.

2 Q. And you said you recovered that later on. How later
3 on was that?

4 A. Within a few minutes. Well, not a few minutes. I'd
5 say like ten minutes or so.

6 Q. And what led you to believe there was another -- a
7 second bag?

8 A. Well, I brought that bag back and Deputy Owens
9 informed me that that wasn't the same bag he saw him with
10 on the traffic stop. He said that there's another bag
11 somewhere and I knew there was another bag on top of the
12 balcony.

13 Q. So you learned from Deputy Owens there was a second
14 bag?

15 A. Yes.

16 Q. And then you recovered that bag. What was inside of
17 that bag?

18 A. Inside of that bag there was a handgun, a pistol.

19 Q. And what did you do once you recovered that bag and
20 the pistol?

21 A. We basically secured the weapon and returned to our
22 vehicles.

23 Q. And you turned it over to investigators?

24 A. Yes, it was turned over to investigations.

25 Q. And at that point did that kind of conclude what your

1 role in this was?

2 A. Yes.

3 Q. Anything else you did?

4 A. No, just notifying the investigators and once they
5 responded just turned everything over to them at that
6 point.

7 Q. Did you at any point search the vehicle?

8 A. We, I guess, inventoried the vehicle. We did search
9 it and I inventoried it prior to it being towed to our
10 compound.

11 Q. Did you recover anything relevant inside the vehicle?

12 A. Not that I recall. Nothing else was located.

13 **MR. STEADMAN:** Thank you. No further questions.

14 **THE COURT:** Cross-examination?

15 **MS. ZMROCZEK:** Thank you.

16 CROSS-EXAMINATION (In-Camera)

17 BY MS. ZMROCZEK:

18 Q. Investigator Pennington, you stopped that car because
19 you saw Brandon Berry?

20 A. No, I did not know Brandon Berry was in the car.

21 Q. You did not know he was in the car?

22 A. Not until I made contact with the car and I got his
23 ID.

24 Q. You went to the academy?

25 A. Yes.

1 Q. Graduated?

2 A. Yes.

3 Q. Learned how to write reports?

4 A. Yes.

5 Q. Put everything that's important in your report?

6 A. Yes.

7 Q. Okay. You're a member of the team that parols the
8 streets?

9 A. Yes.

10 Q. When you turn your blue lights on, your cameras come
11 on?

12 A. Yes.

13 Q. Your body mic is on?

14 A. Yes.

15 Q. They were on at this time?

16 A. Yes.

17 Q. You provided the complete stop that's supposed to --
18 that camera is supposed to run from the time that you
19 initiate your blue lights until the time you drop someone
20 in the sally port or -- or get rid of the victim -- or
21 defendant, correct?

22 A. No, after the traffic stop or whatever I turned off
23 the camera.

24 Q. When did you turn that off?

25 A. I don't recall.

1 Q. Didn't you bring Mr. Berry back to your car after you
2 caught him?

3 A. I don't recall.

4 Q. You don't recall?

5 A. My car was down at the bottom. I mean, it was a while
6 before we brought him back up there.

7 Q. Okay. So whose car was he in? You don't remember?

8 A. I wouldn't have put him in my car because I had the
9 Challenger.

10 Q. Okay. You had the child in it?

11 A. The Challenger. It wasn't a caged unit.

12 Q. Okay. Who had the caged unit?

13 A. One of the other deputies on-scene, I imagine.

14 Q. Okay. So let's go back to this traffic stop. Where
15 were they coming out of on [REDACTED]

16 A. They weren't coming out of anywhere. They were on
17 Broad River Road.

18 Q. Okay. Were they on [REDACTED] or Broad River?

19 A. I observed him on Broad River take a left on
20 [REDACTED]

21 Q. You didn't see them leave McDonald's?

22 A. No.

23 Q. And when you stopped them, you told them that you saw
24 them put their seatbelts on in the street -- when they got
25 to the street?

1 A. Yes.

2 Q. You asked for their ID's?

3 A. I did.

4 Q. You went back to the vehicle?

5 A. Yes.

6 Q. Your vehicle?

7 A. Yes.

8 Q. And ran them and they both came back clear?

9 A. Yes.

10 Q. Meanwhile, your cell phone is steady ringing?

11 A. No, it wasn't my cell phone I don't believe. I think
12 it was the computer in my car making loud noises.

13 Q. So the computer wasn't ringing, it was just making
14 loud noises?

15 A. It was ringing? I don't --

16 Q. Deputy Owens was calling you, wasn't he?

17 A. No.

18 Q. Okay.

19 **MS. ZMROCZEK:** Your Honor, at this time I'd like to go
20 ahead and play the video for the Court, the entire video,
21 so I can continue down this line of questioning.

22 **THE COURT:** Video of?

23 **MS. ZMROCZEK:** His in-car stop.

24 **THE COURT:** Okay. I don't mind you playing the
25 relevant part. How long is the whole thing?

1 **MS. ZMROCZEK:** It's twenty-two minutes.

2 **THE COURT:** Okay. Fine.

3 **MS. ZMROCZEK:** But let me -- I'll ask a few more
4 questions and then we can play it at the end because
5 maybe --

6 **BY MS. ZMROCZEK:**

7 **Q.** Deputy Owens came -- got into your vehicle?

8 **A.** I don't think he got inside of my vehicle. He came
9 and talked to me. He was my backup officer.

10 **Q.** Okay. And you told him that you had Brandon Berry in
11 the car?

12 **A.** I said Brandon Berry's in the car.

13 **Q.** And all I have is seatbelt?

14 **A.** Yes.

15 **Q.** Go see if you can see or smell something?

16 **A.** Yes.

17 **Q.** Twice?

18 **A.** Once, from what I recall.

19 **Q.** Okay. You were trying to figure out a way to get into
20 that vehicle?

21 **A.** Yes.

22 **Q.** You're familiar with the Fourth Amendment?

23 **A.** Yes.

24 **Q.** Okay. You didn't see or smell any drugs?

25 **A.** Not initially.

1 Q. Are you saying that you did later?

2 A. No.

3 Q. Okay. But you never put that in your report, right?

4 A. Unh-unh.

5 Q. Where is it that you said you found the second bag?

6 A. It was on the same back area, like behind the
7 apartment, behind the fence. It was on top of a balcony.

8 Q. On top of a what?

9 A. A balcony.

10 Q. Okay. And you've read your report in this case,
11 right?

12 A. I did.

13 Q. And you included that detail in your report?

14 A. I don't know if it was to that detail.

15 Q. You would agree with me that details help establish
16 what happened that day?

17 A. I would agree with you.

18 Q. Okay. So it's your testimony that it was on a
19 balcony?

20 A. Yes.

21 Q. You estimated his speed got up to what in the
22 apartment complex?

23 A. I estimated he got up to maybe thirty-five or forty.

24 Q. You would agree with me that it was less than half a
25 mile that he travelled?

1 A. Yes.

2 Q. And you never lost sight of him?

3 A. No.

4 Q. And you only saw one bag?

5 A. I only saw him throw one bag. I saw him throw a -- I
6 don't even want to say it was a bag. I saw him throw
7 something, an object.

8 Q. One object?

9 A. I don't know how many. I just saw him throw
10 something.

11 Q. Okay. You would agree with me that the objects
12 weren't found --

13 A. I saw Brandon Berry throw go something.

14 Q. You saw him throw an object is what you testified to
15 several times?

16 A. Yes.

17 Q. Okay. How far away from your vehicle were you when
18 you apprehended him?

19 A. Estimation of three to four hundred yards probably.

20 Q. How far does your cameras and mic work?

21 A. Not far.

22 Q. Are you familiar with how far?

23 A. I don't know how far, no.

24 Q. Okay. At what point did you turn off your mic? Did
25 you come back to your vehicle?

1 A. I don't recall.

2 Q. You don't recall if you ever came back to your
3 vehicle?

4 A. I mean, I know I eventually came back to my car, but
5 I don't know when I actually turned my camera off.

6 Q. Okay. You would agree with me that the camera stops
7 as soon as you start chasing him?

8 A. I would agree that the audio stops when I start
9 chasing him.

10 Q. Okay. And then the camera just continues to roll?

11 A. Yes.

12 Q. Okay. But you were the one who turned it off
13 eventually?

14 A. Eventually.

15 Q. Okay. Do you recall standing -- you testified that
16 you had a discussion with Deputy Owens at the back of the
17 car?

18 A. Yes.

19 Q. You recall saying let's just pull the driver out and
20 scare him?

21 A. I didn't say scare him.

22 Q. Okay.

23 A. Maybe I said pull him out, but I didn't talk to him.

24 Q. You didn't say scare him?

25 A. No, I wouldn't say scare him, no.

1 Q. Okay.

2 MS. ZMROCZEK: Your Honor, those are all the questions
3 I have at this time; however, I would ask that we publish
4 the video to the Court at this time.

5 THE COURT: Go ahead.

6 MS. ZMROCZEK: Okay.

7 THE COURT: For purposes of this hearing, we'll call
8 this Court's Exhibit Number 3.

9 MS. ZMROCZEK: Thank you.

10 (Court's Exhibit Number 3, In-Car Video, was marked
11 for identification.)

12 (Whereupon, the in-car video was played for the
13 Court.)

14 MS. ZMROCZEK: Your Honor, if we may stop it for a
15 minute.

16 THE COURT: Wait just a minute.

17 MS. ZMROCZEK: The issue is, Your Honor, this is not
18 the correct -- this is not the video they turned over to
19 me.

20 THE COURT: Stop it a minute. What was that?

21 MS. ZMROCZEK: This is not the video that they turned
22 over to me, Your Honor.

23 MR. STEADMAN: Judge, I think what she's saying is
24 there -- there was some audio that you were able to hear.
25 For some reason, and I don't understand why, but we can't

1 hear exactly what he's saying. You are able to hear it on
2 the laptop when you play it on the laptop, but for some
3 reason you can't hear it on the television. We can try to
4 play it with a different player so maybe you can hear it.

5 **THE COURT:** So there's some audio at this point on the
6 video -- it's the same video, but there's some audio that
7 you can't hear on the --

8 **MR. STEADMAN:** It's really hard to hear, it's faint in
9 the background because the mic isn't turned up real loud,
10 but you can hear him -- the officer talking with the
11 Defendant and you can hear the Defendant talking and you
12 can also hear the driver talking.

13 **THE COURT:** But you can hear it on the computer if you
14 put it on a computer?

15 **MR. STEADMAN:** Yes, Your Honor.

16 **THE COURT:** All right. All right. I'll review that
17 then. Do you want to stop this at this point and I'll
18 review the computer video?

19 **MS. ZMROCZEK:** That's fine, Your Honor. And if I may
20 submit my video just to make sure that you can -- because I
21 can hear it just fine.

22 **THE COURT:** Ma'am?

23 **MS. ZMROCZEK:** I can hear it just fine. If I could
24 submit the video that I -- as long as I -- I just need to
25 listen to it on the computer before they give it to you to

1 make sure it's the same one that I have.

2 **THE COURT:** Well, I assume it's the same one. It's
3 the same one that's on the computer now, isn't it?

4 **MR. STEADMAN:** Yes, Your Honor. I've watched this one
5 before and on my computer it can play just fine.

6 **THE COURT:** Okay. All right. We'll get to that in a
7 few minutes.

8 All right. Any further questions of this witness?

9 **MS. ZMROCZEK:** No, Your Honor.

10 **THE COURT:** Redirect?

11 REDIRECT EXAMINATION (In-Camera)

12 BY MR. STEADMAN:

13 Q. Deputy Pennington, what is that ringing sound you hear
14 on the tape?

15 A. The ringing is my computer, my in-car computer.

16 Q. So it's not a cell phone?

17 A. No.

18 Q. And why does it ring?

19 A. If we call out on a traffic stop or if we run a person
20 or something like that, it will ring. It's just to notify
21 us that we have a message. So probably what it was, was
22 when I called out on the traffic stop that was dispatch
23 putting me out on the traffic stop and it was ringing in
24 the background.

25 Q. So it was basically messages from dispatch?

1 A. It wasn't a message. It was just -- it was just them
2 assigning me to a call on that traffic stop, so when it
3 does that it makes a ringing noise for some reason.

4 **MR. STEADMAN:** Thank you.

5 **MS. ZMROCZEK:** I have nothing further for this
6 witness, Your Honor.

7 **THE COURT:** All right. All right. Thank you, sir.
8 You may step down.

9 (Witness excused.)

10 **THE COURT:** All right. Any other witnesses on this
11 particular subject with regard to the Defendant's motion to
12 suppress the evidence of the vehicle? The home, we'll wait
13 until in the morning until we hear from the homeowner, but
14 with regard to the -- from the State with regard to the
15 vehicle?

16 **MR. STEADMAN:** No, Your Honor.

17 **THE COURT:** All right. I will review the video that
18 has the audio on it. But, again, Ms. Zmroczek, the defense
19 has the right to present any evidence or testify himself
20 regarding this matter if he wishes to do so.

21 **MS. ZMROCZEK:** It's my understanding, Your Honor,
22 that they said that Deputy Owens was also here today and
23 available, and if he is, I would like to call him.

24 **THE COURT:** All right. Is the deputy available?

25 **MR. STEADMAN:** Yes, Your Honor.

1 **THE COURT:** All right. Call him.

2 **MS. ZMROCZEK:** Thank you, Your Honor.

3 Your Honor, we call Deputy Owens.

4 HENRY OWENS,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Thank you. Please have a seat on the
7 witness stand and state your full name for the record.

8 **THE WITNESS:** Henry Owens.

9 DIRECT EXAMINATION (In-Camera)

10 BY MS. ZMROCZEK:

11 Q. Mr. Owens, with whom are you employed? With whom are
12 you employed?

13 A. Richland County Sheriff's Department.

14 Q. How long have you been with Richland County?

15 A. Ten years.

16 Q. What's your current job assignment?

17 A. Narcotics investigator.

18 Q. What was your job assignment in -- July 29, 2014?

19 A. Community Action Team.

20 Q. Do you recall the morning of July 29, 2014?

21 A. Yes, ma'am.

22 Q. How did you become involved in this case?

23 A. As the backup officer to Deputy Pennington.

24 Q. Describe your role as a backup officer.

25 A. Being an extra pair of eyes, watch his back, safety,

1 backup officer.

2 Q. How far were you -- how far behind him were you
3 backing him up?

4 A. How long did it take me to get to him?

5 Q. Yes.

6 A. I was just down the street. We were on [REDACTED]
7 Drive.

8 Q. Where had y'all been prior?

9 A. Ma'am?

10 Q. Where had y'all been prior.

11 A. On [REDACTED] I think I was down towards [REDACTED]
12 [REDACTED], which is probably, I don't know, two
13 hundred yards down the road.

14 Q. And where was Deputy Pennington?

15 A. I'm not sure. I was on that end of [REDACTED] and he
16 was checking apartments on the other end of [REDACTED]

17 Q. Okay. And at what point did you know that you needed
18 to go back him up?

19 A. He called out a -- dispatch called out a traffic stop
20 and we try to back up on all traffic stops if we're close
21 to it.

22 Q. At that point did you call him?

23 A. No, I just went to him.

24 Q. Okay. And so you didn't ring his computer?

25 A. Did I ring his computer?

1 Q. Uh-huh.

2 A. I don't know. I could have send him an MDT earlier.

3 Q. Okay. Do you recall when you got into his vehicle and
4 you said it rang twenty times?

5 A. Oh, that might have been either me -- we stay in close
6 contact because we're actually -- we're coworkers, we're
7 both responsible for that side of town, and if he's working
8 one side, I might send him a message or something or call
9 him or something like that and he'll call me back.

10 Q. So if you called twenty times -- if you said it rang
11 twenty times, that would be in reference to you calling him
12 twenty times, right?

13 A. I doubt I actually called him twenty times. I might
14 have been giving him a hard time.

15 Q. Okay. And I certainly -- but you were trying to make
16 contact with him?

17 A. Right.

18 Q. Okay. And what did you do once you got to his
19 location?

20 A. Walked up to him and checked with him at the vehicle.

21 Q. At that point, who did you learn was in the vehicle?

22 A. He informed me that Brandon Berry was a passenger in
23 the vehicle.

24 Q. Brandon Berry was someone y'all were looking for?

25 A. It's somebody we were very familiar with. I'd worked

1 Broad River Road for over eight years at this point in
2 time. We get to know a lot of people on Broad River Road.
3 I mean, I'm not sure how in-depth you want me to tell you
4 about Brandon Berry. That's up to you.

5 Q. I'll ask the question this way. Did you receive the
6 memo that said that he was involved in a bunch of
7 shootings?

8 A. I was actually involved with a lot of that
9 investigation. It was actually in the neighborhood right
10 across from where we were patrolling that day, but, yes, I
11 was -- had knowledge of all of that, him and several other
12 people, involved with those shootings that took place.

13 Q. Is that written down somewhere?

14 A. I believe there was arrests made from those shootings
15 at some point in time.

16 Q. Okay. But he was a suspect?

17 A. He was just involved. It was a large group. If you
18 want me to get into it -- you don't?

19 Q. That's fine.

20 A. Okay.

21 Q. As a result of the conversation that you had with
22 Officer Pennington, what did you do next?

23 A. Next is when I approached the passenger side of
24 Mr. Wallace's car and I spoke with Mr. Berry and
25 Mr. Wallace.

1 Q. What were you looking for?

2 A. I was reading body language. Like I said, I'm
3 familiar with Mr. Berry. I was also familiar with
4 Mr. Wallace. After I made contact with him, I recognized
5 him from a previous traffic stop. So at that point in time
6 from my training and my experience I just try to have
7 small-talk with them, read body language, you know, trying
8 to watch out for myself and my partner. Any clues that I
9 can pick up on is gonna help -- you know, might notify me
10 that something was going wrong, if something was unusual.

11 Q. Okay. And the previous traffic stop with Mr. Wallace,
12 he'd actually had to -- he'd written his insurance
13 information down on an envelope, hadn't he?

14 A. No, I think we were trying to call the insurance
15 company on a previous traffic stop. That was a couple of
16 months prior.

17 Q. And you knew he had insurance. He just didn't have
18 his card?

19 A. No, not necessarily because I don't know that we ever
20 confirmed it.

21 Q. Okay. But you would agree with me that if y'all were
22 talking about it on the video, that's --

23 A. We were talking about it. I never confirmed it. I
24 informed, I believe, during the traffic stop that he needs
25 to make sure he gets his paperwork to verify that he has

1 insurance. I'm not sure that we ever confirmed it on that
2 traffic stop because I believe there were some other issues
3 that came up about -- during that traffic stop that led to
4 different stuff.

5 Q. When did you locate the narcotics in the vehicle?

6 A. Which traffic stop?

7 Q. This -- I'm talking about July 29th.

8 A. Okay. On the July 29th, I saw what I believed to be
9 residue up in front of the gear stick; however, we never
10 really confirmed it due to all of the excitement with the
11 car fleeing from the scene.

12 Q. Did you ever do a report?

13 A. No, I did not do a follow-up to Pennington's report.

14 Q. In fact, did you ever find narcotics in the vehicle?

15 A. We never got to that with everything else that came
16 about.

17 Q. Okay. And when you were talking to Mr. Berry, you
18 were asking -- what kind of things were you asking him?

19 A. Just small-talk; how you doing, what you've been up
20 to, just trying to read body language just so I can tell
21 what his reactions are, whether he's being hostile or
22 whether he's being nice or --

23 Q. And he was compliant?

24 A. Yeah. He seemed to be a little frustrated at the
25 time.

1 Q. And where did you notice his child was?

2 A. She was in the back seat.

3 Q. What was she doing in the back seat?

4 A. Just sitting, moving around, whatever she wanted to
5 because she wasn't strapped in.

6 Q. Okay. And what did you do next?

7 A. I continued to talk to him. I think Deputy Pennington
8 approached back to the car, backed up, keeping view of the
9 vehicle. I talked with Deputy Pennington. He asked me
10 if anything was odd about the situation. I told him that
11 they appeared to be nervous. Mr. Berry had been talking a
12 lot. I told him there might be some residue in front of
13 his gear stick, I told him I saw some tweezers in the car,
14 and due to their body language, heavy breathing and the way
15 they were acting, I thought that there might be more to
16 that traffic stop than just the car seatbelt and child
17 restraints.

18 Q. And at some point tell -- at some point you went
19 around to the driver's side?

20 A. This is after we re-approached the vehicle. Deputy
21 Pennington had asked Mr. Wallace to step out of the vehicle
22 at that point. They had walked towards the back of the
23 vehicle; however, when he stepped out of the vehicle he
24 left the driver's side door open.

25 Q. And what did you notice next?

1 A. I was continuing to actually have a conversation with
2 Mr. Berry, some more small-talk. Mr. Berry kept fidgeting
3 in the back seat with his four-year-old daughter. He also
4 had a black bag that he kept fidgeting with, which I
5 observed him going into. I saw there were some baby items
6 in there while he was going into it. About that time
7 another vehicle was coming around and that's when I
8 back-stepped around the car and shut the drivers's side
9 door.

10 Q. And -- so you saw the black bag in the vehicle?

11 A. Yes, ma'am.

12 Q. And what happened next?

13 A. I backed around to go to the back side of the door,
14 then shut the door so that the vehicle could get back, the
15 oncoming traffic. When I was doing that, that's when
16 Mr. Berry hopped from the passenger seat into the driver's
17 seat and took off. At that point, I hollered back at
18 Deputy Pennington. I said go. You know, I walked back to
19 where Mr. Wallace was standing. Due to officer safety, I
20 detained Mr. Wallace. I could hear Deputy Pennington and
21 Mr. Berry as they were making their way to the back of the
22 complex with tires squealing until they got to the stopping
23 point.

24 Q. I'm sorry, you said you heard their tires squealing?

25 A. I heard them cutting the corners because it's like a

1 Z-turn almost in there. You could hear the tires turning
2 as they were turning through there. I monitored on the
3 radio with Mr. Wallace and I stayed with him while Deputy
4 Pennington pursued Mr. Berry.

5 Q. And when did you see Mr. Berry next?

6 A. The next time I saw him I believe was at
7 after he had been detained.

8 Q. Who detained him?

9 A. I wasn't there. He was already detained by the time I
10 got there. I can tell you who I know detained him, but --

11 Q. Yeah.

12 A. Okay. I believe it took three officers to detain
13 Mr. Berry.

14 Q. You recall do who else -- who else was there?

15 A. I think Deputy Pennington had stopped him on the fence
16 and then I believe that there was a Deputy Gilbert that was
17 in the area and a Corporal Tapler, I believe.

18 Q. Corporal who?

19 A. Tapler.

20 Q. Okay. And whose vehicle did Mr. Berry get detained
21 in?

22 A. I'm not sure because we had a long walk --

23 Q. I'm sorry?

24 A. It was about a two hundred yard run because he
25 actually ran to the apartment complex that I was at

1 previously before the traffic stop, but we had a long walk
2 back to the car.

3 Q. So he ran -- okay. He ran through --

4 A. He ran -- he parked in the back of [REDACTED]
5 apartment complex and he ran from that apartment complex
6 through the woods, which is a cut that goes from [REDACTED]
7 [REDACTED] and goes behind -- I think it's Lamplighter Drive.
8 There's a neighborhood, a subdivision, in between [REDACTED]
9 [REDACTED]. He ran behind that and then to
10 the back side of [REDACTED] and he actually
11 -- I think he ran around some buildings inside of [REDACTED]
12 [REDACTED] Apartments and they detained him along a fence line
13 at [REDACTED].

14 Q. Okay. And you don't know whose car he ended up in?

15 A. No, I have no idea.

16 Q. As a backup officer, you learned in the academy to
17 document what happened that day?

18 A. Do I go to the academy to learn how to document what
19 happens?

20 Q. When you go to the academy, you learn how to write
21 reports?

22 A. Right. They teach us how to write reports.

23 Q. Okay. And you just didn't write one on this day?

24 A. No, not as backup officer. What I had done at the
25 scene was all pretty much following Deputy Pennington's

1 lead.

2 MS. ZMROCZEK: Thank you. Please answer any questions
3 Mr. Steadman has.

4 THE COURT: Anything further?

5 MR. STEADMAN: No, Your Honor.

6 THE COURT: No cross-examination?

7 MR. STEADMAN: No, Your Honor.

8 THE COURT: Okay. All right. Thank you, sir. You
9 may step down.

10 (Witness excused.)

11 THE COURT: All right. Ms. Zmroczek, do you want to
12 -- any other testimony on this issue from the defense
13 standpoint?

14 MS. ZMROCZEK: No, Your Honor. We would just ask that
15 you reserve -- watch the video before we get to it.

16 THE COURT: I'll do so.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: All right. So the matters that we've been
19 considering, the motion to suppress the evidence received
20 out of the vehicle and the motion to suppress the evidence
21 received from the home, I'm gonna hold off on a ruling on
22 the home matter until we've heard from the witness
23 tomorrow. Also, until I've had a chance to review the
24 video on the computer, which I will do. So we'll move on
25 to the next matter. Do you have a motion to suppress the

1 video? That's what you said in the e-mail. What's that
2 about?

3 **MS. ZMROCZEK:** Yes, but it appears, Your Honor, that
4 I'm going to have to use it to impeach, so I would withdraw
5 that motion at this time.

6 **THE COURT:** All right.

7 **MS. ZMROCZEK:** I do have one more motion, Your Honor,
8 based on the testimony of Officer Pennington. Your Honor,
9 at this time we would move to -- in limine to prohibit,
10 unless and until Mr. Berry gets on the stand, any reference
11 to any gang activity. Also I've never been provided --
12 these officers testified that there's either some memo or
13 that Mr. Berry was a suspect in some other shootings. I've
14 never been provided any of that information. The first I
15 heard that was in your office this morning and now there's
16 been some -- some conflicting testimony as to what his
17 involvement was, so, Your Honor, at this time we would move
18 in limine to prohibit any mention of him being suspected in
19 any robberies or burglaries or shootings or whatever they
20 call them, as well as any gang activity, unless and until
21 he takes the stand.

22 **THE COURT:** Well, you're not -- is the State
23 contending any prior bad acts or anything of that nature?

24 **MS. CAMPBELL:** No, sir, unless she opens the door --

25 **THE COURT:** Right.

1 **MS. CAMPBELL:** -- then we would go into it. However,
2 we do not intend to go into it.

3 **THE COURT:** All right. Well, caution your witnesses
4 against that.

5 **MS. CAMPBELL:** We'll caution our witnesses, but if
6 she's going to -- depending on what she does in front of
7 the jury.

8 **THE COURT:** Sure. Depending on what the testimony is,
9 but caution your witnesses that it would be error that
10 could cause a mistrial if they refer to gang activities or
11 prior bad acts or evidence by this Defendant until either
12 he testifies or the door has been opened.

13 **MS. CAMPBELL:** Yes, sir. We did elicit it for
14 purposes of this hearing so you could understand why they
15 were doing what they did.

16 **THE COURT:** Okay. All right. And while we're -- so
17 that's where we stand on that, Ms. Zmroczek, but let me ask
18 you about this. You had a motion to exclude the firearm
19 testimony and a motion to exclude the footwear comparisons.
20 I assume that is challenging the evidence of the expert
21 testimony; is that correct?

22 **MS. ZMROCZEK:** Correct, Your Honor.

23 **THE COURT:** All right. Is that under State versus
24 Council and are you challenging the qualifications or the
25 testimony itself?

1 **MS. ZMROCZEK:** Well, to this point I've not been
2 provided any qualifications, so, one, I would ask that they
3 provide that information to me so that I could then address
4 that issue. I think that it could be probably done in a
5 very brief pre-trial -- I mean, a hearing -- in-camera
6 hearing. Sorry.

7 **THE COURT:** What's the status of the experts at this
8 point as far as attendance is concerned, Ms. Campbell?

9 **MS. CAMPBELL:** Your Honor, we can have them here in
10 the morning.

11 **THE COURT:** Okay.

12 **MS. ZMROCZEK:** It's gonna be a busy morning, Your
13 Honor.

14 **THE COURT:** Well, that's why I told the jury not
15 to come back until 11:00 so that we could take care of
16 everything. Let's have them here in the morning and we'll
17 find out if you challenge -- under State versus Council
18 whether or not you're challenging the testimony or the
19 qualifications or both and then, if necessary, we'll have
20 an in-camera hearing to determine that.

21 **MS. CAMPBELL:** And that's just to the firearm and the
22 footwear?

23 **MS. ZMROCZEK:** And the DNA.

24 **THE COURT:** Oh, and the DNA? I thought --

25 **MS. ZMROCZEK:** They told me that he would be here in

1 the morning as well to testify, but he couldn't be here
2 today.

3 **MS. CAMPBELL:** I told him he could be available if she
4 needed him, but then you ruled on that matter so I didn't
5 think it was necessary.

6 **THE COURT:** Yeah, and I thought that -- well, I ruled
7 on the question of her motion to suppress the DNA evidence
8 based on Brady and Rule 5. I didn't rule on it with regard
9 to the expert.

10 **MS. CAMPBELL:** We'll have him here, too.

11 **THE COURT:** Okay. So we'll have to -- we're gonna
12 have to decided on all the -- you've got three separate
13 expert witnesses; one for the DNA, one for the firearm and
14 one for the footwear comparisons. And be sure to keep the
15 testimony succinct to the issues under Brady and State
16 versus Council.

17 All right. So it seems -- and y'all tell me if
18 there's anything else. The things that we need to be ready
19 -- to prepare to address in the morning are the vehicle,
20 the items seized as a result of the vehicle stop, and
21 that's dependent upon my viewing the video, the items
22 seized as a result of the home search; and that, in your
23 view, Counsel, is dependent upon the homeowner's testimony?

24 **MS. ZMROCZEK:** That's correct, Your Honor.

25 **THE COURT:** Okay. And then the other three matters

1 all have to do with qualifications of or the content of the
2 experts' testimony on firearm, footwear and DNA.

3 **MS. ZMROCZEK:** That's correct.

4 **THE COURT:** And anything else that you know of?

5 **MS. ZMROCZEK:** Not that -- no, Your Honor. I did
6 provide them with a witness list. They're familiar with
7 all of the witnesses. Maybe they're not familiar with
8 Ms. Destiny Katio, who's the sister of the homeowner, and
9 I will provide them a date of birth if they need to run a
10 rap sheet. I have not to this point been provided any
11 information regarding -- under Lyle for any of their
12 witnesses. I would just ask if they had any rap sheets or
13 -- they would just provide me that they have clear rap
14 sheets.

15 **THE COURT:** Will you take care of that, Ms. Campbell?

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** Okay. All right. Anything else that we
18 need to address this afternoon?

19 **MS. CAMPBELL:** Your Honor, one other matter. Before
20 she puts up the -- Ms. Katio tomorrow on the one issue,
21 our victim witness person was present when I talked to her
22 last week. She's in the courtroom. Does she need to be
23 sequestered for her testimony? She's here in an official
24 capacity.

25 **THE COURT:** What's your position?

1 **MS. ZMROCZEK:** Well, Your Honor, they -- here's my
2 problem; is that Ms. Walker was the one who relayed that
3 information to me, it wasn't written down, it wasn't in an
4 e-mail, and I wasn't told that anyone else was present at
5 the time. I would request just for that that -- I know
6 that they have several victim advocates upstairs. That
7 just for the duration of Ms. Katio's testimony regarding
8 this issue tomorrow, and what the victim advocate heard or
9 didn't hear, that she just be sequestered for that portion
10 and that's it.

11 **THE COURT:** Okay. We'll take care of that.

12 **MS. CAMPBELL:** That's fine.

13 **THE COURT:** All right. The other thing is I would
14 like for you to both to be in a position to give me some
15 authority on the standing question in the morning.

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** As far as the -- as far as the home is
18 concerned and it seems like to me also maybe you've got
19 that same question on the vehicle. The vehicle is not
20 owned by the Defendant; is that right?

21 **MS. ZMROCZEK:** It's my -- and, Your Honor, it's my
22 understanding -- and I'll have Mr. Wallace here tomorrow.

23 **MS. CAMPBELL:** At this point nothing was found in the
24 vehicle.

25 **THE COURT:** Ma'am?

1 **MS. CAMPBELL:** Nothing was found in the vehicle.

2 **THE COURT:** I was gonna say nothing was found in the
3 vehicle, so there's really nothing --

4 **MS. ZMROCZEK:** Right, right.

5 **THE COURT:** So there's no search issue there. The two
6 things that were found there were over the fence --

7 **MS. CAMPBELL:** Over the fence and on the balcony.

8 **THE COURT:** Okay. All right. We've got a jury coming
9 in at 11:00. Let's try to be ready to convene at 9:30 in
10 the morning and get those taken care of in that hour and a
11 half before the jury gets here. I don't want to keep -- I
12 don't want to keep the jury waiting any longer than we
13 absolutely have to. I try to make it a point never to keep
14 juries waiting in that little room back there, so we'll try
15 to do that as best we can.

16 Anything else before we adjourn for the afternoon?
17 All right. We'll be in recess until 9:30 tomorrow morning.

18 (Whereupon, the proceedings were concluded for
19 November 30, 2015, at 4:21 PM.)

20 (The following proceedings were held on December 1,
21 2015, beginning at 9:43 AM.)

22 **BAILIFF:** All rise. Court come to order, please.

23 **THE COURT:** Thank you. Please be seated.

24 (State's Exhibit Number 3 through 126 were marked for
25 identification.)

1 **THE COURT:** All right. We are back on the record with
2 regard to the matter of the State versus Brandon Berry.
3 Mr. Berry is present with his counsel. The State is
4 present and represented by the Fifth Circuit Solicitor's
5 Office. This morning the object, until 11:00 when the jury
6 comes in, is to clear up the remainder of the matters that
7 we had not finished yesterday afternoon and the first one
8 that I have is with regard to the motion to suppress the
9 evidence in reference to the vehicle and the home.

10 I don't remember -- were there other witnesses that
11 were going to be presented in that connection? I believe
12 there was or did you wish to eliminate that?

13 **MS. ZMROCZEK:** There was and they are here, Your
14 Honor. They are here to testify.

15 **THE COURT:** All right. Proceed.

16 **MS. ZMROCZEK:** Thank you. Your Honor, at this time
17 we would call Lourisa Katio. Are they calling her? Have
18 they rested? I'm not sure, so -- I apologize.

19 **THE COURT:** I thought that you had already
20 presented --

21 **MS. ZMROCZEK:** Yes. It's Lourisa Katio. And, Your
22 Honor, I'm a one-man show, so I have to go out and get my
23 own witnesses. I apologize.

24 **THE COURT:** Okay.

25 LOURISA KATIO,

1 having been duly sworn, testified as follows:

2 **THE CLERK:** Thank you. Please have a seat on the
3 witness stand and state your full name for the record.

4 **THE WITNESS:** Lourisa Katio.

5 DIRECT EXAMINATION (In-Camera)

6 BY MS. ZMROCZEK:

7 Q. Good morning, Ms. Katio.

8 A. Good morning.

9 Q. Have we spoken before?

10 A. Yes.

11 Q. When did we first speak?

12 A. Saturday.

13 Q. Okay. And how are you involved in this case?

14 A. I'm the baby's mother.

15 Q. Okay. So you're the mother of [REDACTED]

16 A. Yes.

17 Q. Okay. And do you recall Tuesday, July 29th?

18 A. Somewhat, yes, ma'am.

19 Q. Okay. Were you -- how were you brought to the --
20 were you ever brought to where -- the location where your
21 daughter was?

22 A. Yes.

23 Q. How did you get there?

24 A. I was at work that morning and I received a phone call
25 saying that my daughter and Brandon was with the police.

1 Q. Okay. How long did it take you to get down there?

2 A. Like twenty minutes.

3 Q. Who did you ride with?

4 A. Myself.

5 Q. And who did you see when you got there?

6 A. Just the police officers at first.

7 Q. Do you recognize any of the police officers that you
8 saw?

9 A. Yes.

10 Q. Who do you recognize?

11 A. (Indicating.)

12 Q. This gentleman sitting right here?

13 A. Yes.

14 **MS. ZMROCZEK:** For the record, Your Honor, she's
15 pointing to Investigator --

16 **THE COURT:** All right. The record will so reflect.

17 **MS. ZMROCZEK:** The name just left my mind.

18 **INVESTIGATOR CARWELL:** Carwell.

19 **MS. ZMROCZEK:** Carwell. Thank you.

20 BY MS. ZMROCZEK:

21 Q. Did you speak to Investigator Carwell?

22 A. Yes.

23 Q. What did you tell him?

24 A. When I first got there, I told him -- he was like,
25 you know, is this your child? I said yes, it's my child,

1 and he was letting me know that they were in a serious
2 situation, and then I said okay. I tried to get my
3 daughter and when I tried to get my daughter, he was like
4 that he would call -- he would have to get DSS involved if
5 I couldn't provide a place -- you know, a safe place for
6 her.

7 Q. So then what did you say?

8 A. So when he said that, I said so I can't get my
9 daughter? Then my sister came and my stepfather met me
10 down there at the site and I was like so I can't get my
11 daughter without DSS, and he said no.

12 Q. Did you eventually -- so he said you can't get your
13 daughter without DSS?

14 A. Uh-huh.

15 Q. Did that change?

16 A. Yes. Because he asked me where did I live, I said
17 [REDACTED] He said is Brandon's stuff there, I said yes,
18 and then he said well, if I can prove that it's a safe
19 place, I'll -- you know, I can let the baby go. He said --
20 I said sure, you know, there's nothing here, and that's
21 what I said, there's nothing here. And so we went to the
22 house and that's when my sister, my step-daddy -- actually
23 my step-daddy was talking to him, too. It was my sister,
24 my step-daddy and me. Me and my sister rode together, my
25 step-daddy rode in different car, and him and another guy

1 rode together.

2 Q. And where was your daughter at that point?

3 A. At that point he said that she could ride with us.

4 Q. So once you gave them permission to check out your
5 house --

6 A. Uh-huh.

7 Q. -- then they gave your daughter back?

8 A. To -- yeah, once -- yeah, we got there and --

9 Q. Let me talk to you a little bit about Brandon. They
10 asked if his stuff was there?

11 A. Uh-huh.

12 Q. Did he live there?

13 A. On occasion. Just like I told them, sometimes.

14 Q. Okay. Sometimes. More than half the year or not?

15 A. Yeah. If we were in a relationship, yes, ma'am.

16 Q. And at that time y'all were in a relationship?

17 A. In and out, yeah.

18 Q. Did he have a key?

19 A. Sometimes, yeah.

20 Q. Did he have a key -- did he spend the night that
21 night?

22 A. Yes.

23 Q. Okay. And he had stuff -- his personal items in your
24 house?

25 A. Yes.

1 Q. Okay. How many times that month did he spend the
2 night?

3 A. Probably he may -- he was there more than he wasn't
4 there.

5 Q. Okay. That's fine. Have I told you how to answer
6 these questions?

7 A. No. You said tell the truth.

8 Q. All right. When you got to the location, when you got
9 back to your house --

10 A. Uh-huh.

11 Q. -- then what happened?

12 A. Then that's when like me, my sister and my grandmother
13 and -- and my step-dad was there. My grandmother met us
14 there because she was on the lease. I discussed that me
15 and my grandmother was on the lease --

16 Q. Okay.

17 A. -- so my grandmother met us there. I did tell
18 Mr. Carwell that my grandmother did not live there.

19 Q. Okay.

20 A. And then he asked -- he even told my grandmother, he
21 said I'm just -- because she said may I ask why you're
22 here. He said I'm just making sure this is a safe place
23 for [REDACTED] I'm just looking for another weapon.

24 Q. Just looking for another weapon, just making sure it's
25 a safe place?

1 A. For [REDACTED] right.

2 Q. Did you want to let them search?

3 A. I was willing to, yes, ma'am.

4 Q. Okay. Were you willing to if they were gonna call

5 DSS?

6 A. Yes, I was willing to do anything to get my child

7 back.

8 Q. Okay. That's my question.

9 A. Anything to --

10 Q. You were willing to do anything to get your child

11 back?

12 A. Yes.

13 **THE COURT:** All right. It's your witness.

14 **MS. ZMROCZEK:** Okay.

15 **BY MS. ZMROCZEK:**

16 Q. Okay. How long did they search?

17 A. Maybe fifteen, twenty minutes. Not that long.

18 Q. Okay. Did they find any weapons?

19 A. No.

20 Q. Where did they look?

21 A. On top of the refrigerator, in my room, in the living

22 room, on the balcony.

23 Q. And they -- they were in your room?

24 A. Uh-huh.

25 Q. Whose stuff was in that room?

1 A. Half of Brandon's -- a little bit of Brandon's stuff
2 was in that room, but mainly Brandon's stuff was in the
3 living room.

4 Q. Okay. When he stayed there, where did he stay?

5 A. He would sleep with me sometimes.

6 Q. In your room?

7 A. Uh-huh.

8 Q. And the night before had he done that?

9 A. Yes.

10 Q. Okay.

11 **MS. ZMROCZEK:** Those are all the questions I have at
12 this time for this matter.

13 **THE COURT:** Cross-examination?

14 **CROSS-EXAMINATION (In-Camera)**

15 **BY MS. WALKER:**

16 Q. Good morning.

17 A. Good morning.

18 Q. My name's Meghan. I'm sorry. You and I haven't met
19 before?

20 A. No, ma'am.

21 Q. When was the last time you spoke to Brandon?

22 A. Around our child support date. It was around -- it
23 maybe was a month ago.

24 Q. So you've spoke to him sometime in early November and
25 you haven't spoken to him since then?

1 A. Yeah, and I let him know -- and I also just let him
2 know that they placed child support on him.

3 Q. And that was in early November?

4 A. Yeah, this month.

5 Q. Uh-huh. Okay.

6 A. Not December, but November. Sorry.

7 Q. I understand. I think you said on direct examination
8 that he spent the night with you that night?

9 A. Uh-huh.

10 Q. Do you remember giving a statement to law enforcement?

11 A. Yes.

12 Q. Okay. Do you remember telling law enforcement that
13 he did not spend the night there and that he showed up
14 sometime in the early morning hours around 5:00 in the
15 morning?

16 A. Yes, but we was trying to -- I thought that was she
17 asking -- because if he was out, then he couldn't have -- I
18 guess -- can I explain what I was saying?

19 **THE COURT:** Yes, ma'am. She asked you a question.
20 You've got to answer her question and it's got to be
21 responsive to the question. Ask your question again.

22 **BY MS. WALKER:**

23 Q. Do you remember telling law enforcement that he got to
24 your house around 5:00 in the morning?

25 A. Yes, I did tell law enforcement, but Brandon had left

1 like, I'd say, at nine, ten. I did let Mr. Carwell know
2 that I did not know exactly what time because I was asleep.

3 Q. You didn't know exactly what time he left or what --

4 A. He got back. I just told you what time he came --
5 like, left, nine or ten, but I didn't know exactly, like,
6 precise what time he got in.

7 Q. But do you remember saying it was 5 AM?

8 A. Yes, but when he asked me that question -- when he
9 asked me what time -- about what time, I did say 5 AM, 6:00
10 to make sure that he was there to get my child before I
11 left for work.

12 Q. Okay. And on the -- you got a phone call saying you
13 need to come get your child?

14 A. Uh-huh.

15 Q. There's been an accident or there's an issue?

16 A. Uh-huh.

17 Q. Okay. Who called you?

18 A. Kayla.

19 Q. Who's Kayla?

20 A. Maybe his girlfriend, baby momma.

21 Q. This is another woman?

22 A. Uh-huh.

23 Q. Okay. Calls you, you need to come get your child?

24 A. (Nods head.)

25 Q. At that point in time, were you aware that your child

1 had been in a dangerous situation? Once you got there.

2 A. I found out for detail once I got there, but she --
3 she told me to come and get my child.

4 Q. And at that point did you realize that the child had
5 been in a police pursuit, unbuckled in the back seat of a
6 car?

7 A. No.

8 Q. Did you learn that while you were on the scene?

9 A. Yes.

10 Q. Okay. Did you learn that there had been a gun in the
11 back seat with the child in a diaper bag?

12 A. When I got to the scene, yeah.

13 Q. And at that point in time law enforcement told you
14 that they needed to make sure that the child is going to a
15 protective home from this environment?

16 A. Correct.

17 Q. And that they wanted to make sure that wherever the
18 child was going was going to be a safe place?

19 A. Yes.

20 Q. And, if not, that they would have to call DSS?

21 A. He didn't say if not because I asked can I get my baby
22 back.

23 Q. Right.

24 A. But I'm assuming that, yeah, that's maybe why he said
25 that, but he did not say that. He said DSS first.

1 Q. I'm sorry. I don't understand what you're saying.

2 A. He said -- he said where do you stay. I said

3 [REDACTED] He said -- and then I said can I get my baby
4 back. He said I have to call DSS. I may have to call DSS.

5 Q. He said I may have to call DSS?

6 A. Uh-huh.

7 Q. And then he asked you where you lived?

8 A. Yes, and was Brandon's stuff there, and then that's
9 when he went off and said that I needed to make sure that
10 this is a safe place, can I come, sure.

11 Q. And you told him he could?

12 A. Yes.

13 Q. And you signed consent?

14 A. I did sign, yes.

15 Q. Okay.

16 A. I signed.

17 Q. And in your statement, do you remember talking to them
18 about giving consent in the statement you gave police?

19 A. Yes, I told them I'd do anything to get my baby back.
20 That's basically it.

21 Q. And you didn't have anything to hide at that point?

22 A. No.

23 Q. And in terms of where Brandon lived, was his name on
24 the lease?

25 A. No.

1 Q. When law enforcement asked you who lived at the house,
2 who did you tell them lived at the house?

3 A. Me and [REDACTED] and my grandmother is on the lease.

4 Q. But you didn't mention Brandon living at the house
5 because he didn't live there?

6 A. No. I mean, he's not --

7 Q. He would on occasion --

8 **THE COURT:** Wait a minute. One at a time. Don't talk
9 over each other.

10 **MS. WALKER:** I'm sorry, Your Honor.

11 **THE COURT:** Go ahead and ask the question.

12 BY MS. WALKER:

13 Q. He would on occasion spend the night?

14 A. Yes.

15 Q. But his name wasn't on the lease?

16 A. (Shakes head.)

17 Q. Whose name was on the lease?

18 A. Mine and my grandmother's.

19 Q. Okay. Do you remember meeting recently with people
20 who work in my office, Ms. Campbell and some other people?

21 A. Yes, ma'am, I do.

22 Q. Okay. And do you remember telling them that you had
23 no problem giving consent to search your apartment?

24 A. Yes, I had no problem.

25 **MS. WALKER:** Thank you. I don't have any further

1 questions.

2 **THE COURT:** Before I call on her for redirect, let me
3 get in the exhibits and the consent form over there.

4 **MS. ZMROCZEK:** Do you have the statement as well, Your
5 Honor?

6 **THE COURT:** The statement has not been offered. Oh,
7 you're talking about the statement -- yes, I have in the
8 statement. Do you want it?

9 **MS. ZMROCZEK:** Yes. May I borrow that?

10 **THE COURT:** Court's Exhibit Number 2. (Handing.)

11 **MS. ZMROCZEK:** Thank you.

12 Do you want me to proceed or did you want to keep
13 reading?

14 **THE COURT:** Go ahead.

15 **MS. ZMROCZEK:** Okay. I just didn't want to interrupt
16 you, Your Honor.

17 **THE COURT:** Redirect?

18 **MS. ZMROCZEK:** All right. Thank you.

19 REDIRECT EXAMINATION (In-Camera)

20 BY MS. ZMROCZEK:

21 Q. Ms. Katio, I'm showing you Court's Exhibit Number 2.
22 Do you recognize that statement?

23 A. Uh-huh.

24 Q. And -- I'm sorry to tell you because I know you
25 haven't testified in court before, you have to say "yes" or

1 "no" --

2 A. Yes.

3 Q. -- just so the court reporter can take it down.

4 A. Yes, ma'am.

5 Q. Okay. And you don't have to call me "ma'am". Don't

6 worry about that. You -- is that -- that statement written

7 in your handwriting?

8 A. No, this is not written in my handwriting.

9 Q. Who wrote that statement?

10 A. Mr. Carwell.

11 Q. And then you signed it?

12 A. Yes, I did sign it.

13 Q. Okay. I'm just gonna ask you a couple of follow-up

14 questions to what she asked -- about what Ms. Walker asked

15 you about. So he was at -- he, Brandon, was at your house

16 until nine or 10:00 on Monday?

17 A. Yes.

18 Q. Had he spent the night Sunday night?

19 A. Well, he was -- Sunday night?

20 Q. Uh-huh. The night before.

21 A. The day -- yes, we went to church. Yes, ma'am, we

22 did.

23 Q. Okay. Did he have friends stay there sometimes?

24 A. Occasionally. Not -- not -- rarely.

25 Q. Not regularly?

1 A. Yeah, not regularly.

2 Q. But sometimes?

3 A. Sometimes.

4 Q. Did he entertain? Did he have people over?

5 A. Sometimes, not --

6 Q. Are you friends with some of his friends?

7 A. Sometimes.

8 Q. All right. Y'all were in a tumultuous relationship,
9 right? I know that --

10 **THE COURT:** Your witness, ma'am.

11 **MS. ZMROCZEK:** Thank you. Let me ask it this way.

12 BY MS. ZMROCZEK:

13 Q. What kind of relationship did you have with him?

14 A. Very off and on. For the last year like it hasn't
15 been really at all.

16 Q. Okay. Off and on?

17 A. Yeah.

18 Q. Okay. When he was there, when he was at your house,
19 did he have the ability to tell people that they couldn't
20 come over or that they had to leave?

21 A. Yes.

22 Q. Okay. How long did you know him?

23 A. For a total of five years today.

24 Q. And you said y'all went to church that Sunday?

25 A. Yeah, uh-huh. He would always go to church with me.

1 Q. Did you eat meals together?

2 A. Yes, ma'am.

3 Q. Okay. I know these sound like silly questions, but I
4 have to ask them. And I just -- when Ms. Walker was asking
5 you about if you signed all these consent forms and let the
6 police in your house, I want to make sure I heard your
7 answer correctly. Was your answer "I would do anything to
8 get my baby back"?

9 THE COURT: Now I heard the testimony. I'm not gonna
10 let her -- I'm not gonna let you lead her into repeating
11 it.

12 MS. ZMROCZEK: Okay. Let me ask the question this
13 way.

14 BY MS. ZMROCZEK:

15 Q. Why did you sign the consent form?

16 A. To get my baby back.

17 MS. ZMROCZEK: Okay. Thank you. I have no further
18 questions, Your Honor.

19 THE COURT: Recross?

20 MS. WALKER: No, Your Honor.

21 THE COURT: All right. Let me have that statement,
22 please.

23 (Witness excused.)

24 THE COURT: All right. Anything further, Counsel, on
25 this issue?

1 **MS. ZMROCZEK:** I have one more witness, Your Honor.

2 **THE COURT:** All right. Call the witness.

3 **MS. ZMROCZEK:** Destiny Katio. And, again, I'm sorry
4 for leaving.

5 DESTINY KATIO,

6 having been duly sworn, testified as follows:

7 **THE CLERK:** Thank you. Please have a seat on the
8 witness stand and state your full name for the record.

9 **THE WITNESS:** Destiny Katio.

10 DIRECT EXAMINATION (In-Camera)

11 BY MS. ZMROCZEK:

12 Q. Ms. Katio, what relationship do you have with Brandon
13 Berry?

14 A. He's my niece's father.

15 Q. How well do you know him?

16 A. I knew --

17 Q. I'm gonna just pull the mic down a little bit. You
18 have a soft voice.

19 A. I knew him the entire time him and my sister were in a
20 relationship.

21 Q. The entire time they were in a relationship?

22 A. Yes.

23 Q. And had you known him to -- where did your sister live
24 at the time?

25 A. Off of [REDACTED] on [REDACTED], I believe.

1 Q. Okay. Have you ever lived there?

2 A. I moved in after.

3 Q. After what?

4 A. After Brandon went to jail.

5 Q. Okay. After Brandon went to jail. What do you know

6 -- what, if anything, do you know about who stayed there

7 before Brandon went to jail?

8 A. He stayed there like off and on sometimes depending on

9 the relationship.

10 Q. What, if any, personal items did he keep there?

11 A. Besides --

12 Q. If you don't know, you don't know.

13 A. I don't know.

14 Q. Okay. That's fine. Do you know whether or not he had

15 a key to the house?

16 A. I'm not sure.

17 Q. Okay. How long had they been in a relationship?

18 A. For about like four years, I think. Four or

19 five years.

20 Q. Do you know whether or not he helped pay the bills?

21 A. When he could.

22 Q. When he could? Okay. How did you become involved in

23 this case?

24 A. Well, my sister had called my mother and she was

25 upset, so me and my step-dad went over to the apartments

1 where it had took place and we were just there to basically
2 be with my sister and see what was going on and to make
3 sure that [REDACTED] was okay.

4 Q. And she was upset?

5 A. Yes.

6 Q. And -- how well do you know your sister?

7 A. I know her very well.

8 Q. Okay. Were you able to tell her state of mind when
9 you got there?

10 A. She was very frantic because the only thing -- she was
11 just worried about her child. She was very frantic.

12 Q. What was your understanding about how the police got
13 to the apartment that day? Her apartment.

14 A. From my understanding, she was told -- well, I was
15 there and so she was told that if she wasn't gonna let them
16 search the apartment, then DSS would get involved and
17 everything.

18 Q. And you were there?

19 A. Yes, ma'am.

20 Q. And who said that?

21 A. The police.

22 Q. The police?

23 A. Yes.

24 Q. Do you know which police it was? Did he have a
25 uniform on that day?

1 A. Yes, ma'am.

2 Q. Okay. Do you recognize any of the police sitting over
3 at this table?

4 A. No.

5 Q. Okay. So you don't know who it was, but he had a
6 uniform on?

7 A. I don't remember exactly.

8 Q. Do you remember what color hair he had? I can assure
9 it wasn't either one of them.

10 **MS. WALKER:** Objection, Your Honor.

11 **THE COURT:** Sustained.

12 **MS. ZMROCZEK:** Okay. I'll ask the question
13 differently.

14 BY MS. ZMROCZEK:

15 Q. Do you have any independent recollection of what he
16 looked like?

17 A. I don't know.

18 Q. He had a uniform on?

19 A. Yes, ma'am.

20 Q. Okay. The person that said this to you had a uniform
21 on?

22 A. Yes, ma'am.

23 Q. Okay. Was it -- how many police officers were there?

24 A. There were a lot because during this time it was just
25 a lot -- like a lot of police there.

1 Q. Okay. Do you remember how many police cars?

2 A. Not exactly. I remember like Brandon was in one and
3 then Nick was in one and then the people that came over
4 to search the house weren't in police cars, they were in
5 trucks.

6 Q. They were in what?

7 A. Trucks. I remember that.

8 Q. Did they have uniforms on?

9 A. I'm not sure. I don't really remember.

10 Q. Okay. Were you in the house or were you waiting
11 outside?

12 A. I went -- I went in the house.

13 Q. Okay.

14 MS. ZMROCZEK: Thank you. Please answer any questions
15 the State may have.

16 THE COURT: Cross-examination?

17 MS. WALKER: Thank you, Your Honor.

18 CROSS-EXAMINATION (In-Camera)

19 BY MS. WALKER:

20 Q. Good morning.

21 A. Good morning.

22 Q. Hi, my name's Meghan. I'm one the prosecutors in this
23 case. I just have a few quick questions for you.

24 A. (Nods head.)

25 Q. There was a man in a uniform that you saw tell your

1 sister if you don't let me search the house, then I'm gonna
2 have to call DSS?

3 A. Yes, I'm gonna -- I don't remember if he had on a
4 uniform or not. I really don't. I'm not --

5 Q. There was a police officer?

6 A. Yes, ma'am.

7 Q. Okay. Who said iff you don't let us search the house,
8 we're gonna have to call DSS?

9 A. Yes, ma'am.

10 Q. Okay. And you said that your sister was upset when
11 you spoke to her?

12 A. On the phone before I got there she was upset and she
13 was upset when -- you know, but she kind of calmed down
14 once we got there, to the place.

15 Q. Okay. And your sister at that point in time could
16 have been upset for a number of reasons, right?

17 A. No, I think she was upset because she got a call that
18 something had happened and her child was involved.

19 Q. Okay. And she was concerned for her child's safety?

20 A. Yes, ma'am. Yes. Well, not concerned --

21 Q. I'm sorry. Go ahead. I'm not trying to cut you off.
22 Say whatever you need to say.

23 A. Not exactly for the safety, but she wanted to know
24 what was going on because she didn't really get a clear
25 understanding of exactly what was going on from the phone

1 call. That's why I said she calmed down once she got
2 there.

3 Q. Okay. Do you know who called your sister?

4 A. I'm not sure.

5 Q. Okay.

6 A. I know she called my mom.

7 Q. That your sister called your mom?

8 A. Yes, ma'am.

9 **MS. WALKER:** I beg the Court's indulgence, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 BY MS. WALKER:

12 Q. Did you know at that point in time that your sister
13 and Brandon were in the process of breaking up?

14 A. Yes, I knew they were going through some things.

15 Q. I'm sorry, I can't hear you.

16 A. I said yes, I knew they were going through some
17 things.

18 Q. Okay. And did you know -- or did you ever learn that
19 the person that called your sister was Brandon's other
20 girlfriend?

21 A. I had -- no, I didn't know that, but I knew about that
22 situation.

23 Q. Okay.

24 **MS. WALKER:** I don't have any other questions.

25 **THE COURT:** Recross -- I mean, redirect?

1 **MS. ZMROCZEK:** Briefly, Your Honor.

2 REDIRECT EXAMINATION (In-Camera)

3 BY MS. ZMROCZEK:

4 Q. Ms. Walker asked you if you knew they were in the
5 process of breaking up, your sister and Brandon?

6 A. Yes.

7 Q. What, if anything, do you know about the Sunday before
8 this incident? Do you know if they were together or if
9 they weren't together? If you know.

10 A. The Sunday, I do know they were together because he
11 had came to church.

12 Q. Because he had --

13 A. Came to church.

14 Q. Okay. Do you know whether or not he was there the
15 night before this happened?

16 A. I'm pretty sure he was.

17 **MS. WALKER:** I'm sorry. I can't hear.

18 **THE WITNESS:** I said I'm pretty sure he was.

19 BY MS. ZMROCZEK:

20 Q. Thank you. And then she asked you about her -- your
21 sister being upset and you said it was -- what did you say
22 it was focussed around?

23 A. It was focussed around the child, her child. Like
24 when she called my mom, she just kept saying I have to go
25 get my baby. Like it was all about [REDACTED] That's why

1 we came, too.

2 **MS. ZMROCZEK:** Thank you.

3 **THE COURT:** Ms. Walker?

4 **RECROSS EXAMINATION (In-Camera)**

5 **BY MS. WALKER:**

6 Q. You said that you -- how do you know where Brandon was
7 the night before, I guess, on Sunday?

8 A. I said I'm pretty sure he was. I don't know about
9 that night. I know that he went to church with us.

10 Q. Okay. So you don't know where he was that night?

11 A. No.

12 **MS. WALKER:** Thank you. I don't have anything else.

13 **THE COURT:** All right. Thank you. You may step down.

14 (Witness excused.)

15 **MS. ZMROCZEK:** And I know these witnesses have things
16 to do today, Your Honor. May they be excused?

17 **THE COURT:** Are you gonna need them for anything else
18 today, Ms. Luck -- Ms. Campbell?

19 **MS. CAMPBELL:** I'm sorry. I was talking to
20 Ms. Walker.

21 **THE COURT:** She wanted to see if the witnesses could
22 be excused for the day.

23 **MS. ZMROCZEK:** Just for today.

24 **MS. CAMPBELL:** Oh, yes.

25 **THE COURT:** I don't know who's got them under subpoena

1 or what the situation is.

2 **MS. CAMPBELL:** This isn't my witness. She can be
3 excused.

4 **MS. ZMROCZEK:** Okay. Thank you.

5 **THE COURT:** Okay. All right.

6 **MS. CAMPBELL:** And as far as the last witness as well.

7 **MS. ZMROCZEK:** Your Honor, we would ask that she just
8 remain under our subpoena. We're not excusing her.

9 **THE COURT:** All right. She's still under subpoena,
10 but subject to being called. So if you get called, you've
11 got to come back.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** All right. Any other witnesses on this
14 issue, Ms. Zmroczek?

15 **MS. ZMROCZEK:** No other witnesses, Your Honor. I do
16 have that case if I can hand it up.

17 **THE COURT:** We'll get to that in just a minute.

18 **MS. ZMROCZEK:** Okay.

19 **THE COURT:** All right. So anything in reply to
20 the witnesses presented by the defense on the motion to
21 suppress the warrantless search of the house, Ms. Campbell?

22 **MS. CAMPBELL:** No, sir.

23 **THE COURT:** Okay. All right. So, first of all, give
24 me just a little bit of background, then I'm gonna ask
25 for y'all to give me some arguments on why you think the

1 evidence received from the house from was admissible, but,
2 first off, what evidence was actually seized from the home
3 that you intend to use in the trial, Ms. Campbell?

4 **MS. CAMPBELL:** Your Honor, the evidence received from
5 the home was some of the clothing of the Defendant's,
6 specifically there was a pair of jeans and some shoes, as
7 well as, I believe, a red polo shirt. Those were all
8 seized from the house. DNA testing was on done on those.
9 The jeans and shoes came back positive for blood; the blood
10 came back matching the victim in the case. This was the
11 same clothing that was identified by Ms. Katio in her
12 statement as belonging to Brandon and the clothing also --
13 ownership came back to him as well.

14 **THE COURT:** All right. I'll hear from you,
15 Ms. Campbell, with regard to the reasons you think the
16 search was lawful. Yeah, go ahead.

17 **MS. CAMPBELL:** Your Honor, in reviewing the case law
18 and everything, I haven't had a chance to see the case
19 she just handed up, but even if you assume that he has
20 standing, the testimony is that he -- there was no
21 testimony that he had a key at the time, there was no
22 testimony that he was on the lease, there was no testimony
23 that he stayed there on a regular basis, just that he
24 stayed there sometimes. The testimony as by the witness
25 himself -- herself is that he got in -- she now clarified

1 to say sometime after she went to sleep. In her statement
2 she said it was around 5 AM that morning at best. He had
3 been there for a short amount of time prior to all of these
4 events occurring involving the child.

5 In addition, Your Honor, she freely admitted that it
6 was her grandmother's name and her name on the lease and
7 when she asked who lived there the only thing she mentioned
8 were her baby and herself actually lived in the apartment.
9 Even assuming that the Defendant had standing to -- the
10 cases that I have, Your Honor, State versus Flowers and
11 State versus L-A-U-X, I can't pronounce it, the homeowner
12 herself would have the right to give permission. Even
13 though the defense has tried to twist it into the -- it was
14 DSS or not, by the witness's own testimony until she was
15 lead right there at the end that he mentioned that they
16 needed to make sure that it was a safe place, Your Honor,
17 which is something I hope the police would do before they
18 would leave a child back at the home and maybe exposing the
19 child to guns. And at that point she said -- the testimony
20 was that they said they may have to call DSS. This is her
21 own testimony which contradicts what Investigator Carwell
22 testified to, which I'll get back to in a minute, but even
23 if she had perceived that in her mind, her testimony was
24 she had nothing to hide and she was more than happy for
25 them to search her area. She was the primary homeowner,

1 Your Honor, she was the one that actually had the right
2 according to the case law to give permission and that she
3 gave that permission freely and voluntarily, and she
4 testified to that.

5 In addition, Your Honor, her testimony does contradict
6 some of Investigator Carwell's and her sister said that she
7 heard a policeman, she thought he was in uniform and she
8 changed back, she contradicted herself, when she looked
9 around perhaps in the courtroom, and said that she heard
10 this. The victim -- the witness in the case, the
11 homeowner, is the Defendant's girlfriend, the mother of --
12 they share a child in common. She mentioned that she's
13 been in touch with him over the course of his -- he was
14 incarcerated a period of time, then out and back
15 incarcerated, Your Honor; that her last contact with him
16 was maybe a month ago and we haven't had an opportunity to
17 check to see, in fact, if she had any calls more recently
18 than that, which we can.

19 But regardless, Your Honor, I mean, even if she had --
20 even in her testimony taken in entirety, she said that she
21 freely and voluntarily told the police they could come in
22 because she had nothing to hide, that she gave permission,
23 which when she was asked, that was the same information she
24 gave us last week as well.

25 Additionally, Your Honor, Investigator Carwell never

1 said he threatened her with DSS or anything of that nature.
2 Was DSS mentioned at the scene? No doubt, Your Honor,
3 because the police have a duty to ensure the safety of the
4 child before it's returned to an environment that may cause
5 it harm. And, in addition, Your Honor, they make sure that
6 the person that gets the child back is the proper person.
7 It's somewhat ironic that they're trying to use the fact
8 that the police were doing their job against them in saying
9 that it was oh, this big threat. And how she perceived
10 that is one thing, Your Honor, but as far as what the
11 testimony was, even by her own testimony there was never a
12 "if you don't give me permission to go in your house, I
13 will turn your child over to DSS". Her testimony does not
14 support that contention.

15 **THE COURT:** Okay. And you have some authority on the
16 question of the standing of -- of this Defendant to --

17 **MS. CAMPBELL:** I've got, Your Honor, four cases that
18 I would hand up. I'm handing up McKnight, Flowers, State
19 versus Laux, L-A-U-X, and State versus Herring --

20 **THE COURT:** All right.

21 **MS. CAMPBELL:** -- which address the standing issues
22 and, more importantly, the right of the actual homeowner to
23 give permission to search.

24 **THE COURT:** Okay. All right, Ms. Zmroczek.

25 **MS. ZMROCZEK:** Thank you, Your Honor. I'm handing up,

1 and I've already given the State a copy, State versus
2 Robinson, a Supreme Court case -- a Supreme Court case,
3 Your Honor, from this state.

4 Your Honor, in this case it lists several factors that
5 they consider in determining whether a criminal defendant
6 has standing. They, in fact, list them, Your Honor.
7 Whether the defendant owned the residence or had property
8 rights in it. We know that he was not on the lease, we
9 know that he did not own it. Whether he was an overnight
10 guest at the home. We know that he was an overnight guest
11 at the home. The testimony was off and on and he had been
12 there that Sunday, had clothes there, and had been there at
13 some point before she woke up. It seems to be a play on
14 words with the overnight, Your Honor. We're not trying to
15 accuse or blame. We're just trying to make sure that the
16 Fourth Amendment is being followed. Whether he had a key.
17 Sometimes he had a key, sometimes he didn't. Whether he
18 had dominion and control over the home and could exclude
19 others. My question to her was he had the right when he
20 was there to tell people not to come in or, you know, to
21 leave, and her answer was "yes". How long had he known the
22 owner. They had known each other for five years and had a
23 child in common for at least two years. Whether he
24 attempted to keep his activities in home private. I don't
25 know whether or not there was testimony on that, but

1 clearly his belongings -- she said he stayed in her room,
2 he had his stuff in her room, his property in her room.
3 Whether he -- her testimony was that he kept some of it in
4 another room, too. Whether he engaged in typical domestic
5 activities at the home or treated it as a commercial
6 establishment. Your Honor, there was testimony that they
7 ate meals together, they even went to church together.
8 Clearly --

9 **THE COURT:** Let me ask you this question. Let's
10 assume everything you're saying is true and -- let's assume
11 that you're saying that everything is true and take this
12 hypothetical. If the police are investigating me and they
13 go to my house where I live every day of the year and that
14 house is in my wife's name, she can't consent to search?

15 **MS. ZMROCZEK:** Absolutely she can.

16 **THE COURT:** Okay. Well, what's the difference?

17 **MS. ZMROCZEK:** The difference, Your Honor, is the
18 child. Her testimony --

19 **THE COURT:** Well, that's not what you -- that's not
20 what you were arguing. You were arguing dominion and
21 control and all those sorts of things. Now you're
22 contending that the consent was not voluntarily given.

23 **MS. ZMROCZEK:** Your Honor, I've never argued dominion
24 and control. Yesterday you told me that I had to provide
25 -- the State raised the standing issue.

1 **THE COURT:** Well, I misunderstood your argument
2 because you were discussing about how he had the right to
3 tell people to leave and he had the right to invite guests
4 and he had -- you know, I thought that was the dominion and
5 control argument you were making.

6 **MS. ZMROCZEK:** That's why I was asking the questions
7 because yesterday I was told that -- or the State indicated
8 yesterday he didn't have standing, so that's why I
9 addressed the standing issue.

10 **THE COURT:** What is your position exactly? That she
11 did not voluntarily give consent?

12 **MS. ZMROCZEK:** That's exactly my --

13 **THE COURT:** Okay. It's not the dominion and control
14 issue at all. It's her voluntariness to give consent --

15 **MS. ZMROCZEK:** Absolutely.

16 **THE COURT:** -- in the face of her statement and in the
17 face of the written statement she gave you're saying that
18 she felt compelled to give consent because the police told
19 her that if she didn't give consent that they were gonna
20 take the child or call DSS?

21 **MS. ZMROCZEK:** Your Honor, yes. And it was her
22 testimony, and I did not lead her in this testimony. She
23 said this on cross, "I would do anything to get my baby
24 back", and that's, Your Honor, our --

25 **THE COURT:** She said that wasn't -- after some other

1 statements, yeah, but -- but let me ask you this. So -- so
2 what you're saying is that the consent was not voluntarily
3 given?

4 MS. ZMROCZEK: Right.

5 THE COURT: All right.

6 MS. ZMROCZEK: And that's always been my position,
7 but yesterday I was told that the State raised a standing
8 issue, that I didn't have standing to raise that issue,
9 and I believe that we do have standing to raise the issue
10 and I think that we've met that he had standing because I
11 think that -- you know, he qualified as someone who had a
12 property interest or a right to privacy interest in that
13 property. And the first question --

14 THE COURT: Again, that's a different issue. That's
15 not whether -- we're talking about apples and oranges
16 here. There's a question of whether he had a right to
17 privacy, whether -- you know, the question of whether or
18 not he had the right to Fourth Amendment protections is one
19 question. The second -- the primary question, it seems
20 like to me, the one that you're relying on, is not so much
21 that he had a right to rely on the Fourth Amendment
22 protections, but the fact that she did not -- that she was
23 compelled or intimidated into giving consent. Those are
24 two different issues.

25 MS. ZMROCZEK: Right, right. And that's the issue I'm

1 focussing on, Your Honor.

2 **THE COURT:** Okay.

3 **MS. ZMROCZEK:** The first -- I can't remember if I
4 asked her the question or if Ms. Walker asked the question,
5 what was the first thing that the police spoke to her -- or
6 you know, that she remembered, and the first question --

7 **THE COURT:** So the issue then becomes one of
8 credibility as to whether the police were talking to her
9 about DSS from the standpoint of ensuring the safety of the
10 child as opposed to the reasons for wanting to search the
11 house.

12 **MS. ZMROCZEK:** Correct. And her first question --
13 and I believe I asked the question, "What was the first
14 thing Investigator Carwell said to you?" Or what's the
15 first thing you remember, "Does Brandon Berry live there or
16 does Brandon Berry have stuff at -- is his stuff at your
17 house?" That was the first question and that was her
18 testimony. I didn't lead her, I didn't --

19 **THE COURT:** But isn't his testimony that he did not
20 -- and she said this, or one of them said this, that his
21 purpose in asking her about where she lived and who lived
22 there and all that sort of stuff was to ensure the safety
23 of the child?

24 **MS. ZMROCZEK:** Exactly, and that's exactly what she
25 testified to, Your Honor, and that's where credibility

1 comes in because yesterday I said -- this is what I recall.

2 **THE COURT:** But what she was trying to do was convince
3 the police that the house was safe and that the child could
4 be taken back there without calling DSS. It had nothing to
5 do with whether or not they could come in and search the
6 house and see what they could find of the Defendant's
7 there.

8 **MS. ZMROCZEK:** Right. Right, Your Honor, but my
9 concern is this. That the first question that they asked
10 her was, "Is Brandon Berry's stuff there?", and yesterday
11 all Investigator Carwell -- all he had to do was say -- all
12 he had to do was say we were just going to go see if the
13 house was safe. What his testimony was, Your Honor, was
14 that she walked up and said "Come on in", and that's just
15 not what happened, Your Honor.

16 **THE COURT:** Well, it's not what you remember as the
17 testimony, but -- and my thinking on it is that we've got
18 two different issues here. We've got the issue as to
19 whether or not he had the right to prohibit the search of
20 the house, the warrantless search of the house, or she had
21 the right to give permission when she did or -- because she
22 was the -- on the lease, it was her house, and the question
23 is whether her will was overcome by intimidation that she
24 was gonna lose her child if she didn't let them search.
25 That's the issue we're talking about.

1 **MS. ZMROCZEK:** Correct. Correct.

2 **THE COURT:** Okay.

3 **MS. ZMROCZEK:** Thank you, Your Honor. I'm sorry I
4 wasn't more clear on that, but, yes, coercion has always
5 been the issue with this.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** And the only reason I went into that
8 whole standing issue is because it was raised.

9 **THE COURT:** I got you. All right. I'll read these
10 cases and before we break for the day, I will give you my
11 ruling on that.

12 All right. Now with regard -- let's talk about --
13 are there any other issues with regard to the search -- no
14 other issues -- or are there any other issues with regard
15 to the search of the vehicle? I don't think there was
16 anything found in the vehicle, but there were items found
17 allegedly that the Defendant put one of them -- put one on
18 the porch and one over the fence.

19 **MS. ZMROCZEK:** Right. And if that's the testimony
20 that they're sticking with, Your Honor, then obviously we
21 don't have a search issue with the car.

22 **THE COURT:** So there's nothing that came of the
23 vehicle. Okay.

24 **MS. ZMROCZEK:** We would, I think -- there was
25 testimony that they searched the car. It's never been

1 certain whether or not there were drugs found. Your
2 Honor, I would -- I will take issue with that one if that
3 information is presented to the jury. They never presented
4 any drugs, they never found any drugs, never smelled any
5 drugs. They saw some tweezers and they claimed that they
6 saw -- they thought they saw seeds or something either by
7 the drive stick or in the console, I don't know, but they
8 got consent to search, it was never found, and I think --

9 **THE COURT:** Ms. Campbell, there's no issues on
10 anything y'all found in the car, is there?

11 **MS. CAMPBELL:** No. No, sir.

12 **THE COURT:** All right. The next thing I've got on my
13 list is a motion to suppress the video of the vehicle.

14 **MS. ZMROCZEK:** We withdrew that yesterday.

15 **THE COURT:** Okay. Now we've got -- we're down to
16 actually three issues with regard to potential experts in
17 this case. One is firearms testimony, one is footwear
18 comparisons, and one is DNA. In chambers, Ms. Campbell,
19 you discussed -- or brought to my attention the fact that
20 your DNA expert is not available today and we expect him to
21 be available in the morning, but you -- but you don't want
22 to start the trial without an understanding -- you don't
23 want the jury sworn without an understanding that he is
24 qualified and that his testimony is -- the proper subject
25 would be DNA expert testimony; is that right?

1 **MS. CAMPBELL:** That's correct, Your Honor.

2 **THE COURT:** Okay. And I believe you said,
3 Ms. Zmroczek, that you have no objections to the
4 qualifications of the DNA expert or his testing and his
5 findings; that his testimony might go to the weight, but
6 would not go to the admissibility?

7 **MS. ZMROCZEK:** Right.

8 **THE COURT:** All right. With that understanding,
9 you're comfortable in going forward with the jury tomorrow?

10 **MS. CAMPBELL:** Yes, sir.

11 **THE COURT:** Okay. So we don't need to worry about
12 the DNA expert today. What about your motion to exclude
13 the firearm testimony? What's your position on that,
14 Ms. Zmroczek?

15 **MS. ZMROCZEK:** Well, Your Honor, again, I've not been
16 provided, and I've asked repeatedly --

17 **MS. CAMPBELL:** It's right there.

18 **MS. ZMROCZEK:** Never mind. I've been handed now the
19 qualifications. If I may go over this.

20 **THE COURT:** Okay. Go ahead.

21 **MS. ZMROCZEK:** Thank you. Okay. Your Honor, given
22 this, I believe it will have the same issue; that it will
23 go to the -- I mean, this is all I needed. It will go to
24 the weight of the person --

25 **THE COURT:** Okay. So you don't challenge his

1 qualifications --

2 MS. ZMROCZEK: Right.

3 THE COURT: -- nor that the testimony is the proper
4 subject of DNA -- I mean, or firearms -- I guess firearm
5 testimony as it's talking about ballistics. Is that what
6 it is, ballistics testimony?

7 MS. ZMROCZEK: Correct.

8 MS. CAMPBELL: Yes, Your Honor. Tool mark.

9 THE COURT: So you don't question the testimony or
10 the qualifications under State versus Council, we agree to
11 that. And, of course, if you want you have a right to
12 cross-examine him on his findings and anything that goes to
13 the weight, but not the admissibility.

14 MS. ZMROCZEK: Right.

15 THE COURT: That resolves the firearms expert. Is he
16 a SLED agent?

17 MS. CAMPBELL: No, Your Honor. She's with the
18 Richland County Sheriff's Department, but she's had
19 extensive training.

20 THE COURT: Okay. All right. What about the footwear
21 comparison?

22 MS. CAMPBELL: I've got his CV, Your Honor. I don't
23 have a copy of it. I'd just ask that I'd be able to make
24 her a copy of it.

25 THE COURT: Okay.

1 **MS. ZMROCZEK:** Okay. I have no problem with the crime
2 scene and shoe impression and fingerprint guy -- or latent
3 print person.

4 **THE COURT:** All right. So you have no problems
5 with --

6 **MS. ZMROCZEK:** My argument will -- yes. I mean, my
7 challenge will be the same. It will always go to the
8 weight versus the credibility.

9 **THE COURT:** All right. So under State versus Council,
10 there's no admissibility questions on footwear comparisons?

11 **MS. ZMROCZEK:** Correct.

12 **THE COURT:** Okay.

13 **MS. ZMROCZEK:** And, Your Honor, I believe they listed
14 investigator -- or Crime Scene Investigator Holt, H-O-L-T.
15 If they do not intend to call him, Your Honor, we will be
16 calling him, so I need to know if they don't intend to call
17 him.

18 **THE COURT:** Well, if you're concerned about that --
19 she doesn't have to make that decision now. You know how
20 to prepare a subpoena, so that's up to you. She doesn't
21 have to have your witnesses here for you.

22 **MS. ZMROCZEK:** But he was listed as a witness. I just
23 want him to be here.

24 **THE COURT:** Well, that's true. She also has control
25 over it and she can cut him loose at any time she wants to.

1 **MS. ZMROCZEK:** Exactly. We'll get him subpoenaed
2 today. Thank you, Your Honor.

3 **THE COURT:** Okay.

4 **MS. CAMPBELL:** Your Honor, finally, I just need to
5 make sure so this doesn't come up later, there is a -- his
6 primary treating physician may be testifying and I wanted
7 to make sure that she's good with him. He's a doctor.

8 **THE COURT:** Who is that, a physician?

9 **MR. STEADMAN:** Dr. Thomas Jones, Your Honor.

10 **MS. CAMPBELL:** She's got the medical records.

11 **THE COURT:** All right. So his expert testimony will
12 be to what end?

13 **MR. STEADMAN:** The severity of his injury to his right
14 leg.

15 **THE COURT:** I'm sorry?

16 **MR. STEADMAN:** The severity of the injury to his right
17 leg.

18 **THE COURT:** Of the victim?

19 **MR. STEADMAN:** The victim, yes.

20 **THE COURT:** Okay. All right. Again, are there
21 questions regarding the qualifications or the subject of
22 the expert testimony of the physician?

23 **MS. ZMROCZEK:** None, Your Honor. I don't believe --
24 was he listed yesterday? And if he wasn't, we'd just make
25 sure none of the jurors were treated by him or know him.

1 He was not listed as a witness yesterday.

2 **THE COURT:** What's his name?

3 **MR. STEADMAN:** Dr. Thomas Jones, Your Honor.

4 **THE COURT:** Thomas Jones. He is listed as a witness.

5 **MS. ZMROCZEK:** Okay. I just wanted to make sure. It
6 usually says doctor in front of it, so --

7 **THE COURT:** Yes, it does. Dr. Thomas Jones.

8 **MS. ZMROCZEK:** Okay. Perfect. I just don't recall
9 that yesterday, Your Honor.

10 **THE COURT:** So there's no problem with his
11 qualifications?

12 **MS. ZMROCZEK:** None whatsoever.

13 **THE COURT:** Or the subject of his testimony?

14 **MS. ZMROCZEK:** No, sir.

15 **THE COURT:** All right. The next thing I have on the
16 list was a motion to exclude photos.

17 **MS. CAMPBELL:** Your Honor, we were gonna meet this
18 morning with defense counsel. We've got the photos here.
19 Maybe when you're reviewing the case law we can review the
20 photos.

21 **THE COURT:** All right. Perhaps y'all can go ahead and
22 do that.

23 All right. I'm going down now to the last thing
24 that was on your e-mail that was sent that I received
25 yesterday morning, not the last thing either, but the

1 chain of custody. We talked a little bit about this
2 yesterday. You said there may be some chain of custody
3 issues on what piece of evidence?

4 **MS. ZMROCZEK:** No, Your Honor, we withdraw that at
5 this time.

6 **THE COURT:** All right. Withdrawn.

7 No Jackson versus Denno issues and motion to sequester
8 is taken care of.

9 **MS. ZMROCZEK:** (Nods head.)

10 **THE COURT:** All right. So it looks like that the only
11 -- the only outstanding issue that's not been ruled upon is
12 the search of the house.

13 **MS. ZMROCZEK:** That's correct.

14 **THE COURT:** Does everybody agree?

15 **MS. ZMROCZEK:** Yes, Your Honor.

16 **THE COURT:** All right. Counsel, what I'd like to do
17 in order to -- the jury's due back at eleven. I'll go
18 down and -- if I'm not ready to rule on this, I'll start
19 reviewing these cases and things and I'll come back at
20 11:00 and bring the jury in and explain to them that we've
21 run into a bit of a hitch that's nobody's fault and turn
22 them loose for rest of the day and bring them back tomorrow
23 morning and then I will go back in chambers and finish up
24 reviewing the testimony and the law that has been submitted
25 on this motion to suppress.

1 In the meantime, y'all look at the pictures and see
2 if you can agree on that and let's plan to be back in the
3 courtroom though at 11:00 because that's when the jury is
4 supposed to be back and I want to come up and at least
5 explain to them what's going on, okay?

6 **MS. ZMROCZEK:** Thank you, Your Honor.

7 **THE COURT:** Thank you. We'll be in recess until
8 11:00.

9 (Recess taken.)

10 **BAILIFF:** Come to order, please.

11 **THE COURT:** Thank you. Please be seated.

12 **BAILIFF:** Make sure your electronics are cut off.

13 **THE COURT:** All right. Back on the record with
14 regard to the matter of the State versus Brandon Berry.
15 Mr. Berry is present with his counsel, the State is present
16 represented by the Fifth Circuit Solicitor's Office. I've
17 been advised that all fourteen members of the jury are
18 present and that the jury has selected Juror Number 168,
19 Janice Lewis, as the foreperson of this jury. And they
20 gave me a note that -- where they all signed the election,
21 the eleven principal jurors and, of course, the person
22 chosen as foreperson. Since they did it by writing and
23 signed it, I didn't tell them to do that, but they did it,
24 I will receive the note from the jury and I'll make it
25 Court's Exhibit Number 4.

1 (Court's Exhibit Number 4, Jury Note, was marked for
2 identification.)

3 In addition to that, Counsel, we have a note from
4 Juror Number 231 who says, "I have a concern with the
5 potential length of time this trial may take. I'm
6 contractually obligated to speak -- I guess she means in --
7 she says to speaking three different cities beginning
8 Sunday, December the 6th. I speak on critical mental
9 health needs in the school. Any guidance will be
10 appreciated. Thank you." And it's signed by Ms. Randall,
11 who is Juror 231.

12 First of all, I don't know whether that means it's
13 just on Sunday or whether it's gonna run into next week,
14 and we might have to inquire and find out about that, but
15 in view of the developments as far as witnesses are
16 concerned, the stipulations regarding the experts, do you
17 think that there's any chance of going into next week,
18 Ms. Campbell?

19 **MS. CAMPBELL:** I think -- since I would anticipate
20 our witnesses to go up very quickly, this is not a real
21 convoluted case, but maybe defense counsel -- it depends
22 on cross-examination. Even if we were to have go over the
23 weekend, I assumed we would work the weekend and there are
24 alternates available so that that shouldn't be a problem,
25 Your Honor, if, in fact, she does have something she needs

1 to do.

2 **THE COURT:** My intention would be to inquire of her --
3 and you tell me, Ms. Zmroczek, if you agree -- inquire of
4 her whether that is just a Sunday obligation or if it's an
5 obligation that would run into next week, and if she tells
6 me it could run into next week, that I can assure her that
7 we will not prevent her from making that obligation because
8 we would have alternates available. Any objection to that,
9 Ms. Zmroczek?

10 **MS. ZMROCZEK:** None whatsoever, Your Honor.

11 **THE COURT:** All right. Ask Ms. -- Juror Number 231,
12 Ms. Randall, to come in, please. And I'm going to make
13 this note as Court's Exhibit Number 5.

14 (Court's Exhibit Number 5, Juror Number 231 Note, was
15 marked for identification.)

16 (Whereupon, Juror Number 231 enters the courtroom.)

17 **THE COURT:** You can stand right there. I just wanted
18 to ask you some questions, Ms. Randall. I have your note
19 that you have some concern about the length of the trial;
20 that you are obligated to speak in three different cities.
21 I assume that means away from Columbia somewhere; is that
22 correct?

23 **JUROR:** Yes. Yes, it's actually a two-week swing that
24 starts in Charlotte and then goes to Omaha and then --
25 actually I can't remember because I'm on the road a lot,

1 but I have my schedule in my purse.

2 **THE COURT:** All right. So it -- it would run -- you
3 said it begins Sunday at six, so it would run --

4 **JUROR:** That's when I fly out. Yes, sir.

5 **THE COURT:** Okay. All right. What we're gonna ask
6 you to do is continue to serve and stay with us,
7 Ms. Randall. I think that we could finish this case this
8 week, and if we do, that will be the end of it, but if we
9 don't I will assure you that I will not prevent you from
10 making your speaking -- your contractual obligations.

11 **JUROR:** Perfect. That's actually what I wanted, so.

12 **THE COURT:** Okay. Thank you.

13 **JUROR:** Thank you so much.

14 **THE COURT:** Thank you.

15 (Whereupon, Juror Number 231 returns to the jury
16 room.)

17 **THE COURT:** All right. Counsel, I need a little more
18 time in connection with reviewing these cases. I'm not
19 quite ready to rule on the search of the home question.
20 I'm going to go back downstairs and do that in a minute,
21 but I'm going to turn -- bring the jury in and turn them
22 loose. But before I do that, let's talk about the
23 photographs. Have y'all got that resolved?

24 **MS. ZMROCZEK:** I'm sorry, what?

25 **THE COURT:** The photographs.

1 **MS. ZMROCZEK:** Oh, yes, sir. I mean, I have no
2 objection. I believe that some of them are duplicative,
3 she knows that, and I think she's gonna pull some of them
4 out, Your Honor, so I have no objection.

5 **THE COURT:** So you don't have any motions to exclude?

6 **MS. ZMROCZEK:** No.

7 **THE COURT:** Okay. As far as possible, Counsel, I
8 would ask that when we break here and before the court
9 reporter leaves to mark as many exhibits as possible. If
10 they're agreed upon, they can just be marked and nothing
11 further will be needed to authenticate them. If there's
12 any objection to them, have the court reporter put an ID
13 sticker on them and we'll take that up as they're offered,
14 but anything that can be agreed upon, you can go ahead and
15 give it a number and it's in evidence without further
16 authentication to save us some time.

17 **MS. CAMPBELL:** Yes, sir.

18 **THE COURT:** So if y'all could take care of that before
19 we go to lunch.

20 All right. Is there anything before we bring the jury
21 in and send them home until tomorrow morning?

22 **MS. CAMPBELL:** No, sir.

23 **MS. ZMROCZEK:** Not to my knowledge.

24 **THE COURT:** All right. Bring the jury in, please.

25 **BAILIFF:** Yes, Your Honor.

1 (Whereupon, the jury returns to the courtroom at
2 11:08 AM.)

3 **THE COURT:** You can go ahead and be seated.

4 **BAILIFF:** Jury's seated, Your Honor.

5 **THE COURT:** All right. Good morning, ladies and
6 gentlemen, and thank you for your promptness in being
7 back here. I told you yesterday that I had hoped that we
8 would have all of the administrative matters taken care
9 of so that we could start the testimony in this case this
10 morning, but it's worked out that that's not gonna be
11 possible. That's nobody's fault. We've still got -- there
12 are some things that we have to deal with, there are a lot
13 of issues in this case that the Court has to address, and
14 so we want to go ahead and take care of those. I'm trying
15 to not waste your time, but this is necessary, and so I am
16 going to -- I hate to have to have brought you back here
17 this morning, but I think it was the appropriate thing to
18 do, but I am going to excuse you for the rest of the day
19 and tell you that for sure we will start this matter in the
20 morning at 9:30.

21 So I will ask you to please be back in your jury room
22 tomorrow morning at 9:30. I think everybody is in their
23 proper positions. I do see, Ms. Lewis, that you have been
24 selected as the foreperson of this jury and you will always
25 occupy the seat where you are seated. The two alternates

1 will always sit at the back where they're seated. And, as
2 I told you, the rest of the seats of the jury box are not
3 reserved and it does not matter what order you come and go
4 from the courtroom. Simply go all the way down so it
5 wouldn't be a situation of crawling over one another.

6 I apologize for bringing you back here unnecessarily,
7 but it turns out that we've got some more matters that
8 we've got to discuss and I don't want to waste your time by
9 keeping you in the jury room while we're clearing up these
10 matters.

11 Again, I would tell you that over this recess and
12 until tomorrow morning, please do not discuss the case with
13 anyone. When you see your family or friends, don't discuss
14 it with them. I know, again, you don't know anything about
15 the case, but it would be improper for you to discuss it
16 with anyone because you've got to decide the case based
17 upon what you hear in this courtroom and not on the basis
18 of what anyone else may say. Do not discuss it among
19 yourselves when you're reassembling in the jury room and
20 do not allow anyone to discuss it with you. If anyone
21 should approach you or try to discuss it with you, get
22 their name, their description and report it to the
23 bailiffs, and I will deal with them.

24 And, finally, do not read any news stories and listen
25 to any media broadcast about this matter. Again, you've

1 got to decide the case based upon what you hear in the
2 courtroom and not what you might hear from any further
3 source. Again, I'm sorry for the inconvenience of bringing
4 you back today, but it was absolutely necessary, and so you
5 are free for the remainder of the day. And I do appreciate
6 your promptness in being back here at 11:00 and I want to
7 ask you to be back promptly tomorrow morning at 9:30 and we
8 will be ready to go forward.

9 Thank you. Have a pleasant day. Maybe you can get
10 some of your Christmas shopping done.

11 (Whereupon, the jury was excused for the day at
12 11:12 AM.)

13 **THE COURT:** All right. Counsel, I'm gonna need about
14 another forty-five minutes to read over -- finish reading
15 over these cases and to make my determination with regard
16 to the motion to suppress the search of the home. I think
17 that's the only outstanding issue at this time, so we'll be
18 at ease until 12:00. If y'all will reassemble in the
19 courtroom at 12:00, I will be prepared to rule on the
20 issues at this time. Thank you. We'll see you then.

21 **MS. WALKER:** Thank you, Judge.

22 (Recess taken.)

23 **BAILIFF:** Come to order, please.

24 **THE COURT:** Thank you. You may be seated.

25 All right. We're back on the record with regard to

1 the matter of the State versus Brandon Berry. Mr. Berry
2 is present in the courtroom with his counsel. The State
3 is represented by the Fifth Circuit Solicitor's Office.

4 The only thing to be resolved, I believe, in pre-trial
5 is a determination on the Defendant's motion to quash the
6 evidence obtained as a result of the warrantless search
7 of the apartment. First of all, the Defendant does not
8 challenge the warrantless search of the home on the basis
9 that law enforcement could have obtained the search
10 warrant; that was basically the issue in State versus
11 Herring, 387 South Carolina 201.

12 The challenge to the warrantless search is made on the
13 basis of the Fourth Amendment and not on the basis of
14 South Carolina Code Section 17-13-140, dealing with
15 search warrants. As was said in State versus McKnight,
16 281 South Carolina 110, the defendant who seeks to suppress
17 evidence on Fourth Amendment grounds must demonstrate a
18 reasonable expectation of privacy. Unless he has a
19 reasonable expectation of privacy, he has no standing to
20 challenge the search. The Defendant cites State versus
21 Robinson, 410 South Carolina 519, a 2014 case, and the
22 factors set forth therein to justify -- or to assert that
23 the Defendant in this case had a reasonable expectation of
24 privacy.

25 It is clear that the lease or rental agreement was not

1 in his name. He did spend some nights there, but much of
2 his property was left in the front room. He may have had
3 some dominion and control to exclude others, but clearly
4 from the testimony the primary person in control was
5 Lourisa Katio. At best he was the father of a child they
6 had in common, but at the time he was a sometime or
7 part-time boyfriend who spent some nights on the premises.
8 There was no other legal relationship between the parties,
9 they were not married legally or even a common law
10 marriage. There's no evidence he paid rent, participated
11 in domestic activities or claimed a proprietary or
12 possessory interest in the property or to attempt to keep
13 his activities in the home private.

14 Based on this, I find that the Defendant has no
15 reasonable expectation of privacy in the property search
16 as required to prove a violation of his Fourth Amendment
17 rights. The Defendant basically concedes this issue and
18 relies on the contention that the will of the tenant,
19 Ms. Katio, was overcome when she gave her consent to
20 search as shown in State's Exhibit Number 2. This is
21 based on the Defendant's contention that she was told that
22 DSS would be called to take her child if she did not
23 consent. I find that the testimony of Ms. Katio and of
24 her sister on this issue is not credible. The law
25 enforcement officers were simply trying to determine if

1 the residence was safe to return the child to. They were
2 not using this fact as a threat to intimidate her into
3 giving her consent.

4 As was said in State versus Flowers, 360 South
5 Carolina 1, a homeowner or tenant may give consent to
6 search the premises in which a criminal defendant resides
7 if the homeowner or tenant possesses common authority to
8 the premises. Common authority to consent involves a
9 mutual use of the property and so at the very least
10 Ms. Katio had mutual use or common authority of the
11 property. I also find that her consent was freely and
12 voluntarily given and not as a result of any attempts to
13 intimidate her by threatening the use of DSS to take her
14 child. Based on the above, the motion to suppress the
15 evidence seized from the Defendant's apartment is denied.

16 All right. Ms. Campbell, is there anything that has
17 -- the State has that would preclude us or we'd need to
18 address to preclude us from going forward in the morning
19 at 9:30?

20 **MS. CAMPBELL:** No, sir.

21 **THE COURT:** Defense?

22 **MS. ZMROCZEK:** No, we're ready, Your Honor.

23 **THE COURT:** All right. We'll be in recess then until
24 tomorrow morning at 9:30. Be ready to go forward at that
25 time with opening statements. Thank you.

1 **MS. CAMPBELL:** Your Honor, one thing I would like to
2 put on the record though. She approached me at the break
3 about a possible additional plea offer I was going to give
4 her. I told her I would consult with the victim and I'll
5 do that right now.

6 **THE COURT:** All right. Do you want to address that
7 this afternoon?

8 **MS. CAMPBELL:** Well --

9 **THE COURT:** We've got plenty of time. I mean, we can
10 take a break and come back after lunch if you've had a
11 chance to take it up and see if there's something that we
12 could do --

13 **MS. CAMPBELL:** To resolve?

14 **THE COURT:** -- that might result in the disposal of
15 the case this afternoon rather than keep the jury waiting
16 in the morning.

17 **MS. CAMPBELL:** That would be smart. That's fine,
18 Your Honor.

19 **THE COURT:** Why don't we take a recess until 2:30 and
20 then y'all can discuss it further and let me know where you
21 stand about that time.

22 **MS. ZMROCZEK:** Okay. And we -- I just have -- I
23 forgot that I was supposed to be in a bond hearing, which
24 obviously doesn't have any precedence, but now that we had
25 a break I told them that I would be there this afternoon,

1 but I'll just push it back. I told them I'll be there at
2 three, so I still might make it. It's just Lexington, so
3 it's not --

4 **THE COURT:** Well, y'all will know at 2:30 whether or
5 not --

6 **MS. ZMROCZEK:** Right. Exactly.

7 **THE COURT:** If it is something that would dispose of
8 it, we'll take a little break and let you take care of your
9 bond hearing and come back and take care of this. If it's
10 something that's not gonna result in disposal of it, we're
11 in no different place. So let's come back at 2:30.

12 **MS. CAMPBELL:** Thank you, sir.

13 **THE COURT:** Thank you.

14 (Whereupon, a luncheon recess was taken.)

15 **BAILIFF:** Court come to order.

16 **THE COURT:** Thank you. Y'all be seated.

17 All right. We're back on the record with regard to
18 the matter of the State versus Berry. Mr. Berry is present
19 with his counsel. The State is present and represented by
20 the Fifth Circuit Solicitor's Office.

21 The purpose of reconvening this afternoon was to find
22 if there was any change in the situation or anything we
23 needed to do. Ms. Walker?

24 **MS. WALKER:** Thank you, Your Honor. We did after
25 speaking with the victim in this case and to law

1 enforcement offer Mr. Berry a plea range of -- our original
2 plea offer was thirty years. We offered him a range of
3 fifteen to twenty years. My understanding is that he has
4 rejected that plea offer.

5 Over the course of the break though, Your Honor, and
6 I did share this with Ms. Zmroczek, I didn't want to catch
7 you off guard in the morning, in looking -- verifying some
8 other information that was testified to this morning, we
9 did find on the jail phone calls -- I'm not sure how
10 familiar you are with how the jail phone calls are done,
11 they are recorded and you can go online and look at them.
12 The inmates are supposed to use their PIN numbers to make
13 those phone calls.

14 Over the course of trying to verify things that
15 happened this morning, we realized that he has been using
16 other people's PIN numbers to disguise the calls so we
17 wouldn't have access to those calls. We did find those
18 probably fifteen minutes ago -- probably fifteen minutes
19 ago and we will be e-mailing those to Ms. Zmroczek this
20 afternoon. So I just wanted to put those things on the
21 record.

22 **THE COURT:** But as far as the plea offer that was
23 made, you've made a new plea offer to him that has been
24 cleared with the victims?

25 **MS. WALKER:** Yes, sir.

1 **THE COURT:** And it's your understanding that he's
2 rejected that plea offer?

3 **MS. WALKER:** That's my understanding, Your Honor.

4 **THE COURT:** All right. Yes, ma'am.

5 **MS. ZMROCZEK:** Your Honor, that is correct.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** You can question the client, if you'd
8 like, but he -- that I did extend the offer to him, fifteen
9 to twenty.

10 **THE COURT:** All right.

11 All right. Mr. Berry, let me ask you. You understand
12 the offer that the State has presented in connection with
13 this matter as set forth by the solicitor?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** And your lawyer has advised the Court that
16 you wish to reject that offer; is that correct?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. Ms. Walker, the status of it then
19 would be that offer is revoked; is that correct?

20 **MS. WALKER:** Yes, Your Honor. That offer is no longer
21 on the table and will not be placed back on the table.

22 **THE COURT:** All right. Do you understand that that
23 offer is no longer on the table if you reject it today and
24 you would be subject to the full -- if you are convicted,
25 you would be subject to the full amount of punishment on

1 all five charges. Do you understand that?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Okay. Do you have any questions that you
4 want to ask me about the plea offer?

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** All right. The Court will find that the
7 Defendant has -- or does understand the plea offer as
8 communicated to him by his lawyer from the solicitor's
9 office and that he has freely and voluntarily waived --
10 or freely and voluntarily rejected that offer, fully
11 understanding that that offer is revoked as of now, and he
12 would be subject to the full amount of punishment in the
13 event that he's found guilty of the charges.

14 All right. We'll be prepared to go forward in the
15 morning at 9:30. I'll see you then.

16 **MS. WALKER:** Thank you, Judge.

17 **MS. ZMROCZEK:** Thank you.

18 (Whereupon, the proceedings were concluded for
19 December 1, 2015, at 2:35 PM.)

20 (The following proceedings were held December 2, 2015,
21 beginning at 9:34 AM.)

22 **BAILIFF:** Court come to order. All rise.

23 **THE COURT:** All right. Back on the record with regard
24 to the matter of the State versus Brandon Berry. Mr. Berry
25 is present with his counsel. The State is present and

1 represented by the Fifth Circuit Solicitor's Office.

2 Ms. Campbell, anything before we start?

3 **MS. CAMPBELL:** Just a short couple of housekeeping
4 matters. I just wanted -- I informed defense counsel
5 this morning when I was coming in, I went to get on the
6 elevator from the parking garage and the elevator was full
7 of people, some of which were jurors in our case. One of
8 them said hello and kind of smiled, but I did not respond
9 because it wouldn't be appropriate. I did not get on the
10 elevator. I turned that over to the defense this morning.

11 Is there any way you can advise the jury that we
12 aren't supposed to talk to them? Because I was kind of
13 rude. I really didn't -- you know, I didn't mean to be,
14 but I didn't want to do anything that would have any
15 interaction with them.

16 **THE COURT:** I give a little -- introductory remarks
17 to the jury and I will include that.

18 **MS. CAMPBELL:** Thank you, sir. I appreciate it. I
19 just -- I was not nice.

20 **THE COURT:** Okay. Thank you for bringing that to our
21 attention.

22 **MS. CAMPBELL:** The only other thing, Your Honor, the
23 co-defendant in the case who was charged with gun charges
24 initially had talked to our office through his lawyer and
25 indicated he wanted to testify. We were informed by his

1 lawyer last night that he plans on invoking the Fifth. We
2 confirmed that again this morning, Mr. Leonard is here with
3 his client, and based on that, just in opening argument --
4 we also became aware last night that there was a phone call
5 from last week between the Defendant and the co-defendant,
6 who's here, where the Defendant is telling him not to talk
7 or not testify or something to that effect.

8 **MS. WALKER:** Your Honor, to the effect of "If you get
9 up there and you think you're gonna help me, you're
10 probably gonna hurt me, you need to plead the Fifth, you
11 need to not testify".

12 **MS. CAMPBELL:** So at this point until we have a chance
13 to sort all that out, we would just ask that in opening
14 argument not to mention any communications or anything that
15 the co-defendant might say or communicate in any way until
16 we can figure out what may be admissible or may not for
17 both sides.

18 **THE COURT:** Do you have any intention of using any of
19 that in opening arguments -- opening statements?

20 **MS. ZMROCZEK:** No, not in opening statements.

21 **MS. CAMPBELL:** And that's just a precautionary matter
22 because I just don't know at this point if he will be
23 taking the stand.

24 **THE COURT:** As long as it's not gonna be used in
25 opening statements. Before it comes up, let's address it.

1 **MS. CAMPBELL:** No mention of any communication by him
2 or anything of that nature.

3 **MS. ZMROCZEK:** Thank you.

4 **THE COURT:** In the meantime, counsel, remind your
5 client that he is to have no direct contact with any
6 witnesses or potential witnesses in the case. If the
7 witness needs to be contacted, you, of course, have the
8 right to contact him, but he's not to talk to any witnesses
9 or call any of them on the phone. Do you understand that?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** All right.

12 All right. Anything else?

13 **MS. CAMPBELL:** Not from us, Your Honor.

14 **THE COURT:** All right. Anything from --

15 **MS. ZMROCZEK:** Just, Your Honor, I would like to
16 address the co-defendant taking the Fifth at some point
17 because I think that's -- obviously it's gonna impact a lot
18 of what is testified to. You know, officers can't testify
19 to what he said or what they learned or -- I just want to
20 make sure that that gets addressed and not in front of the
21 jury because he --

22 **THE COURT:** Oh, I always --

23 **MS. CAMPBELL:** I think we can take that up later.

24 **THE COURT:** I always take that up before -- generally
25 at the end of the State's case, but sometimes during a

1 break.

2 **MS. CAMPBELL:** We can do it at a break. I just don't
3 want to delay any longer.

4 **THE COURT:** I'll take that up with him.

5 **MS. ZMROCZEK:** Okay.

6 **THE COURT:** Okay.

7 All right. Bring the jury in, please.

8 (State's Exhibit Numbers 127 through 151 were marked
9 for identification.)

10 (Whereupon, the jury enters the courtroom at 9:39 AM.)

11 **BAILIFF:** The jury is seated, Your Honor.

12 **THE COURT:** All right. Thank you, sir.

13 Good morning, ladies and gentlemen. And thank you for
14 your promptness in being back here. We have now resolved
15 all of the pre-trial matters that we had to address and
16 we're prepared to go forward with this case. I hope that
17 these two little breaks gave you an opportunity to get some
18 personal business done or some Christmas things done before
19 we actually get into the trial of this case, but we are now
20 ready to start the case.

21 Madam Clerk, you may swear the jury in.

22 **THE CLERK:** Yes, sir, Your Honor. Madam Forelady and
23 ladies and gentlemen of the jury, please stand and raise
24 your right hand to be sworn. After this oath, please
25 acknowledge by answering "I do".

1 (Whereupon, the jury was duly sworn by the Clerk of
2 Court at 9:40 AM.)

3 **THE CLERK:** Thank you. You may be seated.

4 **THE COURT:** All right. Before we begin the actual
5 trial of this case, I thought it might be helpful if I
6 explained to you basically how a trial proceeds. I know
7 all of you have seen trials on television, but I think that
8 you will find that it is a great deal different in real
9 life.

10 First of all, the State will make an opening
11 statement. An opening statement is not evidence. It is
12 simply an outline to help you understand what the State
13 expects the evidence will show. The Defendant may, if he
14 wishes to, through his lawyer, present an opening
15 statement, but he doesn't have to for reasons that I will
16 explain later.

17 Following the opening statements, you will hear the
18 testimony and evidence in this case. This will consist
19 of testimony from the State's witnesses, as well as any
20 physical exhibits which may be introduced into evidence.
21 And I will tell you that if there are physical exhibits
22 that are introduced into evidence, it's very likely that
23 the attorneys will ask for permission to publish those
24 exhibits to the jury. That simply means to show the jury
25 the exhibits. They may even hand them to you to be passed

1 around while you're sitting there in the jury box or they
2 may be shown electronically. Do not be concerned if you do
3 not have as long to look at an exhibit as you would like to
4 when it's being passed around. Anything that is admitted
5 into evidence will go with you to the jury room when you
6 retire to deliberate your verdict in this case.

7 Following the completion of the testimony, the
8 attorneys will, again, have an opportunity to make what is
9 called a closing statement or a summation to you. This is
10 an opportunity for the attorneys to summarize the case from
11 their respective points of view. Again, these arguments
12 are not evidence.

13 Following the closing statements by the attorneys, I
14 will instruct you on the law of South Carolina as it
15 pertains to the issues that have arisen in this case and
16 when I have completed my instructions to you, you will be
17 permitted to begin your deliberations in order to reach a
18 verdict.

19 Now, ladies and gentlemen, you're now the jury in
20 this case and I want to take a few minutes to tell you
21 something about your duty as jurors and to give you basic
22 instructions. At the end of the trial, I will give you
23 more detailed instructions and those instructions will
24 control your deliberations. It will be your duty to decide
25 from the evidence what the facts are. You and you alone

1 are the judges of the facts. You will hear the evidence,
2 decide what the facts are and then apply those facts to
3 the law that I will give to you. That is how you reach a
4 verdict. In doing so, you must follow the law whether you
5 agree with it or not. The evidence will consist of the
6 testimony of witnesses, documents and other things received
7 into evidence as exhibits and any facts on which the
8 lawyers agree or which I may instruct you to accept.

9 Now you should not take anything that I may say or
10 do during this trial as indicating what I think of the
11 evidence or what your verdict should be. The law does not
12 permit me to have an opinion about the facts. The same
13 law that makes you the judge of the facts makes me the
14 judge of the law. You must take the law as I give it to
15 you regardless of what you think the law is or what the
16 law ought to be. If I'm wrong on the law, there's another
17 time and place for that error to be corrected, but for this
18 case you must accept the law as I charge it to you.

19 Now this is a criminal case brought by the State of
20 South Carolina. The State charges the Defendant with five
21 separate grounds; unlawful conduct toward a child, unlawful
22 carrying of a pistol, resisting arrest, attempted murder
23 and attempted armed robbery. The charges against the
24 Defendant are contained in the five indictments. The
25 indictments are not evidence of anything. They are simply

1 the description of the charges made by the State against
2 the Defendant. The Defendant has pled not guilty to these
3 charges and is presumed innocent unless and until proven
4 guilty beyond a reasonable doubt. A reasonable doubt is
5 the kind of doubt that would cause a reasonable person to
6 hesitate to act. A defendant has the right not to testify
7 and never has to prove his innocence or present any
8 evidence. The burden of proof is always on the State of
9 South Carolina.

10 Now there are certain things that are not evidence
11 and you must not consider them as evidence in deciding the
12 facts of this case. Statements and arguments of the
13 attorneys are not evidence, questions and objections of the
14 attorneys are not evidence, and testimony that I instruct
15 you to disregard is not evidence. Evidence may be direct
16 or circumstantial evidence. Direct evidence is testimony
17 by a witness about what that witness personally saw or
18 heard or did. Circumstantial evidence is indirect
19 evidence. The law permits you to give equal weight to
20 both, but it is for you to decide how much weight to give
21 to any of the evidence.

22 Now there are rules of evidence which control what can
23 be received in court. When a lawyer makes -- or when a
24 lawyer asks a question or offers an exhibit into evidence
25 and the lawyer on the other side thinks that it is not

1 permitted by the rules, that lawyer may object. If I
2 overrule the objection, the question may be answered or
3 the exhibit may be received. If I sustain the objection,
4 the question cannot be answered and the exhibit cannot be
5 received. Whenever I sustain an objection to a question or
6 deny a motion to admit an exhibit into evidence, you must
7 ignore the question or the existence of the exhibit and you
8 must not guess what the answer would have been or what the
9 exhibit would have shown.

10 Sometimes it may be necessary for me to request that
11 you leave the courtroom when I -- while I discuss with
12 the attorneys legal questions that come up during the
13 trial. If this occurs, you should not speculate about
14 our discussions or the reasons that you were asked to
15 leave the courtroom. This is simply a procedure that the
16 law requires when certain legal issues arise. There also
17 may be occasions when I ask the attorneys to approach the
18 bench so that I can discuss a legal issue with them in
19 private. I will do this as often as possible so that you
20 will not be required to leave the courtroom more than is
21 absolutely necessary. Again, if I ask the attorneys to
22 step up to the bench or if I ask you to leave the
23 courtroom, please don't think that anybody is trying to
24 hide anything or keep any evidence from you. This is
25 simply a procedure used by all lawyers and by all courts

1 to determine and decide legal questions.

2 Now in determining the facts of this case, you may
3 have to decide which witnesses to believe and which
4 witnesses not to believe. You may believe everything a
5 witness says or only part of it or none of it. In deciding
6 what to believe, you may consider a number of factors,
7 including the witness's ability to see or hear or know
8 the things the witness testified to, the quality of the
9 witness's memory, the witness's manner or demeanor while
10 testifying, whether the witness has an interest in the
11 outcome of the case or any motive, bias or prejudice,
12 whether the witness was contradicted by anything the
13 witness said or knew before the trial or by any other
14 evidence and how reasonable was the witness's testimony
15 when considered in the light of other evidence which you
16 do believe.

17 Now just a few words to you about your conduct as
18 jurors, some of which I have already mentioned to you, but
19 they're important enough that they bear repeating. First
20 of all, do not talk to each other about this case or about
21 anyone who has anything to do with it until the end of
22 the case when you go to your jury room to decide on your
23 verdict. Do not talk with anyone else about the case until
24 the trial has ended following your verdict and you have
25 been discharged as jurors. This means do not discuss the

1 case with members of your family or your friends or with
2 anyone else. You may tell them that you are a juror, but
3 don't tell them anything about the case until you have been
4 discharged by me.

5 Do not let anyone talk to you about the case. If
6 anyone should try to talk to you about the matter, please
7 get their name and their description, report it to the
8 bailiffs and they will report it to me. And in that
9 connection, I will tell you that in coming and going from
10 the courthouse you may encounter certain people who are
11 participating in this case, lawyers, witnesses or
12 individuals who may have something to do with the case,
13 and I will tell you that they are not even permitted to
14 speak to you in a friendly manner and greet you and tell
15 you good morning or anything else if -- during the course
16 of this case. So they're not being rude if they ignore
17 you. Just remember that they have been instructed by the
18 Court not to have any contact, which means even a social
19 greeting with the jurors during the course of the trial.
20 So do not think that anybody is being rude to you if they
21 refuse to speak to you in connection with this matter or
22 decline to speak you.

23 Do not read any news stories or articles or listen to
24 any radio or television reports about the case and do not
25 do any research or anything on the Internet in connection

1 with this matter. You are not to consider as evidence
2 anything that you may see or hear when court is not in
3 session. So don't do any research such as consulting
4 dictionaries or other reference materials or anything on
5 the computer.

6 And, finally, do not make up your mind about what
7 your verdict should be until you have heard all of the
8 evidence in this case and the instructions -- the arguments
9 of counsel and the instructions on the law by the Court.
10 You will be instructed when to begin your deliberations by
11 either me or the bailiff.

12 Anything with regard to my opening remarks on behalf
13 of the State, Ms. Campbell?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** On behalf of the defense?

16 **MS. ZMROCZEK:** No, sir.

17 **THE COURT:** All right. The first order of business
18 then, ladies and gentlemen, is the matter of opening
19 statements and for that purpose the State will -- the
20 Court will recognize the solicitor.

21 **MR. STEADMAN:** A routine traffic stop is what solved
22 this case. The morning of the robbery, Brandon Berry, the
23 Defendant in this case, was pulled over for no seatbelt,
24 and during the course of that traffic stop -- it started
25 as just the no seatbelt, but during that traffic stop it

1 quickly turned into an armed robbery investigation and a
2 shooting investigation which happened six hours prior.

3 The victim in this case, Michael Keith, got home to
4 his apartment complex around 4 AM the morning of the
5 robbery. He's a club promoter. He does several events
6 around town. He got back home that night about 4 AM,
7 pulled into his apartment complex, pulled into his parking
8 spot -- he backed into his spot, and as he was getting out
9 of his car he was approached by the Defendant with a mask
10 covering his face, armed with a pistol. And he approached
11 Michael Keith. He demanded his money, he demanded his
12 keys. Michael Keith resisted, which he had a right to do.
13 He ran around his vehicle to get the vehicle in between
14 him and the Defendant. The Defendant then ran around to
15 chase Michael Keith and at some point during that the
16 Defendant jumped up on top of his car. He came over the
17 top of Michael Keith's car, Michael ran back toward his
18 apartment complex, and as the Defendant was coming down off
19 the top of his car he fired a shot missing Michael Keith,
20 striking a tire of the car next to the other car.

21 Michael Keith pretended to be shot and he fell down
22 in the grassy spot right before his apartment complex. The
23 Defendant then get on top of Michael Keith, still demanding
24 his money and demanding the keys to his car. Michael Keith
25 didn't give him his money, he didn't give him his keys, and

1 he paid for it. The Defendant then aimed the pistol at
2 Michael's leg and shot him in the right leg. The shots
3 were fired. That prompted a neighbor to come out, that
4 prompted Michael's girlfriend, Sidara Allen, to come out,
5 and as she came out on the porch, she observed the
6 Defendant put the pistol against Michael's head. She
7 yelled from the balcony and the Defendant was spooked by
8 that and he ran off. He got into an awaiting vehicle right
9 near the scene and he drove off.

10 Michael Keith was then rushed to the hospital.
11 Officers got a description of the suspect. It was a person
12 in a black mask, a person with a pistol and dark clothing.
13 At that point the officers didn't have anything to go on.
14 There weren't really any leads. Michael Keith was treated
15 at the hospital.

16 And then six hours later, the morning of the robbery
17 -- this happened at 4 AM, so six hours later Brandon Berry
18 and his friend, Nickilous Wallace, just happened to be
19 travelling down Broad River Road. Deputy Pennington with
20 the Richland County Sheriff's Department sees that both of
21 them aren't wearing their seatbelts, so he pulls them over.
22 He pulls them over into an apartment complex right off of
23 [REDACTED] and [REDACTED] Road area.

24 During that traffic stop, the officer gets Nickilous
25 Wallace, who was the driver, he gets him out of the vehicle

1 and he speaks with him about his insurance and all of a
2 sudden Brandon Berry hops in the driver's seat of that
3 vehicle and speeds off. And keep in mind there was another
4 passenger in that vehicle. In the back seat there was a
5 two-year-old girl named [REDACTED] who was the Defendant's
6 daughter. She was unrestrained in a child seat as the
7 Defendant sped off at a high rate of speed.

8 He sped through the apartment complex. Deputy
9 Pennington gave chase. He sped through the apartment
10 complex and then he got out on foot. Deputy Pennington
11 did not lose sight, he was right behind Brandon Berry,
12 and during the foot pursuit he saw Brandon Berry grab
13 something and toss it. He apprehends Brandon Berry shortly
14 thereafter with the help of a few other officers. They
15 then go back to where he saw Brandon Berry toss something.
16 What he tossed was two bags. Inside that bags that he
17 tossed was a pistol, a black mask, zip ties and gloves.
18 The black mask and the gloves has his DNA on them. The gun
19 that was found matched the shell casings at the scene of
20 the shooting.

21 At this point it's an armed robbery investigation and
22 Investigator Carwell is called out to the scene. He was
23 assigned the case, he's the lead investigator. He then
24 began his investigation. One of the first things he did
25 was go to the girlfriend's house, Brandon Berry's

1 girlfriend's house, where he stayed the night of the
2 robbery. Once he gets to the girlfriend's house, he gets
3 consent to search her apartment and inside her apartment
4 he recovers Brandon's black jeans and the shoes. Those
5 black jeans have Michael Keith's blood DNA on them. Those
6 shoes have Michael Keith's blood DNA on them. Those shoes
7 are consistent with a footwear impression that was left on
8 the top of Michael Keith's car when he stood on top of it.
9 Those shoes were Brandon Berry's.

10 He was charged with armed robbery -- attempted armed
11 robbery, attempted murder, unlawful conduct toward a child,
12 and resisting arrest. You will hear from multiple experts
13 in this case and you will get presented with all of the
14 scientific evidence and we're gonna ask you to rely upon
15 this scientific evidence and we're gonna ask you to return
16 a verdict of guilty on all charges. Thank you.

17 **THE COURT:** Does the Defendant wish to make an opening
18 statement, Ms. Zmroczek?

19 **MS. ZMROCZEK:** Yes, Your Honor.

20 **THE COURT:** All right. You may.

21 **MS. ZMROCZEK:** Thank you. May it please the Court?

22 **THE COURT:** Yes, ma'am.

23 **MS. ZMROCZEK:** Good morning. The truth is what you
24 know and not what you believe. Mr. Steadman in his opening
25 said that he asked you to rely on the scientific evidence.

1 Ladies and gentlemen, I would also ask you to rely on all
2 of the scientific evidence because what you will hear in
3 this case is that the shoes that they found that were
4 Brandon's that had the victim's blood on them, Cadillac, a
5 big promoter around town, lots of people know him, also had
6 other -- someone else's DNA, and the reason is, ladies and
7 gentlemen, is because he loaned his shoes. You think
8 that's just ludicrous, but then you ask, and I would ask
9 that you ask while the evidence is being presented, he said
10 scientific evidence. And he jumped on the car. Surely
11 there's fingerprints and palm prints, and I assure you
12 we'll hear testimony about that. Not from the State.
13 They're going to make us present it.

14 Also cell phones. Cell phone technology. They can
15 track us anywhere. And the Richland County Sheriff's
16 Department did a great job of investigating in this case,
17 such a great job that the evidence that they started to
18 produce started to make them realize that Brandon Berry was
19 nowhere near the scene when it happened. He couldn't be,
20 he wasn't, but they don't want to present that evidence to
21 you. We'll be presenting it. And I submit it's because
22 the truth they want you to believe is not the truth that
23 they know.

24 There was discussion from the judge and there will be
25 discussion throughout about the burden of proof. And the

1 best part of our country is you guys, you guys, y'all, get
2 to decide the facts of the case. Y'all and only y'all.
3 It's not what I think or they think or any of the officers
4 think. Only y'all. But I think -- and I submit in order
5 to be able to decide those facts, you have to be presented
6 with all of the information. In order to be presented with
7 all of that information, you're gonna have to listen to the
8 questions and the answers and judge the credibility and ask
9 why wasn't this done?

10 If this is an open and shut case, why are we here?
11 Well, we're here, ladies and gentlemen, because it's not an
12 open and shut case and there are serious questions of fact.
13 And the Government has a duty and their burden to present
14 those facts to you. I have to ask some tough questions,
15 that's part of my job, and I have to ask some tough
16 questions of the officers. That doesn't mean I don't
17 like them, it doesn't mean I don't think they did a good
18 job. I think they did an excellent job. Could have
19 they done more? Sure. Easy little things, ladies and
20 gentlemen. And there are things that are not subject
21 to interpretation; video, audio. These things are not
22 subject to interpretation. They are what they are. They
23 show you what happened.

24 This -- this evening, July 28th, the night before,
25 started at a club where Cadillac was promoting at [REDACTED]

1 [REDACTED], right there on [REDACTED], right down the
2 road. There's video inside, there's video outside. It
3 goes on to [REDACTED], a club down in The Vista. There's video
4 inside, there's video outside. The police know and were
5 informed what Brandon Berry was wearing that evening from
6 his shoes to his clothes and that video could have shown
7 you. You'll hear testimony about what shoes he was
8 wearing.

9 Ladies and gentlemen, reasonable doubt gives someone a
10 reason to doubt. I submit after hearing all the evidence
11 that's presented to you by the State, and not presented to
12 you by the State, that you will have more than one reason
13 to doubt and find Brandon Berry not guilty. Thank you.

14 **THE COURT:** All right. You may call your first
15 witness for the State.

16 **MR. STEADMAN:** The State calls Clay Short.

17 CLAY SHORT,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Please have a seat on the witness stand
20 and state your full name for the record.

21 **THE WITNESS:** Clay Short.

22 **MS. WALKER:** May it please the Court, Your Honor?

23 **THE COURT:** Yes, Ms. Walker.

24 DIRECT EXAMINATION

25 BY MS. WALKER:

- 1 Q. Good morning.
- 2 A. Good morning.
- 3 Q. Sir, can you tell me where you're currently employed?
- 4 A. Richland County Sheriff's Department.
- 5 Q. And what do you do at the sheriff's department?
- 6 A. I am a burglary investigator.
- 7 Q. And I want to turn your attention back to last year.
- 8 What were you doing for the sheriff's department then?
- 9 A. I worked uniformed patrol for Region 2.
- 10 Q. And where is Region 2?
- 11 A. Region 2 is -- the main part of Region 2 is 2 Notch
- 12 Road between Decker Boulevard and Sparkleberry Road.
- 13 Q. Decker Boulevard and what road?
- 14 A. Sparkleberry Road.
- 15 Q. And when you say uniformed patrol, can you explain to
- 16 the jurors what the duties of a uniformed patrol deputy
- 17 are?
- 18 A. To respond to 9-1-1 calls.
- 19 Q. And on July 29th of 2014, in those early morning
- 20 hours, did you have the occasion to respond to a 9-1-1
- 21 call?
- 22 A. I did. Yes, ma'am.
- 23 Q. And where did you go?
- 24 A. I went to 1460 Oakcrest Road, which is The Haven
- 25 Apartments.

1 Q. Is that located here in Richland County?

2 A. Yes, it is.

3 Q. And was your purpose -- and will you pull that mic a
4 little bit closer to you? There we go. What was the
5 reason for responding to that address?

6 A. We responded to a -- what's called a confirmed
7 shooting.

8 Q. Okay. And what is a confirmed shooting?

9 A. That's when dispatch has confirmed that it's not just
10 shots fired in the air, it's confirmed that somebody has
11 been hit by a bullet.

12 Q. And what, if anything, did you do once you arrived on
13 the scene?

14 A. I arrive on the scene at 1460 Oakcrest and I saw some
15 what looked like blood on the sidewalk and then ran to the
16 victim's apartment where he was laying inside.

17 Q. Okay. And what did you observe once you reached the
18 victim in this case?

19 A. He was holding his leg. He said that he had been
20 shot. He said a guy tried to rob him and that there was a
21 struggle. He ended up trying to get away from the guy. He
22 said the guy tackled them and he ran around his own car to
23 try to get away and that the guy jumped on top of his car
24 and jumped -- you know, chased him across the car basically
25 and they struggled for the gun, I believe, and the guy

1 ended up shooting him in the leg. I made -- I made sure
2 that he wasn't in danger of bleeding out or dying or
3 anything and I made sure that EMS was on the way and made
4 sure that a crime scene was established.

5 Q. It was important for you to get medical attention to
6 him at that point?

7 A. Yes, of course.

8 Q. At that point did he tell you what, if anything, was
9 stolen from him during this robbery?

10 A. He said his cell phone was taken and he said it was
11 a --

12 Q. A cell phone is fine.

13 A. Okay. A cell phone, yeah.

14 Q. Were you able at that point to get a description of
15 the robber from the man who was shot?

16 A. He described him as a -- a guy in a black mask and he
17 had black clothing on. He couldn't remember a whole lot.
18 Most -- most people don't because they focus on the gun
19 when they see a gun put in their face.

20 Q. Did he describe the handgun?

21 A. I believe he described it as a black gun.

22 Q. And what -- what other involvement did you have in
23 this case besides that?

24 A. Other than responding to the victim and making sure
25 that there was a crime scene established, that was -- that

1 was it.

2 **MS. WALKER:** Thank you, sir. I don't have any further
3 questions for you at this time.

4 **THE COURT:** Cross-examination, Ms. Zmroczek?

5 **MS. ZMROCZEK:** Thank you. Just briefly.

6 CROSS-EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. Good morning.

9 A. Good morning.

10 Q. You responded to the call at -- what time were you
11 dispatched?

12 A. I was dispatched at 0438 in the morning.

13 Q. At 4:38?

14 A. Uh-huh.

15 Q. And at that time had you -- you had been aware that
16 there were seven calls to 9-1-1, correct?

17 A. At that time, no, I did not know that.

18 Q. Did you learn that when you got there?

19 A. I don't see that I was aware that there were seven
20 calls.

21 Q. Okay. Were there other officers that arrived on the
22 scene that would have interviewed witnesses?

23 A. Yes.

24 Q. Okay. That wasn't a part of your job?

25 A. No, I'm -- since I was the first person there, my main

1 concern was the victim.

2 Q. Okay. And you stated that you got the best
3 description you could?

4 A. (Nods head.)

5 Q. And he was inside his apartment when you arrived?

6 A. Uh-huh. Yes, inside his apartment laying on the
7 floor.

8 Q. Laying on the floor?

9 A. Uh-huh.

10 Q. Okay. And you established the crime scene?

11 A. Yes.

12 Q. Okay. You did speak to some witnesses, yes?

13 A. The only other person I believe I spoke with was his
14 girlfriend, which was inside with him.

15 Q. Did you write a report in this case?

16 A. I did.

17 Q. And did anybody assist you with that report?

18 A. No.

19 Q. All right. So -- do you have that report in front of
20 you?

21 A. I do.

22 Q. Do you recall speaking with a witness who was not the
23 girlfriend?

24 A. I did not speak to them. That might have been another
25 deputy that spoke with them.

1 Q. If you could turn to Page 2 of your report.

2 A. Uh-huh. My report may look -- what I have may look a
3 little different from yours. Which page are you talking
4 about?

5 MS. ZMROCZEK: May I approach, Your Honor?

6 THE COURT: Yes.

7 MS. ZMROCZEK: Thank you.

8 BY MS. ZMROCZEK:

9 Q. May I see the report that you have?

10 A. Yeah.

11 Q. I'll show you the handwritten report that I have.
12 That may refresh your recollection. Is that the report you
13 wrote?

14 A. Yes, it is.

15 Q. Okay. Were you able with speak to a different witness
16 as well?

17 A. I believe there was another witness, a neighbor, I
18 think, that lived in the apartment complex.

19 Q. What time did you leave the scene?

20 A. I think about 6:00 or a little after 6:00 that
21 morning.

22 Q. And the reason that you -- you handwrite a report and
23 then you type one later; is that -- is that accurate?

24 A. Normally we type reports on computers in our car. At
25 that time the computer system was down, so we had to

1 handwrite them.

2 Q. And you do that that night so that the information is

3 fresh in your mind?

4 A. You do it before the leave the scene.

5 Q. Before you leave the scene?

6 A. Uh-huh.

7 Q. And that it's as accurate as possible?

8 A. (Nods head.)

9 Q. Correct?

10 A. Yes, ma'am.

11 Q. I saw you. The court reporter has to take down yes

12 or no. I'm sorry. And you said that the suspect's

13 description was a black male?

14 A. Yes.

15 Q. Black handgun?

16 A. Yes.

17 Q. Black clothing?

18 A. Yes, ma'am.

19 Q. Black face mask?

20 A. Yes, ma'am.

21 Q. Unknown height or weight?

22 A. Yes, ma'am.

23 Q. And that the only item stolen was a cell phone?

24 A. Correct.

25 **MS. ZMROCZEK:** Thank you.

1 **THE WITNESS:** Uh-huh.

2 **THE COURT:** Redirect?

3 **MS. WALKER:** None, Your Honor.

4 **THE COURT:** All right. Thank you. You may step down.

5 (Witness excused.)

6 **THE COURT:** All right. Call your next witness.

7 **MS. WALKER:** Your Honor, the State calls Sidara Allen.

8 **THE COURT:** Come around, please, ma'am.

9 SIDARA ALLEN,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record and,
13 please, spell your first name.

14 **THE WITNESS:** It's Sidara Allen, and it's S-I-D-A-R-A.

15 **MS. WALKER:** May it please the Court, Your Honor?

16 **THE COURT:** Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. WALKER:

19 Q. Ms. Allen, can you tell me where you currently live?

20 You don't have to give me an address, just the city.

21 A. Columbia.

22 Q. And how long have you lived here?

23 A. Probably thirteen, fourteen years now.

24 Q. Okay. Do you work?

25 A. I do.

- 1 Q. What do you do for a living?
- 2 A. I'm a pharmacy technician.
- 3 Q. Do you know Michael Keith?
- 4 A. I do. Yes, ma'am.
- 5 Q. And how do you know Michael?
- 6 A. He's my boyfriend of eight and a half years.
- 7 Q. And do you guys currently live together?
- 8 A. Yes, ma'am.
- 9 Q. And back last year did y'all live together?
- 10 A. Yes, ma'am.
- 11 Q. What is it that Michael does for a living?
- 12 A. He -- excuse me.
- 13 Q. Do you need some water?
- 14 A. No. I'm okay.
- 15 Q. Okay.
- 16 A. He is a bus monitor for Richland School District 2 and
- 17 he also hosts different events.
- 18 Q. Can you describe what you mean when you say hosts
- 19 different events?
- 20 A. It can be anything from clubs, parties, church events.
- 21 He -- like if you have a wedding, he can MC it, like
- 22 introduce people to come out. Just different events like
- 23 that.
- 24 Q. And does he do that all around town?
- 25 A. Yes, ma'am.

1 Q. I want to take your attention back to July 29th of
2 last year.

3 A. Yes, ma'am.

4 Q. Does that night stand out to you?

5 A. Definitely.

6 Q. And do you remember what Michael was doing that night?

7 A. Yes, ma'am.

8 Q. And what was that?

9 A. He had to host at a fight night called Knuckle Up
10 Mondays and then he had -- after he left that he had
11 another event he had to go to at a lounge called [REDACTED]

12 [REDACTED]

13 Q. And Knuckle Up -- did you say Knuckle Up Mondays?

14 A. Yes, ma'am.

15 Q. And where is that held?

16 A. It can be held at different places, but I think that
17 night it was on the corner of Blanding and Barnwell.

18 Q. And at some point, I guess, that night did he return
19 to y'all's home?

20 A. Yes, ma'am.

21 Q. And how were you alerted that he was home?

22 A. I heard a bam, like a big bang. Like it could be
23 referred to as either a firework or a gunshot.

24 Q. And when you heard that noise, what were you doing?

25 A. I was asleep. It woke me up out of my sleep.

1 Q. And once you heard the bang, what did you do?

2 A. Well, I sat up for a minute because I was unsure of
3 what it was because I also had my TV on, and I have a
4 little dog, so she also woke me up. And so I sat up and
5 just kind of sat there and then I heard some really loud
6 talking, like it sounded familiar, like it was Michael
7 talking, and I was kind of getting out of the bed to kind
8 of see what it was and as I was walking to go to the
9 window, I heard -- heard it again, the noise, and that's
10 when I looked out the window and I saw that Michael -- in
11 relevance to my bedroom window, he was probably closer to
12 me than you're standing.

13 Q. Well, tell me -- tell me where he was.

14 A. Probably about right there.

15 Q. Okay.

16 A. Maybe a little this way. Yeah, there you go. About
17 right there. And so when I looked out the window, I could
18 see a gentleman standing over him with a gun to his head.
19 So that's when I looked out the window and I ran to the
20 balcony and walked outside and I screamed. In so many
21 words, I was like "What are you doing?", and that's when
22 Michael yelled at me and told me to go back in the house
23 because I was trying -- I was on my way over the balcony
24 until he yelled at me.

25 Q. And what floor are you guys on?

1 A. On the first floor.

2 Q. The first floor?

3 A. Yes, ma'am.

4 Q. And, I'm sorry, I didn't mean to interrupt you. You
5 were saying that Michael yelled at you to go back inside?

6 A. Yes, ma'am. And I went back inside and I threw on
7 some pants and ran out the front door. So when I out the
8 front door, he yelled at me to go back in the house. I
9 didn't listen. I --

10 Q. When you ran back outside, who -- what was going on?

11 A. As he -- he was by himself at that moment and all I
12 saw was blood and I could tell -- at that point I knew
13 because I had seen blood when I had looked out the window
14 before I had run onto the balcony and when I went outside,
15 he had been shot and there was blood everywhere, and he
16 told me well, since you're out here, go find my keys
17 because he had kicked them up under the car. So I ran and
18 tried to find his keys. He told me did I see his phone and
19 I didn't see his phone.

20 Q. Okay. Let me slow you down a little bit, okay?

21 A. Yes, ma'am.

22 Q. Going back to -- you said you saw someone standing
23 over Michael?

24 A. Yes, ma'am.

25 Q. Could you see their face?

1 A. No, ma'am.

2 Q. Could you see anything about them at that point?

3 A. Just that they were wearing all black and a black
4 mask.

5 Q. Okay. And once you got outside, where was that
6 person?

7 A. They had -- they were gone.

8 Q. Okay. So then you try to find the keys. What's going
9 on while you're trying to find the keys?

10 A. Michael was directing me to find them. He was still
11 laying on the sidewalk and so I found the keys, I couldn't
12 find his phone and then I walked -- well, I wasn't walking,
13 I was running in panic, and I ran back to him and he was
14 like "Well, I don't know if he's still out here, so help me
15 get in the house". So we stood up and I tried some
16 hopping. I helped him hop in the house and got him in the
17 doorway and then that's when I called 9-1-1.

18 Q. And did police arrive on the scene that night?

19 A. Yes, ma'am.

20 Q. And an ambulance?

21 A. Yes, ma'am.

22 Q. And did you speak with law enforcement about this?

23 A. Are you talking about at that moment?

24 Q. At any point from -- after that shooting, did you
25 speak with law enforcement?

1 A. Briefly. I don't remember who I spoke to, but at that
2 moment the only thing I was concerned about was Michael, so
3 I got in the ambulance. I remember them trying to stop and
4 talk to me and get telephone numbers and stuff, but other
5 than that I don't remember the conversation. I got in the
6 ambulance and went with Michael.

7 MS. WALKER: I beg the Court's indulgence, Your Honor.

8 THE COURT: Yes, ma'am.

9 BY MS. WALKER:

10 Q. And once y'all got to the hospital, what happened?

11 A. We got to the emergency room and then they -- of
12 course, because he was a gunshot victim, they put him in
13 immediately and they -- I don't know exactly what they did
14 because I couldn't go in there with him immediately because
15 of the nurses and doctors and whoever was in there with
16 him. I know they cut his pants and did whatever they had
17 to do. I know he went down for x-rays, but I was making
18 phone calls and stuff, so I don't know exactly where he
19 went at that moment and what they did until I got in the
20 room with him.

21 MS. WALKER: Okay. Thank you. I don't have any
22 further questions.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Cross-examination?

25 MS. ZMROCZEK: I have no questions. Thank you.

1 **THE COURT:** All right.

2 (Witness excused.)

3 **THE COURT:** All right. You may call your next
4 witness.

5 **MR. STEADMAN:** The State calls Michael Keith.

6 MICHAEL KEITH,

7 having been duly sworn, testified as follows:

8 **THE CLERK:** Thank you. Please have a seat on the
9 witness stand and state your full name for the record.

10 **THE WITNESS:** Michael Keith.

11 DIRECT EXAMINATION

12 BY MR. STEADMAN:

13 Q. How old are you, sir?

14 A. Thirty-seven.

15 Q. Do you live here in Columbia?

16 A. I do.

17 Q. How long have you lived here in Columbia?

18 A. All my life.

19 Q. Are you employed?

20 A. Yes, I am.

21 Q. Where are you employed?

22 A. Richland District 2, S & D Shoe Store at Columbia
23 Mall, a radio station, and nightclubs -- different
24 nightclubs. A total of six jobs.

25 Q. Tell me a little about the nightclubs. What exactly

1 do you do for them?

2 A. I'm the guy that gets the party started, get them
3 hyped, turned up, make announcements about what's gone on
4 previous nights, let them know if we've got special guests
5 or artists or any performance. I'm the go-to guy.

6 Q. And does that require you to be out late --

7 A. Yes.

8 Q. -- at certain nightclubs around town?

9 A. Yes.

10 Q. Okay. Were you doing that job on the evening of
11 July 28, 2014, and the early mornings hours of July 29th?

12 A. Yes, sir.

13 Q. Where were you working that night?

14 A. I had two gigs that night. I had to host Knuckle Up,
15 a boxing -- a legal boxing match at Sound Stage, and then
16 after that I had to host the official after-party for that.
17 So at some nights I can host up to three to four parties in
18 one night.

19 Q. And so tell me about that night. Approximately what
20 times were you at these clubs?

21 A. Knuckle Up, I started at ten, got out of there around
22 about one-ish, about one, 1:30. The official after-party
23 started at 2:30 and I was there from 2:30 to about -- about
24 three. They didn't really have a good turnout, so it was
25 kind of short.

1 Q. At what point did you finish your evening that night?

2 A. Me and a friend of mine went to I-Hop to get something
3 to eat, took him home around like three, 3:30 maybe. I'm
4 kind of iffy on the times or whatever.

5 Q. Okay. So around 3:30, where were you headed?

6 A. Back home.

7 Q. And when did you get home?

8 A. Four, 4:30, one of those. I wasn't too sure of the
9 time, what time I got there.

10 Q. Can you describe what happened once you got to your
11 apartment complex?

12 A. Where I stayed at, it's two other apartments in front
13 of mine, so what I normally do -- my routine is once I get
14 back to the apartments if there's any headlights behind me,
15 I go all the way down, but that night there was nothing, so
16 I got to my apartment complex to wait for the privacy gate
17 to open up, and that takes a little while. So once the
18 gate came all the way up, I came in and just backed into my
19 parking lot.

20 Q. And so why do you look for headlights behind you?

21 A. Due to the fact I host different events, I get paid
22 cash and -- and sometimes it could be a large amount,
23 sometimes it can be little. A lot of people who know me
24 know that there could be cash, no checks or whatever, you
25 know.

1 Q. So once you pulled into your apartment complex, you
2 parked in your space, what happened then?

3 A. I -- once I got out, I went to get me -- so I had some
4 doughnuts sticks in my mini bag, so I grabbed that. As I
5 shut the door, I looked up, I saw this individual standing
6 behind me. He looked like death because he had on black
7 everything; black mask, black shoes, just black everything.
8 So once I got out and shut the door the person that had the
9 gun pointed it out at me and I looked at them like nobody
10 I'm kicking with plays dress-up like this. I'm trying to
11 think -- it wasn't near Halloween, I'm confused, and the
12 guy was like "Give me the keys and give me the money". I'm
13 still trying to figure out like what's going on and then
14 that's when I heard the uni -- universal language,
15 (demonstrating); okay, I understand what's going on now.
16 So he was like "Give me the keys and give me the money".
17 I'm sitting there trying to use my comedic skills and my --
18 my personal skills like trying to communicate with the
19 person, like chill out, let's try to work something out.
20 He said "I'm gonna count down. If you don't give me the
21 money by the time I count down, I'm gonna kill you".

22 Q. This is what the --

23 A. The person that was in all black. He started counting
24 down and then once they got down to zero, I was like, you
25 know what, I might try to run. So I was by my door, which

1 was the driver's, and the individual that was in the black
2 was behind -- was in the back of the car where the license
3 plate area was at. So once they count down, we're running
4 around the car, duck, duck, goose, and he's telling me
5 "Look, stop running before I shoot you". So due to the
6 fact that I'm in the neighborhood, I figured if -- I can't
7 scream that loud, so I said well, if I yell out "shoot"
8 maybe it might wake up somebody. So I'm telling him to
9 shoot. "If you're gonna shoot, shoot". We're still
10 running around the car, running around the car. So I
11 ducked down and he ducked down and I'm like "Jeez, this
12 guy's good". So the next thing I know I get to the back
13 of the car, he jumps on the car. Me, not thinking, I was
14 upset because he jumped on my car because my car was just
15 washed the day before, but he walks across my car and when
16 he did that I took my Minute Maid and threw it at him.

17 Once I threw the Minute Maid at him, I ran because my
18 -- the apartment is now right behind me. So I figured I
19 could just run into the apartment or just keep running to
20 where the lake is at and maybe I can, you know, get away.
21 As I ran, pow. Well, I dropped down to the ground. Once I
22 dropped down to the ground and tried to get up, then the
23 guy in all black came over me, like "Give me the money,
24 give me the keys". At that time he's pulling on -- pulling
25 on my pants trying to get my pants off. I was like -- I

1 ain't never had a man try to take my pants off, but I'm
2 trying to -- trying to hold them up. I didn't know what
3 they were gonna do. Instead of trying just to let me --
4 I'm putting my hands to keep him from trying to mess with
5 me, I've got my hands up, and he was getting frustrated
6 because I'm not -- I apologize if I told you this already,
7 but I'm not giving you nothing. I worked hard for this.
8 I'm not giving you nothing. Whatever -- whatever you've
9 got to do to get it, get it how you get it.

10 As of this time, he's still trying -- still trying to
11 hit me with -- hit me with the gun. He got frustrated. I
12 could imagine he's gonna get frustrated. He pointed the
13 gun at me, I put my hands up like this, he aimed it at my
14 leg, pow, shot me in my leg. I'm sorry, mom. I went "Oh,
15 shit, you shot me. What the hell?". I'm mad now because
16 -- it's not that serious, but you try to kill me for this
17 little bit of money or the money that you think I have? So
18 once he did that, I was like, "Yo, all right, chill, chill,
19 chill, chill." "Give me the money, give me the keys.
20 Something inside of me wouldn't give it to him. He put
21 the gun towards my head. I felt the heat from the barrel
22 of -- of the gun. I thought that was it. I laid back and
23 whatever was gonna happen was gonna happen. I laid back,
24 waited to whatever my end result was gonna be.

25 As I -- as I seen him getting ready to squeeze the

1 trigger, my girl came to the balcony and I'm like golly,
2 yo, just go inside because I think this due might kill me,
3 so I don't -- I don't want you to see this, so just -- just
4 go inside. She would listen. She's trying to be Wonder
5 Woman and jump over the balcony and I'm like yo, go inside,
6 don't -- I don't want you to see this. Because he already
7 done shot me. Just go inside. So she went inside and so
8 I'm like okay. I laid down. Hopefully he can -- whatever
9 he's gonna do he can get it over with and done by the time
10 she gets outside, but due to the fact she didn't listen,
11 she's running outside towards me anyhow, I'm like hell, he
12 done shot me, no telling what he's gonna do with my girl.
13 So I -- I swung at him. I don't know if I hit him in the
14 belt buckle, stomach or whatever, he takes off. So at the
15 time he was asking for my keys and my money, I already had
16 my money and my keys -- I yelled just go get the keys for
17 the car, you know what I'm saying, in case the person tried
18 -- whoever it is tries to backtrack and get the keys.
19 She's like -- I don't know if she got the keys or whatever,
20 so I'm like you know what, don't even worry about it, just
21 -- just help me get in the house.

22 As I stood up, I heard this snap, which I believe --
23 well, come to find out later on that was my fibula when it
24 broke. So we're hopping and blood's trailing all the way
25 back to the house. And once I -- once I felt myself, you

1 know, to see if I was shot anywhere else, it was just my
2 leg, I was like okay, you know, in my mind I'm good. My
3 girl didn't get hurt, he got no money, he got no car, he
4 got nothing, so I was -- I was all right from there.

5 Q. How bad were you bleeding?

6 A. Pretty bad. It left a nice little trail on the
7 sidewalk.

8 Q. I want to go back to when he was on top of you.

9 A. Uh-huh.

10 Q. He was directly on top of you. Were you looking at
11 his face, were you looking at his shoes or were you looking
12 at anything? Did you pay attention to any article of
13 clothing?

14 A. I -- I -- I did. I'm a shoe junky. I work at a shoe
15 store. I -- I know -- I noticed the shoes. I know it
16 might sound like crazy or whatever, but I'm -- I'm a shoe
17 guy and I know that the shoes was black, the black shoes,
18 and we actually sell -- used to sell those shoes in my
19 store.

20 Q. Did you recognize the brand of shoes?

21 A. Yeah.

22 Q. How do you -- how did you single out those shoes?

23 A. It's like -- it was like -- in my culture, all we
24 notice -- all we notice is shoes. Tennis shoes -- I notice
25 tennis shoes before I even notice you, you know, and those

1 Nike -- those black Nikes, I noticed them with the -- with
2 the strap, you know.

3 Q. I want to go back to -- what happened once you got
4 inside and Sidara called 9-1-1?

5 A. Once we got inside, just waited. Just waited. She
6 was trying to do a lot of stuff she seen on CSI, tie my leg
7 up and all this other stuff, you know.

8 Q. And then once you -- the ambulance showed up?

9 A. Right.

10 Q. And what happened once you got drove off in the
11 ambulance?

12 A. They got me in the ambulance, took me to the emergency
13 room. I don't know what officer came and took my -- took
14 my statement or whatever.

15 Q. So did you give a statement in the hospital?

16 A. Right.

17 Q. And what treatment did you receive at the hospital?

18 A. I don't -- I'm not sure.

19 Q. Okay. What kind of permanent effects do you have from
20 the gunshot wound?

21 A. Oh, man. Any -- any loud -- you know, any loud noises
22 kind of -- kind of throw me off and now -- now that this
23 happened to me I cannot stand people being around me close,
24 even to where I'm at the gas station, anybody around me, I
25 have to -- I have to stand off to the side. Trust issues

1 is kind of out the window now, you know, and nighttime kind
2 of -- kind of rocks with me a little bit, kind of throws me
3 off a little bit. So I'm not as -- as approachable as I
4 used to be before the situation because if you would have
5 met me before then, I don't you know, but I'll get up, give
6 you a hug, show you love, but now it's like I don't know
7 you.

8 Q. As far as your physical injury to your leg, do you
9 have any permanent effects from the incident?

10 A. Not quite running just yet. No -- no limping or
11 anything, but in the morning time aches -- aches and pains
12 in the morning time and like -- like the older people say,
13 I can tell when it's about to rain or whatever because my
14 leg kind of -- kind of hurts a little bit more than it did
15 before the situation happened.

16 Q. And so during this -- the attack, during the shooting,
17 you were really close to the Defendant?

18 A. Yes.

19 Q. Please describe what exactly from head to toe what he
20 was wearing.

21 A. He had on a black mask. I don't know if you're
22 familiar with the show So You Think You Can Dance? It was
23 labeled like a jabberwocky's mask. It's an all black mask
24 with black clothes, black jeans and black -- black shoes.
25 Just black everything.

1 Q. You also at some point described his physical build to
2 officers. Describe his physical build.

3 A. He was like kind of taller than me because once I --
4 once I -- once we got on the sidewalk I was -- I stood up,
5 you know what I'm saying, as we were tussling back and
6 forth, you know, so I know he was just a little -- little
7 taller -- just slightly taller than me or a little shorter
8 than me, but, you know --

9 Q. How tall are you?

10 A. Six-one.

11 Q. So you were standing at some point next to him?

12 A. Right, right. Yeah, once I -- once I got up.

13 Q. And so how tall would you say he was?

14 A. He had -- he had to be six-one. Six-one or six foot.

15 Q. I'm gonna show you what's been marked for
16 identification purposes as State's 149.

17 **MS. ZMROCZEK:** Without objection.

18 A. Yes.

19 Q. Do you recognize that?

20 A. I surely do.

21 Q. Is that the mask that he was wearing?

22 A. That's the mask that was that night. I saw it that
23 night.

24 **THE COURT:** What number?

25 **MR. STEADMAN:** State's 149, Your Honor. Your Honor,

1 at this point we would move to enter State's 149 into
2 evidence.

3 **THE COURT:** Any objection?

4 **MS. ZMROCZEK:** Just subject to my previous.

5 **THE COURT:** Come up, guys. I don't recall the
6 previous objection. Come up.

7 (Proceedings held at the bench; not reported.)

8 **THE COURT:** All right. The objection is overruled.
9 The State's Exhibit Number 149 for identification is
10 admitted into evidence subject to the objection previously
11 made.

12 (State's Exhibit Number 149, a mask, was admitted into
13 evidence.)

14 **MR. STEADMAN:** Thank you, sir. No further questions.

15 **THE COURT:** Cross-examination?

16 **MS. ZMROCZEK:** Thank you.

17 CROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q. Good morning.

20 A. Good morning.

21 Q. Do you go by Cadillac?

22 A. On weekends I do.

23 Q. On weekends?

24 A. Yeah.

25 Q. Is that your promotion name?

- 1 A. It is.
- 2 Q. Are you on the -- you're on the radio?
- 3 A. Now I am.
- 4 Q. And you let people know where you're gonna be?
- 5 A. Right.
- 6 Q. How long -- excuse me. How long have you been doing
- 7 this?
- 8 A. Twelve years.
- 9 Q. And you said you have five other jobs as well?
- 10 A. Correct.
- 11 Q. Quite ambitious. What -- how much cash did you have
- 12 that evening?
- 13 A. Roughly about -- I don't know. About seven hundred.
- 14 Q. About seven hundred?
- 15 A. Yeah.
- 16 Q. And you always get paid in cash?
- 17 A. Sometimes, right.
- 18 Q. Okay. Just sometimes or do they pay you in checks as
- 19 well?
- 20 A. It depends on the event. If it's a wedding, they're
- 21 not gonna pay me in cash, I'm paid a check.
- 22 Q. Okay. I want to talk about Knuckle Up Mondays for
- 23 just a moment.
- 24 A. Sure.
- 25 Q. Tell the jurors a little bit about what Knuckle Up

1 Monday is.

2 A. Knuckle Up Monday is -- you know, it's a boxing event
3 for young people who have -- they want to box a friend or
4 whatever and they do it the legal way, you know, with a
5 referee, a judge, an ambulance, the whole -- the whole nine
6 yards, and so you come to this event and just box for fun.

7 Q. Okay. And it's located on Blanding Street?

8 A. That particular night it was. It hosts -- it's at
9 different events.

10 Q. Okay. This night it was the Sound Stage, correct?

11 A. Right.

12 Q. Which is at 1800 Blanding?

13 A. Right.

14 Q. And how far is 1800 Blanding from your home?

15 A. Downtown. Quite -- quite far.

16 Q. And, let's say, if I'm at downtown and Lexington and
17 West Columbia are this side, which side do you live on?

18 A. At the time it was towards Columbia Mall.

19 Q. Towards where?

20 A. Columbia Mall.

21 Q. Close to Dentsville?

22 A. I don't know where Dentsville is.

23 Q. Okay. But up in that area off of 77 --

24 A. Right.

25 Q. -- and 20?

1 A. Right.

2 Q. Okay. So off of 77 and 20?

3 A. Uh-huh.

4 Q. And then after -- so going back to Knuckle Up Monday,

5 are there cameras?

6 A. I don't know. I -- I host.

7 Q. Okay. So do you walk in the front door?

8 A. No, I have to use the side door.

9 Q. Okay. And you're familiar that -- in fact, I think

10 you posted on your Facebook they have some pictures that

11 are taken from aerial views inside.

12 A. My managers take care of my Facebook. I have nothing

13 to do with Facebook.

14 Q. Okay. Are you familiar with the rules of Sound Stage

15 and Knuckle Up Mondays?

16 A. The rules of boxing, correct.

17 Q. Okay. And the people who -- who come in -- who come

18 to watch the boxing --

19 A. Uh-huh.

20 Q. -- they can't wear plain colored shirts, right?

21 A. And, again, I host. I'm not security or the promoter.

22 I'm just the host of the event.

23 Q. Are you familiar with the rules though?

24 A. It don't apply to me because I'm the host.

25 Q. Okay. One of your jobs as the host you said was to

1 kind of get the crowd fired up, right?

2 A. Along with other things. That's one of them, right.

3 Q. Okay. So some of the things that you do to get the
4 crowd fired up is that you talk to them, right?

5 A. Correct.

6 Q. And you single out certain people sometimes?

7 A. Single out?

8 Q. Like make fun of what they're wearing or comment on
9 what they're wearing.

10 A. Right.

11 Q. Okay. So you comment on what people are wearing
12 sometimes?

13 A. Right.

14 Q. Or you say hey, scrub in the corner, pay my waitress
15 or get out?

16 A. That's correct.

17 Q. Tip the bartenders or leave?

18 A. Right, so they can make more money. It's -- it's
19 reverse psychology, yes.

20 Q. Right, right, right.

21 A. Correct.

22 Q. And it's comprised of a bunch of young people?

23 A. Correct.

24 Q. How many people do you think were there that night?

25 A. Quite a few.

1 Q. Quite a few. You were actually shown a picture of
2 Mr. Berry, correct?

3 A. I was.

4 Q. And did you recognize him?

5 A. Not -- not from -- from where when you ask did I
6 recognize him?

7 Q. When you were shown the pictures, they asked you did
8 you recognize him?

9 A. All right.

10 Q. And what was your response?

11 A. No.

12 Q. You haven't seen him before?

13 A. I have seen him before, yes. Yes, I have seen him
14 before.

15 Q. Okay. Do you know him?

16 A. Personally, no.

17 Q. Okay. You said on direct that your culture notices
18 shoes?

19 A. Pretty familiar with shoes, right.

20 Q. And that these were absolutely Nike Air Raids no
21 doubt, right?

22 A. I didn't say Air Raids. I know they was Nikes with --
23 with the strap, yes.

24 Q. Okay. And they were black?

25 A. Right.

1 Q. So the person jumped on your car?

2 A. Yeah, from the hood to the windshield all the way to
3 the top of the car and then -- right.

4 Q. And prior to that they were going around it, they were
5 touching your car and you were touching your car to try to
6 move around the car as well, right?

7 A. That's correct.

8 Q. And they were as well?

9 A. Correct.

10 Q. And when -- and they put their hands on it and jumped
11 up?

12 A. No, they didn't jump. I don't know if they used their
13 hands. They jumped.

14 Q. A standing jump?

15 A. It can happen, yes.

16 Q. Okay. But you'll admit that they did touch your car?

17 A. No, I'm not gonna admit. I don't know if they did. I
18 -- I wasn't worried about if they did touch my car. I was
19 trying to get away.

20 Q. Okay. And you believed at that time that your cell
21 phone had been stolen?

22 A. That's correct because it wasn't nowhere near me.

23 Q. Okay. But that's changed recently that -- because it
24 was not stolen, correct?

25 A. Right.

1 Q. Okay. In fact, it was just laying right there on the
2 hood of your car?

3 A. I didn't know where it was at. It wasn't with me.

4 Q. Okay. The description -- do you recall right when the
5 police officer responded to your house that evening?

6 A. Say that again.

7 Q. Do you recall right when the police officer responded
8 to your house that evening?

9 A. Yeah.

10 Q. And did you speak with that officer?

11 A. Did I do what?

12 Q. Did you speak with the officer?

13 A. It was a lot of officers. I was -- I don't -- I don't
14 remember who I was talking to. I know I was shot. I know
15 it happened in front of my girlfriend and, yeah, I wasn't
16 -- I don't remember what officer I talked to, what fire
17 department or EMS person I talked to.

18 Q. Okay. I'm not trying to trick you. I'm just trying
19 to --

20 A. No, you're making me upset because I --

21 Q. Would you like some water?

22 A. No, I'm good. Go ahead.

23 Q. I know that this is upsetting and --

24 A. Yeah, because I almost got killed and you're sitting
25 here asking me these -- go ahead. I know you've got a job

1 to do. Go ahead. I'm listening.

2 Q. That's okay. We can take some time if you need it.

3 A. No, I'm good.

4 **THE COURT:** Speak up, please.

5 BY MS. ZMROCZEK:

6 Q. That evening when you were shot and you were concerned
7 about your girl, you did the very best you could to give
8 the most accurate description, right?

9 A. Correct.

10 Q. And you described the clothes?

11 A. Right. All black everything.

12 Q. And you told the officer at that time that you didn't
13 know what height or weight or build; is that right?

14 A. The height or build at that -- at the time I didn't --
15 I wasn't concerned. Once I got to the hospital in a safe
16 area, you know what I'm saying, then that's what I did,
17 yes.

18 Q. And you described the gun as a black gun?

19 A. Right.

20 Q. Do you own a gun?

21 A. Do I own a gun?

22 Q. Yes.

23 A. At the time I didn't, but I do -- I'm a registered
24 concealed weapon owner.

25 Q. You said -- just a few more questions. You got to

1 [REDACTED] at around 2:30. Did I hear that correctly?

2 A. Around -- around about. I'm not sure about time.

3 Q. Okay. And you're familiar with [REDACTED] you've been
4 there before?

5 A. Correct.

6 Q. And they have cameras on the inside?

7 A. I don't know.

8 Q. Okay. When you got there at 2:30, how did you get
9 into [REDACTED]

10 A. How did I get -- through the door.

11 Q. Through the -- the side entrance and then the normal
12 way?

13 A. No, I go -- I went through -- every club I go to that
14 has a side door, I go through the side door because I'm
15 like the master of ceremonies. I don't -- it's kind of
16 hard to explain to you. I don't know if you'll probably
17 understand it, but when it comes to these parties I am that
18 guy, okay? They make a big deal when I'm coming, you feel
19 me?

20 Q. Uh-huh.

21 A. So when they -- when I get ready to come in, Cadillac
22 is on his way, Cadillac is coming, turn it up, all right?
23 So we're gonna bring you through the side door so you can
24 make a grand entrance. That's what I do, right.

25 Q. Okay. So you're a big -- you're a big personality?

1 A. I like to think so.

2 Q. Yeah. When did you -- were you aware that there were
3 fights going on that night at [REDACTED]

4 A. No, I'm not concerned with that. I don't pay
5 attention to that.

6 Q. There weren't a lot of people? You were inside,
7 right?

8 A. Right.

9 Q. And there weren't a lot of people inside. I think you
10 said they had a bad turnout?

11 A. Right.

12 Q. Okay. How -- and then you went to I-Hop?

13 A. That's correct.

14 Q. And dropped your friend off?

15 A. Correct.

16 Q. Where does your friend live?

17 A. Down by [REDACTED]. I don't know
18 the exact address or whatever, but down --

19 Q. In West Columbia?

20 A. No, it's not West Columbia.

21 Q. Oh, off of [REDACTED]?

22 A. (Indicating.)

23 Q. Okay. And then from there you went home?

24 A. That's correct.

25 Q. And what -- how did you get home?

- 1 A. Two Notch all the way up.
- 2 Q. Two Notch the whole way?
- 3 A. Correct.
- 4 Q. Approximately how long did that take?
- 5 A. Fifteen, twenty.
- 6 Q. Fifteen to twenty minutes?
- 7 A. (Nods head.)
- 8 Q. And you have a private -- a privacy gate?
- 9 A. Yeah.
- 10 Q. Explain how that works.
- 11 A. You can use a card to get in, but what I had at the
- 12 time was a button. You mash the button and the gate comes
- 13 up.
- 14 Q. Like a garage door?
- 15 A. Yeah. It's supposed to prevent people who don't live
- 16 there to come in and rob us or whatever and come in.
- 17 Unwanted guests.
- 18 Q. And so it opens up only for you and then it closes
- 19 behind you?
- 20 A. It opens up for whoever has a button or a key or
- 21 whoever will buzz you in. So, no, it don't just open up
- 22 for me.
- 23 Q. And so did you see what direction the person who
- 24 attacked you fled?
- 25 A. Away from me and my girl. That's the only thing that

1 I was concerned with at the time.

2 Q. And then when you stood up is when you heard the snap
3 you said?

4 A. Right, which was my fibula that broke because I was
5 shot.

6 Q. And then you went inside?

7 A. Hopped inside, right.

8 Q. Hopped inside?

9 A. Right.

10 **MS. ZMROCZEK:** Thank you, Mr. Keith.

11 **THE COURT:** Redirect?

12 **REDIRECT EXAMINATION**

13 **BY MR. STEADMAN:**

14 Q. That night you thought your cell phone had been taken?

15 A. I thought it was because my girl wasn't able to find
16 it and I didn't have it. Instead of letting her stay out
17 there looking for a cell phone not knowing if whoever just
18 shot me was still out there, I told her not worry about it.
19 So at that time I didn't have it and I was under the
20 assumption that it was stolen or misplaced.

21 Q. And did you later find out that your cell phone had
22 actually not been taken?

23 A. Right. They told me that the cell phone was around my
24 car or on my car, something like that.

25 **MR. STEADMAN:** Thank you.

1 **THE COURT:** Recross?

2 **MS. ZMROCZEK:** I have no further questions. Thank
3 you.

4 **THE COURT:** All right. Thank you. You may step down.
5 (Witness excused.)

6 **THE COURT:** All right. You may call your next
7 witness.

8 **MS. CAMPBELL:** May it please the Court? The State
9 calls David Sassaman.

10 **THE COURT:** All right.

11 DAVID SASSAMAN,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Thank you. Please have a seat on the
14 witness stand and state your full name for the record and
15 please spell your last name.

16 **THE WITNESS:** David Sassaman, S-A-S-S-A-M-A-N.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q. Mr. Sassaman, where are you employed?

20 A. Richland County EMS.

21 Q. Can you talk a little louder? It's hard to hear in
22 here, okay?

23 A. Richland County EMS.

24 Q. How long have you been working there?

25 A. Four years.

1 Q. And what are your duties at the Richland County EMS?

2 A. I'm an EMT.

3 Q. And as an EMT, are you the person that responds if
4 someone calls 9-1-1 and they're in distress?

5 A. Yes, ma'am.

6 Q. I want to turn your attention back to July the 29th in
7 the early morning hours. Did you respond to a gunshot
8 wound that morning?

9 A. Yes.

10 Q. Where did you go?

11 A. Out in the northeast area.

12 Q. The northeast area?

13 A. Yes, ma'am.

14 Q. Do you remember the -- was it an apartment complex
15 or --

16 A. Yes, it was an apartment complex.

17 Q. And do you remember about what time you were
18 dispatched that morning?

19 A. After 4 AM.

20 Q. And if I show you a copy of your report, would that
21 help refresh your memory?

22 A. Yes, ma'am.

23 Q. Okay. And approximately what time was it that you
24 were dispatched that morning?

25 A. We were dispatched at 4:37 AM.

1 Q. 4:37 AM?

2 A. Yes, ma'am.

3 Q. And approximately how long did it take you to actually
4 get to the apartment complex where the person had been
5 shot?

6 A. Eight minutes.

7 Q. Eight minutes. Once you got there, can you tell the
8 jury what you found?

9 A. Once we arrived on the scene, we went to the apartment
10 number that was given to us. We opened the door to find a
11 patient laying on the entryway floor. He stated that he
12 had been shot in the leg. We exposed the wound, wrapped it
13 and bandaged it and placed him in full spinal precautions,
14 took him to our stretcher and loaded him into the truck.

15 Q. Let me stop you for a second. When you say "we were
16 there", was somebody else there with you?

17 A. Yes. My paramedic partner was there with me.

18 Q. But were you the primary on this call?

19 A. Yes, ma'am.

20 Q. And you say -- you had mentioned that you exposed the
21 wound. Where was the wound located that you observed?

22 A. In the patient's right ankle.

23 Q. And specifically what type of wound was it that you
24 observed?

25 A. There were two holes noted. It looked like possibly a

1 through and through gunshot wound.

2 Q. Consistent with a through and through gunshot wound?

3 A. Yes, ma'am.

4 Q. Did you take any effort to help stop the bleeding at
5 that point?

6 A. Yes, ma'am. It was bandaged and wrapped with cling
7 and the bleeding was controlled. It had pretty much
8 stopped bleeding prior to us arriving.

9 Q. Once you had bandaged the ankle, did you make any
10 efforts to transport the victim anywhere?

11 A. Yes. He was transported to Richland.

12 Q. Why was he transported to Richland?

13 A. Richland is a trauma center and they're pretty good at
14 dealing with that.

15 Q. Based on your observation of the wound, he needed
16 additional care?

17 A. Yes, ma'am.

18 Q. And once you transported him to Richland County, about
19 what time was it when you got there?

20 A. We arrived at 5:11 AM.

21 Q. And was that the extent of your involvement in this
22 case?

23 A. Yes, ma'am.

24 **MS. CAMPBELL:** Thank you. I don't have anything
25 further.

1 **THE COURT:** Cross-examination?

2 **MS. ZMROCZEK:** Just briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. What's a trauma score?

6 A. A trauma score?

7 Q. Yes.

8 A. That takes the Glasgow coma score and the patient's
9 blood pressure and respiratory rate and adds them together.

10 Q. Is it done on a scale?

11 A. Yes, ma'am.

12 Q. What is the highest Glasgow score?

13 A. The highest Glasgow is fifteen.

14 Q. Okay. And what's the lowest? Is it zero?

15 A. Three.

16 Q. A three?

17 A. Three, yeah.

18 Q. Do you recall what the score was in his case?

19 A. The trauma score was a twelve and the Glasgow coma
20 score was a fifteen.

21 Q. Was a fifteen?

22 A. Yes, ma'am.

23 **MS. ZMROCZEK:** Thank you. I have further no further
24 questions.

25 **THE COURT:** Redirect, Ms. Campbell?

1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** All right. Thank you. You may step down.

3 (Witness excused.)

4 **THE COURT:** You may call your next witness.

5 **MS. WALKER:** Your Honor, the State calls Kristin
6 Settles.

7 **THE COURT:** All right, ma'am. Come on around and come
8 on up to the front.

9 KRISTIN SETTLES,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record.

13 **THE WITNESS:** I'm Kristen Settles.

14 DIRECT EXAMINATION

15 BY MS. WALKER:

16 Q. Good morning.

17 A. Good morning.

18 Q. Can you tell me what city you currently live in?

19 A. Columbia.

20 Q. How long have you lived here?

21 A. It's about three years now.

22 Q. And what do you do for a living?

23 A. I'm an occupational therapist.

24 Q. Back in July of last year, where were you living?

25 A. At ...

1 Q. I want to take your attention back to July 29th, the
2 early morning hours. What were you doing or where were
3 you?

4 A. I was in my apartment.

5 Q. Okay. And what were you doing?

6 A. I was asleep when I heard everything.

7 Q. Can you tell me what awakened you that night?

8 A. Well, I had fallen asleep on the couch and I was
9 getting up to go back to bed and I heard like a yelling
10 outside.

11 Q. Could you tell -- did you recognize the voices?

12 A. No.

13 Q. And when you heard the yelling, what, if anything, did
14 you do?

15 A. Well, I was on my way to my bedroom and then I went to
16 look out the window to see what was going on.

17 Q. And what did you see out your window?

18 A. I saw two guys like in the grassy area downstairs and
19 then I heard they were arguing. I heard one person say no,
20 no, no and then --

21 Q. I'm sorry, you heard one person say what?

22 A. No. I heard them say no over and over again and then
23 I saw one guy down on the ground and I don't know if they
24 were arguing or what, but then I saw the gunshot -- or
25 heard and then saw it and whoever was on the ground had his

1 hands on his face, I don't know if he was being hit or
2 what, and then the other guy ran off and jumped the fence
3 and then, I guess, a car was waiting for him because then
4 the lights come on, but there was a sign there, so I
5 couldn't see like the whole car. I saw the lights come on
6 and it drove off.

7 Q. Before, I guess, the running started, did you see
8 lights from a car before this?

9 A. No.

10 Q. So the lights were off and then they came on?

11 A. Uh-huh.

12 Q. How many gunshots did you hear that night?

13 A. Just one.

14 Q. Do you remember giving a statement to law enforcement
15 about this case?

16 A. Uh-huh.

17 Q. And do you think seeing your statement could refresh
18 your memory about certain things?

19 A. Sure.

20 Q. Okay.

21 **MS. WALKER:** Your Honor, may I approach the witness?

22 **THE COURT:** Yes, ma'am.

23 BY MS. WALKER:

24 Q. Just in terms of the number of gunshots, do you
25 remember how many you -- you told law enforcement you heard

1 at that point?

2 A. Yes. I think there were two, but I only saw one.

3 Q. You saw him fire one, but you heard two shots?

4 A. I think I heard two.

5 Q. Okay. I'm not trying to confuse you.

6 A. Uh-huh.

7 Q. Just trying to get it straight. The person that shot
8 the victim in this case, could you describe that person to
9 me?

10 A. All I remember -- it was dark. All I remember was
11 like black clothing. It could have been a black guy, but I
12 don't remember specifics of anything.

13 Q. Do you remember if he was tall or short or fat or
14 skinny?

15 A. No.

16 Q. Let me approach you with that statement again. If it
17 pleases the Court.

18 A. Okay.

19 Q. Do you remember back in -- back on July 29th of 2014
20 the description you gave to law enforcement?

21 A. I said black, skinny, all black clothing.

22 Q. I'm sorry. Will you repeat that one more time?

23 A. Black, skinny, all black clothing.

24 Q. Okay. And did you call 9-1-1?

25 A. Uh-huh.

1 **THE COURT:** Yes?

2 **THE WITNESS:** Yes.

3 **THE COURT:** It's hard for her to take "uh-huh" and
4 "unh-unh".

5 **THE WITNESS:** Sorry.

6 **MS. WALKER:** Thank you.

7 BY MS. WALKER:

8 Q. The car that the shooter ran to, did you get a look at
9 that at all?

10 A. I think I said it was white or it could have been a
11 white car, but I only saw like the back of it.

12 Q. Was it like an SUV or a four-door, a sports car?

13 A. I said it was a four-door. It could have been kind of
14 square looking.

15 Q. You said square looking?

16 A. Uh-huh.

17 **MS. WALKER:** Thank you. I don't have any further
18 questions.

19 **THE COURT:** Cross-examination?

20 **MS. ZMROCZEK:** Thank you.

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q. Ms. Settles, when you saw the car, was it in a light
24 or was it -- you said that he jumped the fence?

25 A. Yes.

1 Q. Okay. And how -- how great were you able to see this
2 car?

3 A. How what?

4 Q. How good -- how clearly were you able to see the car?

5 A. I saw it when the lights came on. I didn't see it
6 before.

7 Q. But when the lights came on, you got a good look?

8 A. No, I just saw the back of the car.

9 Q. It was a white or a light colored car?

10 A. Uh-huh. Yes.

11 Q. Okay. And you described it as square?

12 A. I think it could have been, uh-huh.

13 Q. Could you -- did you describe it as an older or a
14 newer?

15 A. I didn't know if it was old or new.

16 Q. You thought it looked older?

17 A. Probably.

18 **MS. ZMROCZEK:** Thank you.

19 **THE COURT:** Redirect, Ms. Walker?

20 **MS. WALKER:** No, Your Honor.

21 **THE COURT:** All right. Thank you. You may step down.

22 (Witness excused.)

23 **MS. WALKER:** Your Honor, may this witness be released
24 -- or excused?

25 **THE COURT:** Go ahead and call your next witness. You

1 want her excused?

2 MS. WALKER: Yes, Your Honor.

3 THE COURT: Any objection?

4 MS. ZMROCZEK: No objection.

5 THE COURT: All right. You are excused. You're free
6 to go. Thank you for coming.

7 MS. CAMPBELL: The State would call Investigator
8 Trevor Holt.

9 THE COURT: Counsel, come up just a moment, please,
10 while the witness is being sworn.

11 (Proceedings held at the bench; not reported.)

12 TREVOR HOLT,

13 having been duly sworn, testified as follows:

14 THE CLERK: Thank you. Have a seat on the witness
15 stand, please.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q. Investigator Holt, where are you employed?

19 A. Richland County Sheriff's Department.

20 Q. What do you do there, sir?

21 A. I'm a crime scene investigator.

22 Q. As a crime scene investigator, what do your duties
23 include?

24 A. Collection, preservation, documentation and
25 reconstruction of crime scenes or evidence related to crime

1 scenes.

2 Q. And how long have you been working in the crime scene
3 investigative unit at the Richland County Sheriff's
4 Department?

5 A. Since 2008.

6 Q. And how long have you actually been in law
7 enforcement?

8 A. Since '95.

9 **THE COURT:** Excuse me, Ms. Campbell. I didn't get his
10 name.

11 **MS. CAMPBELL:** Trevor Holt. Thank you, Your Honor.

12 **BY MS. CAMPBELL:**

13 Q. Can you tell the jury a little bit about your
14 education and your training in the field of crime scene
15 investigation?

16 A. Yes, ma'am. In addition to in-house competency and
17 proficiency testing yearly, I've received the continuing
18 educational workshops and formal training in these certain
19 areas; ethics, crime scene investigation, blood pattern
20 analysis, DNA, overview of forensic pathology, advanced
21 crime scene photography, advanced blood pattern analysis,
22 crime scene processing, fingerprint recognition and
23 comparison, forensic anthropology and archeology, shooting
24 incident documentation and reconstruction, blood pattern
25 analysis, crime scene reconstruction, ethics in forensic

1 science, advance blood pattern analysis, shooting analysis
2 and reconstruction. I'm also certified as a crime scene
3 investigator with the International Association of
4 Identification, which I've been a member of since 2009.
5 I'm also a member of the South Carolina Division of the
6 International Association of Identification since 2010.

7 Q. And when you respond to a crime scene, is it important
8 to basically try to memorialize the crime scene as it is
9 when you get there?

10 A. Yes, ma'am. Through photography we try to document
11 the scene as is when we get there to show -- be able to
12 show what it was like when we arrived.

13 Q. And then once you document it by photographing it,
14 then do you also go back and kind of highlight certain
15 pieces of evidence that may or may not be important in the
16 case?

17 A. Yes, ma'am.

18 Q. And do you do that by putting markers with like
19 numbers or letters on them?

20 A. Yes, ma'am. ID markers.

21 Q. I want to turn your attention to the early morning
22 hours of July the 29th of last year. Did you respond to a
23 shooting incident?

24 A. Yes, ma'am. At approximately 4:50 AM.

25 Q. And 4:50 was when you were actually notified?

1 A. Yes, ma'am. I actually heard the call dispatched over
2 the radio and responded.

3 Q. Okay. Where were you when you first heard the call?

4 A. I was out patrolling the Region 2, Two Notch Road,
5 Decker Boulevard, Parklane Road area.

6 Q. And is headquarters actually in Region 2?

7 A. Yes, ma'am.

8 Q. Right there on Two Notch Road?

9 A. Two Notch by Fontaine, yes, ma'am.

10 Q. So were you in pretty close proximity to this crime
11 scene?

12 A. Yes, ma'am.

13 Q. And when you got there, what, if anything, did you
14 observe?

15 A. Upon arrival, I observed uniformed patrol officers
16 who arrived on the scene prior -- prior to me establishing
17 scene security by putting up crime scene tape and starting
18 a crime scene log.

19 Q. And is it important that the deputies do that before
20 you get there or before other people are allowed to wander
21 near it?

22 A. Correct. This was in front of an apartment building
23 at an apartment complex. It was a very large outdoor area
24 between the parking lot and the front of the building that
25 had to be secured. Individuals that were living in the

1 complex, of course, I guess, heard some type of disturbance
2 and were coming out looking, being noisy, that kind of
3 stuff.

4 Q. Once you got there, did you make contact with a Deputy
5 Short, who was one of the first officers on the scene?

6 A. Yes, ma'am, I did.

7 Q. And at that point -- you can't say what he said to
8 you, but do you get a history from officers at the scene in
9 order to help you --

10 A. Yes, ma'am.

11 Q. -- figure out what you need to memorialize?

12 A. I knew what had been put out over the radio, which
13 was the reason I responded, and then I received a brief
14 statement from Deputy Short at that time upon my arrival
15 at the scene.

16 Q. And once you got there, what areas were you
17 specifically focussed on memorializing that morning?

18 A. It was the parking lot area around a 2012 Chrysler 300
19 in front of Building 1400, the walkway in front of the
20 Building 1400 and the front door of Apartment 1407.

21 Q. And when you got there -- was it still dark when you
22 first got there?

23 A. Yes, ma'am.

24 Q. Did you then photograph these different areas
25 including the car that you mentioned, which was a Chrysler

1 what?

2 A. 300. 2012 Chrysler 300.

3 Q. I want to show you photographs that are 3 through 39,
4 Your Honor, I believe without objection. Do you recognize
5 those photographs?

6 A. Yes, ma'am.

7 Q. Are those the photographs that you took that evening
8 both at the scene as you originally found it and then once
9 you put markers out?

10 A. Correct.

11 **MS. CAMPBELL:** Your Honor, may the witness step down
12 in front of the jury?

13 **THE COURT:** Yes.

14 (Whereupon, the witness steps down from the witness
15 stand.)

16 **THE COURT:** Let's get the numbers on the record.
17 Numbers.

18 **MS. CAMPBELL:** 3 through 39.

19 **THE COURT:** Photographs, Numbers 3 through 39,
20 admitted without objection?

21 **MS. ZMROCZEK:** That's correct, Your Honor.

22 **THE COURT:** All right. Admitted without objection.

23 **MS. CAMPBELL:** Thank you.

24 (State's Exhibit Numbers 3 through 39, photographs,
25 were admitted into evidence.)

1 **THE COURT:** All right. The State's counsel wishes to
2 publish or show these exhibits to you and they may do so
3 at this time. I will, again, tell you that do not be
4 concerned if you are not able to see them as closely as
5 you might like to. You will be able to take everything to
6 the jury room -- or all exhibits that are admitted into
7 evidence to the jury room with you when you retire to
8 deliberate your verdict.

9 All right, Ms. Campbell.

10 **MS. CAMPBELL:** Thank you, Your Honor.

11 BY MS. CAMPBELL:

12 Q. If you can stand on this side so the court reporter
13 can hear you better and I'll get over here. The first one
14 I want to show you is State's Exhibit Number 3. What area
15 -- this is a dark photograph. What area does this show?

16 A. This is the parking lot area showing the placement of
17 the burgundy colored 2012 Chrysler 300.

18 Q. And I'll show you State's Exhibit Number 5. Does that
19 show kind of the area where the car was parked?

20 A. Yes, ma'am.

21 Q. What's the color of the car we're talking about?

22 A. Burgundy. It's the red burgundy color with the red
23 burgundy rims.

24 Q. And State's Exhibit 4 shows it again?

25 A. Yes, ma'am.

1 Q. And how was it parked in the parking lot when you got
2 there?

3 A. It was backed in.

4 Q. I'll show you State's Exhibit Number 6, which is
5 another photograph of that car. What's the item here
6 that's on the hood?

7 A. A cell phone.

8 Q. And is that how it was when you found it --

9 A. Yes, ma'am.

10 Q. -- when you got out there?

11 A. Yes, ma'am.

12 Q. And, of course, at this point you don't know what, if
13 any, significance that has?

14 A. Correct.

15 Q. In order to memorialize how the car was parked, I'll
16 show you State's Exhibit 7 and 8. Do those show different
17 areas on that same car?

18 A. Yes, ma'am.

19 Q. And State's Exhibit Number 9 and 10?

20 A. This is the white line dividing the two parking spaces
21 between the burgundy Chrysler and the car next to it and an
22 overall of the indication of where a shell casing was found
23 and then a midrange photograph of where the shell casing
24 was found.

25 Q. When we're talking about a shell casing, can you tell

1 the jury what's a shell casing and why are shell casings
2 left at the scene significant?

3 A. Shell casings when fired out of a semiautomatic
4 weapon or an automatic weapon the projectile is actually
5 fired through the barrel of the weapon. The casing is
6 then ejected from the side of the weapon; whereas in a
7 revolver they're all contained within a cylinder. On a
8 semiautomatic or a fully automatic weapon they're
9 discharged out to the side.

10 Q. So in cases where a shooting though has occurred, you
11 look for evidence such as any projectiles or casings?

12 A. Correct.

13 Q. Is it more usual to find the casing or a projectile?

14 A. More prevalent would be the casing itself.

15 Q. Why is that? What happens to the projectile?

16 A. The projectile at the velocity it's travelling when it
17 hits things, there's no telling where it's gonna go. It's
18 gonna deflect, it's gonna ricochet, it may impact and go
19 through, it may lodge, it may perforate the surface. It's
20 a guess as to where a projectile actually ends up after
21 it's been fired.

22 Q. But you look for them nonetheless?

23 A. Correct. We look for them and any indications of
24 where they may have gone or the flight path they may have
25 taken. In this case, there was no impact points or

1 anything that would lead us in a certain direction of which
2 way that weapon was fired or the direction a projectile
3 would have travelled.

4 Q. That you were able to observe in the dark?

5 A. Correct.

6 Q. And State's Exhibit Number 11 is a close-up of the
7 area between the cars?

8 A. Correct.

9 Q. And that shows one of the shell casings?

10 A. One of the shell casings, yes.

11 Q. That you later collected?

12 A. Yes.

13 Q. And State's Exhibit Number 12, what does this show?

14 A. This is the front side of Building and the walk
15 path going up to Building

16 Q. And specifically this is the walk path we're talking
17 about here?

18 A. Yes.

19 Q. And that was significant also in your investigation?

20 A. Yes, ma'am.

21 Q. I want to show you State's Exhibit Number 13 and then
22 further up the path on State's Exhibit Number 14. Again,
23 what area does this show?

24 A. Correct. This is the indication of Building by
25 the marker on the building. This is a closer view of the

1 front of the building showing a location of a stain on the
2 sidewalk.

3 Q. A stain on the sidewalk?

4 A. Yes, ma'am.

5 Q. I want to show you State's Exhibit Number 15, which
6 shows some crime scene tape, as well as the actual roll the
7 crime scene tape came off of.

8 A. Right. Yes.

9 Q. Was that there before you got there?

10 A. Yes, ma'am.

11 Q. And is that unusual for a deputy to mark evidence
12 before you get there just to make sure it doesn't get
13 moved?

14 A. It's not unusual. Usually if they find something they
15 consider to have evidentiary value, they will place some
16 type of marker or indicator there, especially when it's
17 dark outside, just so when we go back they can say hey, at
18 this area I put this here to mark the location of this that
19 I found.

20 Q. And State's Exhibit Number 16 and 17, actually what's
21 located next to that with a marker?

22 A. That is a second fired shell casing.

23 Q. And where is this located on the sidewalk?

24 A. Right where the crime scene tape roll is located where
25 the two sidewalks merge together.

1 Q. And State's Exhibit 17, again, is a close-up of that?

2 A. Yes, ma'am.

3 Q. And you mentioned some stains on the sidewalk. I'll
4 show you State's Exhibit Number 18 and 19.

5 A. Yes, ma'am. Reddish-brown stains located on the
6 sidewalk in front of Building .

7 Q. I'm sorry. I keep walking in front of you.

8 A. That's okay.

9 Q. And, again, when you're observing all this, you don't
10 have any details as to what happened?

11 A. Correct.

12 Q. These are your observations?

13 A. Correct.

14 Q. State's Exhibit Number 20, is that a close-up of that
15 stain?

16 A. Close-up view of the same stain.

17 Q. State's Exhibit Number 21 and 22 is from a different
18 angle?

19 A. Right. This is looking from the walkway -- the
20 interior walkway of Building . . . back out towards the
21 parking lot.

22 Q. So that's just you want to include every viewpoint?

23 A. Right.

24 Q. And State's Exhibit Number 23 and 24 show what
25 apartment number?

1 A. Apartment Number , door , and the location of
2 two additional stains that were located by door .

3 Q. And , was -- that apartment on what floor?

4 A. First floor.

5 Q. On the ground floor?

6 A. Yes, ma'am.

7 Q. You mentioned stains and I'll show you State's Exhibit
8 Number 25. Where were those stains exactly?

9 A. They were right here by the crease or the corner of
10 the building going towards door , so they would be
11 right here in this photograph and this would be your white
12 trim to door .

13 Q. And then, of course, a closer view in State's Exhibit
14 Number 26?

15 A. Yes, ma'am.

16 Q. And, again, what type of stain was that?

17 A. A reddish-brown stain.

18 Q. And you're calling it a reddish-brown stain, not
19 blood. Why do you do that?

20 A. At this time, I didn't see the source of any blood
21 being let by anyone. I had information that there was an
22 injury involved in this case. Until it's determined
23 through processing that it's blood, we refer to it as a
24 reddish-brown stain.

25 Q. Once you've taken your overall pictures, did you then

1 go back and take some close-ups?

2 A. Yes, ma'am. Items that I feel -- felt had evidentiary
3 value they were marked with ID markers.

4 Q. I'm showing you State's Exhibit Number 27 and 28.
5 Again, what's that?

6 A. A cell phone located on the hood of the vehicle.

7 Q. And then, again, between the cars in State's Exhibit
8 29 and 30 and 31?

9 A. It's the fired cartridge casing between the two
10 vehicles in the parking lot.

11 Q. The first one?

12 A. Yes, ma'am.

13 Q. Which is in State's Exhibit Number 31?

14 A. Yes, ma'am.

15 Q. And then you also put a marker, I believe, next to the
16 tape in State's 32?

17 A. Yes, ma'am. The second fired cartridge casing that
18 was found at the scene.

19 Q. And then another marker, which is D -- and you don't
20 do them in any order that have significance, you just do
21 them in any order?

22 A. Right. Yes, ma'am. They're just placed there.

23 Q. State's Exhibit 34 and 35?

24 A. Yes, ma'am. This is Marker D indicating the
25 reddish-brown stain on the walkway in front of

1 Building

2 Q. 36 and 37. And when you got there, the reddish-brown
3 stain that you didn't call blood though, what was its
4 condition? Was it dry or wet?

5 A. It was wet.

6 Q. State's Exhibit 38 and 39 show what?

7 A. The location of the reddish-brown stain located by
8 door

9 Q. Thank you.

10 (Whereupon, the witness returns to the witness stand.)

11 BY MS. CAMPBELL:

12 Q. Okay. Once you had photographed things, first overall
13 as you found them and then went back and put the markers,
14 did you then collect any type of evidence there at the
15 scene?

16 A. Yes, ma'am, I did.

17 Q. What did you collect that day?

18 A. I collected the cell phone, which was marked as A. I
19 collected the fired cartridge casing that was marked as B,
20 I collected the second fired cartridge casing that was
21 marked as C. I collected a swab from Marker D, which was
22 the reddish-brown stain on the walkway, and I collected a
23 swab from Marker E, which was the reddish-brown stain
24 located in front of the door

25 Q. I'm gonna show you what's been marked as State's

1 Exhibit 139, 141 and 138. Do you recognize those?

2 A. Yes, ma'am.

3 Q. And are those the actual items of evidence you
4 collected that night?

5 A. Yes, ma'am.

6 **MS. CAMPBELL:** Your Honor, at this time we'd offer
7 these in to evidence; 138, 139 and 141.

8 **MS. ZMROCZEK:** Without objection.

9 **THE COURT:** Admitted without objection.

10 (State's Exhibit Number 138, a swab; Number 139, a
11 cell phone; and Number 141, cartridge casings, were
12 admitted into evidence.)

13 BY MS. CAMPBELL:

14 Q. So this is the cell phone and then in State's Exhibit
15 141, those were the actual cartridge casings?

16 A. Yes, a fired cartridge casing, .9 millimeter Luger,
17 found on the ground on the passenger side of the vehicle,
18 and the walkway in front of Building

19 Q. And any further testing other than collection of
20 possible DNA evidence on these would be done by someone
21 else in your department?

22 A. Processing-wise as far as latent prints I would do
23 myself, but in this case these were collected at the scene,
24 they were taken back to the forensic laboratory, they were
25 processed using black powder or ground graphite with

1 negative results for latent prints. A swab was then
2 collected off of each shell casing for DNA processing.

3 Q. I'll get back to that. Okay. While you were still at
4 the scene, did you make arrangements for the car -- the red
5 car -- burgundy car to be towed?

6 A. Yes.

7 Q. What was the purpose of that?

8 A. The information I received was that this -- this
9 incident took place around this vehicle. Not knowing if
10 there was any type of evidentiary value on the vehicle
11 itself, on the exterior of the vehicle, if anybody may
12 have touched it during a scuffle, I just knew it took
13 place around this vehicle, I wanted to be able to take
14 this vehicle to a controlled environment where I could
15 process it.

16 Q. And was that actually towed that night?

17 A. Yes, ma'am.

18 Q. And it was towed to where?

19 A. The forensic garage at the sheriff's department.

20 Q. And were steps made to make sure that no one altered
21 or tampered with it in any way?

22 A. Correct. Once it's placed in the forensic garage,
23 nobody has access to the garage except for crime scene
24 personnel.

25 Q. And was that car later processed by a different crime

1 scene investigator?

2 A. Yes, ma'am.

3 Q. And you also mentioned that once you had collected the
4 two cartridge casings you took those back to headquarters
5 and processed them?

6 A. Yes, ma'am.

7 Q. And tell the jury how you go about processing
8 something?

9 A. The cartridge casings are processed with a camelhair
10 fingerprint bush and black powder, which is just ground
11 graphite. It's applied gently to the surface of the item
12 of evidence that we're trying to process to see if there's
13 any enhancement of a latent print, which is just a relative
14 term for invisible print, fingerprint. And, if so, that
15 print is then lifted and it's submitted for latent print
16 analysis, which in this case it was not. It was negative
17 results on it.

18 Q. And when you say negative results, does that mean that
19 no one ever handled those cartridge casings?

20 A. No, ma'am.

21 Q. And the cartridge casings especially, is it unusual
22 for you to have negative results?

23 A. No, ma'am.

24 Q. Why?

25 A. Due to the heat that's generated during the firing

1 of a cartridge casing. A fingerprint is moisture, is
2 basically what a fingerprint is, and that heat dries that
3 moisture. That's not to say that you will never find a
4 fingerprint on shell casings, which is why we always
5 process the shell casings just in case, and in this case
6 there was negative reaction.

7 Q. Well, say, even with surfaces other than shell
8 casings, if I walk up and put my finger down on this and
9 then carefully pull it up, am I gonna necessarily leave a
10 fingerprint there?

11 A. No, ma'am, not necessarily. Just because you touch
12 something doesn't mean you will actually leave a
13 fingerprint on it. It's a large misconception. Some
14 individuals have very dry hands and with a fingerprint
15 being 98 percent moisture, if you have very dry skin or
16 very dry hands, you are less likely to leave a fingerprint.
17 In addition to that, you may be wearing gloves when you
18 touch something. There are -- you know, it may be the
19 type of surface that you touch that you're just not going
20 to be able to leave a print on.

21 Q. And even if I touch this and had the ability to leave
22 a fingerprint, how I touch it on the surface does that
23 affect in any way my ability to leave one?

24 A. Correct. If the surface is -- is textured, a very
25 rough surface or a wet surface, you are less likely to be

1 able to leave a print.

2 Q. And specifically are you familiar with the term
3 "smudge"?

4 A. Yes.

5 Q. What does that mean in the case of latent prints?

6 A. It basically means that once a finger is placed on a
7 surface it's not just lifted away, it's -- there's actually
8 movement in the finger itself which distorts any ridge
9 detail, which is what we look for for identification
10 purposes, and it's just considered a smudge at that point.

11 Q. But in this case when you processed the two cartridge
12 casings you recovered at the scene, you weren't able to get
13 anything?

14 A. Correct.

15 Q. Which is what's pretty normal in your experience?

16 A. Yes, ma'am.

17 Q. You mentioned that you did collect, however, a DNA
18 swab?

19 A. Yes, ma'am.

20 Q. And what -- how do you do that? What are we talking
21 about when you say you collected a DNA swab?

22 A. When we collect a DNA swab, we take a sterile cotton
23 tipped applicator and we apply a drop of distilled water on
24 it. It is then rubbed across the surface of the evidence,
25 then -- which we're trying to find out if there may be any

1 type of DNA on it. If somebody's touched something and
2 they didn't leave a print, they may have left their DNA on
3 it, so we swab the surface of that item that's considered
4 evidence and then it's submitted into our DNA laboratory
5 for testing.

6 Q. And I show you State's Exhibit Number 140. Do you
7 recognize that?

8 A. Yes, ma'am.

9 Q. And are those the two swabs that you collected?

10 A. Yes, ma'am.

11 **MS. CAMPBELL:** And, Your Honor, at this time we'd
12 offer State's Exhibit 140 into evidence.

13 **THE COURT:** Any objection?

14 **MS. ZMROCZEK:** Without objection.

15 **THE COURT:** Admitted without objection.

16 (State's Exhibit Number 140, DNA swabs, was admitted
17 into evidence.)

18 BY MS. CAMPBELL:

19 Q. And you took these two swabs from the two separate
20 ones?

21 A. Yes.

22 Q. And do you take any steps, whenever you collect
23 evidence, to make sure that its integrity is protected and
24 that there's no cross-contamination?

25 A. Correct. Yes, ma'am. When they're collected at the

1 scene, they are packaged separately from each other so that
2 they do not have contact with each other. They are then
3 processed one at a time. They are then swabbed separately.

4 Q. Was that the extent of your involvement in this case?

5 A. Yes, ma'am.

6 **MS. CAMPBELL:** Thank you. I don't have anything
7 further.

8 **THE COURT:** Cross-examination?

9 **MS. ZMROCZEK:** Thank you.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q. Investigator Holt, I want to make sure that I heard
13 you correctly. Did you say you're currently a member of
14 the International Association of Identification?

15 A. Yes, ma'am.

16 Q. And you're certified as a crime scene -- you have a
17 crime scene certification with them?

18 A. Yes, ma'am.

19 Q. When did you get that?

20 A. That was received in 2012.

21 Q. And you have to take proficiency tests to keep that
22 updated, correct?

23 A. We take proficiency tests in-house departmental-wise
24 and the re-cert on the certification with the International
25 Association is every five years, three years on some

1 certifications.

2 Q. And you're aware that they have a website?

3 A. Yes.

4 Q. And they list all of their persons who are certified?

5 A. Yes.

6 Q. Can you explain why your name is not on that list?

7 A. I cannot.

8 Q. Would you like to have -- to look at the list? Would
9 it help for you to see it?

10 A. Sure.

11 Q. Okay. Here's the front page of it.

12 A. It has Holt, Trevor, crime scene investigator, and my
13 certification expires September 27, 2017.

14 Q. Perfect. Thank you. Thank you for finding it for me.
15 The certification is important because when you collect
16 evidence you -- you have ethical responsibilities when you
17 collect evidence, right?

18 A. Yes, ma'am.

19 Q. Because you want to make sure that the evidence when
20 you find it is in the exact location when it happened?

21 A. The evidence -- I have no control over the evidence
22 prior to my arrival at the scene. The evidence I collect
23 is documented where I find it.

24 Q. Where you find it?

25 A. Meaning not where it was when the incident occurred.

1 Q. Right, but when you find it?

2 A. Correct.

3 Q. But in this case, the responding officer did exactly
4 what he was trained -- and all officers are trained to do,
5 and that was file off the crime scene, right?

6 A. Correct.

7 Q. And any evidence of any evidentiary value he left --
8 he didn't have a little cone or a number or a sticky, so
9 he put the crime scene tape to identify, for example, the
10 shell casing on the sidewalk?

11 A. Correct.

12 Q. So even if -- even if inadvertently that shell casing
13 had been moved, that -- that marker still would have let us
14 know where it was located before it got touched, right?

15 A. General location, yes.

16 Q. So, for example, if there were other items of
17 evidentiary value at different crime scenes that had to
18 be moved, the best practice would be to place something
19 there to mark -- locate where it was found and then -- so
20 when the crime scene people come to evaluate the scene
21 they know at least where an item is located, right? For
22 example, if -- if there was a backpack -- if there was a
23 backpack --

24 A. Okay.

25 Q. -- and they took the backpack for whatever reason,

1 but they wanted it -- to know where it was found, the best
2 practice would have been not to take it until it was
3 photographed, right?

4 A. Correct.

5 Q. And then the second best practice would have been to
6 leave something where it was located so that we could have
7 an understanding of where it was found?

8 A. If an item in evidence at a scene, say it's an active
9 scene, and say there may be a loaded weapon that's just
10 laying out on the ground and there are people around, the
11 responding officers have the duty to still protect the
12 public. They will collect that weapon, place it in the
13 trunk of their vehicle, someplace secure, they will then
14 notify us upon our arrival this is what I found, this is
15 where I found it, this is why I collected it. As far as
16 placing something there to mark the actual location, if
17 it's possible, it's been done; if not, it's not a
18 requirement as long as they document why.

19 Q. In detail where they found it?

20 A. Correct.

21 Q. And that's why they write those reports?

22 A. Yes, ma'am.

23 Q. And that is standard procedure for all of -- all of
24 Richland County, correct?

25 A. The documentation?

1 Q. Right.

2 A. Yes.

3 Q. Because what we want the jury to have is -- is the
4 most accurate information?

5 A. Correct.

6 Q. And did you go inside the home where the -- where
7 Mr. Keith was found?

8 A. Is that [REDACTED]

9 Q. Correct.

10 A. I did not.

11 Q. Okay. Would you have gone in there if there was blood
12 located in there? Would that have been important?

13 A. If I had a search warrant or a consent or someone to
14 verbally allow me into that premise, yes.

15 Q. Okay. Would you have needed to if there were items of
16 evidence or reddish-brown stains at that time?

17 A. I would have liked to have gotten in to document to
18 see what was in there, yes, ma'am.

19 Q. Okay. When you arrived, did you speak with the
20 responding officer --

21 A. Yes, ma'am.

22 Q. -- to try to get the details of what to look for at
23 the crime scene?

24 A. Yes, ma'am.

25 Q. Do you speak with any medical personnel or --

- 1 A. No, ma'am. I'm sorry. Go ahead.
- 2 Q. For example, you found two shell casings?
- 3 A. Right.
- 4 Q. Did you look for bullets?
- 5 A. Yes, ma'am.
- 6 Q. I mean, are they called cartridges?
- 7 A. Projectiles.
- 8 Q. Projectiles?
- 9 A. Yes.
- 10 Q. Did you look for those?
- 11 A. Yes, ma'am.
- 12 Q. Did you find any?
- 13 A. No, ma'am.
- 14 Q. When you -- you said that part of your recognized
- 15 training is blood spatter?
- 16 A. Blood, yes, ma'am.
- 17 Q. And you had an advanced class in blood spatter?
- 18 A. Yes, ma'am.
- 19 Q. What does blood spatter help tell you?
- 20 A. Blood spatter -- different types of stains tell us
- 21 different things. It tells us if there's directionality
- 22 in the movement of blood. We can take the measurements
- 23 of stains and be able to string -- do a calculation and
- 24 string those stains back to an area of convergence to
- 25 where maybe blood was let in a scene. Different stains

1 can tell us different things about what took place inside
2 of a scene.

3 Q. Okay. So -- and that's where I was going. So the --
4 the reddish-brown stains, which we now know to be blood,
5 were on the sidewalk. It left spatter, right?

6 A. It left stain.

7 Q. It left stain?

8 A. Yes, ma'am.

9 Q. Was there any directionality to it?

10 A. The large stain on the sidewalk in front of [REDACTED]
11 [REDACTED] is what I would refer to as just gravitational
12 droplets. There's no indication of movement in the stain.
13 It's just blood and the blood dripping.

14 Q. Okay. So that -- but you weren't asked to do any
15 studies to see where the person was standing?

16 A. No. No, ma'am.

17 Q. Okay.

18 A. In addition, the sidewalk being textured, that's gonna
19 change the shape and size and -- and it's gonna change the
20 shape and size of the stain once it impacts that textured
21 surface.

22 Q. Okay. And you said there's no way to tell from a
23 projectile where someone was standing?

24 A. Without knowing which direction the projectile was
25 actually fired, an overall search of the area was done.

1 There were no obvious signs of impact points in the front
2 of the building or the vehicle in the parking lot. If it
3 was just fired off somewhere, into the bushes or something,
4 there was no indicator as to the direction that the shot
5 was fired.

6 Q. Okay. Are you -- do you have a radio on? Can you
7 hear the chatter while you're --

8 A. When I am processing a scene, no, I do not have my
9 radio. My mind is on what I'm doing.

10 Q. Okay. When -- and you got there at 4:50
11 approximately?

12 A. Yes, ma'am.

13 Q. How many officers were on the scene at that time?

14 A. I do not recall.

15 Q. Okay. Do you recall being told that the shooter or
16 suspect jumped a fence?

17 A. I don't recall that.

18 Q. You don't recall it?

19 A. No, ma'am.

20 Q. And do you recall one of the officers locating where
21 they jumped the fence?

22 A. I don't recall that.

23 Q. Had you been able to -- had you been given that
24 information, is that something you would have photographed
25 as well?

1 A. Yes, ma'am.

2 Q. Okay. And 3 through 39 are several pictures. The
3 way that you properly document a crime scene is you kind
4 of take an overall picture?

5 A. Yes, ma'am.

6 Q. And then you maybe step a little bit closer and then
7 step a little bit closer?

8 A. Yes, ma'am.

9 Q. Okay. And those are done so that all of the evidence
10 is preserved, as you said, the way you see it, right?

11 A. It's -- it's done so that when they're presented to
12 the jury the jury has an idea of where in the scene
13 something is located. If I just saw a picture of a hole in
14 the wall, you're not gonna know on what wall that hole is
15 located if that's the only picture I'm showing you. If I
16 could show you different angles of that same hole, you can
17 then relate that hole to where it's at in relation to the
18 scene.

19 Q. And that can give us the best -- the best view instead
20 of trying to rely on your memory, right?

21 A. Correct.

22 **MS. ZMROCZEK:** Thank you.

23 **THE COURT:** Redirect?

24 **MS. CAMPBELL:** Yes, sir. Just a couple of questions.

25 **THE COURT:** Yes, ma'am.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. She asked you about the bloodstains on the sidewalk.

A. Yes, ma'am.

Q. And, again, you explained to the jury why you weren't able to make any further assessment other than they appeared to be gravitational?

A. Correct.

Q. And as far as bloodstains being transferred during a struggle, if the person's left the scene with the blood on their clothing, you can't make any determinations about that?

A. If there's a victim's transfer blood onto our suspect, through a DNA analysis.

Q. That would be possible?

A. Right. But actually looking at a stain, stains are absorbed. Blood is wet, fabric is absorbent, it's gonna absorb that stain and change the look of whatever the stain was originally.

Q. And what time was it when you completed and left the scene?

A. A quarter to six in the morning.

Q. A quarter to six, so 5:45?

A. Yes, ma'am.

Q. And at that point do you know whether or not all the

1 witnesses had been interviewed or was that part of your
2 purview or someone else's?

3 A. Somebody else's.

4 **MS. CAMPBELL:** Thank you, Your Honor. I don't have
5 any further questions.

6 **THE COURT:** Any recross?

7 **MS. ZMROCZEK:** Yes, just briefly.

8 **RE CROSS EXAMINATION**

9 **BY MS. ZMROCZEK:**

10 Q. Ms. Campbell asked you about locating spatter on
11 clothes or clothing items.

12 A. Correct.

13 Q. And are you saying that you can't tell anything from
14 reviewing those?

15 A. I'm not saying you can't tell anything from looking at
16 those, no, ma'am. I'm saying that fabric is --

17 **BAILIFF:** Your Honor, we need a break.

18 **THE COURT:** Sir?

19 **BAILIFF:** We need a break.

20 **THE COURT:** I can't hear you.

21 **BAILIFF:** One of the jurors need a break.

22 **THE COURT:** We're gonna take one in just a second.

23 **BY MS. ZMROCZEK:**

24 Q. I'm sorry, they were talking. Go ahead.

25 A. There may be like a transfer stain and I can tell you

1 that's a transfer stain. I may have a bloody hand and grab
2 your shirt or your pants and I can be able to tell you
3 that's a transfer stain on a hand, but I would not be able
4 to see the ridge detail in it to be able to tell you that
5 is the fingerprint of this person.

6 Q. Were you ever asked to analyze or even see if you
7 could analyze any bloodstains on shoes or pants in this
8 case?

9 A. No, ma'am.

10 **MS. ZMROCZEK:** Thank you.

11 **THE COURT:** All right. Thank you. You may step down.
12 (Witness excused.)

13 **THE COURT:** All right, ladies and gentlemen. We had
14 planned to take our midmorning break at this time and we
15 are going to do that. I'm going to allow you to go to your
16 jury room for about fifteen minutes. We'll start back
17 around ten -- five or ten minutes until twelve. Please
18 relax for a few minutes and do not discuss the case among
19 yourselves. We'll return you to the courtroom in about
20 fifteen minutes.

21 Thank you. You may go to your jury room.

22 (Whereupon, the jury retires to the jury room at
23 11:38 AM.)

24 **THE COURT:** All right. We'll be in recess. Let's be
25 prepared to go forward at 11:55.

1 **MS. CAMPBELL:** Thank you, Your Honor.

2 **MS. ZMROCZEK:** Thank you.

3 (Recess taken.)

4 **BAILIFF:** All rise. Court come to order.

5 **THE COURT:** Thank you. Please be seated.

6 All right. Back on the record with regard to the
7 matter of the State versus Brandon Berry. Mr. Berry is
8 present with his counsel. The State is present and
9 represented by the Fifth Circuit Solicitor's Office.

10 Yes, Ms. Campbell.

11 **MS. CAMPBELL:** Your Honor, just one housekeeping
12 matter. As far as the co-defendant, he is here and his
13 lawyer is here. We would take that matter up at some other
14 time. We're in no rush. I just didn't know whether his
15 lawyer should maybe leave and then come back or what you
16 wanted to do.

17 **THE COURT:** What is the issue?

18 **MS. CAMPBELL:** The issue, Your Honor, is during the
19 traffic stop that you've observed, he was the driver in
20 that. He was charged with, I believe, a pistol charge. He
21 has indicated to us he wants to take the Fifth Amendment
22 and not testify in this case and we just need to proffer
23 his testimony and get a ruling from the Court, I believe,
24 at some point.

25 **THE COURT:** All right. What I'd like to do rather

1 than keep the jury waiting --

2 **MS. CAMPBELL:** I didn't want to do it now. I just
3 thought we could --

4 **THE COURT:** Let's try to break for lunch at one.
5 We'll come back at two, bring the jury back at 2:30, and
6 between two and 2:30 we'll take care of this proffer.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 **THE COURT:** All right. Bring the jury in, please.
9 (Whereupon, the jury returns to the courtroom at
10 12:00 PM.)

11 **BAILIFF:** Jurors seated, Your Honor.

12 **THE COURT:** All right. Thank you, ladies and
13 gentlemen, and we are now ready to proceed. You may call
14 your next witness.

15 **MR. STEADMAN:** The State a calls Deputy Brendon
16 Pennington.

17 **BRENDON PENNINGTON,**
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Thank you. Have a seat on the witness
20 stand. State your name for the record.

21 **THE WITNESS:** Brendon Pennington.

22 **DIRECT EXAMINATION**

23 **BY MR. STEADMAN:**

24 **Q.** Deputy Pennington, where are you employed?

25 **A.** I'm employed with the Richland County Sheriff's

1 Department.

2 Q. And what do you do for the Richland County Sheriff's
3 Department?

4 A. Right now I'm assigned to Special Teams.

5 Q. How long have you been with the Richland County
6 Sheriff's Department?

7 A. It will be nine years in January.

8 Q. And what capacities have you worked with them in?

9 A. I started out in patrol in the Two Notch Road area. I
10 was then assigned to patrol in the Broad River Road area
11 before I was moved to the Community Action Team, then to
12 the Drug Suppression Team, and now with Special Teams.

13 Q. Tell me a little bit about the training that you've
14 received while working.

15 A. I've had a good bit of training as far as on patrol,
16 you know, taking reports, responding to calls, stuff like
17 that. On the Community Action Team, we dealt a lot with --
18 one-on-one with the communities, the community leaders and
19 whatnot, and establishing good working relationships with
20 them. The Drug Suppression Team is obviously working
21 street level narcotics cases. And then with Special Teams
22 I'm currently assigned to the special responses.

23 Q. What area in particular are you assigned to?

24 A. Right now?

25 Q. Right now, yes.

1 A. I'm county-wide right now.

2 Q. Okay. And where were you patrolling -- where were you
3 assigned back on July 29, 2014?

4 A. I was currently in -- July 29th I was with the
5 Community Action Team.

6 Q. And did you -- and as part of your duties back on
7 July 29th, would you patrol the Broad River area?

8 A. Yes.

9 Q. And at some point on July 29th, did you observe the
10 Defendant and Nickilous Wallace driving without seatbelts?

11 A. I did.

12 Q. Tell me what you did once you saw that.

13 A. I was sitting stationary on [REDACTED] Drive, which
14 runs off of Broad River Road. I observed them on Broad
15 River about to take a left onto [REDACTED]. I observed two
16 occupants putting their seatbelts on when they were in the
17 intersection. When they drove past me, I then pulled
18 behind them and I initiated the traffic stop into [REDACTED]
19 [REDACTED], which is off of [REDACTED] Drive.

20 Q. And once you initiated the traffic stop, what are your
21 next steps?

22 A. My next step was to notify dispatch of my location,
23 which I did over the radio, and then I made contact with
24 the driver and requested identification. Neither one of
25 them had seatbelts on, so I requested identification from

1 both of the occupants.

2 Q. Once you got their identification, what did you do
3 next?

4 A. At that point I returned to my vehicle to run a
5 standard Department of Motor Vehicles check on them to
6 check the statuses of their licenses and NCIC and also
7 ran an in-house warrant check with our in-house warrant
8 division.

9 Q. And is that standard procedure on every traffic stop?

10 A. Yes.

11 Q. So after you ran them through warrants and NCIC, what
12 did you do next?

13 A. At that point my backup officer arrive, Deputy Owens.
14 When I was at the car initially, I noticed nervous behavior
15 from both the driver Wallace and the passenger Berry. I
16 noticed that Berry was doing a lot of the talking for the
17 driver, which I found strange, and they both were visibly
18 shaking and visibly nervous. I informed Owens that Brandon
19 Berry was in the car and to check and see if he could smell
20 or see anything because I felt like with their nervous
21 behavior there was something up with the stop, so I had him
22 go to the car. After I checked for warrants, I went back
23 and talked to Nickilous Wallace.

24 Q. And you said you talked to Nickilous Wallace. Did you
25 order him out of the vehicle or did you ask him out of the

1 vehicle? How did you start talking to Nickilous Wallace?

2 A. I asked him to step out of the vehicle. I said can I
3 speak with you at the rear of the vehicle.

4 Q. Was he willing to speak with you?

5 A. Yes.

6 **MS. ZMROCZEK:** Objection.

7 **THE COURT:** Pardon?

8 **MS. ZMROCZEK:** I just was -- I was objecting to the
9 hearsay before it comes out. Thank you.

10 **THE COURT:** Go ahead.

11 BY MR. STEADMAN:

12 Q. So at some point you did talk to Nickilous Wallace?

13 A. Yes.

14 Q. Don't tell me what he said, but while you were talking
15 to Nickilous Wallace what happened next?

16 A. I requested consent to search the vehicle. I was
17 granted that consent and I was granted consent to search
18 Mr. Wallace. As I was searching Wallace, Berry, who was in
19 the passenger seat, moved over to the driver's seat and
20 fled in the vehicle. At that point Deputy Owens stayed
21 with Wallace, I returned to my car. I was right at --
22 beside my car, which was behind the vehicle, so I pursued
23 Mr. Berry through the apartment complex. He made a quick
24 left and then a quick right and then a quick left again to
25 the rear of the complex and that's where he got out and

1 fled on foot.

2 Q. And let me go back to the traffic stop just briefly.
3 Who else was inside the vehicle beside Brandon Berry and
4 Nickilous Wallace?

5 A. There was a two-year -- I don't know how old they
6 were, but a toddler in the vehicle who was not secured in
7 the car or -- and not in a car seat in the back seat.

8 Q. Did you inquire who had custody of that toddler?

9 A. Yes. Mr. Berry.

10 Q. Did he admit it was his daughter?

11 A. Yes.

12 Q. Now let's go back to the pursuit. He speeds off, you
13 give chase and then what happens?

14 A. He gets out. I didn't find out until actually later
15 that actually when he fled with the child in the car he
16 forgot to, I guess, put the vehicle all the way in park.
17 I didn't notice that until later when I returned. The
18 vehicle was all the way across the parking lot because I
19 think it was in reverse or something. But I pursued him
20 through a cut or a wood line that runs between [REDACTED]

21 [REDACTED] Apartments and goes all the way over to [REDACTED]

22 [REDACTED] Apartments, a few hundred yards. I pursued him
23 around a building, observed him throw an object over a
24 fence that backed up to one of the apartments, like a
25 privacy fence. I pursued him around the building through

1 another parking lot around another building where Mr. Berry
2 attempted to jump over a fence and that was where I was
3 able to apprehend him. I basically jumped up on the fence
4 with him. Half his body was over the fence and his legs
5 were on the other side and I grabbed his legs -- onto his
6 legs and I couldn't get him back over the fence. I waited
7 for responding units and once they arrived we effected the
8 arrest.

9 Q. And the traffic stop, this foot pursuit, did all this
10 occur in Richland County?

11 A. Yes, it did.

12 Q. I'm showing you now what's been marked as State's
13 Exhibit 147. Have you had a chance to look over this map?

14 A. I have.

15 Q. And does this encompass the area of the foot pursuit
16 as well as the traffic stop?

17 A. It does.

18 Q. I'm gonna ask you to step down and demonstrate where
19 everybody --

20 **MS. ZMROCZEK:** Your Honor, we would ask that it be
21 moved into evidence prior to being shown to the jury, and
22 we have no objection.

23 **THE COURT:** All right. Do you offer it into evidence?

24 **MR. STEADMAN:** Your Honor, we would offer State's
25 Exhibit 147 into evidence.

1 **THE COURT:** Admitted without objection.

2 **MS. ZMROCZEK:** Thank you.

3 (State's Exhibit Number 147, a blow-up map, was
4 admitted into evidence.)

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 BY MR. STEADMAN:

8 Q. Where were you located when you observed the Defendant
9 without a seatbelt?

10 A. I was sitting right here in my patrol vehicle. I
11 observed them pull to right here about to take a left onto
12 [REDACTED] This is [REDACTED] Drive, this is Broad River
13 Road. When they were right here, I observed them look at
14 me and they both put their seatbelts on, both the driver
15 and the passenger. They came past me, I pulled out behind
16 them. They took a right into here and I initiated blue
17 lights and they stopped right here. When the pursuit
18 begin, when Berry moved over into the driver's seat, he
19 turned -- he quickly sped off, took a left right here and
20 then a quick right onto this and then another left right
21 here, and this is where his car actually came to -- rested
22 initially when the foot pursuit began. He ran around this
23 building, back through here, okay? And there's a little --
24 this is a pond. There was a little cut right here, this
25 little dirt path, and it goes around this pond and this is

1 a fence line that separates these two apartment complexes.
2 He ran along this fence line. There's a little wooden gate
3 right here. We ran through that. When he got to right
4 here, this is where I observed him throw an object. We
5 continued around this building, through this parking lot,
6 back around this building, and there's another privacy
7 fence here that backs up to these like little town homes.
8 This is where he tried to jump the fence and I was able to
9 get on top of the fence with him and prevent him from doing
10 that. The other officers, who I told which direction he
11 was running, came into here with their patrol vehicles and
12 they were able to run over here and help me get him back
13 over the fence.

14 Q. About how many other officers assisted you?

15 A. From what I recall, there was two or three.

16 Q. And they came from a different -- they came from the
17 other direction?

18 A. Yes, they came from -- as soon as the chase began, I
19 actually told them on the radio to get to the

20 because I'm very familiar with this cut and I know it
21 leads to right here, so it took them a few minutes. They
22 weren't there when I initially ran through this parking
23 lot, so they didn't get there until we were on this fence.

24 Q. I'm now showing you what's been marked as State's
25 Exhibit 150. Do you also recognize this?

1 **THE COURT:** Okay. Go ahead.

2 A. Yes, I do.

3 Q. And what is that?

4 A. This is an overview of

5 Q. Is this a more zoomed in look?

6 A. It is.

7 **MR. STEADMAN:** Your Honor, at this point we would
8 offer State's Exhibit 150 into evidence.

9 **THE COURT:** Any objection?

10 **MS. ZMROCZEK:** Without objection.

11 **THE COURT:** 150 admitted into evidence without
12 objection.

13 (State's Exhibit Number 150, a blow-up map, was
14 admitted into evidence.)

15 BY MR. STEADMAN:

16 Q. So this is a more zoomed in --

17 A. Yes.

18 Q. -- view. So can you now describe how the foot pursuit
19 took place?

20 A. Okay. Again, this is the cut, okay? This is the dirt
21 trail. Over here would be [REDACTED], okay? So this
22 is the dirt trail that goes in between and
23 [REDACTED]. This is the privacy fence I was talking
24 about that separates these two apartment complexes and
25 this is another -- this is the entrance to the path to

1 leads into . So when we came through here,
2 in this area is where I observed him discard the object
3 over the -- over the little privacy fence that backs
4 up into these apartments -- that's attached to these
5 apartments. So, again, I ran down this path right here --

6 Q. Let me go back to that. How did you observe him
7 discard the object?

8 A. I observed him make a motion, I guess, like that
9 (demonstrating).

10 Q. All right, sir. And could you tell me where that
11 happened again exactly?

12 A. Yes. Right in here. Right here.

13 Q. But at that point your main objective was apprehending
14 him?

15 A. Apprehending him.

16 Q. Okay. Continue.

17 A. So, again, we continued around the rear of this back
18 into the parking lot, okay, all the way across the parking
19 lot to here and to in here where there's a privacy fence.
20 That's where he attempted to jump the fence and I jumped on
21 top of him and basically apprehended him there.

22 Q. Was he successful in jumping the fence?

23 A. He got on top of it. Half of his body was over it.

24 Q. And is that when you grabbed him?

25 A. Yes, I grabbed by his legs.

1 Q. And once you grabbed him, how -- how did you get him
2 into custody?

3 A. Well, first I attempted to tell him to come back over
4 and he wouldn't. I basically held them there because I was
5 pretty tired at this point and I held him there. I knew my
6 backup was coming, I could hear them coming, so I just kind
7 of held him there and, you know, waited for them to get
8 there and one of the deputies was able to get him back over
9 the fence.

10 Q. So another deputy was able -- while you held him
11 there, another deputy came and assisted you?

12 A. Yes, the deputy came over and, you know, we had to
13 grab his body to get him over the fence at this point.

14 Q. Did you use your TASER at any point?

15 A. I attempted to use my TASER initially. It didn't make
16 contact with him. One of the other deputies on the scene
17 -- after he came over the fence, he was still on the -- he
18 was still up, you know, he wasn't on the ground at that
19 point and he was tased.

20 Q. Thank you. And so where was Deputy Owens at this
21 point, the one -- your backup officer?

22 A. The other map might be better. He was -- he was still
23 in [REDACTED] Apartments.

24 Q. Okay. So that's the adjacent apartment building?

25 A. That's not this place. It's further up.

1 Q. Through the woods?

2 A. Yes.

3 Q. Thank you.

4 (Whereupon, the witness returns to the stand.)

5 BY MR. STEADMAN:

6 Q. I'm showing you now what's been marked as State's
7 Exhibit 135. Can you please take a look at that?

8 A. Yes. This is a Glock 19 handgun.

9 Q. What else is in there?

10 A. This is a Glock 19 .9 millimeter magazine and this
11 looks to be approximately four .9 millimeter rounds.

12 Q. And is that what you recovered once you went back to
13 the fence line?

14 A. Yes, eventually.

15 Q. When did you recover that?

16 A. This was recovered after the masks and everything was
17 recovered. This was on top of the balcony.

18 Q. So once you -- so once you took Brandon Berry back
19 into custody, you went back to the spot where he tossed the
20 masks. What did you do then?

21 A. We went back to the spot where I saw him throw objects
22 or throw an object, okay? I noticed there was a bag on the
23 ground, okay, and a bag on the balcony, okay? I retrieved
24 the bag on the ground at that point, all right? We did
25 this because we don't know what was discarded, okay,

1 whether it be weapons or drugs or something, we don't want
2 to leave that out in the public for very long, so we
3 retrieved that stuff. Inside the bag I retrieved was, from
4 what I recall, two masks, zip ties, gloves, and I believe
5 some clothing items, like some shirts.

6 Q. And which bag was this recovered in?

7 A. This was recovered in the Gamecock -- a black Gamecock
8 bag that was on the balcony.

9 Q. I'm showing you now what's been marked as State's
10 Exhibit 136. Do you recognize that?

11 A. Yes, I do.

12 Q. And where was that bag when you recovered it?

13 A. This was on top of the balcony.

14 Q. What was inside that bag?

15 A. Inside this bag were diapers and the gun was at the
16 bottom of the bag.

17 Q. All right. I'm now showing you what's been marked as
18 State's Exhibit 137. Can you, please, take a look at that?

19 A. This is the bag that I recovered off the ground that
20 was on the other side of the fence.

21 Q. Okay. What was inside that bag when you recovered it?

22 A. Masks, zip -- zip ties, gloves, and I believe some
23 shirts.

24 Q. Is this the black mask that was recovered inside that
25 bag?

1 A. Yes.

2 MS. ZMROCZEK: Your Honor, none of these items have
3 been introduced into evidence.

4 THE COURT: Ma'am?

5 MS. ZMROCZEK: None of these items have been
6 introduced.

7 THE COURT: I understand that.

8 MR. STEADMAN: Your Honor, at this point we would move
9 to introduce State's 137, 136 --

10 THE COURT: All right. Let's take them one at a time.
11 137 would be the bag from the ground containing,
12 according to the officer's testimony, with the masks
13 inside, as well as the shirts. Any objection?

14 MS. ZMROCZEK: Subject to my previous objection,
15 Your Honor.

16 THE COURT: All right. Come up a minute, counsel.
17 (Proceedings held at the bench; not reported.)

18 THE COURT: All right. Based on pre-trial motions,
19 the Exhibit Number 137 is admitted without objection
20 because I don't believe there was any pre-trial motion, I
21 think it was resolved at that time, and the record would so
22 reflect. Exhibit 137 is admitted.

23 (State's Exhibit Number 137, a bag, was admitted into
24 evidence.)

25 MR. STEADMAN: Your Honor, we would also move to enter

1 into evidence State's Exhibit 135 and 136.

2 **THE COURT:** All right. With regard to 135, I want the
3 court reporter to -- first of all, I want the officer to
4 check the weapon to make sure that it is safe.

5 **THE WITNESS:** It is safe, Your Honor.

6 **THE COURT:** All right. Then I want the box with the
7 weapon in it marked as 135A, the magazine 135B and then the
8 four .9 millimeter rounds marked as 135C. I want them all
9 marked separately. So label those 135A, B and C.

10 (State's Exhibit Numbers 135A, a handgun; 135B, a
11 magazine; and 135C .9 millimeter bullets, were marked for
12 identification and admitted into evidence.)

13 **THE COURT:** All right. 135A, B and C have been moved
14 into evidence. And, again -- Ms. Zmroczek, again, it's my
15 view that the -- this issue was resolved in pre-trial and
16 the record would reflect whatever the situation was, but it
17 is admitted into evidence.

18 **MS. ZMROCZEK:** Thank you.

19 **MR. STEADMAN:** And, Your Honor, we would also move to
20 enter State's 136 into evidence.

21 **THE COURT:** All right. The same ruling on 136, which
22 is the bag that was found on the balcony according to the
23 witness. The same ruling. I believe that was resolved
24 pre-trial and the black -- that bag, State's Number 136, is
25 admitted into evidence.

1 (State's Exhibit Number 136, a bag, was admitted into
2 evidence.)

3 **THE COURT:** All right. Counsel come up just a minute
4 and let me tell you -- we'll go back in just a minute --
5 and tell you what my ruling is on 135.

6 (Proceedings held at the bench; not reported.)

7 **THE COURT:** All right. Go ahead.

8 BY MR. STEADMAN:

9 Q. Deputy Pennington, I'm gonna go back to the traffic
10 stop. You got Nickilous Wallace out of the car. What did
11 you talk to him specifically about?

12 A. I talked to him about if he used marijuana because I
13 was informed by Owens that he possibly saw marijuana in the
14 vehicle. I asked him if he used marijuana, if he'd been
15 using marijuana today, if anyone inside the car had been
16 using marijuana, and then I asked him why he -- why he and
17 Berry were so nervous, and I also -- excuse me. I asked
18 him why they were, you know, so nervous and I also asked
19 him why his eyes were so bloodshot. It looked like he was
20 possibly under the influence of something.

21 Q. And what other violations were you investigating with
22 Mr. Wallace?

23 A. Mr. Wallace did not have insurance -- or, excuse me,
24 he didn't have proof of insurance and also the unsecured
25 toddler in the back seat with no seatbelt or child seat or

1 anything.

2 Q. So there was no child seat?

3 A. Not that I recall.

4 Q. Was the child restrained?

5 A. No.

6 Q. And where was the child sitting in the back seat?

7 A. He wasn't really sitting. He was kind of just moving
8 back and forth in the back seat. That actually grabbed my
9 attention. You know, I didn't see the child initially.
10 When I walked up to the car, it grabbed my attention, and
11 I told him that the child needed to be in a car seat.

12 Q. And once he fled in the car, you said it came to a
13 stop, but it was placed in reverse. Can you, please,
14 describe that?

15 A. Yes, sir. When he fled and he was running, the car
16 was -- it was -- it appeared stopped to me, so I continued
17 on foot. After everything subsided, when I returned back
18 to my vehicle the car was actually backed all the way
19 across the parking lot, and apparently it was in reverse
20 or something and I think a random person jumped in the car
21 and basically put it in park to prevent it from causing an
22 accident.

23 Q. Was the child in the vehicle at that time?

24 A. No, the child had been retrieved by a person in the
25 parking lot.

1 Q. And during the -- during the foot pursuit, did you
2 tell him you were attempting to place him under arrest?

3 A. I told Berry to stop very loudly. Also on the fence
4 I told him to stop resisting, you know.

5 Q. I'm showing you what's been marked as State's 151.

6 A. Yes.

7 Q. Do you know what that is?

8 A. It looks like my dash cam footage.

9 Q. Yes. And you had your dash cam rolling that day?

10 A. Yes.

11 Q. And have you had a chance to watch this footage?

12 A. I have.

13 Q. Is this a fair and accurate description of the events
14 that day?

15 A. Yes, sir.

16 **MR. STEADMAN:** Your Honor, at this point we would
17 move State's 151 into evidence.

18 **THE COURT:** Any objection?

19 **MS. ZMROCZEK:** As long as it's entered in its
20 entirety, Your Honor, no objection.

21 **THE COURT:** All right. He's going to run the entire
22 thing.

23 **MR. STEADMAN:** Your Honor, permission to publish?

24 **THE COURT:** Yes, sir. Permission granted. Number 151
25 is admitted into evidence without objection and it now will

1 be published to the jury.

2 (State's Exhibit Number 151, in-car video, was
3 admitted into evidence.)

4 **THE COURT:** Again, ladies and gentlemen, this is
5 electronic evidence and you can watch it now and if you
6 want to see it further at the time you're back in the jury
7 room, we can make arrangements for it to be played for you.

8 Can everyone on the jury see or does it need to be
9 tilted or turned a little bit?

10 **MR. STEADMAN.** I'll bring it around.

11 **MS. CAMPBELL:** He's going to bring it around.

12 **THE COURT:** You may proceed.

13 (Whereupon, State's Exhibit Number 151 was played for
14 the Court and jury.)

15 BY MR. STEADMAN:

16 Q. Deputy Pennington, who was that talking?

17 **THE COURT:** Wait a -- wait just a moment. If you're
18 going to answer questions, you will have to stop it.

19 (State's Exhibit Number 151 was played in its
20 entirety.)

21 **MS. ZMROCZEK:** Your Honor, we don't object to this
22 copy.

23 **THE COURT:** Okay.

24 BY MR. STEADMAN:

25 Q. So once you recovered the bags that he threw and you

1 apprehended Brandon Berry, what was the next step in your
2 duties?

3 A. Well, as far as the bags go, I recovered one bag, the
4 one with the masks and the clothing items, and I returned
5 to my vehicle. I was told that wasn't the right bag, that
6 wasn't the bag that my partner saw.

7 Q. Okay. So there were two bags?

8 A. Yes, sir. Two bags in -- in the same privacy fence.

9 Q. And when did you find out about the second bag?

10 A. When I returned to Owens basically. When I returned
11 to Deputy Owens, he said that's not the bag I saw him with
12 in the car.

13 Q. And that is what prompted you guys to go back and look
14 for a second bag?

15 A. To go back and look for a second bag and that's when
16 we saw another bag on the top of the balcony.

17 Q. And was that in the same location where the first bag
18 was found?

19 A. Yes, same -- same exact apartment, same enclosed
20 little area. It was a vacant apartment. No one lived
21 there.

22 Q. And at that point your traffic stop turned into a
23 robbery or an armed robbery investigation?

24 A. Yes.

25 Q. What was the next step then?

1 A. Basically when I saw there was a gun and a mask and
2 zip ties, I knew that this was something that was little
3 more to it, so I called Investigator Carwell, who I knew
4 was in, I guess, major crimes at that point, investigated
5 robberies. He told me he was gonna look into it and he,
6 you know, called me back and responded to the scene and
7 informed me about a shooting that occurred the night before
8 and Investigator Carwell at that time kind of took over --
9 took lead on the investigation.

10 Q. So at that point when Investigator Carwell took over,
11 your job was pretty much done?

12 A. Yes, except for, you know, getting the car, you know,
13 towed and everything like that it was pretty much done.
14 Doing the paperwork on -- on both Berry and Wallace.

15 Q. Do you recognize the person in the courtroom who you
16 chased that day and tossed the two bags?

17 A. I do.

18 Q. Can you, please, point him out?

19 A. Sitting right there in the white shirt and tie.
20 That's Brandon Berry.

21 Q. We heard some ringing on the video. What was that?

22 A. Some what?

23 Q. Some ringing.

24 A. That was my MDT or mobile data terminal. Every --
25 I won't say every, but most cars are outfitted with a

1 computer that we can basically run information, run tags,
2 type reports. That constant ringing was my computer in my
3 car ringing constantly.

4 Q. And that's basically like unchecked messages?

5 A. Yeah. When you run tags, it makes noise. When
6 dispatch assigns you to a call, it makes noise. When you
7 get a message, it makes a noise. So that was basically
8 unchecked messages on the -- it could have been an alert
9 from the State files or it could have been a alert from
10 the DMV files or it could have been an in-house message.

11 **MR. STEADMAN:** No further questions.

12 **THE COURT:** Cross-examination, Ms. Zmroczek?

13 **MS. ZMROCZEK:** Thank you.

14 CROSS-EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Deputy -- is it deputy or investigator?

17 A. It's deputy.

18 Q. Deputy Pennington, you graduated from the academy?

19 A. Yes, ma'am.

20 Q. You learned how to write reports?

21 A. Yes, ma'am.

22 Q. You learned how to follow the laws of the State?

23 A. Yes.

24 Q. And execute the laws of the State?

25 A. Yes.

- 1 Q. And learned about the amendments?
- 2 A. Yes.
- 3 Q. And about the Fourth Amendment?
- 4 A. Yes.
- 5 Q. And about when you have the right to search and seize
- 6 people?
- 7 A. Yes.
- 8 Q. You learned report writing?
- 9 A. I did.
- 10 Q. You learned that the reports are supposed to be
- 11 complete?
- 12 A. Yes.
- 13 Q. Accurate?
- 14 A. Yes.
- 15 Q. Have all of the information?
- 16 A. Yes. Pertinent information.
- 17 Q. Pertinent information?
- 18 A. Yes.
- 19 Q. Would you consider location of evidence pertinent
- 20 information?
- 21 A. Yes.
- 22 Q. You prepared a report in this case?
- 23 A. I did.
- 24 Q. Investigator Pennington, where in your report does it
- 25 say that you found a bag on the balcony?

1 A. It says that two bags were recovered. I don't -- I
2 don't remember the exact wording.

3 Q. Would you like to look at your report?

4 A. Yes, I would.

5 MS. ZMROCZEK: May I approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. ZMROCZEK: Thank you.

8 THE WITNESS: Do you me want to read it or just --

9 MS. ZMROCZEK: Nope, no reading.

10 THE COURT: Just read it to yourself to refresh your
11 memory. You can't read from the report.

12 BY MS. ZMROCZEK:

13 Q. Does that refresh your recollection?

14 A. Yes.

15 Q. Where does it say on that report that you located a
16 bag on the balcony?

17 A. It doesn't. It says two bags were recovered.

18 Q. Okay. Does it say -- in fact, it doesn't say where
19 either of the two bags were recovered, does it?

20 A. No.

21 Q. You indicated that the ringing that we heard, the
22 constant ringing, were those different from the quick beeps
23 that we heard?

24 A. Everything that you heard was from the computer.

25 Q. So when your partner gets in the vehicle with you and

1 says it rang ten times, he meant the computer?

2 A. I don't know what he was talking about.

3 Q. Okay. You took Mr. Wallace out of the car?

4 A. I asked him to step out of the car.

5 Q. You asked Mr. Wallace to step out of the car?

6 A. Yes! Right.

7 Q. At that point he could have said no?

8 A. Yes.

9 Q. Sent your backup to see or smell anything?

10 A. And to watch the occupants of the vehicle. To serve

11 as a backup.

12 Q. You've written tickets for no child in a passenger --

13 or in a restraining seat, right?

14 A. I don't recall how many. I don't.

15 Q. It's a blue ticket.

16 A. Yeah, I know what it is. It's a blue ticket.

17 Q. And a fine?

18 A. Yes.

19 Q. Okay. Mr. Berry slides over, takes a left, a right

20 and a left and parks the vehicle, correct?

21 A. Well, he didn't park it because it -- it backed up all

22 the way across the parking lot.

23 Q. I want to talk about that for a minute. Were there

24 any problems with the vehicle's lights?

25 A. My lights?

1 Q. No, no. With the vehicle. Were the brake lights
2 working?

3 A. From what I recall they were.

4 Q. And the reverse lights were working?

5 A. From what I recall.

6 Q. When you put a car in reverse, the lights are on for
7 reverse, correct?

8 A. Yes. Typically.

9 Q. If that car was in reverse, we would have seen that on
10 the lights, right?

11 A. On the video, yes. I don't know if I would have seen
12 it because I was focussed on him.

13 Q. But we would have seen it. It would be on the video.
14 The reverse lights would be on if the car were in reverse?

15 A. If the car was in operating order it would, I assume.

16 Q. All right. The first time you touched Mr. Berry was
17 when?

18 A. On top of the fence.

19 Q. On top of the fence. And that's when you grabbed him
20 down?

21 A. I wasn't able to grab him down.

22 Q. Oh, you just held him?

23 A. I had to hold him there, yes.

24 Q. Okay. And at that point -- it was after that point
25 the other people came and assisted you to get him back over

1 the fence?

2 A. Yes.

3 Q. Okay. How far did he travel in the community with the
4 car?

5 A. In the car?

6 Q. Yes.

7 A. I mean, he -- a couple of hundred yards, I guess.

8 Q. You had an in-car camera that records what happens?

9 A. Yes, ma'am.

10 Q. And that's done so we can get a realtime view of what
11 happens, correct?

12 A. Yes. Uh-huh.

13 Q. You have a body mic?

14 A. Uh-huh.

15 **THE COURT:** Yes?

16 A. Yes. Sorry.

17 Q. And that only works -- it's tethered to your car?

18 A. No, the body mic was on my belt.

19 Q. Okay. But the sound is tethered to your -- it only --
20 it only works from so many feet away?

21 A. I don't know how many feet it works.

22 Q. Okay.

23 A. I have a mic -- a mic on my person, a little black
24 box, that -- at that time when I was doing patrol, I had a
25 mic always on me. Inside the car it also had, I guess,

1 microphones.

2 Q. Okay. So the mic box that you had on your body, we
3 could have heard all of what happened during the chase?

4 A. No, because they're -- they're wireless. And this is
5 old technology. It's VCR.

6 Q. Okay. And then on -- someday soon we'll have body
7 cams, so we could have watched the race, too, right?

8 A. Maybe.

9 Q. Okay. And we do that so that we can see exactly
10 what's happening realtime, right?

11 A. Yes.

12 Q. So when -- your testimony is now that he throws an
13 item. That wasn't in your report, though, was it?

14 A. I can't recall. I thought I wrote in there he threw
15 an item.

16 Q. Would you like to see it again?

17 A. I would. I stand corrected.

18 Q. When Mr. Berry was apprehended, what happened next?

19 A. After he was placed in handcuffs?

20 Q. Correct, after.

21 A. I returned and retrieved what I saw him throw.

22 Q. And who -- who had custody of Mr. Berry at that time?

23 A. One of the deputies that arrived on the scene. I
24 can't recall which one it was.

25 Q. And they would have taken control and put him in the

1 car?

2 A. They would have probably put him in a caged unit.

3 Q. A caged unit?

4 A. Yes.

5 Q. And those caged units have cameras?

6 A. They have cameras like that, but we don't have
7 interior cameras.

8 Q. The caged unit is -- for example, when someone gets a
9 DUI, they get put in a caged unit?

10 A. I don't -- I don't know.

11 Q. Okay. When did you start -- when did you look in the
12 -- the first bag that you say you retrieved, now can you
13 show us on one of these maps exactly where you -- if you
14 don't mind stepping down.

15 A. Yes, sir.

16 (Whereupon, the witness steps down from the stand.)

17 BY MS. ZMROCZEK:

18 Q. Which map do we need to look at?

19 A. We can use the same -- that one.

20 **THE COURT:** Speak up. You're just chatting now. This
21 lady's got to take it down and everybody's got to hear
22 everything.

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** What exhibit are you referring to?

25 **MS. ZMROCZEK:** This is Government's 150.

1 **THE COURT:** All right.

2 **MS. ZMROCZEK:** Thank you.

3 **THE WITNESS:** This is where Berry discarded the item,
4 made a throwing motion. You can't see it, but behind here
5 are privacy fences that belong to each one of these
6 separate apartments. Both of those items were over the
7 privacy fence.

8 **MS. ZMROCZEK:** Okay. Thank you. Have a seat.

9 (Whereupon, the witness returns to the witness stand.)

10 BY MS. ZMROCZEK:

11 Q. Do you have department-issued cameras?

12 A. Patrol does. I do have one.

13 Q. Is it your testimony that not one of the people there
14 on the scene that day had a camera?

15 A. I don't know if they had cameras.

16 Q. Okay. When Investigator Carwell got there, did you
17 tell him where you located the items?

18 A. I'm sure I did.

19 Q. Okay. You said that initially when you ran the tag
20 and then you took their identifications and you ran them
21 through all of your checks that they -- both subjects came
22 back clear?

23 A. Clear, yes.

24 Q. No warrants?

25 A. No, ma'am.

1 Q. No holds?

2 A. No, ma'am.

3 Q. No drugs?

4 A. Deputy Owens said he thought he may have seen
5 marijuana in plain view in the car.

6 Q. And then I believe you testified on direct that part
7 of your duties after all this was to seize the car or tow
8 the car?

9 A. After it was all said and done --

10 Q. Right.

11 A. -- we towed it to the compound.

12 Q. And there were no drugs in the car?

13 A. No.

14 Q. When he was -- he, Brandon Berry, was running away
15 from you, you yelled hey, stop, correct?

16 A. I think I said Berry, stop.

17 Q. Okay. And then when you caught up with him, he stayed
18 on the fence and there was no incidents after that?

19 A. He continued to struggle with me, but there was no,
20 you know, violence.

21 Q. Well, struggling because he was on top of the fence?

22 A. Struggled trying to get away from me.

23 Q. Okay. And -- but at what point was he tased?

24 A. He was tased after he got back on the other side of
25 the fence.

1 Q. Okay. In handcuffs?

2 A. No, he was not in handcuffs at that point.

3 Q. Okay. And how high was this fence?

4 A. I had to jump to get to the top of it. It was
5 probably between six feet, eight feet high. At least six
6 feet high.

7 Q. Okay. And he was -- he was up at the top six feet?

8 A. Uh-huh. Yes.

9 Q. Okay. And so you grabbed him, you held on?

10 A. Yeah, I held on.

11 Q. And at that point you can't say whether he was
12 struggling to get away or struggling to not fall?

13 A. Half his body was on one side, his legs were on the
14 other. He was moving his legs in what I perceived as -- he
15 had already ran for a couple hundred yards. I thought he
16 was still continuing to try to flee.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. STEADMAN:

21 Q. She made mention of you not putting "throwing the bag"
22 in your report.

23 A. Yes.

24 Q. Do you have a copy of your report in front of you?

25 A. I do not.

1 Q. I'm showing you your report. Can you, please, take a
2 look at that and tell us whether you did put that in your
3 report?

4 A. Yes, I -- not the exact word "throw". I said
5 discarded.

6 Q. You said discarded?

7 A. I said he discarded two bags inside [REDACTED] in
8 my report.

9 Q. Also, what is the purpose of retrieving those bags
10 immediately once he -- once he was arrested?

11 A. Public safety. We didn't know if there were weapons
12 or drugs. You know, there's a big population in these
13 apartment complexes on [REDACTED] so we wanted to go ahead
14 and retrieve them for public safety in case they contained
15 weapons or, you know, dangerous items.

16 MR. STEADMAN: Thank you.

17 THE COURT: Recross?

18 MS. ZMROCZEK: Yes, briefly, Your Honor.

19 RE CROSS EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. You used the word "discarded" in reference to not
22 seeing him discard them, but retrieving the items that --

23 A. I used the word "discarded" as I observed him discard
24 the bag -- or discard an object.

25 Q. Okay. You said public safety was the interest. You

1 did not know what was in the bag?

2 A. No, I did not.

3 Q. You went through training at the academy?

4 A. Yes.

5 Q. You went through and you received policies from
6 Richland County?

7 A. Yes.

8 Q. You understand the importance of the preservation and
9 the location of evidence?

10 A. Yes.

11 Q. You understood that the best practice would have been
12 to check the items where they were located?

13 A. Yes.

14 Q. And if there were a gun, then you could remove the gun
15 and secure that?

16 A. We secured the weapon.

17 Q. Right.

18 A. Yes. And we checked the bag because of the reason of
19 exigent circumstances.

20 Q. Right. And you agree with me, as you just did, that
21 the best practice would have been to check the items where
22 they were located?

23 A. Yes, which I --

24 Q. We have no pictures of where these items were located,
25 do we?

1 A. No, ma'am.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: All right. Thank you, Mr. Pennington.
4 You may step down.

5 (Witness excused.)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we have reached the lunch hour and we are going to
8 recess at this time. I will allow you to go and get your
9 lunch and I will tell you that I have been advised there
10 are some matters that we need to tend to at 2:00 and so I'm
11 going to ask you to be back in the jury room at 2:30. That
12 will give you an hour and a half to get your lunch and come
13 on back to your jury room at 2:30, and we'll be back at
14 2:00 to tend to the matters that we need to tend to outside
15 of your presence.

16 Again, I will remind you over the lunch recess do not
17 discuss the case with anyone, do not allow anyone to
18 discuss it with you and do not discuss the case among
19 yourselves when you're reassembling in the jury room. It's
20 still premature for you to give any discussion whatsoever,
21 but have a nice lunch and be back at 2:30 and we'll be
22 prepared to go forward at that time.

23 Thank you and see you this afternoon.

24 (Whereupon, the jury retires to the jury room at
25 1:02 PM.)

1 **THE COURT:** All right. Counsel, we will be in recess
2 until 2:00. And, Ms. Campbell, I understand at that time
3 you want to call Mr. Wallace and proffer his testimony and
4 we'll determine where we go from there, okay?

5 **MS. CAMPBELL:** Yes, sir.

6 **THE COURT:** All right. So let's plan to be back at
7 2:00 to take care of that proffer and I will see you then.

8 **MS. CAMPBELL:** Thank you, Your Honor.

9 (Whereupon, a luncheon recess taken.)

10 (State's Exhibit Numbers 152 through 160 were marked
11 for identification.)

12 **BAILIFF:** Court come to order. All rise, please.
13 Reminders. If you have cell phones, electronic devices,
14 please turn them off.

15 **THE COURT:** Thank you. Please be seated.

16 All right. We're back in the record with regard to
17 the State versus Brandon Berry. Mr. Berry is present with
18 his counsel. The State is present and represented by the
19 Fifth Circuit Solicitor's Office.

20 All right. Ms. Campbell, I believe you had a witness
21 that you wanted to proffer and there may be some things we
22 have to address on that.

23 **MS. CAMPBELL:** Your Honor, this is Mr. Nickilous
24 Wallace. And just so you know, he is charged with one
25 count of, I think, unlawful carrying of a pistol and one

1 count of carrying a pistol by a convicted felon, or
2 whatever that charge is, a crime of violence, whatever
3 it is.

4 **THE COURT:** One count of -- what was the first one?

5 **MS. CAMPBELL:** First is just an unlawful carrying of
6 a weapon, a gun, and the second one is the unlawful
7 carrying by a person convicted of a crime of violence.
8 Those two events that he's charged with did come out of the
9 traffic stop in this case. Our intent would be to ask him
10 questions about the events of the night before.

11 **THE COURT:** Okay.

12 **MS. CAMPBELL:** And I think if he objected we would --
13 and we would probably have to explain to the jury we're
14 limited in asking questions about the night.

15 **MR. LEONARD:** Your Honor, my name is Chris Leonard,
16 and I represent Mr. Wallace, who is a partial co-defendant.
17 He was a suspect in the armed robbery from the get-go. His
18 involvement in this is being charged with the gun they say
19 is associated with the crime. The car that he owns was
20 allegedly used in the commission of the crime. He was with
21 the Defendant -- he admits that he was with the Defendant
22 prior to the crime and after the crime allegedly occurred.
23 There's some text messages involving shoes I believe are
24 relevant.

25 Your Honor, I don't know if there's anything truly

1 that the State could ask my client that would not lead to
2 some possibility of incriminating information. He's told
3 me he wishes to plead the Fifth. I've explained that to
4 the State, I've explained that to the defense counsel. On
5 cross-exam he could open himself into unchartered
6 territories.

7 **THE COURT:** Well, I think the only way we could make
8 that determination is to have his testimony proffered.

9 **MR. LEONARD:** Well, he can't testify if he's gonna
10 plead the Fifth.

11 **THE COURT:** Then we'll find that out.

12 **MR. LEONARD:** Mr. Wallace.

13 **MS. CAMPBELL:** And, Your Honor, I could make a proffer
14 of what his prior statement to the police officers were and
15 the limited amount that we'd be going into.

16 **THE COURT:** I'm sorry?

17 **MS. CAMPBELL:** I can make a proffer if he chooses --
18 never mind. We'll just do it this way. I'm sorry.

19 **THE COURT:** We can do it that way, too.

20 **MS. CAMPBELL:** No, sir, this will be better for him to
21 take the stand.

22 **THE COURT:** All right. Come on up.

23 NICKILOUS O'NEAL WALLACE,
24 having been duly sworn, testified as follows:

25 **THE COURT:** Thank you. Please have a seat on the

1 witness stand and state your full name for the record.

2 **THE WITNESS:** My name is Nickilous O'Neal Wallace.

3 **THE COURT:** Nickilous Wallace?

4 **THE WITNESS:** O'Neal Wallace.

5 **THE COURT:** O'Neal?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Okay.

8 DIRECT EXAMINATION (In-Camera)

9 BY MS. CAMPBELL:

10 Q. Mr. Wallace, how old are you?

11 A. Twenty-two.

12 Q. Twenty-two?

13 A. (Nods head.)

14 Q. And do you know Brandon Berry?

15 A. Yes, ma'am.

16 Q. How do you know Brandon?

17 A. A friend.

18 Q. I want to turn your attention back to the early
19 morning hours of July the 29th of 2014. Do you remember
20 the police asking you about that night?

21 A. No, ma'am. I plead the Fifth.

22 Q. Do you remember the police asking you about that
23 night?

24 A. When I got pulled over?

25 Q. Later on they talked to you about where you had been

1 the night before.

2 A. Yeah, when I got pulled over.

3 Q. Yes, sir. That same day.

4 A. Yes, ma'am.

5 Q. They talked to you and asked you questions about the
6 night before?

7 A. Yes, ma'am.

8 Q. And do you remember what you told them about the
9 events prior to you being stopped in the vehicle from the
10 night before?

11 **MR. LEONARD:** I object, Your Honor.

12 **THE COURT:** All right. On the basis of the Fifth
13 Amendment?

14 **MR. LEONARD:** That's correct, Your Honor.

15 **THE COURT:** All right. Tell me why you think that's
16 an incriminating question.

17 **MR. LEONARD:** Again, he's charged with the gun coming
18 out of that traffic stop.

19 **THE COURT:** She didn't mention the traffic stop.
20 She's talking about the night before.

21 **MR. LEONARD:** He was with the Defendant the night that
22 he allegedly commits the armed robbery.

23 **THE COURT:** And the answer to that is "yes". She
24 didn't ask him where he was the night before.

25 **MR. LEONARD:** He was also on probation, Your Honor,

1 and not allowed to -- probably not allowed to hang out with
2 people who have violent records.

3 **THE COURT:** And why would it be a violation of
4 probation if he was with the Defendant in this case? Is
5 he a convicted felon that it would be a violation of his
6 probation?

7 **MR. LEONARD:** I don't know, but I -- most of the
8 conditions on probation have that in there.

9 **THE COURT:** I know the conditions are there. There's
10 no question about that. It is a violation of probation if
11 he's with a convicted felon. My question is being with
12 this individual, is that a violation of his probation if
13 he was with this individual? I don't know what this
14 Defendant's criminal record is.

15 **MR. LEONARD:** I believe he has a record. I don't know
16 the extent.

17 **MS. CAMPBELL:** Your Honor, it was my understanding
18 from Mr. Leonard yesterday that he had been served with a
19 violation of his probation, but the only grounds for it
20 was this new arrest.

21 **MR. LEONARD:** That's correct. That's the only current
22 grounds, but, again, the Fifth Amendment applies to future
23 prosecutions, any reasonable possibility of future, and
24 that revocation is still pending.

25 **THE COURT:** Well, that doesn't have anything to do

1 with being with this individual. That's what Ms. Campbell
2 is telling you is the alleged violation by the probation
3 department has nothing to do with being with this
4 individual.

5 **MR. LEONARD:** But it could. If he admits on the
6 record that he was with Mr. Berry, there's a very
7 reasonable possibility that that's a new ground for
8 revocation that is still pending before the Circuit Court
9 and it's been continued until the resolution of this
10 matter.

11 **THE COURT:** All right. Let's -- the first question
12 then that you asked that he's taken the Fifth Amendment to
13 was who he was with the night before. Is that what it was?

14 **MS. CAMPBELL:** Yes, sir.

15 **THE COURT:** All right. I'll sustain that objection
16 for now. Let's see what else you want to proffer.

17 **MS. CAMPBELL:** At this point, Your Honor, the only
18 other thing I would be going into is who he lent his car to
19 the night before for two hours. And, Your Honor, to give
20 you a background --

21 **THE COURT:** Go ahead.

22 **MS. CAMPBELL:** -- to help fill in the blanks,
23 basically he was interviewed after this stop on two
24 different occasions. On the first time he had said that
25 he had been with Brandon Berry the night before; that when

1 he was with Brandon Berry they had gone to two different
2 clubs, which ultimately corresponded to clubs where the
3 victim was doing his DJ job or whatever it is, and that
4 they had left. In his second statement, he said that
5 at some point that morning, around 3:00, he went to
6 Mr. Lucky's and Brandon Berry had his car for two hours
7 and he didn't know what he was doing.

8 **THE COURT:** So that's what you wish to establish
9 basically?

10 **MS. CAMPBELL:** (Nods head.)

11 **THE COURT:** He made statements as to this?

12 **MS. CAMPBELL:** Not written statements. He made oral
13 statements with his lawyer present; on the second one to
14 law enforcement. He would not put it in his handwriting.

15 **THE COURT:** If he made those statements, wouldn't that
16 waive his Fifth Amendment rights?

17 **MR. LEONARD:** He did not waive his Fifth Amendment
18 right, Your Honor. Not in open court.

19 **THE COURT:** He was giving Miranda warnings?

20 **MR. LEONARD:** He was, Your Honor.

21 **THE COURT:** Why hasn't he waived his rights?

22 **MR. LEONARD:** Because the Fifth Amendment -- he did
23 not waive it. You can assert it at any time. And
24 especially at trial and testimony. He cannot state on
25 the record and be forced to incriminate himself.

1 **MS. CAMPBELL:** The other issue in this case
2 additionally, Your Honor, is the defendant was -- this
3 defendant, who is the co-defendant, I guess, in the
4 traffic stop, was cooperative and he changed his mind
5 after receiving a phone call from the Defendant last
6 week and we can play that for the Court where the
7 Defendant told him he shouldn't testify.

8 **MS. ZMROCZEK:** Your Honor, if I may be heard.

9 **THE COURT:** Yes.

10 **MS. ZMROCZEK:** Thank you. Two things. One, that's
11 not an accurate reflection of the phone call that I
12 received. What it said is "I've done research" -- what
13 Mr. Wallace said is "I've done research and I don't have
14 to testify" and what my client says is "Yeah, yeah, I
15 don't want you to testify".

16 **THE COURT:** Who initiated the call?

17 **MS. ZMROCZEK:** Well, he has to initiate the call. I
18 mean, he -- that's not the only call.

19 **THE COURT:** What was his purpose in calling him?

20 **MS. ZMROCZEK:** Your Honor, his purpose in calling him
21 was to complain about his girlfriend not paying his bond
22 and that -- there are numerous -- numerous -- there are
23 698 phone calls that I have in my possession and several --
24 I mean, there are more than a hundred that are between
25 these two, so it's not just --

1 **MS. CAMPBELL:** This is the one --

2 **THE COURT:** Wait a minute. Wait a minute.

3 **MS. ZMROCZEK:** This is not just a recent
4 communication or development. And then, secondly,
5 Your Honor, I -- I would object to that they're allowed
6 to --

7 **THE COURT:** Isn't the -- well, if the call was made
8 from the jail, isn't it recorded?

9 **MS. ZMROCZEK:** Oh, absolutely.

10 **MS. CAMPBELL:** We have the call.

11 **THE COURT:** I mean, does that -- does the call reflect
12 what you said or is that incorrect?

13 **MS. ZMROCZEK:** I think that if, Your Honor -- I
14 mean --

15 **THE COURT:** Ma'am?

16 **MS. ZMROCZEK:** I've heard it and what it reflects to
17 me is that he says "I've done research, I know", and then
18 after he says that, he says "Yeah, yeah, I don't want you
19 to testify". It wasn't the other way around. There was no
20 coercion, there was no threat. That's my understanding of
21 the call unless they have a different call that I didn't
22 receive.

23 **MS. WALKER:** Your Honor?

24 **THE COURT:** Yes.

25 **MS. WALKER:** I'm sorry. If I may? Ms. Campbell

1 hasn't listened to the jail phone calls. This is one of
2 those jail phone calls that we put on the record yesterday
3 where this Defendant starts using a different PIN number as
4 to hide the call from law enforcement so that we wouldn't
5 be able to find it and use it against him. In that phone
6 call, he calls under a different inmate's name this
7 witness, Mr. Wallace. At that point they are talking about
8 the trial upcoming and he says -- and they're both talking
9 about the Fifth Amendment. I don't think it's coercive,
10 but he says "When you get up there, you just plead the
11 Fifth because you're gonna say something that you think is
12 going to try to help me and it's going to hurt me, so you
13 just plead the Fifth, you plead the Fifth, you plead the
14 Fifth", and he says that to him repeatedly, but he is -- at
15 that point in time, I think when we spoke with his attorney
16 last week, he was willing to --

17 **THE COURT:** Look at me. Don't look at him. I can't
18 understand you when you --

19 **MS. WALKER:** I'm sorry, Judge. He was willing to --
20 last time we spoke with his attorney, he was willing to
21 testify. After that phone call takes place between the
22 two of them, that is when he begins to say that he wants
23 to assert his Fifth Amendment privilege.

24 **THE COURT:** Well, don't we have two different issues?
25 First of all, there's no -- of course, this is the first

1 blush for me with this, but don't we have two different
2 issues? Number one is whether or not he has the right to
3 assert the Fifth Amendment in regard to questions about
4 where he was and who he was with and who he lent his car
5 to. That's one question it seems like to me. And then
6 the other question is whether or not he has been
7 intimidated or threatened by the Defendant in this case.

8 **MS. ZMROCZEK:** Your Honor, I would assert there's also
9 a third question because if he chooses not to testify and
10 they try to get his statements or what was said in, then I
11 have -- I have no meaningful cross-examination on him.
12 Even if they want to just limit it to what they want to
13 limit it to, Your Honor, I don't believe that they can just
14 limit -- you know, hamstringing my cross-examination under the
15 Sixth and Fourteenth Amendment and proffer it. I think
16 that there are several challenges that I could make to that
17 testimony coming in.

18 **MS. CAMPBELL:** Your Honor, what we could do if you
19 want to is I can do some additional research on this issue
20 and submit it. We aren't putting him up until tomorrow
21 anyway --

22 **THE COURT:** I understand.

23 **MS. CAMPBELL:** -- and maybe I could get you some case
24 law and also let you listen to the phone call.

25 **THE COURT:** All right. First of all, let's see if we

1 can get that testimony, what you want him to testify to.
2 First is who he was with the night before, who he lent his
3 car to, and what else?

4 **MS. CAMPBELL:** The time period.

5 **THE COURT:** Time period. Okay.

6 **MS. CAMPBELL:** Because basically he said he went to
7 Mr. Lucky's. At that point he gave his car to Brandon
8 Berry for a couple of hours and he didn't know where he
9 was.

10 **THE COURT:** And --

11 **MS. CAMPBELL:** And I can -- I can give you the exact
12 summary so that there's no --

13 **THE COURT:** All right. Here's what I'm gonna do.
14 I want you to prepare -- have your office prepare the
15 questions that you intend to ask that you want to get out
16 of this witness with regard to substantive testimony; that
17 is, who he lent the car to, who he was with, what he did
18 with the car. Those are the things that you want to ask
19 him, so have those in writing so I know exactly and so will
20 the defense know exactly what questions he might be asked
21 and then I think what I would -- is it possible to get a
22 transcript of that telephone call that seems to be the
23 crucial call here that y'all are --

24 **MS. CAMPBELL:** We can get it transcribed while we're
25 in court this afternoon.

1 **THE COURT:** Okay. Let's get a transcript of that
2 telephone call. And then the third thing is I want from
3 both of you at 9:00 in the morning any law on the two
4 questions; that is, the -- the substantive testimony and
5 the conversation from the jail as to what that conversation
6 was. And also from the defense, if it's your position that
7 he doesn't -- well, I'm pretty clear on the law is you
8 can't put the witness up just for the purpose of obtaining
9 a Fifth Amendment claim -- a Fifth Amendment -- for the
10 defendant to take the Fifth amendment. I'm also pretty
11 clear that the law is that the determination as to what is
12 or may be incriminating is pretty much up to the witness,
13 and that's what the law is, but at the same time I am very
14 concerned about a telephone conversation between this
15 Defendant and this witness regarding intimidation of the
16 witness, and that's one of the things that I can't just sit
17 still on.

18 **MS. ZMROCZEK:** And, Your Honor, I would ask that the
19 Court then be provided all of the conversations. You don't
20 have to have a transcript of all of them, but the dates --

21 **THE COURT:** I don't want them all. There's only one
22 I need if this is the one he's telling him not to testify,
23 that it could hurt me. This is the one that's the crucial
24 issue here. All the other conversations don't make any
25 difference.

1 **MS. ZMROCZEK:** Unless they discuss it, Your Honor, and
2 that would be my position.

3 **THE COURT:** Well, it depends on the content of this
4 last conversation, which is the one the State thinks that
5 -- because prior to that y'all felt like the witness was
6 going to be cooperative; is that right?

7 **MS. CAMPBELL:** That's exactly -- yes, Your Honor.

8 **MR. LEONARD:** We were open to negotiations about his
9 pending charges prior to that.

10 **THE COURT:** Well, I want -- I want -- I mean, I'll
11 tell you which way I'm leaning and then I'll listen to
12 you otherwise in the morning because we're gonna need to
13 go forward, but the way I'm leaning is the witness does
14 have the right to make the determination of what is
15 incriminating and what is not incriminating; that you
16 can't put him up just for the purpose of getting him to
17 take the Fifth Amendment, so I'm pretty clear on that.
18 But I am very concerned if there has been an intimidation
19 of the witness or any kind of a threat by the Defendant or
20 anything that would cause him not to testify as being in
21 contempt of this Court, so that's where I stand on your
22 client, Ms. Zmroczek. If this conversation reveals that
23 he has, in fact, tried to influence the witness not to
24 testify, we'll address that because I think that is --
25 I'm going to be very, very upset if that's what the

1 situation is.

2 **MS. ZMROCZEK:** And I respect that position, Your
3 Honor. It's my understanding that it's -- not only that
4 they can give you a transcript -- a copy of that one call
5 because yesterday the conversation that I was told between
6 the State and Mr. Wallace's attorney is that they didn't
7 see it as any threat or coercion, but I think that's for
8 the Court's determination and I understand your concern.

9 **THE COURT:** When did this call take place?

10 **MS. WALKER:** Your Honor, if I recall correctly, it
11 was on -- it was either Tuesday or Wednesday of last week.
12 It was right before Thanksgiving. And we will -- I'll go
13 to my office now and get someone started on getting you a
14 transcript of that phone call.

15 **THE COURT:** All right. Everybody be back at 9:00 in
16 the morning and we'll address this matter at that time.
17 But, as I say, my inclination is that he is the individual
18 who can make that determination as to whether it may or
19 may not be incriminating. The way you can eliminate that
20 is, you know, give him immunity, but that's all right,
21 that's up to you, but I'll make that determination tomorrow
22 and I do want to see that what the contents of the
23 telephone call are and I also want any law on both the
24 Fifth Amendment protections that this witness has, as well
25 as however you can use the telephone calls.

1 **MS. CAMPBELL:** Thank you.

2 **THE COURT:** 9:00 in the morning.

3 **MR. LEONARD:** Thank you, Your Honor.

4 (Witness excused.)

5 **THE COURT:** We've got a few minutes before the jury is
6 in. Ms. Zmroczek, let me -- this is a good time for me to
7 go over -- I'm not going to require a decision at this
8 time, but let me go over the Fifth Amendment rights with
9 your client.

10 **MS. ZMROCZEK:** Thank you, Your Honor.

11 **THE COURT:** Mr. Berry, you may be called as a witness
12 to testify in this case. I now advise you that you have
13 the right to invoke the protections given to you by the
14 Fifth Amendment to the Constitution of the United States
15 and a similar counterpart provision of the Constitution of
16 the State of South Carolina. The Fifth Amendment to the
17 Constitution of the United States provides, in part, that
18 no person shall be compelled in any criminal case to be a
19 witness against himself.

20 This provision of constitutional law means that you
21 cannot be compelled or required to testify in this case.
22 This is a right and a privilege that the law extends to
23 you. It is a personal privilege and no one can waive this
24 right except you. You have a right not to testify, but you
25 also have a right to testify. The Court will grant you

1 the right to consult with your lawyer before you make a
2 decision. If you elect not to testify, your failure to
3 testify or your election not to testify cannot be used by
4 the State as an inference of guilt and your decision not
5 to testify cannot be considered by the jury in its
6 deliberations, and I will so instruct them.

7 If you elect to testify and waive the privilege
8 extended to you by the Fifth Amendment to the Constitution,
9 I advise you that you would assume the role of a witness
10 in this case and you would then waive or give up your
11 constitutional privilege against self-incrimination. This
12 means that if you voluntarily take the witness stand and
13 testify that you will subject yourself to the same rules
14 that govern other witnesses and you may be examined and
15 cross-examined on any relevant issue in this case and you
16 may be impeached to the same extent as any other witness,
17 all of which is subject to the rules of evidence and the
18 rules of law.

19 I will further remind you that if you elect to take
20 the witness stand and testify, this decision on your part
21 must be made freely, voluntarily, intelligently and with
22 knowledge of the protections given to you by the Fifth
23 Amendment to the Constitution and with knowledge of the
24 consequences of your election not to testify.

25 Do you understand what I've explained to you?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you have any questions about what I
3 have explained to you?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** All right. I would recommend that you
6 discuss the matter thoroughly with your lawyer. I will
7 not require that you to give us an answer at this time as
8 to whether you should or should not testify, but at the
9 appropriate time I am going to require that you make an
10 intelligent decision and a knowing decision as to whether
11 you do or not wish to testify. Do you understand?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** All right. Thank you. You may be seated.

14 **MS. ZMROCZEK:** Thank you, Your Honor.

15 **THE COURT:** All right. Ms. Campbell, are you ready
16 to go forward?

17 **MS. CAMPBELL:** Yes, sir.

18 **THE COURT:** Anything, Ms. Zmroczek?

19 **MS. ZMROCZEK:** No, sir.

20 **THE COURT:** All right. Bring the jury in.

21 (Whereupon the jury returns to the courtroom at
22 2:28 PM.)

23 **BAILIFF:** Jurors seated, Your Honor.

24 **THE COURT:** All right. Thank you. And thank you,
25 ladies and gentlemen, for your promptness in being back

1 here. And the State -- when we adjourned for lunch, the
2 State was presenting their case and will continue to
3 do so at this time. You may call your next witness.

4 **MR. STEADMAN:** The State calls Dr. Thomas Jones.

5 THOMAS MOSS JONES,

6 having been duly sworn, testified as follows:

7 **THE CLERK:** Please have a seat on the witness stand
8 and state your name for the record.

9 **THE WITNESS:** Thomas Moss Jones.

10 DIRECT EXAMINATION

11 BY MR. STEADMAN:

12 Q. Dr. Jones, where are you employed?

13 A. Palmetto Health Richland Hospital.

14 Q. And what do you for them?

15 A. I'm an orthopedic trauma surgeon.

16 Q. And are you licensed to practice medicine in this
17 state?

18 A. Yes, sir.

19 Q. And how long have you been licensed?

20 A. Since 2011.

21 Q. And where did you go to medical school?

22 A. The Medical College of Georgia.

23 Q. And after graduation from medical school, what have
24 you done since then?

25 A. Five years of orthopedic surgery residency at the

1 University of Wisconsin and then one year of orthopedic
2 trauma fellowship at the University of California-Davis.

3 Q. And can you describe the field of orthopedic trauma?

4 A. It's a subspecialty in the field of orthopedic
5 surgery. My specialty is essentially taking care of
6 traumatized extremities; arms, legs, that are damaged in
7 car wrecks, motorcycle crashes, people falling from
8 heights, those types of things.

9 Q. And, once again, where do you practice currently?

10 A. At Richland Hospital.

11 Q. And during your practice throughout your career, how
12 many -- approximately how many personal injury cases have
13 you worked?

14 A. Specifically in which I've testified? You mean
15 personal injury like how many patients I've taken care of?

16 Q. Yes.

17 A. I probably do three hundred operations a year.

18 **MS. ZMROCZEK:** Your Honor, we have no objection and
19 we stipulate to his expertise as a trauma surgeon.

20 **THE COURT:** All right. You can give further
21 qualifications if you want to, but the defense does not
22 object to the qualifications.

23 **MR. STEADMAN:** Okay. Then, Your Honor, we'd ask --

24 **THE COURT:** You're offering him as an expert in what
25 field?

1 **MR. STEADMAN:** In orthopedic trauma.

2 **THE COURT:** Orthopedic trauma. Any objection to the
3 witness testifying as an expert in the field of orthopedic
4 trauma?

5 **MS. ZMROCZEK:** None whatsoever, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen of the
7 jury, let me tell you what that means. Ordinarily a
8 witness is not testifying as an expert. The witness's
9 testimony in the form of opinions or inferences is
10 limited to those opinions or inferences which are
11 rationally based on the perception of the witness or
12 helpful to a clear understanding of the witness's
13 testimony or to the determination of facts in issue and
14 do not require special knowledge, skill, experience or
15 training; however, if scientific, technical or other
16 specialized knowledge will assist the trier of fact,
17 and that's you in this case, to understand the evidence
18 or to determine a fact in issue, a witness qualified as
19 an expert by knowledge, skill, experience or training or
20 education may testify in the form of an opinion.

21 So basically the difference between a non-expert
22 witness and an expert witness is that an expert witness
23 is allowed to give an opinion, whereas a non-expert witness
24 is not allowed to give an opinion, and I have a qualified
25 this witness as an expert in the field of orthopedic

1 trauma.

2 All right.

3 BY MR. STEADMAN:

4 Q. Sir, on July 29th, the early morning hours, were you
5 the attending physician for patient Michael Keith?

6 A. Yes.

7 Q. Can you, please, describe his condition when you first
8 made contact with him?

9 A. So as a little background as to how it works at
10 Richland Hospital, our emergency room is staffed by
11 resident physicians that are part of the University of
12 South Carolina Orthopedic Residency Program. They are
13 essentially the triage physicians that assess the patients
14 when they come into the operating room -- I mean, when
15 they come into the emergency room. Me, as the attending
16 physician, receives that phone call, I have Patient X that
17 has this particular injury, okay, that sounds good, and
18 then we will set -- typically if it's something that
19 requires surgery, we will have surgery the following
20 morning and I'll meet the patient that morning when I come
21 in in the morning to make rounds. As I recall from this
22 particular situation, that was when I met this particular
23 individual was the morning of.

24 Q. Okay. Once you met him, how did you assess his
25 condition?

1 A. So we do what is a typical physical exam. You take
2 a look at the injured extremity. In this particular case,
3 it appeared to have been a gunshot wound in this particular
4 individual's leg. We do what's called a neurovascular
5 check, which is you evaluate for the blood flow to the
6 foot -- or, in this particular case the foot, the
7 extremity, and then you also assess for the neurologic
8 function; is the patient able to wiggle their toes, is the
9 patient able to move their hand or sense, you know, if
10 you're touching the foot or that kind of thing, so we went
11 through that process. We then assessed his radiographs or
12 x-rays of his injured extremity and from what I recall he
13 had an injury to his tibia that was fractured.

14 Q. And once you assessed the fracture to the tibia, what
15 type of treatment did you provide?

16 A. So in this particular this case, given the
17 displacement or, I guess, how much the fracture had moved,
18 the patient needed an operation to stabilize the fracture
19 so that his ankle and knee remain in the space where
20 they're supposed to be to allow the fracture to heal so
21 that he would eventually be able to weight bear after the
22 bone has healed.

23 Q. And based on the location of the gunshot, how severe
24 a wound was there for bleeding out?

25 A. I guess that's relative. I mean, you know, it depends

1 on where an individual is shot on probably what their risk
2 is for, you know, exsanguinating or bleeding to death, if
3 you will. If someone's shot immediately adjacent to their
4 aorta or an organ in their abdomen or one of the large
5 blood vessels in their thighs, that is a significantly
6 higher rate of blood flow per unit of time that, yes,
7 someone can exsanguinate. That distal or that far down in
8 the leg, the blood vessel caliber is significantly smaller,
9 it's a smaller amount of blood that would be flowing
10 through there over a unit of time, so less likely to do so.

11 Also, in this particular case, given that location,
12 that would be a limb that would be amenable to having a
13 tourniquet placed, essentially like a belt or a T-shirt,
14 something to constrict the blood flow to prevent that from
15 happening where you would not be able to do that in the
16 chest, the abdomen or the upper thigh.

17 Q. So would you say there's a significant risk of
18 bleeding out?

19 A. I'd say low risk.

20 Q. Was this injury -- the treatment, is that -- is it
21 going to cause permanent disfigurement?

22 A. In this particular case, likely not. The particular
23 -- this patient's injury did not involve the articular
24 structures or the joint structures. That's where the
25 cartilage is that allows the ankle to move up and down.

1 The bone in the fashion it was broken was able to be put
2 back together kind of like a puzzle perfectly like it was
3 before. It was broken and from what I remember of this
4 particular individual's fracture it healed successfully and
5 he is now weightbearing.

6 Q. And how did you put this fracture back together?

7 A. With plates and screws. You know, we have metallic
8 implants that serve as internal splints, if you will, to
9 hold the pieces in place while the body heals the fracture
10 and then that way the patient doesn't have to wear a cast
11 or a splint on the outside and they can begin moving their
12 ankle or moving their knee, in this particular case, sooner
13 than later.

14 Q. Will -- those metal implants, will they stay in his
15 leg forever?

16 A. They will.

17 Q. After the treatment, after the surgery that you
18 provided, what were the next steps for Michael Keith's
19 recovery?

20 A. So he gets a post-operative check immediately to make
21 sure that his neurovascular status has not changed, the
22 blood is still flowing to his foot, the nerves are still
23 working, and then we see him, you know, two or three times
24 in the hospital until he is discharged and then he comes
25 back and sees me in my clinic just like you would go to a

1 regular doctor's office and take out stitches, we'd get
2 some updated x-rays, and then I typically see patients
3 like this individual at usually the two-week, six-week,
4 three-month and sometimes six-month followup depending on
5 how their clinical course is progressing. If the fracture
6 is healing and they're making good progress with physical
7 therapy, often times we will, you know, not see them after
8 three or six months.

9 **MR. STEADMAN:** Thank you. No further questions.

10 **THE COURT:** All right. Cross-examination?

11 **MS. ZMROCZEK:** No questions.

12 **THE COURT:** No questions?

13 **MS. ZMROCZEK:** (Shakes head.)

14 **THE COURT:** All right. Thank you, Doctor. You may
15 step down. Would you like to have the witness excused?

16 **MR. STEADMAN:** Yes, Your Honor.

17 **THE COURT:** Any objection?

18 **MS. ZMROCZEK:** No.

19 **THE COURT:** All right. Thank you for coming.

20 (Witness excused.)

21 **THE COURT:** Counsel come up.

22 (Proceedings held at the bench; not reported.)

23 **THE COURT:** All right. Thank you.

24 All right. Proceed. You may call your next witness,
25 Ms. Campbell.

1 **MR. STEADMAN:** The State calls Investigator Kerri
2 McClary.

3 KERRI McCLARY,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Please have a seat on the witness stand
6 and state your full name for the record and, please, spell
7 your first name.

8 **THE WITNESS:** Kerri, K-E-R-R-I. McClary,
9 M-C-C-L-A-R-Y.

10 DIRECT EXAMINATION

11 BY MR. STEADMAN:

12 Q. Investigator McClary, where are you employed?

13 A. I'm employed with the Richland County Sheriff's
14 Department.

15 Q. And what do you do for the Richland County Sheriff's
16 Department?

17 A. I am an investigator assigned to the crime scene and
18 latent fingerprint unit.

19 Q. And what are your duties for the latent fingerprint
20 department?

21 A. For latent fingerprints, my duties are to process
22 evidence using various powders or chemicals to see if I can
23 develop fingerprints on particular items of evidence and
24 then I do comparisons as well.

25 Q. And how did you get involved in this case?

1 A. I received a request for processing from Investigator
2 Carwell on a particular item of evidence, Item 11. It was
3 two black plastic masks. He had submitted a request form
4 to have them processed for fingerprints, latent prints, and
5 for DNA.

6 Q. I'm gonna show you what's marked as State's
7 Exhibit 155. Do you recognize that?

8 A. I do.

9 Q. Is this the mask that you were asked to swab?

10 A. It appears to be one of them, yes. There was two.

11 **MR. STEADMAN:** Your Honor, at this point we'd moved to
12 introduce State's Exhibit 155 into evidence.

13 **THE COURT:** What's the number?

14 **MR. STEADMAN:** 155.

15 **THE COURT:** Any objection?

16 **MS. ZMROCZEK:** Without objection.

17 **THE COURT:** All right. Admitted into evidence
18 Number 155 without objection.

19 (State's Exhibit Number 155, a mask, was admitted into
20 evidence.)

21 BY MR. STEADMAN:

22 Q. So you were asked by Investigator Carwell to do swabs
23 of the mask. Can you describe the process?

24 A. Well, I was actually asked to process them for
25 fingerprints and then once I get done with that the

1 technique that we use to swab something is to take a
2 sterile swab, cotton swab, and we apply sterile water to
3 the tip of that swab and then we rub the swab over the
4 surface of whatever the item is and concentrate everything
5 on the tip of the swab. Once we've done the collection,
6 we place it into a box, a very small carton that's for
7 submission to our evidence and property section.

8 Q. Let me show you what's been marked as State's Exhibit
9 127. Do you recognize that?

10 A. Yes.

11 Q. And are those the swabs that you took of the two black
12 masks?

13 A. Yes, it is.

14 **MR. STEADMAN:** Your Honor, at this point we'd moved to
15 introduce State's Exhibit 127 into evidence.

16 **MS. ZMROCZEK:** Without objection.

17 **THE COURT:** All right. State's Exhibit 127 is
18 admitted into evidence without objection.

19 (State's Exhibit Number 127, a swab, was admitted into
20 evidence.)

21 BY MR. STEADMAN:

22 Q. Now besides the swab -- let me back up. This is for
23 DNA purposes, the swab?

24 A. The collection of the swab is to be submitted to our
25 DNA section for analysis, yes.

1 Q. And once you've swabbed them, how does the process
2 work at that point?

3 A. Once I've swabbed -- collected a swab?

4 Q. Yes.

5 A. They are secured in the swab box and then I secure
6 them in the envelope that you just showed me and submit it
7 to our evidence and property section and then it waits
8 there until DNA picks them up for their analysis.

9 Q. And what else -- besides the swabbing of the two
10 plastic masks for DNA, were you asked to proces anything
11 else in this case?

12 A. No, that was the only thing I was to process.

13 Q. And is this the other mask that you were asked to
14 swab?

15 A. Yes.

16 Q. And that's State's Exhibit 149?

17 A. (Nods head.)

18 **MR. STEADMAN:** No further questions.

19 **THE COURT:** Cross-examination?

20 **MS. ZMROCZEK:** Briefly.

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q. Can you tell me which swab came from which mask?

24 A. Which swab came from which mask?

25 Q. Yes.

1 A. Can I see the envelope, please?

2 Q. Sure.

3 A. It was just one swab where I swabbed both masks.

4 They were packaged together in the same container and so
5 I went ahead and swabbed both of them with the same swab.

6 Q. Okay. So if one -- they were packaged together,
7 meaning when they were collected and brought to you they
8 were together?

9 A. They were in the same container.

10 Q. Okay.

11 A. Yes.

12 Q. Could then DNA transfer from one to the other?

13 A. I guess it could be possible. I'm not a DNA expert.

14 Q. Okay.

15 **MS. ZMROCZEK:** Thank you.

16 **THE COURT:** Anything further of this witness?

17 **MR. STEADMAN:** No, Your Honor.

18 **THE COURT:** All right. Thank you. You may step down.
19 (Witness excused.)

20 **THE COURT:** All right. You may call the next witness.

21 **MS. WALKER:** Thank you, Your Honor. The State calls
22 Lourisa Katio.

23 **MS. WALKER:** She's sequestered, Your Honor. Let me
24 step outside and make sure they're getting her.

25 **THE COURT:** All right.

1 LOURISA KATIO,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Thank you. Have a seat on the witness
4 stand and state your full name for the record. State your
5 full name.

6 **THE WITNESS:** Lourisa Katio.

7 DIRECT EXAMINATION

8 BY MS. WALKER:

9 Q. Good afternoon. Where do you currently live? Just --
10 you don't have to give me an address, just like the city.

11 A. Columbia, South Carolina.

12 Q. And how long have you lived here in Columbia?

13 A. All my life. Twenty-three years.

14 Q. Did you go to high school here?

15 A. Yes, ma'am.

16 Q. Where did you go to high school?

17 A. Keenan. W.J. Keenan.

18 Q. And where do you work now?

19 A. Blue Cross Blue Shield.

20 Q. Do you know the Defendant in this case?

21 A. Yes.

22 Q. How do you know him?

23 A. That's my baby's father.

24 Q. He's the father of your child?

25 A. Yes.

- 1 Q. How old is your child?
- 2 A. Three.
- 3 Q. A little boy or a little girl?
- 4 A. A girl.
- 5 Q. I want to take your attention back to July of last
- 6 year.
- 7 A. Uh-huh.
- 8 Q. Were you and the Defendant in a relationship at that
- 9 point in time?
- 10 A. Off and on, ma'am.
- 11 Q. I'm sorry?
- 12 A. Off and on.
- 13 Q. When y'all were on, would y'all spend the night
- 14 together?
- 15 A. Yes.
- 16 Q. And where would y'all stay during your on times?
- 17 A. At my house.
- 18 Q. Okay. And where was that?
- 19 A. [REDACTED].
- 20 Q. Okay. Did he have clothing and other things like that
- 21 at your house?
- 22 A. Yes.
- 23 Q. And in July were you guys off or on? In July of 2014.
- 24 A. For the most part -- I'd say, yes, for the most part.
- 25 Q. Okay. Let's say late July. Were y'all getting along

1 then?

2 A. Sometimes.

3 Q. I want to take your attention back to July 29th.

4 A. Okay.

5 Q. Did you receive a phone call that day that caused you
6 to leave work?

7 A. Yes.

8 Q. Okay. Tell me about that.

9 A. I received a phone call from Kayla and she stated that
10 I --

11 **MS. ZMROCZEK:** Objection, Your Honor. Hearsay.

12 **THE COURT:** All right. Don't testify as to -- I'm
13 not -- I didn't hear the whole question. Ask it again.

14 **MS. WALKER:** I just wanted her to tell me about the
15 phone call she received. I can narrow the question down.

16 **THE COURT:** All right. Don't tell us about any
17 contents of the telephone call, but you can tell what you
18 did as a result of the telephone conversation. Ask the
19 question again.

20 BY MS. WALKER:

21 Q. Who called you?

22 A. Kayla.

23 Q. Kayla?

24 A. Uh-huh.

25 Q. And who is Kayla?

1 A. I'm assuming his girlfriend or baby momma.
2 Q. With a different child? A woman with a different
3 child?
4 A. Yes.
5 Q. Okay. And as a result of talking to Kayla, what did
6 you do?
7 A. I left work.
8 Q. And when you left work, where did you go?
9 A. To the scene where my child was.
10 Q. And do you remember exactly where that was?
11 A. A neighborhood off of Broad River. I not sure the --
12 I don't remember the name of the neighborhood.
13 Q. But it was in the Broad River Road area?
14 A. Yes.
15 Q. And once you got -- how long did it take you to get
16 there?
17 A. About twenty minutes.
18 Q. Okay. And at that point while you were driving to
19 Broad River Road, were you concerned about your child?
20 A. Yes.
21 Q. And once you got to the scene where your child was
22 located, what did you see?
23 A. Just several police officers and my baby.
24 Q. And at that point who had your baby, if you remember?
25 If you don't, that's fine.

1 A. I don't recall.

2 Q. Was Kayla still there?

3 A. I'm thinking that she was.

4 Q. And who else besides your child and Kayla was on the
5 scene?

6 A. When I got there -- when I got there, I called my
7 mother and step-dad and my sister.

8 Q. Okay.

9 A. My mother had just had surgery, so she wasn't able to
10 come, so it was my step-dad, me and my sister.

11 Q. Was anyone else -- was Mr. Berry there at that point?

12 A. I'm assuming -- as I recall, he was in a police
13 officer's car. I didn't really see him.

14 Q. And did you speak with law enforcement officers?

15 A. Yes.

16 Q. That night before you had to rush to the scene, where
17 did you understand Brandon Berry to be?

18 A. I don't recall. I'm sorry.

19 Q. Okay. Was he with you?

20 A. Until 9:00 or 10:00.

21 Q. So 9:00 PM and then what time did you see him again?

22 A. I was asleep, so when I woke up I saw him. I wake up
23 around six, 6:30, so he was there then.

24 Q. Okay.

25 A. He may have got home earlier, but I was asleep.

1 Q. You were asleep and then at 6:00 you woke up?

2 A. By the time it was for me to go back to work, Brandon
3 was there.

4 Q. Okay. Do you remember giving a statement to law
5 enforcement --

6 A. Yes.

7 Q. -- in this case? Do you remember signing your
8 statement?

9 A. Yes, I did sign it.

10 Q. Okay.

11 **MS. WALKER:** Your Honor, may I approach the witness?

12 **THE COURT:** Yes, ma'am.

13 BY MS. WALKER:

14 Q. Do you remember telling them what time he came home?
15 I know it was a long time ago.

16 A. Yes.

17 Q. And what time did you tell law enforcement Brandon
18 came home that morning?

19 A. That -- I did say five something.

20 Q. Okay. I'm not trying to confuse you. You do think
21 your memory was better then than it is now as to what
22 happened that -- that morning?

23 A. Again, I was asleep, but, yes, ma'am.

24 Q. Okay. And when was the last time you spoke with
25 Brandon Berry before today?

1 A. November, early November, during child support when we
2 were going through our court case.

3 Q. Don't tell me what you talked about. I'm just asking
4 when was the last time you spoke with him.

5 A. November.

6 Q. Of 2015?

7 A. Yes.

8 Q. Going back to July 29th, when you made contact with --
9 or, I guess, when law enforcement made contact with you,
10 did you give them consent to search your apartment where
11 you were and where Brandon returned that morning?

12 A. After I was told -- you're saying after the officer --
13 after we already left the scene?

14 Q. Yeah, at some point did you sign a consent form for
15 them to search your apartment?

16 A. Yes.

17 **THE COURT:** Isn't it in evidence?

18 **MS. WALKER:** It's already in evidence. I'm sorry,
19 Your Honor.

20 BY MS. WALKER:

21 Q. So you signed that search -- that consent form and did
22 they make entry into your apartment?

23 A. Yes.

24 Q. Okay. And did they take with them -- did they take
25 anything with them when they left or do you know?

1 A. Yes, they took items with them.

2 Q. Do you remember what, if anything, they took?

3 A. They took pants and shoes.

4 Q. And whose pants and shoes were those they took?

5 A. Brandon's.

6 Q. You don't want to be here today, do you?

7 A. No, ma'am.

8 **MS. WALKER:** I beg the Court's indulgence.

9 **THE COURT:** Okay.

10 BY MS. WALKER:

11 Q. I want to show you what's been marked as State's
12 Exhibit 134 and ask you if you recognize those -- these
13 shoes?

14 A. Yes, ma'am.

15 Q. And how do you recognize these shoes?

16 A. Because those were his shoes.

17 **THE COURT:** Speak up, please. Speak up.

18 A. Those were shoes that he had. I'm not sure though.

19 Q. When you say "he", who are you talking about?

20 A. Brandon.

21 **MS. WALKER:** At this point, Your Honor, the State
22 seeks to admit Number 134 into evidence.

23 **THE COURT:** Subject to previous objections items --

24 **MS. ZMROCZEK:** I appreciate that.

25 **THE COURT:** -- the Item Number 134 is admitted into

1 evidence. State's Number 134.

2 (State's Exhibit Number 134, shoes, was admitted into
3 evidence.)

4 BY MS. WALKER:

5 Q. And these are the shoes?

6 A. Yes.

7 Q. And you said they also took a pair of pants. I want
8 to show you State's Exhibit Number 138.

9 **THE COURT:** 133?

10 **MS. WALKER:** Yes, Your Honor. I'm sorry, 133.

11 **THE COURT:** Okay.

12 BY MS. WALKER:

13 Q. Do you recognize these pants?

14 A. Yes.

15 Q. How do you recognize these?

16 A. They came out of my house.

17 Q. Okay. They came out of where?

18 A. Of my house.

19 Q. Whose pants are these?

20 A. Brandon's.

21 **MS. WALKER:** At this point, Your Honor, the State
22 seeks to move Exhibit Number 133 into evidence.

23 **THE COURT:** Again, subject to previous objections
24 already ruled on by the Court, the exhibit is -- the item
25 is admitted into evidence. State's Number 133.

1 **MS. WALKER:** Thank you.

2 (State's Exhibit Number 133, pants, was admitted into
3 evidence.)

4 BY MS. WALKER:

5 Q. These are the items removed from your home?

6 A. Yes.

7 Q. Ma'am, do you remember which officers -- which law
8 enforcement officers you spoke with that day?

9 A. I do remember one.

10 Q. And who was that?

11 A. (Indicating.)

12 Q. Sitting here at this table?

13 A. Yes.

14 Q. Was he one of the officers involved in the search of
15 your home?

16 A. He's the officer that gave me the statement. I'm not
17 sure that's the one that searched my home.

18 Q. Okay. He's the one you talked to?

19 A. Yes.

20 **MS. WALKER:** I beg the Court's indulgence, Your Honor.

21 **THE COURT:** Yes, ma'am.

22 BY MS. WALKER:

23 Q. In terms of -- when they asked you to -- to consent
24 to search your home, at that point what did you tell law
25 enforcement officers?

1 A. At the scene or at my house?

2 Q. Either -- either time.

3 A. At the scene, he said that he would contact DSS if I
4 didn't -- you know, if I couldn't provide a safe place for
5 my baby to stay and so when we came back -- when we got --
6 of course, I consented because I can provide a safe place
7 for my daughter.

8 Q. You said because you could provide a safe place?

9 A. Yes, a safe place, and so DSS didn't have to get
10 involved. So to get my baby back, I consented. I also let
11 him know that Brandon was not on the lease and that my
12 grandmother was. My grandma came to the house and she was
13 on the lease and she also asked him what he was there for.
14 There wasn't any wrongdoing to me or to my baby, so we
15 allowed him to come in because he said he was looking for
16 a weapon just to make sure that it was a safe place for
17 [REDACTED] to come home to. We had no problems with that.

18 Q. I understand. And at that point -- and don't tell me
19 what the officer said, but were you aware of why the
20 officer was concerned for the child's safety?

21 A. Once he said he was looking for a weapon, yes.

22 Q. And did you know of a weapon to be in your home?

23 A. No.

24 Q. Did you know of a weapon to be in the -- in your
25 child's diaper bag?

1 A. No.

2 MS. WALKER: Thank you. I don't have any further
3 questions.

4 THE WITNESS: Thank you.

5 THE COURT: Cross-examination?

6 MS. ZMROCZEK: Thank you.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q. Good afternoon, Ms. Katio.

10 A. Good afternoon.

11 Q. You don't want to be here for Mr. Berry either, do
12 you?

13 A. No.

14 Q. You just don't want to be here and that's okay.

15 A. Uh-huh.

16 Q. I'll try and make this painless. You -- how long have
17 you known Brandon Berry?

18 A. Five years.

19 Q. Your child was two at the time?

20 A. When I had my child?

21 Q. No, not when you had her. At the time of --

22 A. Yes.

23 Q. Okay. And when you got to the scene that day, they
24 were using words like DSS?

25 A. They did.

- 1 Q. Okay. What was your main concern at that time?
- 2 A. I just wanted my baby.
- 3 Q. Did you get to see your baby?
- 4 A. I did get to see her.
- 5 Q. Was she hurt?
- 6 A. No.
- 7 Q. Was she crying?
- 8 A. No.
- 9 Q. Was she happy?
- 10 A. Yes.
- 11 Q. Okay. And in any pain?
- 12 A. No.
- 13 Q. Okay. Did you pack her diaper bag that morning?
- 14 A. No.
- 15 Q. When was the last time you had her diaper bag?
- 16 A. Well, it's always, let's say, packed, but you do have
- 17 to add stuff to it. But, no, I didn't.
- 18 Q. Okay. Do you know Nickilous Wallace?
- 19 A. Somewhat, yes, ma'am.
- 20 Q. Has he spent the night at your house before?
- 21 A. Maybe.
- 22 Q. Okay. Has he been over to your house before?
- 23 A. Yes.
- 24 Q. Has he borrowed clothes from Brandon before?
- 25 A. Yes.

1 Q. Has he borrowed shoes from Brandon before?

2 A. Yes.

3 Q. Has any other of Brandon's friends borrowed clothes

4 before?

5 A. Yes.

6 Q. Have they borrowed shoes before?

7 A. Yes.

8 Q. Does that make you angry? Are those items you

9 purchased?

10 A. Not the shoes. I -- never mind. I can't recall. I'm

11 sorry.

12 Q. That's all right. Did you have to do the laundry in

13 the house?

14 A. Sometimes.

15 Q. All right. Let me ask you this. When was the last

16 time you saw Brandon Berry the night of Monday, July 28th?

17 A. I hadn't seen Brandon from nine until -- I don't --

18 Q. From -- at 9:00?

19 A. Yes.

20 Q. So before 9:00 he was there?

21 A. Yes.

22 Q. And you saw him leave?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes. Sorry.

1 Q. And you told the officers what he was wearing that
2 night when you left -- when you saw him leave?

3 A. Yes, that I recall.

4 Q. And what -- and what did you tell them?

5 A. I was assuming that he had on -- what he got arrested
6 in is what he had on, but I told him that he did have on
7 black pants and a white shirt.

8 Q. And a white shirt?

9 A. Yes.

10 Q. And what kind of shoes? Didn't you specifically tell
11 the officer what kind of shoes he had on?

12 A. Yeah, I did say black and white Air Force Ones.

13 Q. Black and white Air Force Ones?

14 A. Yes, I did.

15 Q. And that's something that you noticed, right?

16 A. Yes.

17 Q. And you specifically told the officer when he left --
18 he, Brandon Berry, left the house that night he was wearing
19 those white shoes?

20 A. Black pants and a white --

21 Q. White shoes with a black strap? Oh, you mean black
22 pants and a white shirt?

23 A. Uh-huh.

24 Q. Okay. And that's what you told the officers. Did
25 Brandon have a license?

1 A. No.

2 Q. He can't drive?

3 A. No.

4 Q. Did he rely -- did he rely on transportation?

5 A. Yes.

6 Q. From friends?

7 A. Yes.

8 Q. From you?

9 A. Yes.

10 Q. Did he go out with his friends that evening?

11 A. Yes.

12 Q. Did y'all have -- were you in contact via text

13 messages?

14 A. Yes, ma'am.

15 Q. What was your telephone number at the time, if you

16 recall?

17 A. [REDACTED].

18 Q. And do you recall what his was? It's okay if you

19 don't.

20 A. I'm sorry. I don't recall.

21 Q. That's fine. So you -- you texted him several times

22 throughout the evening?

23 A. Yes.

24 Q. In addition to letting friends, including Nickilous,

25 borrow his clothes and shoes, how -- what kind of

1 relationship, if you know, did he have with Nickilous
2 Wallace? Were they close?

3 A. Yes.

4 Q. Like brothers close?

5 A. He did a lot for him.

6 Q. He did a lot for him?

7 A. Yes.

8 Q. Is Nickilous taller or shorter than Brandon?

9 A. Shorter.

10 Q. About two inches shorter?

11 A. With hair, I don't know.

12 Q. Okay.

13 A. Two inches, I guess.

14 Q. Okay. But he's just shorter?

15 A. He's shorter.

16 Q. Not a whole lot, but a little bit?

17 A. Uh-huh.

18 Q. A whole lot or just --

19 A. Just a little bit.

20 Q. Just a little bit. Okay. Ms. Walker asked you about
21 your statement and she refreshed your recollection. Was
22 that statement written in your handwriting?

23 A. No.

24 Q. Whose handwriting was that written in? Who did you
25 give the statement to?

- 1 A. Mr. -- what's his name?
- 2 Q. Investigator Carwell?
- 3 A. Yes.
- 4 Q. Okay. And so he was the one -- was he the same one
- 5 who had mentioned DSS back at the -- the original site?
- 6 A. Yes.
- 7 Q. Okay. And he took your statement down and in there it
- 8 says 5:00 Brandon came home. Why does it say 5:00? What
- 9 did you originally tell him?
- 10 A. I said -- I mean, at first I was asleep, I let him
- 11 know that, and he understands the fact that I was asleep,
- 12 but he said around what time and I can admit that I said
- 13 five or six. Like I say, I'm just leaving it at he was
- 14 home before I went to work.
- 15 Q. Could he have been home at 3:30?
- 16 A. Yes, ma'am, I think.
- 17 Q. Could he have been home at four?
- 18 A. Yes, ma'am.
- 19 Q. Could he have been home at 4:30?
- 20 A. Yes, ma'am.
- 21 Q. You were asleep, so -- so you know for sure when you
- 22 woke up between six and 6:30 he was there?
- 23 A. Yes.
- 24 Q. Okay. Was there anyone else there when you woke up?
- 25 A. Not when I woke up.

1 Q. Okay. And what time did you leave for work that day?

2 A. It was about 7:30 at the latest. I don't recall.

3 Q. And you live -- what was your address at the time?

4 A. At the time in July?

5 Q. Yes.

6 A. [REDACTED].

7 Q. And that's off of [REDACTED]

8 A. Yes.

9 Q. And she asked you about Kayla and Kayla who made the
10 call. Were you aware of where -- what apartment she lived
11 in in July?

12 A. No.

13 Q. You didn't know?

14 A. No.

15 MS. ZMROCZEK: Okay. Thank you, Ms. Katio.

16 THE WITNESS: Thank you.

17 THE COURT: Redirect?

18 MS. WALKER: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. WALKER:

21 Q. She asked you about the relationship between Nickilous
22 Wallace and Brandon Berry.

23 A. Yes.

24 Q. You said that he did a lot for him?

25 A. Uh-huh.

1 Q. Who was the "he" that did a lot for him? When you
2 said "he" did a lot for him, who did a lot for who?

3 A. Well, Nick helped Brandon get a job and Brandon just
4 treats him like a brother, would do anything for him.

5 Q. Where was Nickilous Wallace working at the time?

6 A. Applebee's.

7 Q. And was Brandon working at Applebee's at that point in
8 time?

9 A. I don't -- I'm gonna say I don't recall because he was
10 working at Applebee's, but at -- during that time I'm not
11 sure.

12 Q. And during that -- that July of 2014 time period, were
13 you and Brandon arguing about money?

14 A. Yes.

15 Q. Was he able to financially contribute to the household
16 at that point in time?

17 A. No.

18 Q. But Nickilous had a job?

19 A. Uh-huh. Yes, ma'am.

20 **MS. WALKER:** Thank you. I don't have any other
21 questions.

22 **THE COURT:** Recross examination?

23 **MS. ZMROCZEK:** Just briefly.

24 **RE CROSS EXAMINATION**

25 **BY MS. ZMROCZEK:**

1 Q. When Brandon did work at Applebee's, what uniform, if
2 you know, that they had to wear?

3 A. Black and white. He was a dishwasher.

4 Q. Okay. White shirt, black pants?

5 A. Yes.

6 **MS. ZMROCZEK:** Thank you.

7 **THE COURT:** All right. Thank you. You may step down.
8 (Witness excused.)

9 **THE COURT:** All right. The State may call its next
10 witness.

11 **MR. STEADMAN:** The State would call Investigator Henry
12 Owens.

13 HENRY OWENS,
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Thank you. Please have a seat on the
16 witness stand and state your full name for the record.

17 **THE WITNESS:** Henry Owens.

18 DIRECT EXAMINATION

19 BY MR. STEADMAN:

20 Q. Investigator Owens, where are you employed?

21 A. Richland County Sheriff's Department.

22 Q. What do you do for them?

23 A. I'm a narcotics agent.

24 Q. And how long have you been a narcotics agent?

25 A. Since June.

1 Q. How long have you been with the sheriff's department?

2 A. Since 2005.

3 Q. What did you do before being a narcotics agent?

4 A. I was a burglary investigator and then I was on the
5 Community Action Team.

6 Q. And were you on the Community Action Team back on
7 July 29, 2014?

8 A. Yes, sir.

9 Q. What were your duties and responsibilities for the
10 Community Action Team?

11 A. My area of responsibility was Inbound Region 4, which
12 is Piney Grove into Sunset Boulevard. I shared those
13 duties with Deputy Pennington.

14 Q. And at some point did you receive a call from Deputy
15 Pennington about a traffic stop on Brandon Berry and
16 Nickilous Wallace?

17 A. Yes, sir.

18 Q. And tell me how you got involved with that.

19 A. I responded as a backup unit to Deputy Pennington.
20 I heard him call out the traffic stop and I went to his
21 location.

22 Q. What's your role as a backup unit?

23 A. Officer safety. Be an extra pair of eyes and ears for
24 the lead officer. He has a lot of stuff going on, so it's
25 always good to have an extra pair of eyes and ears at the

1 scene.

2 Q. And how long did it take you to get there?

3 A. Seconds because I was just down the road from
4 where Deputy Pennington was. Less than probably two
5 hundred yards probably.

6 Q. Once you got there, what did you do?

7 A. Made contact with Deputy Pennington at his passenger
8 window.

9 Q. And what did you learn from Deputy Pennington?

10 A. He informed me that he had stopped this vehicle and
11 that the occupant or the front seat passenger was Brandon
12 Berry.

13 Q. And once you learned that, what did you do?

14 A. After he informed me of that, I walked to the
15 passenger side of the vehicle, of Mr. Berry's vehicle --
16 or Mr. Wallace's vehicle, and made contact with both of
17 them.

18 Q. And what do you mean by made contact?

19 A. Talk to them, keep an eye, made sure there's nothing
20 going on, you know, they're not trying to grab a weapon,
21 something like that. Also, you know, try to read people.
22 You read body language, you know, how nervous somebody is,
23 how they're talking to you. So usually I'll just have
24 small-talk with them; hey, how you doing, how's your day
25 going, just hold a conversation to keep their mind off of,

1 you know, something that they could be doing or thinking
2 that could be bad.

3 Q. So what did you observe?

4 A. That both occupants were extremely nervous. Mr. Berry
5 was doing most of the talking. And I just spoke with them
6 as Deputy Pennington ran their information.

7 Q. Did you observe the two-year-old girl in the back
8 seat?

9 A. Yes, there was a two-year-old girl in the back seat,
10 unrestrained. I didn't see any car seats or anything like
11 that. I also saw what at the time looked like green plant
12 material in front of the gear stick on the center console
13 that was what appeared to be trace marijuana.

14 Q. Is that what you mean by green plantlike material?

15 A. Yes, marijuana.

16 Q. And besides that, what else did you observe?

17 A. I also observed some tweezers in the vehicle. And,
18 like I said, both Mr. Wallace and Mr. Berry had extremely
19 nervous body language, heavy breathing, shaking.

20 Q. At some point Deputy Pennington got to Nickilous
21 Wallace, asked him if he would mind stepping to the rear
22 of the vehicle. What did you do next?

23 A. I stayed at the vehicle with Defendant Berry.

24 Q. And when you stayed there with Brandon Berry while
25 he was talking to Mr. Wallace, what else did you observe

1 about Brandon Berry?

2 A. I noticed that he had gotten a little bit more
3 nervous once Mr. Wallace had gotten out of the vehicle.
4 I continued to try to have small talk with him. I believe
5 he was also dealing with his child that was in the back
6 seat. While talking with him, I observed him obtain an
7 object out of a black bag that was in the back seat for his
8 child. I had noticed when he was doing that some baby --
9 or children's belongings like -- possibly like diapers or
10 wipes that were in the bag. I think he either grabbed out
11 like a bottle or some little snacks for the child.

12 Q. And do you remember -- what was the description of the
13 black bag?

14 A. It was a black bag and I remember that it had an
15 emblem on it. Some type of emblem.

16 Q. You don't remember what kind of emblem that was?

17 A. After the incident, when we relocated the bag, I
18 recognized the emblem and it struck me at that point.

19 Q. Is -- State's Exhibit 136, is this the black bag you
20 saw him reaching for?

21 A. Yes.

22 Q. So once he was reaching for that bag, Deputy
23 Pennington starts talking with Nickilous Wallace, what
24 happened next?

25 A. He was reaching in for the bag, he had gotten

1 something out for the kid. When Mr. Wallace got out of
2 the vehicle, he had left his driver's side door open.
3 Where the vehicles were parked there was traffic coming
4 and going and having a difficult time making it around the
5 door. There was also another vehicle that pulled out and
6 had somewhat made contact with us and I had gotten them to
7 move over to the side. The door was still open. I had
8 walked around to the other side of the vehicle to try to
9 shut the door so traffic would have an easier route in and
10 out and upon doing that and walking back around the car
11 back to the passenger side, that's when I saw the movement
12 inside the car as Mr. Berry was jumping into the driver's
13 seat.

14 Q. And when he jumped into the driver's seat, what did he
15 do?

16 A. Fled.

17 Q. And once he fled, what was your role?

18 A. At that point, Deputy Pennington's vehicle was in
19 front of mine and directly behind Mr. Wallace's car, so I
20 hollered at Deputy Pennington "go" and at which time I took
21 control over the driver, Mr. Wallace.

22 Q. So your job was to stay there with Wallace while
23 Deputy Pennington went after Brandon Berry?

24 A. Correct.

25 Q. And at one point did you meet back up with Pennington?

1 A. I monitored what I could on the radio. I could hear
2 the vehicle as it was fleeing from Deputy Pennington to the
3 back of the complex and I was able to listen on the radio
4 during the foot chase part. I then at that time decided
5 that I would move Mr. Wallace from this location down to
6 the vehicle so that I could make sure everything was
7 properly secured and also be there, you know, in case
8 anything was messed with. Myself and Mr. Wallace arrived
9 down there at which time the vehicle was stopped further
10 back into the parking lot and I could see Deputy
11 Pennington's vehicle at the other end of the parking lot.

12 Q. So the vehicle that Brandon Berry fled in, you said it
13 was stopped further back. How much further back in the
14 parking lot was it?

15 A. A good hundred, two hundred feet.

16 Q. And once you observed that, what happened next?

17 A. I kept monitoring the radio. I was kind of stuck with
18 my hands tied because I had the driver of the vehicle in my
19 vehicle with me. I could hear as other officers were being
20 directed in the area where to go. I heard that they had
21 detained Mr. Berry at a neighboring apartment complex.
22 Deputy Pennington -- I checked in the vehicle to see if
23 anything was in the vehicle, cleared the vehicle because
24 I knew the two-year-old was in the vehicle. I noticed
25 that the bag that was in the vehicle was gone. Deputy

1 Pennington arrived back saying he had located the black
2 bag. Upon his arrival back, he showed me the black bag
3 that he had located, told me there was some stuff in the
4 bag, like a mask and some zip ties and stuff. When I
5 approached to see the black bag, however, I noticed that
6 it wasn't the same black bag because there were no baby
7 belongings in the bag and I distinctly remembered seeing
8 the baby belongings while he was going through it in the
9 back seat.

10 Q. So the black bag that Deputy Pennington showed you
11 that he had recovered, that wasn't the same bag that you
12 saw Brandon Berry reaching for in the car?

13 A. No, sir.

14 Q. So is that what prompted you guys to go back to where
15 the first bag was found and look for another bag?

16 A. Yes, sir. At this point the scene was pretty much
17 under control. We got other officers on the scene, so
18 myself and Deputy Pennington decided we were gonna
19 backtrack through the cut that Mr. Berry ran through and
20 into the adjacent apartment complex and that's when we made
21 our way back locating what I knew to be the other black bag
22 that was in the back seat.

23 Q. So, once again, State's 136, this is the second bag
24 that you guys found?

25 A. Yes, sir.

1 Q. And where was this one found?

2 A. That one was located not far from where Deputy
3 Pennington advised me that he had located the first black
4 bag. It was on a balcony at the apartment complex. The
5 neighboring apartment complex.

6 Q. Let me go back to when Deputy Pennington ran off,
7 you took Nickilous Wallace in your vehicle and then you
8 saw the vehicle had rolled back approximately two hundred
9 yards. Was the two-year-old girl still inside the car?

10 A. I believe a concerned citizen from what I understand
11 came out and stopped the vehicle from rolling. We had
12 secured the two-year-old child and I believe the --
13 Mr. Berry's girlfriend arrived on the scene to take -- you
14 know, she was able to comfort the child who was all -- if
15 you could imagine was pretty, you know, traumaticized at
16 that point in time.

17 Q. So you did check on the welfare of that child?

18 A. Yes, sir.

19 Q. And once y'all secured the second bag, what was the
20 next step?

21 A. We secured the second bag. Like I said, myself and
22 Deputy Pennington work on the Community Action Team. We
23 suppress crime in that area. The way we do that is we have
24 to keep up on what crime is going on in Richland County, so
25 we monitor the reports that come in every night. We keep

1 up with the crime trends in other areas, so we had knew
2 that there had been an altercation the night before, a
3 possible robbery. That's when we contacted the robbery
4 investigator, which was Investigator Carwell, at the time.
5 We informed him of what we had because once we found the
6 zip ties, masks, handgun, that kind of relates to a
7 robbery. We contacted Investigator Carwell. He responded
8 to the scene at which time we relinquished the scene to
9 him.

10 Q. And so at that point -- your job is over at that
11 point?

12 A. Pretty much that's it. He's obviously a senior
13 officer to us, so at that point we follow his rules. We
14 do what he wants us to do pretty much. If he needs any
15 help with anything, we try to help him. Other than, you
16 know, Deputy Pennington has to complete his part of the
17 paperwork and all that stuff.

18 Q. And can you, please, identify the person you saw
19 grabbing that bag here in the courtroom.

20 A. Brandon Berry.

21 Q. Can you describe what he's wearing?

22 A. Right now he's wearing a white shirt and a tie.

23 **MR. STEADMAN:** Thank you.

24 **THE COURT:** Cross-examination?

25 **MS. ZMROCZEK:** Thank you.

1 CROSS-EXAMINATION

2 BY MS. ZMROCZEK:

3 Q. Deputy Owens, you didn't do a report in this case,
4 did you?

5 A. No, ma'am.

6 Q. Before today on this witness stand there's been no
7 mention of a concerned citizen getting the child out of the
8 car; has there been?

9 A. What do you mean?

10 Q. Has it been written in any report?

11 A. The vehicle was stopped by a concerned citizen, at
12 which time when we got there the child was relinquished
13 back to her -- his girlfriend or baby's mother.

14 Q. Do you consider that a pertinent fact in this case?

15 A. That a concerned citizen stopped the vehicle?

16 Q. Yes.

17 A. I think it's very important that they did that.

18 Q. Very important?

19 A. I think it was a very good job they did it because it
20 could have been very bad if they didn't.

21 Q. And that would be a very important -- that would be a
22 very important person for me to be able to talk to to know
23 who that was, right?

24 A. That they had stopped the car?

25 Q. Right.

1 A. There was a lot going on at the time.

2 Q. I understand that.

3 A. Yes, ma'am.

4 Q. Was the name of that person ever given?

5 A. I don't believe we ever got the name of that person
6 that I can remember.

7 Q. Can you step down for a moment and make sure you keep
8 your voice up for the court reporter.

9 (Whereupon, the witness steps down from the witness
10 stand.)

11 BY MS. ZMROCZEK:

12 Q. And I'm showing you what's been admitted into evidence
13 at Government's 147. What time did this -- and make sure
14 the jury can see. What time did the traffic stop occur?

15 A. Approximately around ten, 10:30.

16 Q. And where were you located?

17 A. I was on this end of [REDACTED] prior to the traffic
18 stop.

19 Q. Okay. And where did you hear the call come over the
20 radio?

21 A. I was in this area when I heard the traffic stop.

22 Q. Okay. And you went to where?

23 A. I went to the traffic stop and located Deputy
24 Pennington and the Defendant in Mr. Wallace's vehicle right
25 here.

1 Q. Right here? And this is around [REDACTED]
2 Apartments?

3 A. Yes, ma'am. That is the main entrance to [REDACTED]
4 [REDACTED] Apartments.

5 Q. And that's where -- the girlfriend who you gave the
6 child to, that's where she lived, right?

7 A. According to what Mr. Berry then, I believe, said at
8 the car she lived somewhere around the back side of the
9 apartments.

10 Q. Okay. And can you see it on this exhibit where you
11 located the items -- the bag, the Gamecock bag?

12 A. I'm not sure where the -- the first one was located by
13 Deputy Pennington.

14 Q. Right, right. I mean the Gamecock bag.

15 A. The Gamecock bag would have been located on the back
16 side of this apartment building right here.

17 Q. Thank you. You can have a seat.

18 (Whereupon, the witness returns to the witness stand.)

19 BY MS. ZMROCZEK:

20 Q. When you heard the call come over the radio and you
21 went to go backup Investigator Pennington, did you call him
22 on your phone?

23 A. I'm not sure.

24 Q. When you got in the car and you said it rang ten
25 times. What would you be referring to?

1 A. It could be anything. It could have been -- I
2 probably could have called him that morning or that night.
3 I believe we started our shift at around ten or so, so that
4 was probably our first contact. I'm not sure. I call him
5 a lot. We work close together.

6 Q. Okay. But when you sat down -- the jury has seen the
7 video. That was you speaking on the other -- the other
8 voice in the car is Deputy Pennington and then you come in
9 and have a conversation with him, right?

10 A. Uh-huh. That's correct.

11 Q. Okay. And you said -- you said that you noticed a
12 green plant material. There was never any marijuana found
13 in this vehicle, was there?

14 A. We did not do -- or look for the trace of marijuana
15 that I believe I observed. We had a lot of stuff going on
16 at the time, so I never went to that --

17 Q. I'll ask the question again. Was there any marijuana
18 ever found in the vehicle?

19 A. No, we never located any marijuana.

20 Q. Thank you. While Mr. Wallace was having a
21 conversation with Officer Pennington, you stated that
22 Mr. Berry grabs the Gamecock bag. This bag, right?

23 A. No.

24 Q. He didn't grab the Gamecock bag?

25 A. He reached into the back seat for the Gamecock bag. I

1 don't believe he ever grabbed --

2 Q. Okay. But he reached into the back seat?

3 A. Yes, ma'am.

4 Q. So you were able to see what was inside of it?

5 A. Right. He bent over and was digging in and around the
6 diapers.

7 Q. And he's doing all of this in front of you so you can
8 see it?

9 A. In the back seat.

10 Q. Right. But you could still see what -- the bag was
11 open?

12 A. I could see his hands and what was in the top of the
13 bag, yes, ma'am.

14 Q. Okay. So he's doing it like this with no concern
15 that you're standing there? He didn't try to hide it from
16 you?

17 A. He seemed to have some concerns. His chest was
18 beating pretty hard.

19 Q. Okay. But, I mean, he had no problem opening the bag
20 so you could see what was inside?

21 A. He didn't open the bag and say this is what's inside
22 of the bag. He was reaching for stuff in there. I could
23 only see what was at the top of the bag, so I can't say
24 that he had no problem with me looking at what was inside
25 there.

1 Q. Okay. But you looked, right?

2 A. I looked as hard as I could.

3 Q. And you saw baby clothes?

4 A. I saw the diapers on top and stuff like that.

5 Q. Okay. And then he scooted over and left and then the

6 next time you saw the bag it had a gun in it?

7 A. Right.

8 Q. But he was -- after Mr. Wallace was talking to

9 Mr. Pennington, they're back here off camera, right?

10 A. (Nods head.)

11 Q. And you had been talking to Mr. Berry at the passenger

12 side window, right?

13 A. Right.

14 Q. And then y'all -- you and Officer Pennington meet at

15 the back of the car and have a conversation?

16 A. Incorrect.

17 Q. Okay.

18 A. Me and Deputy Pennington had the conversation at the

19 back of the car prior to him having Mr. Wallace step out of

20 the vehicle.

21 Q. Okay. All right. And then you go up to the -- then

22 you go up there and talk with him after he's taken out?

23 After Wallace is taken out you go talk to Berry?

24 A. Right.

25 Q. Okay. And then when Berry leaves, he's out of sight

1 for how long?

2 A. When he fled?

3 Q. (Nods head.)

4 A. Well, it might only have been thirty seconds, it might
5 seem like five minutes to me because I'm listening to my
6 partner chase somebody over the radio, so I can't really
7 tell you exactly how long it was because in situations
8 like that time makes it feel like it could be an hour, but
9 really it's only like seconds.

10 Q. Certainly. But my point is this. There was some
11 period of time when he was in the vehicle with this bag and
12 nobody had eyes on him.

13 A. Wait. You're saying that was he ever in the vehicle
14 where somebody did not have eyes on him?

15 Q. Correct.

16 A. I could not really answer that because I didn't chase
17 him.

18 Q. Okay. So you didn't have eyes on him the whole time?

19 A. Right. The only person -- you'd have to ask Deputy
20 Pennington that question.

21 Q. Okay. So you don't know -- you can't testify as to
22 what he was or wasn't doing in the car besides driving
23 after he left?

24 A. That's right.

25 Q. Okay.

1 A. Yes, ma'am.

2 Q. You keep mentioning these zip ties. When you had
3 heard about the robbery or attempted robbery or altercation
4 the night before, were there any mention of zip ties?

5 A. No, ma'am, but when we find stuff like that we just
6 think of it being with a possible robbery.

7 Q. Okay. Were you aware of where that attempted robbery
8 had taken place?

9 A. No, ma'am.

10 Q. Was that in Region 2?

11 A. Deputy Pennington actually had more knowledge on the
12 actual robbery than I did. We usually took turns reading
13 the daily reports and we would brief each other, so as far
14 as on the tidbits he probably had more information on that.

15 Q. And you went to the academy, right?

16 A. To the police academy?

17 Q. Yes.

18 A. Yes, ma'am.

19 Q. And they taught you how to do investigations? Just
20 generally. How to preserve evidence?

21 A. Somewhat, yes, ma'am.

22 Q. And in-house policy training on how to do that?

23 A. In-house FTO training is about sixteen weeks, the
24 academy is about nine weeks, so I probably learned most of
25 that through FTO training.

1 Q. Okay. When y'all advised what you had found and you
2 invited Investigator Carwell to come and join you, did you
3 take him to the location where all these items were found?

4 A. I believe we recovered the items and then when he was
5 on-scene we advised him of what we had recovered because
6 the items were removed from the location -- from the
7 vehicle.

8 Q. Right. So the only way that we know where these items
9 were located is from your recollection?

10 A. Where we located them, yes, ma'am.

11 Q. Right. But that was never written down anywhere?

12 A. No, ma'am.

13 Q. Okay.

14 A. Well, yes, Deputy Pennington should have done a report
15 where he mentioned where the items were tossed to.

16 Q. He should have done that?

17 A. Yes.

18 Q. Was there a camera on-scene that day when Investigator
19 Carwell got there? Was anybody taking pictures?

20 A. I'm not sure.

21 Q. Okay. Do you know where Mr. Berry stopped the vehicle
22 before he opened the door and ran?

23 A. From watching the video, yes.

24 Q. That wasn't my question. Do you know prior to
25 watching the video where Mr. Berry left the vehicle?

1 A. I would have no idea because I was with Mr. Wallace.

2 **MS. ZMROCZEK:** Okay. Thank you.

3 **MR. STEADMAN:** Nothing further, Your Honor.

4 **THE COURT:** All right. Thank you, sir. You may step
5 down.

6 (Witness excused.)

7 **THE COURT:** Counsel approach a moment.

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** All right. Ladies and gentlemen, we've
10 been in the courtroom now for a little over an hour. It is
11 appropriate that we take our afternoon recess at this time.
12 We're going to take about fifteen minutes, so if you'll go
13 to your jury room and relax for a few minutes. Do not
14 discuss the case among yourselves. Any deliberations or
15 discussion of this matter at this time is still premature.
16 We'll send for you in about fifteen minutes. Thank you.

17 (Whereupon, the jury retires to the jury room at
18 3:35 PM.)

19 **THE COURT:** All right, counsel. We'll be in recess
20 until ten minutes till four.

21 (Recess taken.)

22 **BAILIFF:** Court come to order. Remain seated, please.

23 **THE COURT:** Thank you. All right. We're back on
24 the record with regard to the matter of the State versus
25 Brandon Berry. Mr. Berry is present with his counsel.

1 The State is present and represented by the Fifth Circuit
2 Solicitor's Office.

3 Anything before we bring the jury in?

4 **MS. CAMPBELL:** I didn't know if you wanted to take up
5 the juror issue at this point.

6 **THE COURT:** Yes. I'm glad you reminded me of that,
7 Ms. Campbell. One of the jurors at the conclusion of
8 Dr. --

9 **MS. CAMPBELL:** Jones.

10 **THE COURT:** -- Jones' testimony the juror indicated
11 to the bailiff, called him over, and he related to me that
12 she said that she knew the last witness. That was all
13 that was said. I called counsel up to the bench and we
14 went ahead until we took a break and we need to address
15 that now.

16 What's the State's position or the Defendant's
17 position? What's your position?

18 **MS. ZMROCZEK:** Your Honor, I spoke with my client and
19 we didn't even cross-examine that witness. His testimony
20 I don't think was hurtful to us, so I asked him if he
21 wanted her to be questioned and he has advised that that
22 is a matter for trial theory and we're fine with not
23 even drawing attention to it.

24 **THE COURT:** So as long as you're fine, we don't need
25 to inquire into it any further. Is that right?

1 **MS. ZMROCZEK:** Correct.

2 **THE COURT:** And the State is --

3 **MS. CAMPBELL:** Yes, I just wanted it out because she
4 had said that she wanted you to inquire about it.

5 **MS. ZMROCZEK:** Right, right. And then -- and then I
6 hadn't had at that time an opportunity to speak with my
7 client.

8 **THE COURT:** All right. Then having disclosed that
9 information, all counsel -- neither counsel thinks that
10 further inquiry of the juror is necessary.

11 All right. Thank you.

12 **MS. CAMPBELL:** Thank you.

13 **THE COURT:** All right. Anything else?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** All right. Bring the jury in.

16 (Whereupon, the jury enters the courtroom at 3:36 PM.)

17 **BAILIFF:** Jurors seated, Your Honor.

18 **THE COURT:** All right. Thank you very much.

19 All right. Ladies and gentlemen, when we took our
20 recess, the State was presenting their case and they are
21 still presenting their case and so they have a right to
22 continue. You may call your next witness.

23 **MS. CAMPBELL:** May it please the Court?

24 **THE COURT:** Yes, ma'am.

25 **MS. CAMPBELL:** The State calls Sergeant Stan Richards.

1 STAN RICHARDS,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please state your name for the record.

4 THE COURT: The witness's name is what, Ms. Campbell?
5 What's the witness's name?

6 MS. CAMPBELL: Stan Richards with the sheriff's
7 department.

8 THE COURT: All right.

9 THE WITNESS: Stan Richards, R-I-C-H-A-R-D-S.
10 Richland County Sheriff's Department.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q. Sergeant Richards, what do you do at the Richland
15 County Sheriff's Department?

16 A. I am the operations sergeant for the crime scene and
17 latent prints section.

18 Q. And as the operations sergeant of the crime scene and
19 latent prints, what do your duties involve?

20 A. My duties are to supervise approximately fourteen
21 individuals that work in this unit particularly and to
22 also respond when necessary to crime scenes and help to
23 process and anything else that I need to do in directing
24 what needs to be done on a crime scene.

25 Q. Okay. And if you could speak up just a little bit.

1 For some reason the acoustics in the courtroom aren't that
2 great.

3 A. Yes, ma'am.

4 Q. So you actually are a supervisor as well as you
5 participate in processing crime scenes and/or evidence. Is
6 that fair?

7 A. That's correct.

8 Q. And did you become involved -- well, first let me ask
9 you this. Can you tell this jury a little bit about your
10 education and your training in the field of crime scene
11 investigation?

12 A. Well, my educational background, again, it was a long,
13 long time ago. It was in the military for over twenty
14 years and while I was doing that I went to a variety of
15 universities and colleges trying to get my undergraduate
16 degree, and I finally did that in criminal justice with
17 St. Leo University. I attended Officer Candidate School
18 until I did that. I had the -- was fortunate to be able
19 to attend the U.S. Army Command and General Staff College
20 for combined services, which I was certified at that point
21 in quantitative analysis. When I got out in 1994 and
22 retired, I came to work for the Richland County Sheriff's
23 Department and I've been working with the crime scene and
24 latent print section for fifteen years.

25 Q. And do you have any specialized training as far as

1 collecting and preserving evidence as far as comparison of
2 shoe impressions, things of that nature?

3 A. Yes, ma'am. Over fifteen years I've been through a
4 lot of the courses, a lot of training, you have a lot of
5 studying, you read, and we do that all the time. Everyone
6 that's in my charge that works at the unit is constantly
7 doing training and studying. Over those years I've had
8 courses in virtually every discipline that we are involved
9 in which encompasses photography, crime scene photography,
10 latent print development, latent print comparison, that's
11 shoe wear development and collection and shoe wear
12 comparison. It involves crime scene reconstruction, crime
13 scene investigation, and I've had multiple courses in those
14 disciplines, either basic or advanced courses. I also am
15 certified as a crime scene investigator through the IAI,
16 which is the International Association for Identification,
17 and I'm also certified as a bloodstain pattern analyst and
18 also certified as a crime scene investigator and footwear
19 analyst.

20 Q. So you're certified as well as a footwear analyst?

21 A. Yes, I am.

22 Q. As well as the other areas you mentioned?

23 A. That's correct.

24 Q. And have you been qualified before in court as an
25 expert in those areas?

1 A. I have.

2 Q. And approximately how many times have you been
3 qualified?

4 A. In which one?

5 Q. In general crime scene investigation.

6 A. Crime scene investigation, I've been qualified
7 approximately thirty-five times.

8 Q. And for purposes of this case, specifically as to
9 footwear comparison?

10 A. In shoe wear comparison, six times.

11 **MS. CAMPBELL:** Your Honor, at this point we'd offer
12 him as an expert in crime scene investigation, specifically
13 as to footwear comparison.

14 **THE COURT:** Voir dire with regard to qualification,
15 Ms. Zmroczek?

16 **MS. ZMROCZEK:** No, Your Honor.

17 **THE COURT:** All right. The Court would find this
18 witness as an expert in the field of footprint
19 identification. Again, ladies and gentlemen, I will tell
20 you once a witness has been qualified as an expert that
21 witness may give an opinion, whereas normally a witness
22 who has not been qualified as an expert cannot give an
23 opinion, and I have qualified this witness as an expert in
24 the field that he is going to testify in.

25 All right, Ms. Campbell.

1 **MS. CAMPBELL:** May it please the Court? Thank you.

2 BY MS. CAMPBELL:

3 Q. Sergeant Richards, were you the person that actually
4 responded to the crime scene or did you become involved at
5 a later time?

6 A. No, I become involved later. One of my investigators
7 responded to the crime scene at the time.

8 Q. And specifically on the morning of July the 29th of
9 2014, was there certain evidence that was towed to your
10 forensic garage, I guess you'd call it?

11 A. Yes, ma'am, there was. There was a 2012 Chrysler 300,
12 burgundy in color. It was towed to our forensic garage, a
13 secured place and climate controlled, so we do most of our
14 processing of vehicles in that area.

15 Q. And were there any requests as far as specifically
16 processing on this vehicle?

17 A. Yes, I received a request from Investigator Carwell
18 and Investigator White furnishing me a consent form in
19 order to process the vehicle itself. I also had a chain
20 of custody from when the car was towed to the garage,
21 entered into the garage, and I signed for it from the
22 garage.

23 Q. And, in fact, the consent form that was signed, would
24 it have been signed by the owner of the vehicle?

25 A. That's correct.

1 Q. And is that customary to get that before you do any
2 processing?

3 A. Absolutely.

4 Q. Also did you -- you mentioned that the car was
5 actually towed. Is that unusual for y'all to tow a vehicle
6 in order to do extensive processing?

7 A. We always tow the vehicle.

8 Q. And the fact that it was towed, does that impair your
9 ability to process it any way?

10 A. No, it enhances it. As a matter of fact, if we allow
11 it to be driven, there could be some evidence of any kind
12 to be disturbed or even destroyed.

13 Q. Specifically in this case was it the exterior or the
14 interior of the vehicle that you were focussed on?

15 A. I was requested to process the exterior of the vehicle
16 only.

17 Q. Tell the jury just what steps you went through as far
18 as processing this vehicle to try to find any evidence on
19 it.

20 A. Well, I was asked by request to process for latent
21 prints on the exterior of the vehicle, as well as any
22 footwear impressions that I might have seen on the vehicle
23 itself. The process involves first photography. We
24 photograph everything that we do. So I photographed the
25 vehicle first and then went around the vehicle looking with

1 a light source, an alternate light source, which in this
2 case for latent prints was just a very bright white light.
3 You do that so you can hopefully see some indication of
4 latent prints on the vehicle itself. A latent print by the
5 name alone means invisible or hard to see. Then the next
6 step would be to try to enhance any prints that are
7 possibly on the vehicle by using black powder. We use
8 black powder that's a carbon based powder and it enhances
9 the print itself and we're able to see it. Once we can see
10 it, we can photograph it and we can lift it.

11 Q. And in this case, specifically before lifting any shoe
12 prints, did you first process it to see if you could find
13 any possible fingerprints?

14 A. I did.

15 Q. And when you're processing for fingerprints and you
16 find something that may or may not have enough ridge detail
17 to compare, can you tell how long it's been there?

18 A. No.

19 Q. Are you familiar with the term "smudge"?

20 A. Yes.

21 Q. And what does that mean, sir?

22 A. Smudge is what happens to a fingerprint sometimes when
23 a person puts their finger down. What you have on the end
24 of your fingers are -- are ridges. When you look at your
25 fingers, you'll see those little squiggly lines. They're

1 called ridges. On those ridges are pores. Sweat comes
2 out of those pores just like the rest of your body so that
3 when you touch it, what that will do when a person touches
4 an item, the impression itself of the fingerprint may be
5 transferred to that item. And I say may because you can
6 rub your hands, smooth over an area, you may not have
7 enough sweat in your pores, you may have too much. There's
8 all kind of things in the environment that can enable you
9 to get the print itself with enough ridge detail to do any
10 type of comparison with. So smudges mean someone probably
11 or possibly touched the vehicle, run their hand across it,
12 and you just get a smudge of the residue that comes off the
13 fingers and you don't get any ridge detail so you can't do
14 any comparison work with.

15 Q. Okay. And were there approximately five different
16 areas where you found some -- at least some ridge detail
17 that may or may not be useable?

18 A. Yes. I lifted five prints from the vehicle -- the
19 exterior of the vehicle, which I thought was possibly good
20 enough to do comparison work.

21 Q. And after you had done your initial dusting for the
22 fingerprint evidence, did you also take measures to collect
23 certain footwear pattern evidence?

24 A. While looking at the vehicle when I went around trying
25 to search for latent prints, I also noticed that there were

1 some footwear impressions also on the top of the vehicle
2 and down on the hood area of the vehicle. I could see that
3 also with the lighting that I was using. It's like when
4 you get down on floor for a dime, you can't see it, but if
5 you get down like this and maybe shine a light you can see
6 it. It's the same way with footwear impressions. So I saw
7 those and so I had to enhance those in order to collect
8 those also.

9 Q. And you actually enhanced them in what way?

10 A. I enhanced them with the same fingerprint powder that
11 we use for latent prints.

12 Q. And I believe there were at least seven different
13 what's called gel lifts that were taken in this case?

14 A. That's correct.

15 Q. What's a gel lift?

16 A. A gel lift is an item that we use in order to lift.
17 If you're lifting a latent print, it's just a simple piece
18 of tape. You put the tape down, lift the print and put the
19 print on a card. It's little bit more troublesome, I
20 guess, in order to try to get the shoe wear impression.
21 The shoe wear impression could be any type of residue
22 that's from the bottom of the sole or the foot and it's
23 left when you raise your foot up, you put your foot down,
24 you raise it up. It's what's left. Usually certain types
25 of footwear use rubber for the soles, the outsoles and the

1 bottom, and those soles contain some type of residue by the
2 nature of how they're made at the manufacturer, so that
3 residue is also lifted.

4 In order to get that lift from the vehicle so I can
5 take them into the lab and try to do some type of
6 comparison, we use what we call a gel lift. It's a
7 rubberized piece of rubber with adhesive on one side. You
8 lay it down, you smooth it out, you pull it up and you've
9 got your lift. Particularly if the lift has been enhanced
10 with black powder. Then you put an overlay on the top or a
11 transparency on the top of that so you don't destroy it and
12 then you take it back to the lab.

13 Q. Okay. I want to show you State's Exhibit Number 146
14 and first ask you if you recognize this box?

15 A. Yes, I do.

16 Q. And what's in that box, sir?

17 A. That's the gel lifts that I took from the vehicle.

18 Q. And those gel lifts wouldn't have been of the
19 fingerprints, but of the shoe impressions you observed?

20 A. Of the shoe wear impressions, correct.

21 **MS. CAMPBELL:** Your Honor, at this time we'd offer
22 State's Exhibit 146.

23 **MS. ZMROCZEK:** Without objection.

24 **THE COURT:** All right. Number 146 admitted without
25 objection.

1 (State's Exhibit Number 146, gel lifts, were admitted
2 into evidence.)

3 BY MS. CAMPBELL:

4 Q. And you also, I believe, lifted the areas where you
5 thought there may be prints that might be suitable for
6 comparison?

7 A. I did.

8 Q. And then you mentioned that with the gel lifts and, I
9 assume, with the fingerprints, were those then later done,
10 the comparisons, at a later date?

11 A. The fingerprints or the latent prints that I collected
12 were turned into evidence and they were, in turn, picked up
13 by our latent print analyst for comparison. The gel lifts
14 were turned into evidence by myself also and later picked
15 up by me for comparison.

16 Q. I want to turn your attention to some photographs,
17 State's Exhibit 40 through 85, and first ask if you
18 recognize those?

19 A. Yes, this is from the vehicle that I processed and the
20 markers that you will see on the vehicle itself are one
21 through seven for the shoe wear impressions and A through E
22 were the latent print impressions.

23 MS. CAMPBELL: Your Honor, at this time I'd offer
24 State's Exhibits 40 through 85.

25 MS. ZMROCZEK: I believe without objection, Your

1 Honor.

2 THE COURT: No objection?

3 MS. ZMROCZEK: No objection.

4 THE COURT: And that's 40 through 85?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: All right. 40 through 85 admitted without
7 objection.

8 (State's Exhibit Numbers 40 through 85, photographs,
9 were admitted into evidence.)

10 BY MS. CAMPBELL:

11 Q. And the first series of these photographs, do you go
12 around and just photograph the entire exterior of the car
13 as it appears when you first come in contact with it?

14 A. Yes, all of it.

15 Q. And I believe State's 40 through 54 just show the
16 exterior of the car as it appeared in the garage when you
17 were doing your examination?

18 A. Correct.

19 Q. From different angles?

20 A. Yes.

21 Q. And then after you were able to determine certain
22 areas had something that might be significant, did you then
23 go back and photograph those after they had been dusted
24 prior to collection?

25 A. Yes. After I processed for prints, then if something

1 was enhanced enough I could tell there could possibly be a
2 fingerprint there, I marked those areas and went back and
3 photographed them again.

4 Q. And I'll show you State's Exhibit 55 and 56. Those
5 are marked with letter markers; is that correct?

6 A. Correct.

7 Q. For as far as possible prints, right?

8 A. Correct.

9 Q. And in this -- these two different areas which you
10 have marked on the car was A and B?

11 A. Yes, ma'am.

12 Q. So those were two different areas?

13 A. Yes, ma'am.

14 Q. And after photographing them, then you went back and
15 actually collected the prints?

16 A. That's correct.

17 Q. And that continued through marker -- I believe it was
18 -- the last marker would be State's Exhibit 64, which is E?

19 A. E, correct.

20 Q. Which was located where?

21 A. E was located at the rear center of the vehicle.

22 Q. And then once that had been done, you went through on
23 the areas where you noticed footwear?

24 A. Footwear impressions.

25 Q. And what were the symbols you used to notate those on

1 the car?

2 A. Numerical.

3 Q. In State's Exhibit 67 and 66, do you see some of
4 those?

5 A. Yes.

6 Q. And where were those located primarily as far as any
7 footwear impressions?

8 A. The numerical markers came across the top of the
9 vehicle itself and down the front windshield onto the hood.

10 Q. I believe there were some side shots. I'll show you
11 State's Exhibit 68 and 70. Do those show the general areas
12 as well?

13 A. They do.

14 Q. And, in fact, as shown in 71, one's actually on the
15 windshield itself?

16 A. Correct.

17 Q. I'm showing on State's Exhibit 72 and then 74, the
18 markers that the jury's already seen from 1 and 2. Are
19 these close-ups of the actual prints once it's been
20 enhanced but before you collect it?

21 A. That's correct, ma'am.

22 Q. And in your opinion, is there a fairly distinct
23 pattern?

24 A. Yes.

25 Q. Moving on to State's Exhibit 76 and 79, again, is that

1 before it was collected?

2 A. Yes.

3 Q. And, again, a different area?

4 A. Correct.

5 Q. And it goes on through -- I believe your last one was
6 number -- as shown in State's Exhibit 85, Number 7; is that
7 correct?

8 A. Number 7, that's correct.

9 Q. So there were seven different lifts?

10 A. There were.

11 Q. Which were the ones that have just been put in
12 evidence. And that day all you did, again, was collect
13 the fingerprint evidence as well as the gel lifts; is that
14 correct?

15 A. That's all I did that day, yes.

16 Q. And photographed them?

17 A. Yes, ma'am.

18 Q. I want to turn your attention to, I believe, the next
19 day. Did you receive some additional evidence in this
20 case?

21 A. Yes, I received a forensic request form on July the
22 30th from Investigator Carwell and I retrieved three
23 property boxes, sealed boxes, from the evidence at about
24 8:53 that morning for processing.

25 Q. And I'll show you what's been marked as State's

1 Exhibit Number 135A, and this has got other parts, B and C,
2 I think, which would have been packaged together when you
3 received them?

4 A. Yes.

5 Q. Was that one of the items of evidence that you -- you
6 reviewed?

7 A. It is.

8 Q. Okay. Are you checking for your initials?

9 A. My initials would have been on the sealing tape after
10 I finished, yes.

11 Q. And in addition to that, did you also receive two
12 boxes of clothing, clothing for --

13 A. I received a second box which contained a pair of
14 black Levi jean pants, right.

15 Q. Where did I put them? I'll show you State's Exhibit
16 -- here we go -- 133.

17 A. Yes, that's it.

18 Q. And then the final item you received was what?

19 A. The third box contained a pair of gray and black Nike
20 tennis shoes.

21 Q. I'll show you State's Exhibit Number 134.

22 A. Yes, that's the one.

23 Q. And starting with the actual gun and the ammunition
24 that was provided to you, what were the actual items in
25 that box involving the weapon?

1 A. In the box itself it was a Glock Model 19, a black
2 magazine and four .9 millimeter bullets.

3 Q. Okay. And what, if any, processing did you do to
4 those items?

5 A. I processed all of those items for possible latent
6 prints and as well as swabbed all of it for possible DNA.

7 Q. And prior to doing that, did you memorialize as you
8 were processing?

9 A. Yes, I photographed --

10 Q. Photographs?

11 A. I photographed all of them.

12 Q. I'm gonna show you State's 122 through 126 and ask if
13 you recognize those?

14 A. Yes, that is the Glock, the magazine and the unfired
15 cartridges.

16 MS. CAMPBELL: And, Your Honor, at this time we'd
17 offer 122 through 126 in evidence.

18 MS. ZMROCEK: Without objection.

19 THE COURT: Admitted without objection.

20 (State's Exhibit Numbers 122 through 126, photographs,
21 were admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q. Let's take State's Exhibit 124 and then 125, I
24 believe, shows the serial number.

25 A. Yes.

1 Q. This is the gun that you actually processed?

2 A. It is.

3 Q. Which is the same gun we referred to in State's
4 Exhibit 135A?

5 A. Yes.

6 Q. And you said you processed for fingerprints again.
7 What process did you put them through?

8 A. This process was a little bit different from the car
9 itself. What we're able to do in the lab is use what we
10 call cyanoacrylate, which is a fuming process in order to
11 enhance latent prints. Actually what it is is just
12 superglue. We heat it up, we put some moisture into a tank
13 and the heat along with the super glue and moisture will
14 allow it to -- not evaporate, but it turns into a mist and
15 kind of settles back down onto whatever items you have in
16 the tank with it and it will settle on the fingerprint
17 itself to allow us to see it a lot better. Enhance it, in
18 other words. There's a second step to that after that is
19 finished. Of course we'll still have to process with black
20 powder because that gives us the opportunity to see it in
21 black in order to lift it the same way we would lift a
22 fingerprint or a latent print on your car.

23 Q. Okay. And when you processed this gun, the magazine
24 and the four cartridges that were left in it with the
25 procedure you just explained, what were your results?

1 A. I had negative results on any latent prints.

2 Q. When you say negative results, what does that mean?

3 A. That would mean that there were no prints on the gun
4 or any of the items in the box that were submitted.

5 Q. Is that unusual in your experience?

6 A. No.

7 Q. And why is that, sir?

8 A. Latent prints, along with lot of other things in my
9 profession, are very fragile pieces of evidence. What that
10 means is, as I explained what latent prints was before,
11 those residues or that sweat that comes off of your fingers
12 can be destroyed or disturbed a lot of different ways;
13 just by rolling around in the box, being taken from one
14 place to another. General environmental issues can destroy
15 that type of thing, so it's very, very common. Even if
16 someone's just touched something, you cannot lift an
17 identifiable print. And I mean identifiable by there's
18 not enough ridge detail in the print itself for us to use
19 for identification.

20 Q. Once you had processed it for fingerprints and the
21 results were negative, did you then take any swabs?

22 A. Yes, I swabbed the items also for possible DNA.

23 Q. And I show you State's Exhibit Number 144. Do you
24 recognize that?

25 A. Yes, that's my package and my handwriting for the

1 swabs for those items.

2 Q. And what different areas did you swab and submit
3 separate swabs for DNA?

4 A. From the gun, from the magazine, from the four
5 cartridges.

6 Q. And then those were packaged separately and submitted
7 into evidence?

8 A. They're always packaged separately, yes.

9 Q. Okay. But you didn't do any further testing on those
10 items as far as you don't do the DNA?

11 A. No, I do not.

12 **MS. CAMPBELL:** Okay. Your Honor, at this time I'd
13 offer State's Exhibit 144 into evidence.

14 **MS. ZMROCZEK:** Without objection.

15 **THE COURT:** Admitted without objection.

16 (State's Exhibit Number 144, swabs, were admitted into
17 evidence.)

18 BY MS. CAMPBELL:

19 Q. You also mentioned that you recovered a pair of jeans
20 or pants that you were doing some processing on. You
21 weren't trying to process those for fingerprints, were you?

22 A. No.

23 Q. Would they have been suitable for any kind of
24 processing like that?

25 A. No.

1 Q. And what kind of processing were you doing on the
2 actual black pants or black jeans that we're referring to
3 in State's Exhibit 133?

4 A. I processed those looking for possible areas of blood.

5 Q. And tell the jury exactly what process you went
6 through in trying to locate areas of blood on those jeans.

7 A. The thing we use trying to locate blood, particularly
8 on clothing, is we use a UV light. The UV light is about
9 390, 395 nanometers, which probably doesn't mean anything
10 to you, it didn't mean anything to me when I first started
11 either, but it's a very, very strong light. And what it
12 does when it shines on blood itself it constitutes a very
13 dark, even darker than black, that you can see and if that
14 -- if it shows up like that, you can swab that and then you
15 turn it into DNA and serology and they can identify it as
16 either blood or not blood. I don't identify it as blood at
17 that time. If it appears to be possible blood, we circle
18 it, photograph it, and I swab it and turn it into DNA.

19 Q. And how many different areas on the jeans did you
20 actually swab that your light indicated that could be
21 blood?

22 A. Ten.

23 Q. Ten different areas?

24 A. Yes.

25 Q. I'm gonna show you what's been marked as State's

1 Exhibit 109 through 117 and first ask you if recognize
2 those?

3 A. Yes, ma'am. These are the areas that I circled,
4 photographed and swabbed from the dark pants.

5 Q. So at this point you identify the area, mark it, then
6 you photograph it and then swab it?

7 A. Yes.

8 **MS. CAMPBELL:** Your Honor, at this time I'd offer
9 State's Exhibits 109 through 117.

10 **THE COURT:** Any objection?

11 **MS. ZMROCZEK:** Without objection.

12 **THE COURT:** Admitted without objection.

13 (State's Exhibit Numbers 109 through 117, photographs,
14 were admitted into evidence.)

15 BY MS. CAMPBELL:

16 Q. And I'm gonna show you what's been marked as State's
17 Exhibit Number 110. There's an insignia on top of that.

18 A. So the left outside leg.

19 Q. The left outside leg. And in examining these pants,
20 did you do it in different areas separately?

21 A. Yes.

22 Q. The examination?

23 A. Yes.

24 Q. I see in State's Exhibit Number 111, that shows the --

25 A. Left inside.

1 Q. -- before it was marked and then after. And then
2 State Exhibit 112?

3 A. Left inside leg.

4 Q. And does this show different areas on the left leg?

5 A. Right, the inside and outside. All the exterior. The
6 pants were processed on the exterior only, but the inside
7 and outside of each leg.

8 Q. Exterior of pants only, but inside both sides of each
9 leg?

10 A. Yes.

11 Q. And on this one I see nine are located on the left leg
12 according to these photographs? The swabs.

13 A. That's correct.

14 Q. And then finally on State's Exhibit 115, the right
15 outside leg shows nothing, but then in 116 your final swab
16 was where?

17 A. Right inside the leg, Number 10.

18 Q. And, again, in this examination you're familiar with
19 blood spatter and all that, are you able to tell exactly
20 how the blood got there?

21 A. No.

22 Q. But those were the ten different areas that
23 illuminated so that you collected swabs from those areas?

24 A. That turned dark and I swabbed it, yes.

25 Q. Once you collected those swabs, what, if anything, did

1 you do with them?

2 A. The swabs themselves were then introduced into
3 evidence in order for DNA or serology analysis.

4 Q. Okay. Once you had examined those items and collected
5 those ten swabs, did you then also examine the shoes in
6 State's Exhibit 134?

7 A. For comparison purposes you mean?

8 Q. For the presence of blood.

9 A. Yes, I examined the shoes also.

10 Q. Okay. And, again, did you use the same process that
11 you used when examining the pants?

12 A. I did.

13 Q. And was that because of the nature of how -- you
14 didn't try to process again for fingerprints, did you?

15 A. No, ma'am.

16 Q. Would that have been appropriate?

17 A. No, ma'am.

18 Q. I'll show you what's been marked as State's
19 Exhibits 86 through 108.

20 **MS. ZMROCZEK:** Without objection, Your Honor.

21 **MS. CAMPBELL:** Thank you.

22 **THE COURT:** Okay. 86 through 108 admitted without
23 objection.

24 (State's Exhibits 86 through 108, photographs, were
25 admitted into evidence.)

1 BY MS. CAMPBELL:

2 Q. I believe you photographed the shoes first without any
3 markers?

4 A. Yes. Correct.

5 Q. As in State's Exhibit 86 and 87?

6 A. That's correct.

7 Q. But then once you were able to find -- I notice that
8 in State's Exhibit 92 that you had lined the shoes up, the
9 right shoe and the left shoe, and assigned a certain number
10 to them?

11 A. Yes, that's K-1 for the right and K-2 for the left.

12 Q. And that's just so that you can identify them later?

13 A. Correct.

14 Q. And then once you do that, did you go through and note
15 certain areas where there were stains that were -- again,
16 did you use the same light?

17 A. I used the same light.

18 Q. And then you swabbed certain areas?

19 A. Yes, I did.

20 Q. In the shoes, however, it was even easier to see in
21 certain areas?

22 A. On certain areas of the shoes, yes, because certain
23 areas were white, they weren't that dark, so you could see
24 what we thought -- what I thought was possible blood and I
25 was able to photograph and mark those and, again, swab them

1 without much help from the light source.

2 Q. I see on top of the shoe in State's Exhibit 98 and
3 then left shoe itself in 99.

4 A. Correct.

5 Q. And where I'm pointing, the reddish substance --

6 A. Yes.

7 Q. -- is that what you were referring to?

8 A. Yes, the reddish-brown substance, which is possibly
9 blood.

10 Q. And then once you had photographed them and marked
11 them, did you then collect that evidence as well --

12 A. I did.

13 Q. -- for DNA?

14 A. Through swabbing again and the swabs were packaged and
15 submitted to evidence for DNA and serology examination.

16 Q. And then as far as the right shoe, I note there's a
17 place here marked 4 and then 5 on the right shoe --

18 A. Yes, you can see reddish-brown stains.

19 Q. -- again, what I'm pointing out to you. And, finally,
20 in State's Exhibit 108, that's a 6?

21 A. Yes, it is.

22 Q. An additional place. And when we're saying these are
23 illuminated for possibly blood or it illuminates meaning
24 what?

25 A. It would not illuminate with the UV light. It

1 darkens.

2 Q. Darkens. Excuse me. Okay. And once you collected
3 all those swabs, were those then properly packaged and
4 submitted into evidence?

5 A. They were.

6 Q. At any time when you had any evidence in this case in
7 your custody, did anyone alter or tamper with it in any
8 way?

9 A. No.

10 Q. I'll show you State's Exhibit Number 145. Do you
11 recognize that?

12 A. Yes, these are swabs from the jeans and the swabs from
13 the Nike shoes with my signature.

14 MS. CAMPBELL: Your Honor, at this time we offer
15 State's Exhibit 145 into evidence.

16 MS. ZMROCZEK: Without objection.

17 THE COURT: Admitted without objection.

18 (State's Exhibit Number 145, swabs, was admitted into
19 evidence.)

20 BY MS. CAMPBELL:

21 Q. That day -- that was the extent of what you did on the
22 case that day; is that correct?

23 A. That's correct.

24 Q. And, finally, moving on to the testing you did later
25 on that year, I believe in December, did you do some

1 comparisons as far as the footwear that's involved in this
2 case?

3 A. I did. December 17th, as a matter of fact. I
4 received a request also -- or prior to that from
5 Investigator Carwell asking me to take a look at the shoes
6 and compare to them to the impressions that I took off the
7 car and see if there was any comparison there at all.

8 Q. And, once again, did you use the actual shoes in 134
9 and make certain impressions from those?

10 A. I did. I took those -- or requested those from the
11 evidence, which is where they were kept. I got both shoes,
12 which was Item Number 8 from evidence, and all seven gel
13 lifts from evidence, which was Item Number 1.

14 Q. Which were the gel lifts we referred to earlier?

15 A. That's correct.

16 Q. And before you're able to do a comparison of the shoe
17 itself, you actually kind of do a known print of the shoe I
18 guess it's called?

19 A. Well, before I -- I start by -- there is a way that
20 you do a comparison, of course, and the methodology is the
21 same for latent prints, and that's the analysis begins with
22 looking at the outsoles, which is the bottom of the shoe.
23 So I already have the impressions themselves and I'll look
24 over the gel lifts, I turn the shoe over. If the outsoles
25 don't match and they're just way out of whack, there's no

1 need going any further, so actually the comparison you
2 examine.

3 Q. Okay. And you did that in this case?

4 A. I did.

5 Q. And did you proceed with your comparison or were they
6 eliminated off the bat?

7 A. No, the outsoles looked to be at that time the same
8 pattern as the impressions, so I proceeded.

9 Q. And what did you do next, sir?

10 A. Okay. There's two things you need to do. Number one,
11 I've got now the gel lifts, which is the impressions from
12 the top of the vehicle. I have to look at those to see
13 which one of those I deem fit or I can use in order to do a
14 comparison with. I looked at those and I found two that I
15 thought were the best and so that's the two I used. One
16 happened to be the right and one happened to be the left.
17 So those two impressions from the top of the car is the gel
18 lifts that I used. And I used, of course, the right and
19 left shoe, Nike shoe, that we had in evidence.

20 In order to do that we go through several processes
21 and the analysis process itself is, of course, looking,
22 again, at the outsoles or the bottom of the shoes to see
23 if they matched or if they looked like they would match.
24 Then we're looking for the size of the shoe to see if that
25 matches the size of the impression itself. Those things

1 you go through and the size, the outsole or design of it,
2 and the shape of it. If those three things match, then
3 you can continue on. Those three things are called class
4 characteristics. I need to point out if you can't use
5 those three things and say okay, that shoe made that
6 impression, the class characteristics at that time in those
7 three areas -- because that's the way they're made by the
8 manufacturer because there's many, many pairs of shoes that
9 come out with that same outsole, that same size and that
10 same design. So at that point, those three things, we're
11 still dealing with class characteristics. If they're the
12 same, you continue on.

13 Q. And were they the same in this case?

14 A. They were.

15 Q. And did you continue to try to look for any more
16 significant findings?

17 A. Yes, I did. I looked also -- then the next step is
18 looking for the wear characteristics. On your shoes after
19 you've worn them a while, they start wearing on the bottom,
20 everybody does, but you have to understand that a person
21 walks -- that everybody walks differently and so you wear
22 -- the bottoms of your shoes wear differently. However,
23 that's still a class characteristic. You can't use that
24 as an actual identification of the shoe to the impression.
25 There's some instances when you can, but generally you

1 cannot. In these shoes, I had some general wear patterns
2 on one of the shoes; however, it definitely was not
3 enough to say that you could use that as an individual
4 characteristic in order to make the identification, so that
5 had to be classified also as a class characteristic, and I
6 did that, and then proceeded.

7 Q. But the wear characteristics you observed were
8 consistent with your findings?

9 A. They were generally in the same area on one shoe.

10 Q. And then were you able to make any further
11 determinations based on these shoes and their
12 characteristics?

13 A. On a shoe comparison when you start looking at
14 individual characteristics -- I don't know if you've been
15 told about the individual characteristics on latent prints,
16 but latent prints are developed before you're born and they
17 stay with you for the rest of your life, so they never
18 change. It's a little different for shoe wear, of course.
19 They're manufactured. The individual characteristics that
20 you have to use for identification are made throughout the
21 period that you wear the shoe itself. Those have to be
22 random. They are random. So you have to have the same
23 random characteristics on the shoe as well as on the
24 impression itself. The random characteristics for the
25 bottom of a shoe can be a cut made in the rubber portion

1 of the sole underneath, it can be a rock, a small pebble or
2 something, stuck in the bottom of it that transfers from
3 the shoe to the impression. And you can tell if it's in
4 the exact same place, if the cut is exactly in the same
5 place, it's exactly the right size. All those things have
6 to come into play. If you have those things, then you can
7 make a positive identification. If you don't have those,
8 you can't use class characteristics for a positive
9 identification.

10 Q. And in this case, were there any random areas that
11 showed any specific, unique --

12 A. From the shoe wear impressions that I got and the
13 areas that I was able to see, there were none on the
14 impressions that compared to the shoe itself. If I found
15 some on the shoe and I had a real good impression, I could
16 eliminate the shoe as being the shoe. I didn't have that
17 either, so it was inconclusive my comparison for the shoes
18 and the impressions that I compared to.

19 Q. And when you say inconclusive, were all your findings
20 consent with the shoes you observed?

21 A. My findings were consistent with the size, the shape
22 and the design, that's the tread wear on the bottom of the
23 shoe, yes.

24 Q. So there were no differences that would allow you to
25 eliminate these shoes as having made these?

1 A. No.

2 Q. And, in fact, they were consistent with having made
3 these?

4 A. They were consistent with the size, shape and the
5 design.

6 Q. And I'll show you State's Exhibit 118 through 121. Do
7 you recognize those photographs?

8 MS. ZMROCZEK: Without objection.

9 THE COURT: Admitted without objection.

10 (State's Exhibit Number 118 through 121, photographs,
11 were admitted into evidence.)

12 A. Yes, ma'am. These are photographs that I took of the
13 bottom of the shoes and the gel lifts.

14 Q. And are -- these photographs of the bottom of the
15 shoe, is that over there on this side?

16 A. It is.

17 Q. And the white part, is that the gel lift?

18 A. It is.

19 Q. So that's basically how you made your comparison or
20 did it just visually; is that correct?

21 A. Well, laying them side by side is not really the way
22 it was done, but that's a very easy way of comparing a shoe
23 to an impression. We may use a transparency. We roll ink
24 on the bottom of the shoe, put the shoe on, take a step and
25 then you've got the transparency of the shoe itself and

1 then all you have to do is superimpose that transparency
2 over the gel lift and you're gonna be able to tell if they
3 match the outsole, if they match the side or the bottom.

4 Q. And that was done?

5 A. Yes.

6 Q. And they matched in all the areas you just mentioned?

7 A. Yes.

8 Q. And, in fact, did you -- I think this is the exhibit
9 showing basically your comparisons.

10 A. Yes, ma'am.

11 Q. In State's Exhibit 143 and 142, are those yours?

12 A. Yes, sir.

13 **MS. ZMROCZEK:** Without objection, Your Honor.

14 **THE COURT:** Number 142 and 143 are admitted without
15 objection.

16 **MS. CAMPBELL:** Thank you.

17 (State's Exhibit Number 142 and 143, photograph
18 blow-ups, are admitted into evidence.)

19 **MS. CAMPBELL:** And, Your Honor, may the witness step
20 down for just a minute? May he step down?

21 **THE COURT:** Yes. I'm sorry.

22 **MS. CAMPBELL:** Thank you.

23 (Whereupon, the witness steps down from the witness
24 stand.)

25 **BY MS. CAMPBELL:**

1 Q. I want to show you -- is this the right or the left
2 shoe?

3 A. That's the left shoe.

4 Q. And this is the actual shoe itself?

5 A. That's the left shoe, yes.

6 Q. And were you able to make -- come over on this side.
7 What were you able to show?

8 A. First of all, I don't want to get caught up in this --

9 **MS. ZMROCZEK:** I'm sorry. I can't hear, Your Honor.

10 A. I don't want to get too caught up in this being the
11 left shoe and looking at that, but anybody that steps on
12 something and when you pull your foot up you can tell
13 whether that's your left foot or right foot, correct, just
14 by the way it curves around. You see this? You would
15 think that was probably the right foot by the way it curves
16 and I want to tell you why this is the way we have to do
17 it. This is a gel lift, right, and I told you what we do
18 with the gel lift. We put the rubberized adhesive down
19 and pull it up. When you're looking at that impression
20 down on the substrate or on the surface, you can tell it's
21 somebody's left foot. If you put the gel lift on it, you
22 raise it up. You can't see through the gel lift, it's
23 rubber, and you pull it up and turn it over, it's reversed.
24 So now when you make the overlay you have to do the same
25 thing. You make the overlay like I said. You put the

1 ink on the bottom of the shoe, you put it on the overlay,
2 you take it away, now you have to reverse it. You're
3 looking at something that looks like the right, but this
4 is the left shoe. And then you place the overlay on the
5 impression itself, then you can tell if it's the same
6 design and the same size and the same shape.

7 Q. And was there anything inconsistent with these two?

8 A. No.

9 Q. So they were concluded as being consistent with this
10 pattern?

11 A. In those areas.

12 Q. It's the same pattern?

13 A. (Nods head.)

14 Q. I want to take an additional one, which is State's
15 Exhibit Number 143, I think.

16 A. Now this is the right shoe. Now as you can see, it
17 looks like the left shoe. It's the same thing. You have
18 to reverse the both of them. That's the way that you have
19 to do it, the way we pull them up and collect them.

20 Now what we have here is in this area here and
21 slightly over here is a general wear pattern going on and
22 they are in the same area; however, like I told you,
23 without some very significant wear going on, you can't use
24 that as an identifying characteristic. So it's a general
25 wear pattern, but they are in the same area.

1 Q. Okay. And the pattern itself of the shoe is also
2 consistent in the other three areas?

3 A. They are consistent with what we had talked about.

4 Q. Thank you.

5 (Whereupon, the witness returns to witness stand.)

6 BY MS. CAMPBELL:

7 Q. So basically what you found was consistent with the
8 shoes you had as far as the evidence you collected from the
9 car, the footwear?

10 A. I'm sorry. Say again.

11 Q. The shoes that you had, the impressions of those, were
12 consistent with what you found on top of the car?

13 A. In those areas.

14 Q. In those areas?

15 A. Yes, ma'am.

16 Q. And had you found anything that was inconsistent, that
17 would be eliminated?

18 A. Yes, absolutely.

19 MS. CAMPBELL: I have nothing further, Your Honor.

20 THE COURT: Cross-examination?

21 MS. ZMROCZEK: Thank you. Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Do you have the property report in front of you?

25 A. I do not.

1 Q. Okay. Would it help if I gave you a copy before I ask
2 you a question?

3 A. If you'd like.

4 Q. I've highlighted Item 8 and then 21 through 20
5 something.

6 A. Okay.

7 Q. Are they the same items?

8 A. The same -- the same items as what?

9 Q. As in -- did you do all of the swabs of the shoes?

10 A. For the possible bloodstains?

11 Q. Correct.

12 A. I did.

13 Q. You did all the swabs?

14 A. As far as I know I did unless they were taken out
15 after me by DNA or serology and they had to do some
16 additional testing.

17 Q. Okay. So you would have done -- the shoes that are
18 identified as Nike shoes -- or gray and black Nike shoes,
19 those are these right here that we're talking about, right?

20 A. Yes, ma'am.

21 Q. Okay. You did all the swabs?

22 A. I did the swabs that I -- let me go to my -- the swabs
23 from those shoes I did six.

24 Q. Did you give them items numbers?

25 A. I do not give them item numbers. That's done by the

1 evidence and property section, ma'am.

2 Q. Okay. Perfect. And you did six swabs of the shoes?

3 A. I did.

4 Q. Okay. I want to talk a little bit about the --
5 quickly and briefly about these shoes. Were you ever
6 provided any other shoes?

7 A. I was only --

8 Q. For example, like Air Force Ones?

9 A. I was only asked to pull those from the evidence and
10 property section, compare those with the shoe wear
11 impressions that I did myself, and that's what I did.

12 Q. Okay. And you talked about they have the general --
13 same characteristics and then you talk about there are some
14 differences in wear pattern maybe? Is that -- that's why
15 you couldn't find the identifying characteristics?

16 A. In wear pattern. If you want to talk about the wear
17 pattern, it gets missed. Usually with shoes that's been
18 worn for a period of time it's gonna have on wear patterns
19 on them. What you can't do with the wear pattern unless
20 they are very, very worn and can give us some kind of
21 identifying -- maybe they're worn all the way through and
22 we can identify that hole with the hole that we got on the
23 impression; otherwise, a wear pattern is consistent with
24 where it is only.

25 Q. Okay. And when different people wear the same shoe,

1 can it alter or change the wear pattern a little bit?

2 A. I couldn't tell you. I don't know.

3 Q. Okay. And then, lastly, I just want to ask you a
4 couple of questions about the prints, the latent prints,
5 that you collected off of the vehicle.

6 A. Yes, ma'am.

7 Q. There were five separate prints, I think, that you
8 identified?

9 A. I believe.

10 Q. Or areas.

11 A. I believe that's correct. Yes, ma'am. A through E.

12 Q. A through E?

13 A. Yes.

14 Q. And so A -- tell the jury where A is located.

15 A. Rear windshield is marked Number A.

16 Q. Rear windshield?

17 A. Yes, ma'am.

18 Q. And then C was located where?

19 A. It was the right rear passenger door.

20 Q. Right rear passenger door?

21 A. Yes, ma'am.

22 Q. And B?

23 A. B is right rear trunk.

24 Q. Right rear trunk?

25 A. Correct.

1 Q. And then E?

2 A. Is the roof and -- the rear of the roof and the

3 center.

4 Q. The rear of the roof and the center?

5 A. Correct.

6 Q. Did I get all the letters? Did I get them all? And D

7 maybe? Did I forget that one?

8 A. Rear passenger door. I think I --

9 Q. Okay. I got them. So you said that fingerprints,

10 you're born with them, they don't change?

11 A. That's correct.

12 Q. And no two people, not even identical twins, have the

13 same fingerprints; isn't that right?

14 A. That's correct.

15 Q. And you've been doing -- and I know you didn't do the

16 fingerprint analysis. That was done by someone else?

17 A. Yes, ma'am.

18 Q. But you collected five areas and even if there were

19 smudges you considered the five lifts that you took to have

20 possibly some identification ridge area?

21 A. Yes, or I wouldn't have taken them.

22 Q. Or you wouldn't have taken them?

23 A. That's correct.

24 Q. And no two people can have the same fingerprints?

25 A. No.

1 **MS. ZMROCZEK:** Thank you.

2 **THE COURT:** Redirect, Ms. Campbell?

3 **MS. CAMPBELL:** No, sir.

4 **THE COURT:** All right. Thank you. You may step down.
5 (Witness excused.)

6 **THE COURT:** Counsel approach just a moment.
7 (Proceedings held at the bench; not reported.)

8 **THE COURT:** All right. Ladies and gentlemen of the
9 jury, after discussing scheduling with counsel, we've
10 agreed that this is a good time for us to stop for the
11 afternoon. With it getting dark so early and everything,
12 I think it is a good time for us to stop for the afternoon
13 here, and we are going to do that.

14 I will caution you again against -- about discussing
15 this case with anyone while you are away from the
16 courthouse and do not discuss it with your family or your
17 friends and don't read any news stories or listen to any
18 broadcast media about this matter. Do not allow anyone to
19 discuss it with you. If anyone should approach you, find
20 out who they are or get their description and report it to
21 the bailiffs and they will report it to me. And, again, do
22 not begin any discussion about this matter among yourselves
23 in the morning when you return.

24 In that correction, let me see counsel for just one
25 more minute, please.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** We have a matter of law that we've got to
3 take up in the morning, and I'm not sure exactly how long
4 that's going to take. I don't want to bring you in too
5 early to sit in the jury room while we are working on those
6 things, so I'm gonna ask you to report back to your jury
7 room tomorrow morning at 10 AM. Please be in the jury room
8 at 10 AM tomorrow morning and we will be ready to begin.

9 Thank you. You may go with the bailiff.

10 (Whereupon, the jury is excused for the day at
11 4:50 PM.)

12 **THE COURT:** All right. Let's talk just a moment, and
13 we may want to do it in chambers or we may want to go off
14 the record to see where we are exactly with regard to the
15 proffer of the co-defendant in this case.

16 Let me see if I correctly state it or have in my mind
17 what the offer is and under what conditions you want to
18 get this testimony, but if I -- in a very brief sentence,
19 the Defendant in this case is on trial, of course, for
20 attempted armed robbery and attempted murder that occurred
21 sometime between, say, between 3 and 6 AM. He was not
22 apprehended at that time. Some four to six or seven hours
23 later a vehicle in which he was a passenger was stopped in
24 an unrelated traffic stop. As a result of that stop, the
25 Defendant was charged with unlawful conduct toward a child,

1 his two-year-old daughter who was unrestrained in the
2 vehicle, unlawful carrying of a pistol and resisting
3 arrest. The driver of that vehicle is Mr. -- what is his
4 name?

5 **MS. ZMROCZEK:** Nickilous Wallace.

6 **THE COURT:** Okay. Mr. Wallace, he was charged in
7 connection with that second situation with this Defendant
8 with unlawful carrying of a pistol and -- no, I'm sorry.
9 Wait a minute. Yeah, unlawful carrying of a pistol and
10 possession of a weapon by a felon. The State wants to
11 call the driver, Mr. Wallace, as a witness in the earlier
12 incident, and I'm summarizing, Ms. Campbell, as to what you
13 want to ask him, who he was with the night before and the
14 early morning, what kind of vehicle he had and that he lent
15 it to the -- the Defendant in this case sometime between
16 midnight and 6 AM. And what else?

17 **MS. CAMPBELL:** That's it.

18 **THE COURT:** That's it. Okay. And, of course, as a
19 result of that the witness wishes to invoke the Fifth
20 Amendment and that that testimony may tend to incriminate
21 him on his charges and your position, I guess,
22 Ms. Campbell, is that the questions are not incriminating
23 to him on any criminal activity or charges that are against
24 him?

25 **MS. CAMPBELL:** Yes, sir. That's our position. I

1 believe his position is that he's in violation of probation
2 or something.

3 **THE COURT:** Yeah. That the -- all right. And I've
4 got to figure that out because a probation violation --
5 obviously a probation violation that he's charged with
6 now, as we stated earlier, was -- that this charge was a
7 violation of his probation, but probation hasn't charged
8 him with that yet -- I mean, hasn't charged him with
9 anything yet other than the fact that he's charged with
10 those crimes. Okay.

11 All right. I understand that to be the position and,
12 of course, the case of Hughes -- State versus Hughes is the
13 case and I think Ms. Campbell correctly -- handled this
14 matter correctly in the bringing of this matter to me to
15 determine by the Court outside the presence of the jury
16 because the Hughes case does state that the witness cannot
17 be called solely for the purpose of maybe invoking the
18 Fifth Amendment and whatever effect that may have on the
19 jury.

20 And then there is another case that I looked up during
21 the recess. I can't even pronounce it right now, but I
22 think it's a civil case, and I haven't had a chance to read
23 it, but it does give the reasoning and all surrounding a
24 witness's right to invoke the Fifth Amendment. I have that
25 on the computer downstairs.

1 What I would like to have, as I told you,
2 Ms. Campbell, is a brief summary of what you -- questions
3 you propose to ask and what you expect the answers would
4 be and any law on this question about the -- about the
5 Fifth Amendment.

6 **MS. CAMPBELL:** Yes, sir.

7 **THE COURT:** And the same to you.

8 **MS. ZMROCZEK:** Okay. Thank you, Your Honor.

9 **THE COURT:** And, of course, for his counsel when he
10 gets here in the morning.

11 **MS. ZMROCZEK:** And, additionally, Your Honor, I
12 wanted to mention to you one fact, too, that one of the
13 independent witnesses testified to early on is that she
14 saw a square, older, light colored -- she thought it was
15 white, but she agreed it was a light colored car, which
16 would match that vehicle that they were pulled over in the
17 next day, and I think -- obviously if I'm -- and I'll put
18 it in a brief for the Court, but my concern is obviously
19 that I'm gonna be hamstring'd on what I can cross-examine
20 on and it would be our position that if he takes the Fifth
21 on any part of his testimony that he would be unavailable
22 for all of his testimony because I can't -- to limit what
23 I can ask I think is a violation of his Sixth Amendment
24 right.

25 **THE COURT:** Okay. Yes, ma'am.

1 **MS. CAMPBELL:** Your Honor, I have been handed up a
2 copy of apparently what is the terms of Mr. Wallace's
3 probation --

4 **THE COURT:** Okay.

5 **MS. CAMPBELL:** -- which I've just found out.

6 **THE COURT:** Have you seen this Ms. Zmroczek?

7 **MS. ZMROCZEK:** I think it's in discovery. Yes, I've
8 seen it.

9 **MS. CAMPBELL:** If I can at least hand it up to the
10 Court for review.

11 **MS. ZMROCZEK:** I don't know that Mr. Leonard has seen
12 it yet.

13 **MS. CAMPBELL:** I don't know if he's gonna be --

14 **THE COURT:** All right. That's standard conditions of
15 probation. Okay.

16 **MS. CAMPBELL:** I think that's specifically as to the
17 case he was on probation for, but I'll double-check that.

18 **THE COURT:** All right.

19 **MS. CAMPBELL:** And, Your Honor --

20 **THE COURT:** All right. We have, by my count, covered
21 some twelve witnesses today. How many more witnesses --
22 well, rather than put it that way, Ms. Campbell, let me ask
23 you do you think it is reasonable that we would finish the
24 State's case tomorrow?

25 **MS. CAMPBELL:** Yes. Yes, sir. I would hope by lunch.

1 **THE COURT:** Okay. All right. Good.

2 All right. Then, Ms. Zmroczek, be sure to talk with
3 your client today or in the morning so that he will be in
4 a position to tell us what his position is on the Fifth
5 Amendment at that time --

6 **MS. ZMROCZEK:** Thank you.

7 **THE COURT:** -- at the time they rest.

8 **MS. CAMPBELL:** Thank you.

9 **THE COURT:** Anything else?

10 **MS. CAMPBELL:** We've got the transcript being done.
11 Can we e-mail it to you tonight or just give it to you
12 first thing in the morning?

13 **THE COURT:** Yeah, just e-mail it to me. That would be
14 good. Can you e-mail it to me?

15 **MS. CAMPBELL:** Yes, sir.

16 **THE COURT:** That would be the best thing.

17 **MS. ZMROCZEK:** Your Honor, can they also e-mail you
18 just that one phone call, too? I know y'all were able to
19 e-mail it to me.

20 **THE COURT:** E-mail what?

21 **MS. ZMROCZEK:** I would like for you to have the
22 transcript, but also hear what's going on back and forth
23 because I think in order to properly evaluate whether you
24 think it's a threat or a coercive conversation I think
25 it's important to not only just read the words, but to hear

1 them as they're being exchanged between the two parties.

2 **THE COURT:** Well, how about just doing this? Go ahead
3 and e-mail me the transcript and then have the recording
4 keyed up and available to be played in the morning and I'll
5 be here -- and let's take these matters up between nine and
6 ten in the morning.

7 **MS. CAMPBELL:** We can do it.

8 **MS. ZMROCZEK:** Perfect.

9 **THE COURT:** All right. I can listen to it at that
10 time and I will have had the transcript and I'll be able to
11 review that, okay?

12 **MS. ZMROCZEK:** Thank you, Your Honor.

13 **THE COURT:** Anything else you anticipate we need to do
14 today, Ms. Campbell?

15 **MS. CAMPBELL:** No, sir.

16 **THE COURT:** All right. Ms. Zmroczek?

17 **MS. ZMROCZEK:** No, Your Honor.

18 **THE COURT:** All right. We'll be in recess then until
19 9:00 in the morning as far as meeting with the parties are
20 concerned, 10:00 as far as court personnel are concerned,
21 so we want to be able to go back on the record at 10:00.

22 All right. We'll be in recess until those times.

23 (Whereupon, the proceedings were concluded for
24 December 2, 2015, at 4:58 PM.)

25 (The following proceedings were held on December 3,

1 2015, beginning at 9:17 AM.)

2 (State's Exhibit Numbers 161 and 162 were marked for
3 identification.)

4 **BAILIFF:** Come to order, please.

5 **THE COURT:** Thank you. Be seated.

6 **THE COURT:** All right. We're back on the record
7 with regard to the matter of the State versus Brandon
8 Berry. Mr. Berry is present with counsel and the State
9 is represented by Fifth Circuit Solicitor's Office. I've
10 been advised that all of the jurors are here.

11 Is there anything before we bring the jury in and the
12 State continues in the case?

13 **MS. CAMPBELL:** Nothing from us, Your Honor.

14 **MS. ZMROCZEK:** Your Honor, simply just before they
15 intend to go introduce the phone calls I think we have some
16 relevance arguments as well. I mean, I agree that there
17 are portions that are relevant and should be published, but
18 I just wanted to make sure they weren't going to put those
19 up first thing.

20 **MS. CAMPBELL:** (Shakes head.)

21 **MS. ZMROCZEK:** All right. That's fine.

22 **THE COURT:** All right. Bring the jury in, please.

23 (Whereupon, the jury enters the courtroom at
24 10:05 AM.)

25 **BAILIFF:** The jury is seated, Your Honor.

1 **THE COURT:** All right. Good morning, ladies and
2 gentlemen, and thank you for your promptness in being back
3 here. And we are now ready to proceed. However, before
4 we do that, I do need to ask you if anyone has tried to
5 talk with you or contact you about this case in any manner
6 over the evening recess, I would need to know about it now.
7 Negative response and that's good.

8 Also, if anyone has read any news stories or seen
9 anything on television or other broadcast media about
10 this case over the evening recess, I would also need to
11 know about that now. Again, negative response, and that's
12 good.

13 Thank you very much. Before the recess yesterday the
14 State was presenting their case and they may continue to do
15 so. Ms. Campbell.

16 **MS. CAMPBELL:** May it please the Court? The State
17 calls Gray Amick.

18 GRAY AMICK,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Thank you. Please have a seat on the
21 witness stand and state your full name for the record.

22 **THE WITNESS:** My name is Gray Amick.

23 **MS. CAMPBELL:** Can you pull that down?

24 **THE WITNESS:** Gray Amick.

25 **MS. CAMPBELL:** Thank you.

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q. Sir, where are you employed?

4 A. At the Richland County Sheriff's Department.

5 Q. And what do you do there?

6 A. I'm the technical leader of the DNA department.

7 Q. Of the DNA department?

8 A. Correct.

9 Q. And as technical leader of the DNA department, what
10 do your duties include?

11 A. Basically the supervisor of the DNA department. I
12 also analyze the casework there. I'm also involved in
13 method development and authoring protocols.

14 Q. And what?

15 A. Authoring protocols.

16 Q. Authoring protocols?

17 A. (Nods head.)

18 Q. Can you tell the jury a little bit about your
19 education and training?

20 A. Yeah, I have a bachelor of science, 1989, and a Ph.D.
21 in biochemistry from USC in 1993. In '93, I was hired by
22 the State Law Enforcement Division, commonly known as SLED,
23 where I worked for eleven years in forensics. In 2004, I
24 was hired by Leon Lott with the Richland County Sheriff's
25 Department to start their DNA lab. I'm involved in

1 continuing education in the field annually in forensic DNA
2 and cutting edge technologies in DNA.

3 Q. And over the years you have kept up and -- has DNA
4 progressed over the years as far as testing that y'all do?

5 A. Yeah, we pretty much evolved with the testing as it's
6 evolved, yes.

7 Q. And do you keep up with all of the training and the
8 education and safety protocols?

9 A. Yes.

10 Q. And have you been qualified before as an expert in
11 DNA analysis?

12 A. I have.

13 Q. And specifically how many times have you been
14 qualified as an expert in court for DNA analysis?

15 A. Approximately ninety times.

16 Q. And specifically is there a newer technology that's
17 come up recently called rapid something?

18 A. Yes, there's rapid DNA technology, which we at the
19 sheriff's department have instrumentation for. We put
20 that online in 2014 and have been using that with selected
21 cases.

22 Q. And have you also been trained and educated as far as
23 doing that analysis?

24 A. I have.

25 **MS. CAMPBELL:** Your Honor, at this time we offer him

1 as expert in DNA analysis, including rapid DNA analysis.

2 **THE COURT:** All right. Voir dire with regard to
3 qualifications, Ms. Zmroczek?

4 **MS. ZMROCZEK:** Not at this moment, Your Honor.

5 **THE COURT:** All right.

6 **MS. ZMROCZEK:** We'll stipulate.

7 **THE COURT:** The Court will qualify this witness as
8 an expert in the field of DNA analysis and rapid DNA
9 technology. Again, ladies and gentlemen, you will recall
10 that I told you that a witness who is not an expert is
11 generally not allowed to give an opinion; however, if
12 scientific or other technology knowledge will assist you
13 in making a decision in this case a witness qualified as
14 an expert by experience, training, education or otherwise
15 can give an opinion. So the basic difference between a
16 non-expert and an expert witness is the expert witness
17 is allowed to give an opinion and I have qualified this
18 witness as an expert in the field of DNA analysis and
19 rapid DNA technology.

20 **MS. CAMPBELL:** Thank you, Your Honor.

21 BY MS. CAMPBELL:

22 Q. Dr. Amick, can you explain to the jury generally how
23 evidence comes to you and what kind of comparison you're
24 able to do?

25 A. Sure. The evidence is generally collected by crime

1 scene technicians or deputies or investigators. They bring
2 that to the sheriff's department and they log it into
3 the evidence log in the department where it's given unique
4 identifiers and packaged properly to reduce contamination
5 and then it is requested by the investigator in the case
6 for DNA analysis if they need it. So at that point we
7 would retrieve it from the evidence department, run our
8 analysis on it to try to develop a DNA profile from the
9 evidence and from the standards that are submitted in a
10 case and compare the two to see if they're included or
11 excluded.

12 Q. Okay. And in this case, were there multiple requests
13 for DNA analysis?

14 A. I believe there was, yes.

15 Q. And this was done over a period of time? I believe
16 over about a year?

17 A. That's correct.

18 Q. Does the amount of time if something is properly
19 stored and preserved, does that affect your ability to do
20 DNA analysis?

21 A. It does not.

22 Q. So time won't make someone's DNA change to look like
23 somebody else's or anything like that?

24 A. No.

25 Q. And when you get evidence, say, from a crime scene

1 such as blood or saliva, or in rape cases semen, things of
2 that nature, can you tell how long that DNA may have been
3 there?

4 A. No, you cannot tell how long the stain has been there.

5 Q. And typically DNA, you can do an analysis testing for
6 a body fluid such as I just mentioned?

7 A. You can, yes.

8 Q. But is there also something known as touch DNA?

9 A. There is.

10 Q. And what is touch DNA? Is it different?

11 A. It's still DNA. It's just the source is different.
12 So instead of you get cut and you bleed on an item and that
13 gets collected at a crime scene as the evidence, as the
14 source of the DNA, it is simply where I would touch
15 something and that gets swabbed and collected for DNA. So
16 there's usually less DNA in that type sample than there is
17 in blood or semen or saliva, things of that sort, but it's
18 still DNA.

19 Q. And the DNA in touch DNA typically comes from, I
20 believe, sloughing off of skin cells, stuff of that nature?

21 A. Yes.

22 Q. And does everyone kind of slough skin cells -- that's
23 a horrible word -- the same amount as everyone else?

24 A. No, ma'am. It's independent and depending on the
25 individual, so you may or may not. And it's also depending

1 on the substrate or what you're touching, so whether or not
2 you may or may not leave DNA there by touching it.

3 Q. So if I reach up and, say, I touch this right in front
4 of you, am I going to necessarily leave any DNA there?

5 A. You may or you may not.

6 Q. Are you familiar with the term "buccal swab"?

7 A. Yes.

8 Q. What is that, sir?

9 A. That's simply a term used for a swab of an
10 individual's mouth, which is called a buccal cavity. So
11 when we request a standard from an individual, we ask for
12 a buccal swab, which is basically a Q-tip placed in an
13 individual's mouth, and submit it to the lab.

14 Q. And in collecting that buccal swab, that's what we
15 know as a known standard?

16 A. That's correct.

17 Q. And do you typically have known standards when doing
18 comparisons?

19 A. Yes, you have to to be able to say someone's included
20 or not.

21 **MS. CAMPBELL:** Your Honor, may we approach on a
22 matter?

23 **THE COURT:** Yes.

24 (Proceedings held at the bench; not reported.)

25 **BY MS. CAMPBELL:**

1 Q. In addition to collecting buccal swabs from
2 individuals, is there also a database available that has
3 known DNA standards in it?

4 A. Yes.

5 Q. And can you also use that database with known DNA
6 standards to compare?

7 A. Yes, you can.

8 Q. I want to turn your attention to this case. Did
9 you receive some buccal swabs or known standards from
10 individuals that may or may not have been involved in this
11 case?

12 A. Yes, I did.

13 Q. And who did you receive known standards from or buccal
14 swabs from?

15 A. I got a buccal swab from Nickilous Wallace and Michael
16 Keith, which I believe -- I have listed as the victim.
17 That's the two that were submitted under this case.

18 Q. And was there an additional standard that you used for
19 comparison in this case?

20 A. Yes, Brandon Berry's buccal swab was also used in this
21 case.

22 Q. So you have one from Nickilous Wallace, Brandon Berry
23 and from the victim, Michael Keith?

24 A. Yes, that's correct.

25 Q. And prior to -- let me back up for a minute. How did

1 you initially become involved in this case? Were there
2 certain things that were asked of you to test?

3 A. Yes, there was.

4 Q. And can you explain to the jury what you did and why
5 it's a little different from what you did in a standard
6 case?

7 A. Yeah, this case was -- I was contacted by Investigator
8 Carwell about this case basically right after it happened
9 as being a good candidate for rapid DNA analysis, and
10 that's the technology that I mentioned before that we have
11 available. It's a technology that you can run your samples
12 and get a profile within two hours, so it's -- it's good to
13 use for cases that, as the investigator sees fit, they need
14 an answer right away that could affect the outcome of the
15 investigation or the direction of the investigation. So
16 Investigator Carwell came to me and said I've, you know, a
17 case that's potentially good evidence for this technology,
18 so we looked at it and we ran, I think, items from the
19 shoes, items from the pants that were collected, and also
20 the -- also some -- the victim's standard in the case.

21 Q. The victim's standard is what you had at the time?

22 A. That's correct.

23 Q. And you mentioned that you ran some shoes -- something
24 from the shoes and something from the what, the pants?

25 A. The pants, correct. Let me just look at my sheet now.

1 I don't want to misspeak. So we ran left side leg pants,
2 left inside leg pants, a Nike shoe and a Nike shoe. So
3 it's two swabs from the pants, two swabs from the shoes.
4 And then we also ran Michael Keith and Nickilous Wallace on
5 that same run, a two-hour test.

6 Q. And in this case you said that you were able to
7 actually do testing of -- the rapid DNA testing. In a
8 two-hour period the testing can be completed?

9 A. That's correct.

10 Q. Typically how long does testing take if it's not
11 rapid?

12 A. Our regular turnaround probably averages a month or
13 two.

14 Q. A month or two?

15 A. (Nods head.) Uh-huh.

16 Q. So in this case you ran these swabs and compared it to
17 the victim and Nickilous Wallace?

18 A. That's correct.

19 Q. And what were you able to get as a result of that?

20 A. What we get from this -- what we get from this test
21 is basically investigative information that we can provide
22 to the investigator. So what we were able to tell
23 Investigator Carwell was the item -- the cutting from the
24 -- the pants leg and the shoes, the blood on that matched
25 the victim in this case, which was the Michael Keith

1 individual. So that information is given right away to
2 the investigator and he uses that for his investigation,
3 whether it's search warrants or whatever, but we pass that
4 on and he does what he needs to do with it.

5 Q. And in this case when did that take place? When was
6 that testing done?

7 A. I did that on July 30th of 2014.

8 Q. So the day after this occurred?

9 A. I don't -- I don't know when it occurred, but that's
10 when I did it.

11 Q. Okay. That's when you did it and completed it on the
12 30th?

13 A. That's correct.

14 Q. And once you got that information, did you immediately
15 turn it over to Investigator Carwell?

16 A. Yes, I did.

17 Q. But you didn't stop your testing there, did you?

18 A. No. Because its primarily use right now is for
19 investigative information, what we do is go back and
20 basically test all the other evidence with our conventional
21 method and issue our findings and our report, and that's
22 what we have in court today. So that -- that rapid DNA
23 test is used, like I said, for investigative information,
24 then we basically work the case as we would a normal,
25 conventional case beyond that.

1 Q. Okay. And I believe initially you had Mr. Wallace's
2 and the victim's standard. At a later date were you also
3 provided the known standard from the Defendant in this
4 case?

5 A. I was.

6 Q. And I want to show you what's been marked as State's
7 Exhibit 161 and 162. Do you recognize those?

8 MS. ZMROCZEK: No objection, Your Honor.

9 THE COURT: All right. You can proceed.

10 MS. CAMPBELL: Thank you, Your Honor.

11 THE COURT: If you offer them into evidence, they will
12 be admitted into evidence without objection.

13 (State's Exhibit Number 161 and 162, DNA summary
14 blow-ups, were admitted into evidence.)

15 BY MS. CAMPBELL:

16 Q. And I was gonna ask you are these a summary of your
17 findings in this case?

18 A. Let me see.

19 Q. (Handing.)

20 A. Yes, it appears to be a summary.

21 Q. And you've seen these before. They weren't blown up,
22 but you saw them?

23 A. Yes, I saw a smaller version.

24 Q. Okay. And do accurately reflect some of your findings
25 in this case?

1 A. I looked over the smaller version and it seemed to
2 accurately reflect, yes.

3 MS. CAMPBELL: Your Honor, may the witness step down?

4 THE COURT: Yes, ma'am. You may step down.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 BY MS. CAMPBELL:

8 Q. And if you'd come over here.

9 A. (Witness complies.)

10 Q. The first three items that are -- the items that were
11 received in evidence in this case, are what items?

12 A. These are the three buccal swabs; a buccal swab from
13 Michael Keith, Brand Berry and Nickilous Wallace, and then
14 these indicate victim, suspect, suspect.

15 Q. And in this case the items have numbers out here
16 beside them and then there's, I guess, sub numbers?

17 A. Sub items.

18 Q. Sub items. And explain to the jury why that's
19 represented here?

20 A. So what we do is we'll get an item, for example, these
21 jeans, and in log-in they gave them an Item Number 7. So
22 when we get those and we process them and we find a stain,
23 we'll label that 7.1, 7.2, that kind of naming depiction,
24 so that's what these numbers underneath here mean.

25 Q. And items 7 and 8 on here, the jeans and the pair of

1 Nike shoes, these two items, those were the jeans and shoes
2 that are in evidence, y'all did additional testing than
3 what had been done before?

4 A. Right.

5 Q. And is that standard in the laboratory?

6 A. Yes.

7 Q. And in this case, even though the clothes had been
8 tested and DNA evidence had been collected before, y'all
9 went ahead and collected additional evidence just to make
10 sure?

11 A. That's right.

12 Q. And those items -- on Item Number 7, what was that?

13 A. The jeans.

14 Q. Those were the black jeans?

15 A. Correct.

16 Q. And you were able to, once entered into your
17 laboratory, test three different areas?

18 A. That's right. We tested the waistband and two stains
19 from those jeans.

20 Q. Okay. And the middle column there, the first of the
21 items received, the middle column indicates blood. What's
22 the purpose in that? Do y'all do any testing to see
23 whether or not an item's, in fact, positive for blood and
24 is that different from a DNA sample?

25 A. Yes, it is. It's a different test. It just tests

1 for the presence or an indication of blood. It's not a
2 confirmatory test. It just tells us whether or not that
3 red stain you see is blood or not.

4 Q. Okay. So if there's nothing in that column next to
5 the item, like in the first one, 7.1, is blank next to it.
6 That means that it is not positive for blood?

7 A. That means -- it probably means we didn't test that
8 for blood, which we wouldn't do on a scraping from a
9 waistband. We do that type of item for ownership. So if
10 somebody submits pants or a shirt and we want to find
11 out who may be wearing it, we'll do the collar or the
12 waistband.

13 Q. And when you say ownership, that's just to show --
14 again, that would be --

15 A. Who might have been wearing it.

16 Q. And why do you pick the scraping of the inside of the
17 waistband?

18 A. That's -- for pants that's about one of the best
19 places to possibly get a profile of the person wearing it
20 because it's probably where it touched their skin.

21 Q. And on a shirt it would be what area?

22 A. Either the collar or the cuffs of the sleeves.

23 Q. And in this case, the testing for ownership on
24 Item 7.1, what were your results?

25 A. The results were that it was a mixture of DNA, so it

1 means there was more than one individual, and the major
2 contributor matched Brandon Berry and the other
3 contributor, the minor ones, were just too weak to tell
4 who they were.

5 Q. When you're talking about major versus minor
6 contributor, what are you talking about?

7 A. When you do a DNA profile, it can be one person there,
8 it could be multiple people there. So if there are
9 multiple people there, you can sometimes distinguish
10 somebody who's there in high quantity versus somebody
11 there in low quantity, and that's what we call a major
12 contributor and a minor contributor. It's just based on
13 how much DNA of that individual is there.

14 Q. And in this case on Item 7.1, you were able to
15 indicate the major contributor was Brandon Berry?

16 A. That's correct.

17 Q. And in this case -- and I didn't put these numbers on
18 there, but in these cases typically do you then attach a
19 number of the probability of that being any unrelated
20 person or, I guess, only -- does everyone have different
21 DNA?

22 A. Yes, except for identical twins. So everybody's DNA
23 is unique.

24 Q. Even brother/sister?

25 A. Yes.

1 Q. Parent/child?

2 A. Yes.

3 Q. They're all different?

4 A. They're all different.

5 Q. Unless you're an identical twin?

6 A. Correct.

7 Q. And in this case, the major contributor matched
8 Brandon Berry. Were you able to put a statistical number
9 to that?

10 A. Yes.

11 Q. What was that number?

12 A. That number for 7.1 was that the major contributor
13 matched Brandon Berry and based on the most recent
14 population data available at 13 and 22 loci, which I'll
15 explain in a second, the frequency of seeing this
16 profile in the African American population is one in
17 106 quadrillion.

18 Q. One in a 106 quadrillion?

19 A. Right.

20 Q. I'm familiar with million or billion. How many zeros
21 in quadrillion?

22 A. That would be fifteen zeros. So it goes million,
23 billion, trillion, quadrillion.

24 Q. And how many people on Earth?

25 A. I think around seven billion now.

1 Q. So in your opinion, who's the major contributor in
2 this case?

3 A. So for Item 7.1, my opinion is Brandon Berry was the
4 source of the DNA on that waistband.

5 Q. And when you say the minor contributor is too weak,
6 what does that mean?

7 A. That means there was other indications of DNA on that
8 item, but it was just not enough there to say it matched
9 somebody or didn't match somebody.

10 Q. So too weak?

11 A. Uh-huh.

12 Q. And when we're talking about amounts of DNA you're
13 testing here, what kind of amounts are we talking about?

14 A. Well, it depends on a stain. On a bloodstain, that's
15 a good question. You're gonna have a ton of DNA. You're
16 gonna have so much DNA that you have to dilute it to get a
17 good result. On this type of sample you're gonna have a
18 lot less because it's not a body -- it's not a body fluid,
19 it's not like blood or something, so it's kind of like a
20 touch DNA sample. Your waist is touching that waistband,
21 so it's less DNA there. I think the actual quantity is --
22 is probably, you know, in a number about half a nanogram,
23 which probably doesn't mean anything to anybody. It's like
24 -- let's see if I can quantitate this. Half a nanogram is
25 about .5 micrograms, which is .00005 milligrams. You might

1 have heard the term milligrams, but it's a very small
2 amount.

3 Q. And that's what you're able to test --

4 A. Yes, that's what we're able to test.

5 Q. -- with the current technology?

6 A. Correct.

7 Q. But the major contributor is Brandon Berry?

8 A. It is for 7.1, yes.

9 Q. And 7.2, it indicates that that's a stain from the
10 jeans?

11 A. That's correct.

12 Q. And was that tested for the presence of blood?

13 A. Yes, it was.

14 Q. And were you able to get a result from that?

15 A. Yes. 7.2 and 7.3 the DNA result matched Michael
16 Keith.

17 Q. And, again, did you run the numbers on that?

18 A. I did. Based on the most recent population data
19 available, 22 loci, the frequency of seeing this profile
20 in the African American population is one in 2.2 octillion.
21 That's twenty-seven zeros.

22 Q. So in your opinion, who's the contributor of that
23 blood?

24 A. In my opinion, Michael Keith is the donor of that
25 particular stain.

1 Q. And that's for Item 7.2 and 7.3?

2 A. Correct.

3 Q. And, again, we won't go through all the numbers, but
4 basically the ones you say they were matched, you put a
5 number to them and can say whether or not they were
6 contributors?

7 A. (Nods head.)

8 Q. Okay. Moving on to 8.1, which was a pair of Nike
9 shoes, which was processed in your department?

10 A. Yes.

11 Q. And the left shoe had two -- this one has -- this item
12 has the sub and then the sub sub?

13 A. That's correct.

14 Q. Okay. And so when there's nothing by 8.1, being the
15 left shoe, that's because it was delineated down to two
16 different areas, right?

17 A. That's right.

18 Q. And, again, when you're receiving all these items for
19 your testing, y'all make sure that the chain of custody's
20 correct?

21 A. Yes.

22 Q. That nothing's been tampered or altered?

23 A. That's correct.

24 Q. And while it's in your custody you make sure there's
25 no cross-contamination or anything? There's protocols?

1 A. There's controls in place for all of that, yes.

2 Q. And, in fact, is your lab accredited?

3 A. Yes, it is.

4 Q. And how are y'all accredited?

5 A. It's an international accreditation by a group called,
6 ASCLD, so we adhere to International -- ISO accreditation
7 standards.

8 Q. And y'all have to do testing and keep up with certain
9 standards to make sure?

10 A. That's correct. It's annual -- or actually twice a
11 year we do testing, as well as audits every year, and other
12 -- many other quality components every year.

13 Q. Prior to you issuing a report, is your work also peer
14 reviewed?

15 A. Yes. So a hundred percent of our work is then handed
16 over to a second qualified analyst for technical review and
17 so another qualified analyst looks at all my results and
18 agrees -- has to agree before I can issue a report.

19 Q. Okay. And moving on to 8.1.1, the stains from the
20 left shoe, from the Nike, were you able to test for blood?

21 A. I was.

22 Q. And what were your results?

23 A. For 8.1.1 and 1.2 it was too weak. There was not
24 enough DNA there.

25 Q. And is that unusual?

1 A. No, it's -- it could have been sampled before, it
2 could have been degraded, it could have been many other
3 things. It's just sometimes you don't have enough DNA for
4 a profile.

5 Q. Okay. Moving on to the right shoe, were there two
6 stains that were swabbed there?

7 A. Yes.

8 Q. And were they tested for the presence of blood?

9 A. Yes, both indicated blood.

10 Q. And, finally, what were the results on the pair of
11 shoes that y'all tested in-house?

12 A. Again, the first stain was too weak and the second one
13 I got no result at all. So when I get to a certain point,
14 I got no DNA. These meant I got some DNA indicated, but
15 when I ran the profile it was way too weak.

16 Q. And moving on to Item 9 and 10, those were two items
17 that were not requested for any type of DNA?

18 A. That's correct.

19 Q. But Item Number 11 was a blue bag with masks, gloves,
20 shirt, skull cap and zip ties?

21 A. Yes.

22 Q. Did y'all do certain testing of items in there?

23 A. Yes. So we did brown gloves with the grips, another
24 pair of brown gloves, a black stocking cap and a red polo
25 shirt.

1 Q. And, again, how was the DNA collected in this case for
2 you to do the testing?

3 A. How was it collected?

4 Q. Uh-huh.

5 A. I think the crime scene unit basically collected all
6 of this evidence. I'd have to look and see specifically.

7 Q. Okay. But it is proper to use a swab and sterile
8 solution to collect DNA?

9 A. Yes. So they would either collect the item itself,
10 like a pair of pants or a pair of gloves, or they may
11 actually swab something at the scene, so we get it in
12 different forms.

13 Q. Okay. So typically you're cutting from some clothing
14 or a swab from clothing or a swab from the scene?

15 A. Or the entire item.

16 Q. Okay. And taking these apart and testing Items 11.1,
17 which is brown gloves with grips, what were your results?

18 A. The result is here there was a mixture and the major
19 contributor matched Brandon Berry. Again, the minor was
20 too weak.

21 Q. So the major contributor matched Brandon Berry.
22 Moving on to Item 11.2, which was brown gloves.

23 A. Same result. It was a mixture. The major contributor
24 was, again, matching Brandon Berry. The minor contributor
25 was too weak.

1 Q. And in these -- when we're talking about who it
2 matches or who the mixture may match and the minor's too
3 weak, in each of these cases are you comparing it to all
4 three of these buccal swabs?

5 A. I am. And if there was enough DNA here to make a
6 conclusion about those, it would say these people are
7 excluded, but because it says it's too weak I can't say
8 whether or not anybody else is included or excluded, so
9 that's what that weak means.

10 Q. But you definitely did the comparison and the major
11 contributor would not be Michael Keith or Nickilous
12 Wallace?

13 A. No, if it's matching -- if it matches, it's only gonna
14 match one individual because our DNA is unique. So once
15 it says it matches this person, that means it excludes
16 everybody else.

17 Q. Okay. Moving on to the black stocking cap. Again --

18 A. Again, a mixture of this item, and the major
19 contributor matched Brandon Berry. The minor contributor
20 was too weak.

21 Q. So on all those three items your opinion is the person
22 who is the major contributor is Brandon Berry?

23 A. That's correct.

24 Q. And, finally, 11.4 was a red polo shirt?

25 A. Yeah, and that one was too weak for match purposes.

1 Q. And, again, these weren't tested for blood because
2 there was no indication?

3 A. That's correct. So we do a visual examination of the
4 item. If we see what looks like blood, then we test it for
5 blood.

6 Q. Moving on to State's Exhibit Number 162, does this
7 show more of your results?

8 A. It does.

9 Q. And can you walk us through starting with Item 12?
10 What does that indicate Item 12 was that was submitted to
11 y'all?

12 A. Item 12, a swab from the left outside leg, Marker
13 Number 1. That was -- indicated blood when we tested it
14 and it matched Michael Keith.

15 Q. So, again, when it matches Michael Keith, it would
16 exclude anyone else?

17 A. That's correct.

18 Q. Item Number 13, swab from left outside leg, Marker
19 Number 2.

20 A. That was not tested for blood evidently and matched
21 Brandon Berry.

22 Q. And, again, if you don't see an indicator of blood,
23 you wouldn't test for it?

24 A. That's correct.

25 Q. Number 14, swab from left outside leg, Marker

1 Number 3.

2 A. That was a mixture of Brandon Berry. Mr. Wallace and
3 Mr. Keith are excluded from that particular item.

4 Q. From that particular one. And, again, there was no
5 testing for blood, so it didn't indicate any blood on that?

6 A. That's correct. And these items I can tell by the way
7 they're named came from crime scene collection, so they
8 would put markers out when they're collecting items or at a
9 crime scene -- or I'm not sure how they did it, but that's
10 what it means to me, that these items were swabs that we
11 received from the crime scene unit versus the other ones
12 were the items that we were swabbing and processing. So
13 that's -- when it says Marker 1, 2, 3, that I know came
14 from the crime scene.

15 Q. Okay. But it doesn't affect your testimony?

16 A. No, it doesn't.

17 Q. Moving on to the Item Number 15, the swab from left
18 outside leg, Marker Number 4.

19 A. Too weak for match purposes.

20 Q. And, again, there was a visual done of the swab and
21 then if it was appropriate it would be tested for blood and
22 in this case it wasn't?

23 A. That's correct.

24 Q. And it was too weak for match purposes?

25 A. Correct.

1 Q. And I want to move on to Item 16, swab from left
2 inside leg, Marker Number 5. Was that one of the items you
3 initially used?

4 A. It was.

5 Q. And, again, you've already told them what your results
6 were from that?

7 A. Right.

8 Q. Which was?

9 A. That those items that are marked rapid, I think
10 there's at least three of them here -- four -- three,
11 those were items that matched the victim in the case when
12 we did the investigative information.

13 Q. Okay. Moving on to Swab Number 17 from left inside
14 leg, Marker Number 6, was that tested for blood?

15 A. Yes, blood was indicated on that item.

16 Q. Moving on to Item Number 18 from the same pants leg,
17 Marker Number 7?

18 A. Blood indicated there.

19 Q. Number 19?

20 A. Also blood indicated.

21 Q. And it matches who?

22 A. That matched Michael Keith.

23 Q. And the one before that was no result?

24 A. Right.

25 Q. And Number 20?

- 1 A. Again, blood indicated, and that matched Michael
2 Keith.
- 3 Q. And, finally, on the jeans, Number 21?
- 4 A. The item was too weak for match purposes.
- 5 Q. And it did not get tested for blood?
- 6 A. That's correct.
- 7 Q. The next item starting with Item Number 22, that was
8 a swab from the left Nike shoe, Marker Number 1?
- 9 A. That's correct.
- 10 Q. And was it tested for blood?
- 11 A. No.
- 12 Q. And that was also one used in what?
- 13 A. That was also done with the rapid.
- 14 Q. And that was the one that come back matching?
- 15 A. The victim.
- 16 Q. Item Number 23, which was the next swab from the left
17 shoe, was that tested for blood?
- 18 A. Yes, that one indicates blood and matched Michael
19 Keith.
- 20 Q. Item Number 24, the swab from the left Nike shoe,
21 Marker Number 3.
- 22 A. Again, indicated blood and matched Michael Keith.
- 23 Q. Number 25, another swab from the Nike -- from the
24 right Nike shoe.
- 25 A. That was another one we did with the rapid instrument

1 that was given to the investigator that matched the victim
2 in the case.

3 Q. Number 26 on the right shoe. Again, Number 5.

4 A. Again, blood was indicated matching Michael Keith.

5 Q. Number 27?

6 A. 27, blood was indicated, and that also matched Michael
7 Keith.

8 Q. And Number 28 was a swab from the Glock Model 19
9 .9 millimeter?

10 A. Yes.

11 Q. It was not tested for blood?

12 A. No.

13 Q. And none of these items that we're getting ready to
14 talk to weren't?

15 A. Correct.

16 Q. But what were your results?

17 A. Results from that swab were that they were too weak
18 for match purposes.

19 Q. Item Number 29, a swab from the black magazine?

20 A. Same result. Too weak for match purposes.

21 Q. And then Item Number 30, the swab from the four
22 unfired bullets?

23 A. Those I got no results on.

24 Q. And is that unusual in a case with guns?

25 A. No, not for -- not for bullets and shell casings.

1 It's very difficult to get a profile from those.

2 Q. And, finally, Item Number 31, which is a swab from
3 the two plastic masks.

4 A. Okay. That one, Item 31, was a mixture. The major
5 contributor matched Brandon Berry and then the minor --
6 it doesn't say too weak. There was enough there for me to
7 do a comparison, like I said before, so I could exclude
8 Michael Keith and Nickilous Wallace as being a match of
9 the minor contributor, so I don't know who that minor
10 contributor is.

11 Q. So it was not a complete standard submitted to you?

12 A. Correct.

13 Q. And was that -- in your opinion, on Item Number 31,
14 what were your results as far as numerically on that?

15 A. 31, again, was a mixture; the major contributor
16 matching Brandon Berry. And based on the most recent
17 population data, the frequency of seeing this profile in
18 the African American population is one in 546 quadrillion.

19 Q. So in your opinion, who was the major contributor?

20 A. So in my opinion, Brandon Berry was the source of that
21 particular DNA stain on that item.

22 Q. And it excludes everyone else in the world?

23 A. On the major contributor, yes.

24 (Whereupon, the witness returns to the witness stand.)

25 BY MS. CAMPBELL:

1 Q. And your role in this case was just to do the rapid
2 DNA and then subsequently the rest of the DNA testing?

3 A. That's correct.

4 MS. CAMPBELL: Thank you. I don't have anything
5 further.

6 THE COURT: Cross-examination?

7 MS. ZMROCZEK: Thank you.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Good morning, Dr. Amick.

11 A. Good morning.

12 Q. I want to talk to you a little bit about what you --
13 I want to focus on the pants first, Item 7, 7.1.

14 A. Okay.

15 Q. You talked about -- sorry. You talked about the
16 waistband and the -- for jeans, for pants, where's the best
17 place to swab for DNA?

18 A. For ownership if we're asked maybe who was wearing it,
19 we usually swab -- scrape and swab the waistband.

20 Q. Waistband. And you don't do that on the outside, you
21 do it on the inside, right?

22 A. That's correct.

23 Q. Okay. And in this case, there was at least one other
24 person that was in those pants or in that waistband, right?

25 A. Tell me specifically what item.

1 Q. 7.1.

2 A. Okay. 7.1, that's correct. It was a mixture and
3 Brandon Berry matched the major contributor and, yeah, the
4 minor contributor was too weak to determine who it was. So
5 there was another DNA -- there was other DNA there.

6 Q. There was other DNA on the inside of the waistband?

7 A. That's correct.

8 Q. Okay. In your scientific studies, can that happen
9 when people wear other people's clothes?

10 A. Sure. It can happen that way.

11 Q. Okay. The -- now explain to me with the -- so there
12 was no DNA that you could get from the shoes. Explain that
13 a little bit on Item 8 and all of the --

14 A. Item 8?

15 Q. Item 8 and their subparts, yes.

16 A. So 8.11, 8.12, 8.21 where I have too weak, sometimes
17 there's not enough DNA there. I think that's answering
18 your question. And I believe those were previously swabbed
19 by the crime scene, so I would probably explain that by
20 saying they probably collected most of that sample when
21 they previously swabbed it and when we reprocessed those we
22 didn't get enough to get a profile.

23 Q. Okay. All right. So there's no way to tell who was
24 in those shoes? No way to match DNA to who was in those
25 shoes?

1 A. I think you need to give me a specific item number
2 and maybe I can testify to the --

3 Q. Sure. 8.1, the left shoe.

4 A. So 8.1 is -- the sub items were 1.1 and 1.2, and I did
5 not get any DNA from that particular item.

6 Q. Okay. And then 8.2 -- yeah, 8.2.

7 A. So 8.21 and 8.22, basically I did not get a DNA
8 profile on these either.

9 Q. Okay. So we can't say -- we can't make any
10 identification completely?

11 A. That's correct. For those items.

12 Q. Okay. And then the same with items 11.1, 11.2, 11.3,
13 these were all mixtures, again, just like the inside of the
14 waistband, right?

15 A. (Nods head.)

16 Q. Meaning that there was someone else's DNA that was
17 attached to these items?

18 A. That's correct. Those were all three mixtures.

19 Q. Okay. And then I wanted to talk about the items on
20 your next page, Item 14, swab from the left outside leg.
21 It was a mixture, but you said that the victim, Mr. Michael
22 Keith, and Brandon Berry and Nickilous Wallace were all
23 excluded?

24 A. That's correct.

25 Q. Okay. So that was just somebody else's DNA on the

1 pants?

2 A. That's correct.

3 Q. Okay. And then 31, there was another mixture, and it
4 was -- the major contributor, again, was Brandon, but that
5 means that there was somebody else, but we know it wasn't
6 Nickilous Wallace or Michael Keith on the mask, right?

7 A. That's correct.

8 Q. Were you familiar with how those masks were packaged?

9 A. No, I was not.

10 Q. Okay. You talked about cross-contamination and DNA.
11 Explain a little bit how that happens.

12 A. How cross-contamination happens? Well, there's a
13 bunch of ways it can help and there's a bunch of
14 definitions of cross-contamination.

15 Q. Let me narrow it down then. If you have an item
16 that's touching another item, can you get
17 cross-contamination?

18 A. It possible.

19 Q. Okay. If you have items all thrown in a bag together,
20 can you get cross-contamination?

21 A. It's possible.

22 Q. Okay.

23 A. Usually liquid, but -- like if they're wet, it's more
24 probable.

25 Q. Okay.

1 A. If they're dry, it less probable.

2 Q. All right. Ms. Campbell asked you -- you can't tell
3 when a person left this DNA, right?

4 A. That's right.

5 Q. So if I am very full of DNA and I leave it a lot, if I
6 touch this table, in three years or -- say it doesn't ever
7 get cleaned, which I hope it does, but let's just say in
8 three weeks, if I haven't been here in three weeks, my DNA
9 could still be on that table?

10 A. That's correct.

11 Q. Okay. And so I think -- and I think Ms. Campbell even
12 touched this spot, too. So could that be a mixture of both
13 of our DNA still in three weeks?

14 A. Yes, it could.

15 Q. Or even tomorrow?

16 A. Yes. There's no way to date a DNA stain or profile.

17 Q. Okay. So all the DNA results they're -- they're very
18 scientific, correct?

19 A. They're very scientific?

20 Q. Meaning y'all -- the industry has spent a long time
21 focussing and doing the -- getting the best results they
22 can?

23 A. Yeah, there's a lot of work and quality parameters
24 that go into obtaining a DNA profile.

25 Q. Right. And so you wouldn't come in and say there's

1 a mixture if you weren't sure that there was some other
2 person's DNA in there, right?

3 A. That's correct.

4 **MS. ZMROCZEK:** Okay. Thank you.

5 **THE COURT:** Redirect, Ms. Campbell?

6 **MS. CAMPBELL:** Just a couple of questions, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q. And with touch DNA, it can also mix with, say, a -- I
10 mean, it's easily transferred?

11 A. What's that, touch DNA?

12 Q. (Nods head.)

13 A. It can be transferred, yes.

14 Q. So if I come up and, say, I shake your hand and then I
15 put on my pants?

16 A. That's possible.

17 Q. It's possible it could be a minor contributor?

18 A. It's possible, yes.

19 Q. But things such as body fluids and blood you mentioned
20 are more likely to leave DNA?

21 A. It's -- it's more likely you're gonna have a stronger
22 signal in those.

23 Q. A stronger signal, more DNA?

24 A. (Nods head.)

25 Q. Such as saliva if you wore a mask?

1 A. Yes.

2 **MS. CAMPBELL:** I beg the Court's indulgence.

3 BY MS. CAMPBELL:

4 Q. And if a person is living with another person and,
5 say, they wash their clothes, they could have their DNA on
6 that item as well?

7 A. If they touched the clothes, that's a possibility,
8 yes.

9 Q. Okay. And what effect does washing clothes have, say,
10 on the jeans?

11 A. It's going to decrease the chance of getting a DNA
12 profile if there's DNA on there.

13 **MS. CAMPBELL:** Thank you.

14 **THE COURT:** Recross?

15 **MS. ZMROCZEK:** Just briefly.

16 **RE CROSS EXAMINATION**

17 BY MS. ZMROCZEK:

18 Q. She asked you about the washing of clothes and the
19 decreased possibility of getting, excuse me, a DNA profile.
20 What about if you wear an item more than one other person.
21 Let's say I have a sister -- well, I have six, but let's
22 say my sister and I share clothes, but -- it's my sweater,
23 but I let her borrow it on a special occasion or because
24 she asked to borrow it, are you more likely to find my DNA
25 on it or her DNA?

1 A. That's a hard one to answer. I could answer it by
2 saying -- let me use this example. We've found that when
3 you swab a steering wheel from a car that has been stolen,
4 you'd usually get the person who last touched or drove it
5 versus the owner.

6 Q. Right.

7 A. So I would probably answer it's maybe the same way for
8 clothes, but I'm just not sure.

9 Q. No way to know?

10 A. I can't say for sure.

11 Q. Okay. And when you do the outside -- or the inside
12 of a waistband, that also could mean that there are items
13 of clothing underneath, undergarments, as well that are
14 changing that matter of transfer, right?

15 A. Say that again.

16 Q. If I have -- if I have boxers on under my pants, could
17 that limit the amount of DNA that's transferred to the
18 waistband?

19 A. Yes.

20 **MS. ZMROCZEK:** Okay. Thank you.

21 **THE COURT:** All right. Thank you. You may step down.

22 (Witness excused.)

23 **THE COURT:** Would you like to have the witness
24 excused, Ms. Campbell?

25 **MS. CAMPBELL:** Thank you, Your Honor.

1 **THE COURT:** Any objection?

2 **MS. ZMROCZEK:** No objection.

3 **THE COURT:** The witness is excused. Thank you for
4 coming.

5 All right. Ms. Campbell or -- the State may call
6 their next witness.

7 **MR. STEADMAN:** The State calls Thomas Stetson.

8 **THE COURT:** All right.

9 THOMAS STETSON,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record.

13 **THE WITNESS:** Thomas Stetson.

14 DIRECT EXAMINATION

15 BY MR. STEADMAN:

16 Q. Good morning, Mr. Stetson. Where do you live here in
17 Columbia?

18 A. --

19 Q. And how long have you lived in Columbia?

20 A. A little over five years.

21 Q. Okay. Where are you employed here in Columbia?

22 A. I own a chiropractic office.

23 Q. And where did you live back on July 29, 2014?

24 A. --

25 Q. And how long did you live there?

1 A. I lived there for three and a half, four years.

2 Q. And I want to approach you with what's been marked as
3 State's Exhibit 148.

4 A. Sure.

5 Q. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. That is the apartment building I lived in.

9 Q. Is that an accurate depiction of what it looked like
10 then?

11 A. Yes.

12 **MR. STEADMAN:** Your Honor, at this point we would
13 introduce State's Exhibit 148 into evidence.

14 **THE COURT:** Any objection?

15 **MS. ZMROCZEK:** No objection.

16 **THE COURT:** Admitted into evidence without objection.

17 (State's Exhibit Number 148, a blow-up photograph, was
18 admitted into evidence.)

19 BY MR. STEADMAN:

20 Q. I want to go back to July 29, 2014. Do you remember
21 anything that stands out that night or the early morning
22 hours of July 29, 2014?

23 A. Yes, I was woken up by gunshots.

24 Q. Describe -- what were you doing when you first heard
25 the gunshots?

1 A. Sleeping.

2 Q. And once you heard the gunshots, what did you do next?

3 A. The first -- first thing I did was grab my wife and
4 little baby and we went into the bathroom and called 9-1-1.

5 Q. And after you did that, you called 9-1-1, what did you
6 do next?

7 A. We waited until we saw or heard sirens and saw the
8 lights outside and then we just stayed inside.

9 Q. So before that you didn't look out the window and see
10 what was going on?

11 A. Unfortunately, no.

12 Q. And once you saw the blue lights and police arrive,
13 what did you do?

14 A. We were just peeking out the window making sure
15 everything was fine and I believe we laid back down and
16 just went to sleep because I was exhausted from my infant.

17 Q. And besides calling 9-1-1, did you speak with anybody
18 that night?

19 A. Not that night.

20 Q. Then once you went back to sleep or -- if you don't
21 remember, that's fine. What happened the next morning?
22 What did you do?

23 A. I went outside and I saw that my front driver's side
24 tire was flat, so I just looked around and saw that there
25 was a bullet hole in the front panel and assumed that it

1 got shot from the gunshots.

2 Q. Do you mind stepping down for a second?

3 A. Sure.

4 (Whereupon, the witness steps down from the witness
5 stand.)

6 BY MR. STEADMAN:

7 Q. Show me -- show the jury where were you parked the
8 night before.

9 A. Right in here.

10 Q. And when you came out the next morning, where was your
11 car parked then?

12 A. The same spot.

13 Q. And point to what side of the parking space where you
14 saw the flat tire.

15 A. It would be on the left side, the driver's side, of
16 the car.

17 Q. And where was your apartment complex?

18 A. I'm on the parking lot side, second floor. Or was.

19 Q. Thank you.

20 (Whereupon, the witness returns to the witness stand.)

21 BY MR. STEADMAN:

22 Q. So once you saw the bullet hole, what did you do?

23 A. I took pictures and there happened to be a police car
24 still out in the lot and I spoke to someone just to get the
25 investigator's card that -- to just contact and he gave me

1 the Case Number and I believe I called the -- my insurance
2 to see if -- where to take my car to get it fixed.

3 Q. And at some point did you get your car fixed?

4 A. Yes.

5 Q. And at some point did you speak with the investigator?

6 A. Yes.

7 Q. Did the person who fixed your car remove a bullet?

8 A. Yes.

9 Q. And did you turn that over to the investigator?

10 A. Yes.

11 **MR. STEADMAN:** Thank you. No furthest questions.

12 **THE COURT:** Cross-examination?

13 **MS. ZMROCZEK:** Just briefly.

14 CROSS-EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Good morning.

17 A. Good morning.

18 Q. What color is your car?

19 A. Black.

20 Q. Okay. And you said you took photographs?

21 A. Yes.

22 Q. Did the police ever request a copy of those?

23 A. I believe I e-mailed them to the investigator.

24 **MS. ZMROCZEK:** Thank you. No further questions.

25 **THE COURT:** Anything further?