

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK JAJUAN RIVERA,

APPELLANT.

APPELLATE CASE NO. 2021-001285

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 18 – 22, 2021	1
October 18, 2021	
JURY <i>VOIR DIRE</i>	14
JURY SELECTION.....	31
PRE-TRIAL MOTIONS	45
TESTIMONY	
REBECCA PHILLIPS	56
RYAN DEWANE.....	69
SARA GOODMAN	93
COURT’S RULING	117
October 19, 2021	
MOTION FOR A SPEEDY TRIAL	126
COURT’S RULING THAT DEFENDANT’S RIGHT TO A SPEEDY TRIAL WAS NOT VIOLATED	128
JURY INSTRUCTIONS.....	129
OPENING STATEMENT BY MR. HIXON.....	137
OPENING STATEMENT BY MR. MCGUIRE	145
TESTIMONY	
BRIAN CHURCH	153
TERESA HOLYFIELD	162
CHRISTI JOHNSON-BRUNSON	193
PETE CESTARE	212

DON KOBITHEN	261
REBECCA PHILLIPS	266
MARCUS STITZER.....	335
ANGELINA PHILLIPS.....	341
October 20, 2021	
TESTIMONY (CONTINUED)	
BRIAN SCALES	359
RYAN KEEFE.....	396
DREW EDWARDS	409
BRADFORD BRITTON	472
RYAN DEWANE.....	536
RENEWED MOTION TO SUPPRESS DNA EVIDENCE	543
TESTIMONY (CONTINUED)	
SARA GOODMAN	560
October 21, 2021	
TESTIMONY (CONTINUED)	
SEAN WYDRA	586
JANA WEAVER	672
MOTION TO SUPPRESS	690
COURT’S RULING DENYING MOTION TO SUPPRESS.....	694
TESTIMONY (CONTINUED)	
DAVID LONG.....	695
STATE RESTS	705

MOTION FOR A DIRECTED VERDICT	706
COURT’S RULING	706
TESTIMONY (CONTINUED)	
DERRICK RIVERA	707
DEFENSE RESTS	714
RENEWED MOTION FOR A DIRECTED VERDICT	714
COURT’S RULING	715
CHARGE CONFERENCE.....	715
October 22, 2021	
CLOSING ARGUMENT BY MR. HIXON.....	729
CLOSING ARGUMENT BY MR. MCGUIRE	768
CLOSING ARGUMENT IN REPLY BY MR. HIXON	784
JURY CHARGE	785
VERDICT	802
SENTENCING	813
INDICTMENTS	816
CERTIFICATE OF COUNSEL	822

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 12 (BINGO VIDEO/THIMB DRIVE).

1 ask for your car; right?

2 A Yes, sir.

3 Q And then the police had your phone and they were looking
4 at it, and they said, "We don't see a phone call"; right?

5 A Yes, sir.

6 Q Okay. Is that because Trey didn't call you?

7 A Yes, sir.

8 Q Well, I don't know. I mean, is Trey a real person or
9 not?

10 A It was my -- originally that was the -- originally that's
11 what I said, yes, sir.

12 Q Well, is Trey a real person? Does he really exist?

13 A No. No, sir.

14 Q He's a phantom. He's totally made up?

15 A Yes, sir.

16 Q But you were pretty specific about making Trey up. You
17 said you see him at the Money Saver, which is a convenience
18 store in the neighborhood; right?

19 A Yes, sir.

20 Q And you said, you know, you hang out with Trey there;
21 right?

22 A No, sir.

23 Q You told the police that you saw Trey at the Money Saver.

24 A Yes, sir.

25 Q Okay. And that -- and when you saw Trey, he was always

1 wearing black flip-flops. You told the police that?

2 A Yes, sir.

3 Q And you told the police that he always wore black shorts;
4 right?

5 A Yes, sir.

6 Q Black T-shirt?

7 A Yes, sir.

8 Q And that he always had, like, a black backpack? You told
9 the police that; right?

10 A If I did, I don't exactly -- I don't remember.

11 Q Okay. The police asked you, "Did you see him with a
12 backpack when you see him hanging out at the Money Saver?"
13 And you said, "Yes." And they asked you what kind of strings
14 did it have on it. Do you remember this at all?

15 A No, sir, I don't.

16 Q You told them that Trey would come to your house
17 sometimes; right?

18 A Yes, sir.

19 Q You told them that Trey said he put some gas in your car?

20 A Yes, sir.

21 Q You told them you saw Trey Saturday afternoon between
22 1:00 and 2:00 at the Money Saver; right?

23 A Yes, sir.

24 Q And that that would be on video. If they went and
25 checked the video, that's what they would see; right?

1 **A** Yes, sir.

2 **Q** And you know they went and they pulled that video, and
3 they did not see that; right?

4 **A** Yes, sir.

5 **Q** That's because Trey is a phantom; right?

6 **A** Yes, sir.

7 **Q** Okay. So when you were saying all this stuff about Trey,
8 that you loaned your car to Trey and you gave a pretty
9 compelling story -- a lot of details -- you were protecting
10 yourself; right?

11 **A** Yes, sir.

12 **Q** And you were protecting yourself from getting caught;
13 right?

14 **A** Yes, sir.

15 **Q** Okay. And getting caught for what? What were you afraid
16 of getting caught for?

17 **A** I wasn't sure. I was just protecting myself.

18 **Q** Come on. You were just lying to the police for what? No
19 reason? Why would you lie to the police?

20 **A** Because I was under arrest.

21 **Q** So whenever you get arrested, you just lie to the police
22 automatically?

23 **A** I just naturally have a fear of the police.

24 **Q** Are you an honest man, Mr. Britton?

25 **A** Yes, sir.

1 Q You are an honest man?

2 A Yes, sir.

3 Q On a scale of one to ten, how honest are you?

4 A Ten.

5 Q Ten? Flat out ten?

6 A Yeah.

7 Q Were you a flat out ten, perfect ten with the police in
8 this case?

9 A I'd say I was a nine.

10 Q A nine?

11 A Yes, sir.

12 Q That's pretty high.

13 A Yes, sir.

14 Q Okay. And when you were telling the police about Trey
15 and saying he's got brown skin, this is how tall he is, you
16 said he was about 250 -- do you remember that?

17 A Yes, sir.

18 Q And you gave height, you gave a clothing description, you
19 described being at the Money Saver with him, you said he came
20 over to your house. When you were saying all that, you were a
21 nine?

22 A Yes, sir.

23 Q Okay. And I'm going to ask you again why were you
24 protecting or trying to protect yourself with these lies to
25 the law enforcement officers? What were you protecting

1 yourself from?

2 **A** I wasn't sure. I was just protecting myself because I
3 was under arrest.

4 **Q** For what?

5 **A** I wasn't sure. I didn't know.

6 **Q** So you go straight to totally lying about giving your car
7 to a person named Trey, and you're not even sure why you're
8 lying?

9 **A** Yes, sir. Yes, sir.

10 **Q** Okay. Now, Mr. Britton, I think we can agree that you
11 were flat broke at this time; right?

12 **A** I was broke.

13 **Q** Was your mom paying your rent?

14 **A** From time to time, yes, sir.

15 **Q** Okay. Rent was 600 bucks a month; right?

16 **A** Yes, sir.

17 **Q** Only employment you had was carting people around for a
18 couple of bucks; right?

19 **A** Yes, sir.

20 **Q** Right before this robbery went down, your mama gave you
21 50 bucks?

22 **A** Yes, sir.

23 **Q** Okay. And you were going to use part of that money to
24 wash your clothes; right?

25 **A** Yes, sir.

1 Q That sounds pretty broke to me. Would you agree you were
2 pretty broke at the time?

3 A No, sir.

4 Q Where was your money? Were you holding on to your own
5 money and letting your mama pay your rent?

6 A Sorta say, yes, sir.

7 Q So you were kind of holding out on your mama. You were
8 keeping your money for yourself, but you were letting your
9 mama pay your rent from time to time?

10 A Okay. Yes, sir.

11 Q I mean, is that true?

12 A Yes, sir.

13 Q Okay. If I said it doesn't sound like you were even
14 honest with your mother, would you agree with me?

15 A No, sir.

16 Q You're honest with your mom?

17 A Yes, sir.

18 Q You didn't pay your rent but you've got your own money
19 but that's being honest?

20 A Yes, sir.

21 Q Okay. I'm going to ask you about the night of the bingo
22 robbery and murder. When did you know it was a robbery?

23 A After leaving -- after we're leaving the bingo hall in
24 Surfside.

25 Q So you're telling this jury, you went all the way to

1 Myrtle Beach with somebody and you had no idea they were going
2 to commit a robbery in the bingo hall?

3 A Yes, sir.

4 Q Okay. Do you remember telling the police that you knew
5 it was going to be a robbery?

6 A No, sir.

7 Q Okay. And just so the jury knows, if somebody uses the
8 term "lick," what does that mean?

9 A It means a number of things.

10 Q Well, let's hear it. What?

11 A It can mean robbery. It can also mean just a quick
12 situation. Depending on how you look at it.

13 Q Do you remember telling -- so you're saying that
14 somebody, your passenger -- I know you say it's Derrick
15 Rivera, but your passenger who you carted up to Myrtle Beach,
16 you're saying they told you it's going to be a lick, and
17 you're saying you're confused as to whether that was going to
18 be a robbery or not?

19 A I wasn't aware it was going to be a robbery.

20 Q What's that?

21 A I wasn't aware it was going to be a robbery.

22 Q Okay. So you thought that the person you were carting up
23 to Myrtle Beach was not going to commit a robbery?

24 A Right.

25 Q On the way up to Myrtle Beach from Georgetown, you

1 testified that there was a stop in Surfside; right?

2 A Yes, sir.

3 Q And that was right in the parking lot of the Surfside
4 Bingo; right?

5 A Yes, sir.

6 Q And when you were looking for the Surfside Bingo, you're
7 on Highway 17 and you passed it first; right?

8 A Yes, sir.

9 Q And you had to do a U-turn and turn around; right?

10 A Yes, sir.

11 Q And that's right where the BP and Krispy Kreme is?

12 A Yes, sir.

13 Q And so you do the U-turn and you come back into the
14 Surfside Bingo parking lot; right?

15 A Yes, sir.

16 Q And your passenger takes out their phone and makes a
17 phone call; right?

18 A I don't recall.

19 Q You don't remember that?

20 A No, sir.

21 Q Why did you leave the Surfside Bingo? Isn't it because
22 your passenger made a phone call and said: Hey, just talked
23 to my man. We got to go to the Myrtle Beach Bingo"?

24 A He said this wasn't the place and told me to leave.

25 Q So there's no phone call?

1 **A** I don't recall one.

2 **Q** Do you remember telling the police that your passenger
3 made a phone call?

4 **A** I may have.

5 **Q** You may have told the police that?

6 **A** Yes, sir.

7 **Q** If I show you your words, would that refresh your
8 recollection?

9 **A** Yes, sir.

10 **Q** All right. Take a look right here. Just read to
11 yourself right and here going down. When you need me to turn
12 the page, just let me know. Okay?

13 **A** (Reviewing document.)

14 **Q** You got it from here to here?

15 **A** Yeah.

16 **Q** Okay. So now that you read that, will you agree that you
17 told the police that you got to the Surfside Bingo and you're
18 in the parking lot and your passenger makes a phone call?

19 **A** Yes, sir.

20 **Q** And then your passenger received instructions that it
21 wasn't the Surfside Bingo, it was going to be the Myrtle Beach
22 Bingo?

23 **A** Yes, sir.

24 **Q** Okay. And now you claim, of course, that Mr. Derrick
25 Rivera made that phone call; right?

1 **A** Yes, sir.

2 **Q** And you also claim, at some point, he instructed you to
3 turn your phone off; is that right?

4 **A** Yes, sir.

5 **Q** And you're saying, at some point, he turned his phone
6 off?

7 **A** At the same time, yeah.

8 **Q** And that's like right at the Myrtle -- that's right at
9 the Myrtle Beach Bingo?

10 **A** Yes.

11 **Q** And then turned it back on right after the Bingo; right?

12 **A** Yes, sir.

13 **Q** So if the phones were inactive, they were only inactive
14 for ten minutes; right?

15 **A** I'd say about 20.

16 **Q** About 20. Okay.

17 Have you been confronted by law enforcement? Have they
18 told you that this phone call at the Surfside Bingo does not
19 show up on his phone records? Have they told you that?

20 **A** No, sir.

21 **Q** Are you still sticking to that? Did Derrick Rivera make
22 a phone call in Surfside?

23 **A** I believe so he did.

24 **Q** You believe he did?

25 **A** Yes, sir.

1 Q You're going to stick with that one; right?

2 A Yes, sir.

3 Q On that statement, are you a nine or a ten in terms of
4 honesty?

5 A I'd say I'm a ten.

6 Q A ten on that one?

7 A Yes, sir.

8 Q Now, since you had a little trouble remembering telling
9 them about that Surfside phone call, would you agree with me
10 that you repeated that time and time again to the police? Do
11 you remember that now, that you told them that many, many
12 times and you stuck to it?

13 A I don't remember.

14 Q You don't remember?

15 A No, sir. I mean...

16 Q Show you another little bit of your transcript. You can
17 just read from the very, very top. And after you do that, why
18 don't you let us know if you remember us sticking to that
19 Surfside call to the police.

20 MR. HIXSON: Your Honor, I'd object. He's got to ask a
21 question, and he's got to testify to it. You don't just get
22 to restate what's in...

23 THE COURT: Sustained.

24 BY MR. MCGUIRE:

25 Q Do you remember telling the police a second time about

1 the Surfside call? I tell you what, if you want, you can
2 start reading there. And I'm not going to ask you to restate
3 what you told the police word for word, Bradford. I'm showing
4 that to you so you can remember what you told the police.
5 Okay?

6 **A** (Reviewing document.) Yes, sir.

7 **Q** Having read that, you'll agree that you told the police
8 about this Surfside phone call a second time; right?

9 **A** Yes, sir.

10 **Q** And a third time; right?

11 **A** Yes, sir.

12 **Q** Okay. And a fourth time?

13 **A** I don't remember exactly how many times I said it. It's
14 been two years.

15 **Q** Okay. If I said at least half a dozen times, you'd say
16 that sounds about right; right?

17 **A** Yes, sir.

18 **Q** Are you going to disagree with me about that?

19 **A** No, sir.

20 **Q** Okay. And not only did you tell the police that your
21 passenger made a phone call, you said your passenger Googled
22 using their phone how to get to the Myrtle Beach Bingo. Do
23 you remember that?

24 **A** Yes, sir. Yes, sir.

25 **Q** So you do remember telling the police that your passenger

1 took out their phone and Googled the way to Myrtle Beach?

2 A Yes, sir.

3 Q Okay. And when I say "Myrtle Beach," I mean the Myrtle
4 Beach Bingo that was robbed; right?

5 A Yes, sir.

6 Q Mr. Britton, when you were talking to the police, even
7 after you abandoned the Trey story and you said, "Okay. You
8 got me. I drove up there. I drove somebody up there." You
9 still stuck with "but I don't know what happened." Right?

10 A Yes, sir.

11 Q Even though they had you dead at rights based on the
12 video of your car, your cell phone, you still maintained, "I
13 had no idea what happened at the Myrtle Beach Bingo"; right?

14 A Right.

15 Q Okay. Despite -- despite passing the Myrtle Beach Bingo,
16 when you're making the getaway, and there's a fire truck
17 there, two ambulances, at least three police cars all with
18 blue and red lights flashing; right?

19 A Yes, sir.

20 Q And y'all just cruise right on by; right?

21 A Yes, sir.

22 Q Okay. And isn't it true that -- well, let me ask you
23 about somebody. You got a friend named Bump; right?

24 A Yes, sir.

25 Q His name is Chris?

1 **A** Yes, sir.

2 **Q** And you're tight with him?

3 **A** You'd say so, yes, sir.

4 **Q** You would say so?

5 **A** Yes, sir.

6 **Q** You're just casual acquaintances with Mr. Rivera because
7 he buys marijuana from you; right?

8 **A** I'm sorry? Repeat the question.

9 **Q** Okay. Let me back up. Do you remember the police
10 confronting you and saying, "Bradford, we have been through
11 your cell phone. We know you're selling drugs"? Do you
12 remember the police telling you that?

13 **A** No, sir.

14 **Q** No?

15 **A** No.

16 **Q** You don't remember the text messages talking about hydros
17 on your phone and selling them?

18 **A** No, sir.

19 **Q** Selling marijuana?

20 **A** No, sir.

21 **Q** You're denying all that?

22 **A** Yes, sir.

23 **Q** Okay. You bought your car from a person named Ashley;
24 right?

25 **A** Yes.

1 Q And Chris, or Bump, that's Ashley's boyfriend; right?

2 A Yes, sir.

3 Q And do you remember talking or telephone conversations
4 going back and forth between you and Bump about -- over a
5 dozen times the day before the Myrtle Beach robbery?

6 A No, sir.

7 Q You don't remember that?

8 A No, sir.

9 Q Okay. How often do you talk to Bump a day? Do you talk
10 to Bump -- not now, obviously, but back then, you would talk
11 to Bump all the time?

12 A Yes, sir.

13 Q Y'all were buddies?

14 A Yes, sir.

15 Q And y'all did work together on Ashley's car; right?

16 A No, sir.

17 Q You don't remember that?

18 A No.

19 Q Did the police ever ask you about Bump?

20 A No, sir.

21 Q Do you remember the police telling you, "Bradford, you're
22 not going to rob a place with somebody you barely know. It's
23 going to be somebody you're tight with"? Did they ever ask
24 you about how tight you were with Bump?

25 A No, sir.

1 Q But you were tight with Bump?

2 A Barely, yes, sir.

3 Q And you kind of barely knew Derrick; right?

4 A Yes, sir.

5 Q In fact, you couldn't even tell the police how long you
6 knew Derrick. Your first answer was a month; right?

7 A A month, two months.

8 Q Okay. Your first answer to the police was, "I know him
9 about a month"; right?

10 A Yes, sir.

11 Q And then it got a little bit longer, and then you said,
12 "Well, about four months"; right? Do you remember that?

13 A I vaguely remember three months.

14 Q Okay. Well, you're saying three now.

15 A Yes, sir.

16 Q You told the police one two years ago. Do you remember
17 that?

18 A One to three months, give or take.

19 Q I'm not asking you how long you knew Derrick. I'm asking
20 you what did you tell the police. You told the police you
21 knew him for about a month?

22 A At first I said a month.

23 Q Okay. And then you said about four?

24 A I remember three months.

25 Q Okay. I'll ask the detectives that.

1 So, Bradford, when you're talking to the police and
2 you're saying -- they're asking you questions, even after you
3 give up the name -- you come up with the name Derrick Rivera,
4 you still maintain, "Boy, I still don't know what happened in
5 the bingo hall"; right?

6 **A** I didn't.

7 **Q** And are you telling this jury today that, despite --
8 despite driving past the bingo hall, after your passenger
9 comes running back to your car, gets in the car; right?

10 **A** Yes, sir.

11 **Q** You and your passenger drive past the bingo hall; right?
12 You and your passenger see the fire trucks and the ambulances
13 and the police cars; right?

14 **A** Yes, sir.

15 **Q** And you go all the way back to Georgetown; right?

16 **A** Yes, sir.

17 **Q** Okay. And the police say, "What do you think what
18 happened?" and you say, "I had no idea anything bad happened."

19 That's what you told them; right?

20 **A** Yes, sir.

21 **Q** And are you maintaining to this jury that, after passing
22 all those ambulances -- fire trucks and the ambulances, you're
23 still telling them today, "You know, I still had no idea
24 anything bad happened to them"; right?

25 **A** Yes, sir.

1 Q And are you a nine or a ten on that?

2 A Ten.

3 Q Gotcha.

4 The police officers made it clear to you that they would
5 help you if you gave them a name; right?

6 A No, sir.

7 Q No?

8 You don't remember them using phrases like, "Bradford,
9 you can be a great witness or you can be part of the problem."
10 They told you that; right?

11 A Yes, sir.

12 Q Okay. And they said you're going to eat this murder
13 charge unless you give us a name; right?

14 A Yes, sir.

15 Q They said, "Bradford, we can plush you up or we can knock
16 you down." They told you that too; right?

17 A I don't remember.

18 Q You don't remember that?

19 A No, sir.

20 Q If I show it to you, will you remember it?

21 A Yes, sir, I guess.

22 Q Just read it to yourself, please.

23 A (Reviewing document.) Okay.

24 Q You got it?

25 A Yes, sir.

1 Q And that's what they said. After telling you, "You can
2 eat this by yourself or you can give us a name," they said,
3 "We can plush you up or we can knock you down." They told you
4 that?

5 A Yes, sir.

6 Q And you did give them a name. You gave them Derrick
7 Rivera, and as we already discussed, after you gave them the
8 name, you said, "Can I go home in a couple of days? Can I go
9 home in a couple of weeks?" You said that; right?

10 A Yes, sir.

11 Q From today, how long do you think it will take you to get
12 home, Bradford? From today? How many days are you looking at
13 from today right now?

14 A I'm not sure.

15 Q You're not sure?

16 A I'm not sure.

17 Q You want it to be as short as possible; right?

18 A Yes, sir.

19 Q And the way to make that as short as possible is to try
20 to prove your value to the prosecutor; right?

21 A I'm sorry?

22 Q You have to prove your worth, your value to the
23 prosecutor; right?

24 A No, sir.

25 Q No?

1 **A** I'm here to tell the truth and do the right thing.

2 **Q** Do the right thing.

3 **A** Yes, sir.

4 **Q** And you're a ten on that; right?

5 **A** Yes, sir.

6 **Q** When you told the police, "Hey, did you" -- you didn't
7 tell them you were a ten or a nine. You just said, "Hey,
8 Derrick Rivera did this"; right?

9 **A** I wasn't sure of his name until they showed me his
10 driving record.

11 **Q** Right. Well, that's what you say.

12 You tried to convince them that you were telling the
13 truth after the whole Trey fiasco and them looking at video
14 and you sending them on wild goose chases, and they had to
15 prove you were lying, and you said, "Hey, trust me. I hang
16 out -- the last time I saw this guy, Derrick, was Sunday
17 between 1:00 and 2:00."

18 And they -- the police actually said to you, "Hey, okay.
19 We'll give you a shot. We're going to go get the video and
20 see you guys out front talking, right?"

21 And what did you say? You said, "yes"; right?

22 **A** Yes, sir.

23 **Q** Okay. So you're trying to convince the police that you
24 have got a connection to Mr. Rivera. And of course they go
25 and get the video; right?

1 **A** Yes, sir.

2 **Q** And they proved you were lying again; right, Bradford?

3 **A** I guess, yes, sir.

4 **Q** Well, no, I don't want you to guess. I want you to be an
5 honest ten on your answer, and say, "Yes, I was lying when I
6 said I saw him Sunday at the Money Saver," because they got
7 the video, and you weren't on it and Derrick wasn't on it.
8 Isn't that what happened? That's what happened; right?

9 **A** Yes, sir.

10 **Q** Okay. Were you a ten when you were telling them that you
11 saw Derrick Sunday between 1:00 and 2:00 at the Money Saver?

12 **A** Yes, sir.

13 **Q** Even though that was not true?

14 **A** Yes, sir.

15 **Q** You understand my question? Were you being completely
16 honest with the police when you said, "Hey, I saw Derrick at
17 the Money Saver. He and I talked out front." And they said,
18 "Okay. We'll get the video." They got the video, and you
19 weren't on it. You lied; right?

20 **A** I don't remember. I suppose I did.

21 **Q** Okay. Well, the -- all right. If the police say you
22 were lying about that, you'd believe them; right?

23 **A** Yes, sir.

24 **Q** Okay. You -- when trying to convince the police that it
25 was Derrick Rivera who was your passenger, you said, "Hey, go

1 get the video at the 707 convenience store after the robbery,
2 and you'll see the door of my car open up, and Derrick Rivera
3 will be right there throwing up in the parking lot." That's
4 what you told the police; right?

5 A I never said that.

6 Q You never said that?

7 A No, sir.

8 Q Do you remember what you said? Did you say anything like
9 that at all?

10 A He said he was nauseous, and he asked me for a cup of
11 water.

12 Q Do you remember telling them that your passenger opened
13 the car door when you were at the 707 convenience store
14 parking lot? Do you remember telling the police that now?

15 A Yes, sir.

16 Q All right. So you're trying to convince the police that
17 your passenger is Derrick Rivera, and you're going to see him
18 open up the car door on the 707 convenience store parking lot,
19 and you know they have got that video too, and you know the
20 car door does not open up; right? You know that now; right?

21 A Yes, sir.

22 Q So that was another thing that was not true that you told
23 the police; right?

24 A Yes, sir.

25 Q Do you remember the police telling you, Britton --

1 "Bradford Britton, you have told us so many lies, we can't
2 keep count of them"? Do you remember them telling you that?

3 A Yes, sir.

4 Q They have lost count, you lied so much to them? You
5 remember that?

6 A Mm-hmm. Yes, sir.

7 Q And sort of during the course of your entire interview
8 with them, you were about a nine or a ten?

9 A I'm sorry?

10 Q Were you -- like in terms of honesty, telling the truth,
11 I guess you were more like a nine then; right?

12 A Yes, sir.

13 Q Okay. Do you remember swearing to the police that you
14 were telling the truth?

15 A No, sir.

16 Q Do you remember swearing on your mother's life that you
17 were telling the truth to them?

18 A I never said that.

19 Q Never said that?

20 A No.

21 Q Do you remember swearing to the Virgin Mary that you were
22 telling the truth?

23 A No, sir.

24 Q Do you remember swearing on your son's life?

25 A No, sir.

1 Q Do you remember swearing --

2 MR. HIXSON: Your Honor, I'd object. We're getting a
3 little -- starting to get a little bit repetitive on the
4 questions.

5 THE COURT: Overruled. I'll allow it. Go ahead.

6 BY MR. MCGUIRE:

7 Q Do you remember using the phrase, "I swear on everything
8 I do not know what Trey did"? Do you remember that?

9 A Yes, sir.

10 Q Do you remember making all those statements, swearing on
11 your mother's life?

12 A No, sir.

13 Q You don't remember that?

14 A No, sir.

15 Q All right. Would it be wrong, Bradford, to swear on the
16 Virgin Mary and then tell a lie? Hmm?

17 A Yes, sir, it would be wrong.

18 Q But you didn't do that; right?

19 A No, sir.

20 Q You know what I'm about to show you; right?

21 A No, sir.

22 Q Hmm?

23 A No, sir.

24 Q Okay. Why don't you read that to yourself, Bradford.

25 A (Reviewing document.) Okay.

1 Q When you were trying to convince the police that you were
2 telling the truth, did you use the phrase, "I swear on the
3 Virgin Mary"?

4 A I don't remember saying that.

5 Q Well, are those your words?

6 A It says it. I don't remember saying it.

7 Q You're not saying the police made this up; right? Are
8 you saying you could have said it, you just don't remember?

9 A Yes, sir.

10 Q Does that sound like you?

11 A No, sir.

12 Q Because you don't swear?

13 A No, sir.

14 Q Do you remember swearing on your mother's life?

15 A I don't remember. No, sir.

16 Q But you see the words in front of you; right?

17 A Yes, sir.

18 Q Where you're -- according to the transcript, you swore on
19 your mother's life; right?

20 A Yes, sir.

21 Q And do I need to show you where you swore on everything
22 on your son's life, or are you just going to just agree, "I
23 may have said that, I just don't remember"?

24 A Yes, sir.

25 Q Okay. So you're going to deny remembering that; right?

1 **A** Yes, sir.

2 **Q** You're not denying that you said it; right?

3 **A** Yes, sir.

4 **Q** You're saying you don't remember saying it, but you're
5 not swearing under oath today that you did not say it; right?

6 **A** Yes, sir.

7 **Q** Okay. So you could have said it?

8 **A** I may have.

9 **Q** I mean, it looks kind of convincing if it's in the
10 transcript; right?

11 **A** Yes, sir.

12 **Q** Okay. Bradford, isn't it what really happened, you were
13 broke, mama paying your rent, mama lending you money, and you
14 got together with somebody you're tight with, and you
15 formulated a plan to go rob a bingo place; right?

16 **A** No, sir.

17 **Q** Okay. And I actually think it's probably three people
18 and not just two. When your passenger made the call from
19 Surfside Bingo, that was your inside man; right? That was the
20 person that was supposed to be inside the Surfside Bingo or
21 the Myrtle Beach Bingo; right?

22 **A** No, sir.

23 **Q** And when you called your inside man, they said, "No,
24 we're not robbing the Surfside Bingo today. Come to Myrtle
25 Beach." Isn't that what happened?

- 1 **A** No, sir.
- 2 **Q** Was it your friend Chris, Bump, that was your passenger?
- 3 **A** No, sir.
- 4 **Q** No? The plan was, let's go ahead and make sure we have a
5 change of clothes so, right after the robbery, we can change
6 our description and be able to do things like cruise right on
7 by the bingo hall without getting caught. That was planned;
8 right?
- 9 **A** No, sir.
- 10 **Q** When you were driving in the Tuscany neighborhood, were
11 you shopping for a home?
- 12 **A** Somewhat, yes, sir.
- 13 **Q** Okay. How much do you think a house would go for in
14 Tuscany?
- 15 **A** I'm not sure.
- 16 **Q** Okay. Isn't the real reason you're driving your partners
17 through Tuscany is so they can change the clothes; right?
- 18 **A** No, sir.
- 19 **Q** No. You are aware that multiple items of clothing were
20 found in that neighborhood on the ground? Do you know that?
- 21 **A** Yes, sir, I have heard.
- 22 **Q** That's what you have heard?
- 23 **A** Yes, sir.
- 24 **Q** But nobody in your car threw anything out?
- 25 **A** It was only me and Derrick Rivera.

1 Q That's what you say.

2 You and your passenger -- who threw the stuff out?

3 A I assume it was Derrick Rivera because he rolled the
4 window down and was taking things off.

5 Q I thought you told the police that your windows are
6 always down because it's summertime and your AC doesn't work.

7 A No, sir.

8 Q Mm-hmm. You let Derrick use your house to entertain a
9 lady from time to time, right, or used to two years ago;
10 right?

11 A No, sir.

12 Q That would be impossible -- that just couldn't happen.
13 You would never let him use your house to entertain a lady;
14 right?

15 A No, sir.

16 Q You're a flat ten on that, 100 percent ten; right?

17 A Yes, sir.

18 Q Never let him use your house; right?

19 A Mm-hmm, yes, sir.

20 Q If you would, just read the top part here.

21 A (Witness complies.) Okay.

22 Q Now, do you remember telling the police that you left
23 Derrick at your house with the young lady and then, when you
24 came back, he was gone? Do you remember telling them that?

25 A I don't remember this. I guess I did.

1 Q You guess you did?

2 A Yeah.

3 Q It looks pretty convincing when it's in black and white;
4 right? Did the police put that in there?

5 A I don't remember saying it.

6 Q But you probably said it; right?

7 A Maybe I did.

8 Q You're looking at it.

9 A Okay.

10 Q Okay?

11 A Okay.

12 Q Okay. So Derrick would have run of your house. He could
13 have a lady there. He could take a shower there. He could
14 change clothes there. And the way he got to use your house is
15 he would give you a little money when he bought marijuana from
16 you. He'd give you a little bit extra money. Or he'd help
17 you around the yard. Right? He did some landscaping with you
18 for a little while; right?

19 A No, sir.

20 Q In your yard?

21 A No, sir.

22 Q Okay. And that -- you're certain about that? You're not
23 letting him use your house by himself; right?

24 A I would like to state for the record that I never sold
25 drugs.

1 Q So you say.

2 So you barely know Derrick. You're just acquaintances.
3 You're not tight with him like you are with Bump, Chris. But
4 you just let him use your house out of the goodness of your
5 heart? He would pay you a little bit; right?

6 A Yes, sir.

7 Q Okay. What happened was, when he's using your house,
8 he's entertaining ladies, he gets to take a shower there --

9 MR. HIXSON: I'm going to just object to testimony rather
10 than questions.

11 THE COURT: Yeah, let's get to the questions.

12 MR. HIXSON: On theories --

13 THE COURT: I sustained that.

14 BY MR. HIXSON:

15 Q What happened, Bradford --

16 MR. HIXSON: And that's the objection I had.

17 THE COURT: I think he was going to frame the question.
18 Go ahead.

19 MR. HIXSON: I apologize.

20 BY MR. MCGUIRE:

21 Q What happened, Bradford, is that you and your partners
22 used some clothing that belonged to Derrick on the way to the
23 Myrtle Beach Bingo; right?

24 A I'm sorry: Repeat the question.

25 Q You or one of your partners used some of Derrick's

1 clothing to wear to the Myrtle Beach Bingo?

2 **A** No, sir.

3 **Q** Okay. Are you a ten on that?

4 **A** Yes, sir.

5 **Q** Mm-hmm. Why is there clothing that clearly got chucked
6 from your car on the ground in Tuscany Resort neighborhood?
7 Why is that?

8 **A** I'm not sure. I don't know. Had I thrown clothing out
9 of my window, it would be in the road, not on the side of the
10 road.

11 **Q** You said you knew guns, and it was a .38; right?

12 **A** It was a revolver. I wasn't sure exactly what kind of
13 gun.

14 **Q** Okay. We talked about you wanting to go home; right?

15 **A** Yes, sir.

16 **Q** Okay. The prosecutor right here, he's basically got
17 freedom in his pocket. How much of that do you want? All of
18 it?

19 **A** I just want to do the right thing and tell the truth.

20 **Q** Mm-hmm. Would you lie to go home today?

21 **A** I wouldn't be telling the truth.

22 **Q** Okay. So you're saying -- you're saying you would not
23 lie to get released from the jail today and go home?

24 **A** No, sir.

25 **Q** That's right?

1 **A** Yes, sir.

2 **Q** As tempting as it might be to have the jail door open up
3 and you go home to your family, you would refuse that because
4 that would be wrong to lie? Is that what you're saying?

5 **A** Yes, sir.

6 **Q** Okay. And you're an honest ten on that too; right?

7 **A** Yes, sir.

8 **Q** That's all I have for you, Bradford.

9 THE COURT: Redirect?

10 MR. HIXSON: Yes. Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. HIXSON:

13 **Q** Mr. Britton, have you ever heard of an expression that a
14 broken clock is right twice a day? Have you ever heard that?

15 **A** No, sir.

16 **Q** The general idea, of course, is that, if a clock is
17 broken and the hands don't move that, twice a day, the time
18 lines up to the actual time so the clock is right, even though
19 it's broken all the time. Have you ever heard that before?

20 **A** No, sir.

21 **Q** Okay. So let's just get way back out of all this level
22 of detail, because it's obvious that you have lied and lied
23 and lied a variety of different times to save your tail.
24 Isn't that safe to say?

25 **A** Yes, sir.

1 Q So let's go back to the simple things about a clock on a
2 wall that's right twice a day even though it's broken. Okay?

3 A Okay.

4 Q Did you drive Derrick Rivera up to the bingo parlor?

5 A Yes, sir.

6 MR. MCGUIRE: Objection. Beyond the scope of redirect.
7 It's been gone over.

8 THE COURT: You did address it in your direct.

9 MR. HIXSON: No, that's true. I thought, rather for
10 impeachment, after he's --

11 THE COURT: I'll allow some limited, but let's don't go
12 over your entire direct testimony again.

13 MR. HIXSON: 100 percent, Judge. Very good. Very good.
14 Three questions.

15 THE COURT: Go ahead. And I'll give you some leeway.

16 BY MR. HIXSON:

17 Q You dropped Derrick Rivera off at the bingo parlor?

18 A Yes, sir.

19 Q You picked him up?

20 A Yes, sir.

21 Q Drove him to Georgetown?

22 A Yes, sir.

23 Q Got him a drink?

24 A Yes, sir.

25 Q Talked to him on the cell phone?

1 MR. McGUIRE: Objection. That is going over the whole
2 thing. It's beyond the scope of redirect.

3 THE COURT: Overruled. Overruled. I'll allow it. Go
4 ahead.

5 BY MR. HIXSON:

6 Q Got him a drink at the 707 Scotchman?

7 A Yes, sir.

8 Q And then talked to him on the cell phone afterwards --
9 before and afterwards?

10 A Yes, sir.

11 Q And you're in custody today under a proffer agreement,
12 pled guilty to attempted armed robbery and accessory after the
13 fact of a murder; isn't that right?

14 A Yes, sir.

15 Q No further questions.

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

17 Ladies and gentlemen, we're going to go ahead and take a
18 break for the afternoon. Take about a 10- or 15-minute break,
19 give you an opportunity to stretch your legs, get something to
20 drink, whatever the case may be.

21 Do not discuss the case, even among yourselves. Leave
22 your notepads in the jury box. We'll take about a 10- or
23 15-minute break and come back in just a minute. Thank you
24 very much.

25 (The jury exited the courtroom at 3:58 p.m.)

1 THE COURT: All right. Anything from the State before we
2 take a recess?

3 MR. HIXSON: No, sir.

4 THE COURT: Anything from the defense?

5 MR. MCGUIRE: No, sir.

6 THE COURT: All right. We'll take about a 15-minute
7 break and then come back.

8 (A brief recess was taken from 3:59 p.m. to 4:23 p.m.)

9 THE COURT: All right. Anything from the State before we
10 bring the jury in?

11 MR. HIXSON: No, sir.

12 THE COURT: Anything from the defense?

13 MR. MCGUIRE: No, sir.

14 THE COURT: All right. Let's bring the jury in.

15 (The jury entered the courtroom at 4:25 p.m.)

16 THE COURT: Ladies and gentlemen, welcome back. Make
17 sure you have your own notepads, and no one else's notepad.
18 We're ready to resume the trial of this case.

19 Mr. Hixson, the State can call your next witness.

20 MR. HIXSON: Thank you. At this time, the State would
21 call Special Agent Ryan Dewane from the State Law Enforcement
22 Division.

23 RYAN DEWANE,

24 the witness, after having been duly sworn, was examined and
25 testified to as follows:

1 THE CLERK: State your name and spell your last name for
2 the Court.

3 THE WITNESS: Ryan Dewane.

4 DIRECT EXAMINATION

5 BY MR. HIXSON:

6 Q Good afternoon, ma'am. How are you?

7 A I'm doing well. How are you?

8 Q Okay. I'll give you a second to...

9 What do you do for a living?

10 A I'm a senior forensic scientist assigned to the DNA Case
11 Work Department of the South Carolina Law Enforcement
12 Division, also known as SLED.

13 Q Okay. And describe what the DNA Case Work Division of
14 SLED does.

15 A We receive evidence from agencies across the state. We
16 then attempt to develop DNA profiles from that evidence and
17 compare it to the DNA profile of known individuals associated
18 with the case. We then write reports of our findings and
19 testify in court when needed.

20 Q So do you need any specialized training or education in
21 order to be hired into that role and perform your job?

22 A Yes.

23 Q Could you tell the jury some of the -- what that is to
24 make you a SLED DNA analyst?

25 A I have a bachelor of science degree in biology,

1 preprofessional, from Appalachian State University in Boone,
2 North Carolina. I also have two minors, in chemistry and
3 English. I'm currently pursuing my masters of science degree
4 in biology sciences from Clemson University in Greenville,
5 South Carolina.

6 During my education, I have completed courses in
7 molecular biology, genetics, biochemistry, and statistics.
8 These four courses are considered the foundations of forensic
9 biology.

10 Upon being hired at SLED, I underwent an extensive
11 training program. This training program included practice
12 samples, training samples, mock cases, written exams for DNA
13 and serology, an oral exam, a report-writing exam, a technical
14 review exam, a competency test, and a mock court exam.

15 **Q** Okay. And so that is not only your education but your
16 kind of in-service training in order to be an effective DNA
17 analyst for the State Law Enforcement Division; right?

18 **A** Yes, that is correct.

19 **Q** Now, had you ever had any specialized training on
20 specific types of equipment, for instance, not equipment but
21 STRmix and the STRmix programming that aids you in giving a
22 DNA result?

23 **A** Yes, I have.

24 **Q** And tell us about what that program is like.

25 **A** STRmix or "Star Mix" is our statistical software program.

1 When we adapted this software program, I underwent a four-day
2 workshop training with one of the developers of the software.
3 I also received in-house departmental training, passed a
4 competency test, and I also was a member of our validation
5 team for the software program.

6 Q Okay. And, in short -- and the validation team is a way
7 to make sure that the software is working and giving accurate
8 results?

9 A Yes, that is correct.

10 Q A layperson's way to say that. Okay.

11 And have you been qualified as an expert in courts across
12 the state of South Carolina?

13 A Yes, I have.

14 Q And have you testified in court before as well?

15 A I have.

16 MR. HIXSON: Okay. At this point, we move Agent
17 Dewane -- we'd offer her as a witness, as an expert, in the
18 forensic DNA analysis.

19 MR. MCGUIRE: Without objection.

20 THE COURT: All right. I find this witness to be in the
21 expert in the field of forensic DNA analysis.

22 BY MR. HIXSON:

23 Q Okay. Let's talk about what the field of forensic DNA
24 analysis is. I think you mentioned a little bit about it,
25 about kind of the real basic, for laypersons, about what DNA

1 is, DNA deposit on a spot, and how it's gone about gathering
2 it, and then, ultimately, going to you for processing to
3 develop a profile, and then generating a report.

4 **A** DNA stands for deoxyribonucleic acid. This is a chemical
5 that's found in all of our bodies. We get half from our
6 mother and half from our father, and aside from identical
7 twins, no two people will have the same DNA profile.

8 As an agency, when we receive evidence with a DNA
9 request, we undergo four processes. The first process is
10 called DNA extraction, meaning we separate that DNA from the
11 physical evidence and purify it.

12 The second step is called quantitation. This just means
13 we're determining how much DNA we're working with.

14 The third step is amplification, meaning we're making
15 millions of copies of the DNA to a level that our instruments
16 can detect.

17 And the final step is called electrophoresis, and this is
18 just creating a visual representation of your biological DNA,
19 and that visual representation is what we call the DNA
20 profile.

21 **Q** Okay. So, in a DNA profile, for laypersons like all of
22 us, does a DNA analyst take a look at an allele, or a little
23 segment of chemical, at a particular location on a DNA helix
24 or DNA chain to determine what that DNA profile might look
25 like?

1 **A** Yes. We look at 24 locations on your DNA, and each of
2 those locations will have a series of numbers, and these
3 numbers are what we use for comparison.

4 **Q** And so those numbers, for lack of a better term, if I had
5 24 fingers, there were 24 different locations, and you get an
6 allele from your mom, allele from your dad. Is that why there
7 are so many different permutations or different combinations
8 of allele locations to separate one person from another?

9 **A** Yes. The number I referred to is called an allele, and
10 you get one from your mother and one from your father, and
11 there are many ways that you could have different combinations
12 of that.

13 **Q** Okay. So the process of taking a piece -- let's just say
14 you have a standard, a suspect standard like a known standard.
15 In other words, you have a buccal swab from a person you know
16 who that person is, what do you do with that item?

17 **A** When we have a known standard from an individual, as
18 stated, it's usually a swab from inside someone's cheek. We
19 will develop a DNA profile from that, and we compare that
20 known standard profile to the evidence profiles.

21 **Q** Okay. So once you develop that profile, kind of
22 graphically, what does it look like for you when you first
23 see, you know, that profile being developed? Kind of what
24 does it look like? Is it a series of graphs with numbers in
25 certain locations?

1 **A** Yes. The visual representation is in the form of peaks
2 with numbers, and those numbers are your DNA profile. And we
3 match -- we compare those to the same peaks and numbers for
4 the individuals.

5 **Q** Okay. So let's say, for instance, you take a sample from
6 me that you know is my swab, you know it's me, and then you
7 develop a profile and say, "Okay. Scott Hixson's profile is
8 two numbers here, two numbers here, two numbers here, two
9 numbers here," all the way down to 24; is that right?

10 **A** That's correct.

11 **Q** Okay. Then what happens -- okay. So we have that. And
12 that is any known standard profile; is that safe to say?

13 **A** Yes.

14 **Q** So, in a criminal case, is it common for you to get a
15 known sample? In other words, you know someone collected a
16 sample from a person, and you know that that profile is that
17 sample because of the chain of custody information. You know
18 that's where that came from; is that right?

19 **A** Yes, that is correct.

20 **Q** Okay. And then now the question -- and please correct me
21 if I'm wrong -- the question is what happens if you have an
22 unknown sample? In other words, law enforcement takes a swab
23 from a location that you don't know, it's not a known swab but
24 you have to process that swab to see if you can get a DNA
25 profile from that. Can you describe that process?

1 **A** Yes. So the first step is to either -- we can have a
2 swab submitted by the agency where they actually collected the
3 DNA from the evidence item, or we can receive the physical
4 evidence item, such as a shoe or a hat, and we can collect the
5 DNA from that.

6 Once we have a swab, we then go through those four
7 processes that I stated earlier, and once we have the DNA
8 profile, we determine if it is a single person or if there is
9 a mixture of DNA, meaning that multiple people are
10 contributing to the same item. Whereas, if I were to touch
11 this table and then someone else behind me were to touch it,
12 it's possible that I would have -- there would be a mixture of
13 both of our DNA there.

14 **Q** Okay. So when you're looking at this graphic interface
15 we talked about -- and sorry about the chart -- where it has
16 peaks on it like this and there's 24 of those, and you
17 normally would see two numbers at that location, two numbers
18 at this location, two numbers at this location, all the way to
19 24, right? And then suddenly, at this location, you see three
20 numbers, does that indicate to a trained forensic scientist
21 that there may be a mixture of more than one person's DNA
22 profile in the profile you developed?

23 **A** Yes. In that scenario, that would trigger me to wonder
24 if there's more than one individual present.

25 **Q** Okay. So let's talk about where DNA itself comes from.

1 Is it true that it comes from a cell -- a human cell?

2 A Yes, that is correct.

3 Q And DNA really doesn't matter distinguished between a
4 cell in blood or a cell in semen or a cell on your skin;
5 right? A human cell is a human cell; is that right?

6 A That is absolutely correct.

7 Q So the distinction between if it is a skin cell versus
8 blood is really only how it got on something, not really the
9 science behind DNA; is that safe to say?

10 A Yes, that is correct.

11 Q So, for your purpose, when you find it comes to the lab
12 on a swab, you really aren't privy to what went on in the
13 crime scene and why this swab may matter. You're just trying
14 to extract a profile from it; is that safe to say?

15 A Yes, that is correct.

16 Q Okay. I think that's a pretty good foundation. So, in
17 this particular case --

18 MR. McGUIRE: Judge, I'm sorry, I don't mean to
19 interrupt. Can we approach?

20 THE COURT: Yep.

21 BENCH CONFERENCE

22 (The following bench conference was held outside of the
23 hearing of the jury and others:)

24 MR. McGUIRE: Sorry I forgot to do it before she started
25 testifying. I just got to renew that suppression motion on

1 DNA, if I can just be preserved for the record that I renewed
2 it.

3 THE COURT: Okay. We'll do that.

4 MR. MCGUIRE: Sorry I didn't do it before she started.

5 MR. HIXSON: Yeah, and then, I guess, after, if it comes
6 in the 403 bounds and you think it's probative versus
7 prejudicial.

8 MR. MCGUIRE: Yeah, yeah, yeah.

9 MR. HIXSON: I'll just keep saying that because Phillips
10 keeps --

11 MR. MCGUIRE: Yeah, I understand. Yeah, yeah.

12 THE COURT: I mean, do we need to excuse the jury and do
13 it now?

14 MR. MCGUIRE: No, no, no. We'll just create the record
15 after the fact.

16 THE COURT: All right. That will be good.

17 (Open court resumes as follows:)

18 BY MR. HIXSON:

19 Q Okay. I'm just trying to see if we got the general
20 scientific concept down before we talk about case specifics.

21 So I guess let's finish this hypothetical. Okay? So you
22 have a known standard, a buccal swab from somebody that's
23 generated. Maybe it's a suspect. You know what that profile
24 looks like. You develop the profile. You develop the numbers
25 of the locations, and now you have this kind of chart that you

1 go, "Okay, I know what this profile looks like."

2 **A** Yes, that is correct.

3 **Q** Okay. Now, we're going to move down here to this unknown
4 profile, and the process to develop that profile is exactly
5 the same?

6 **A** Yes, that is correct.

7 **Q** Just you don't have the -- don't know exactly what
8 profile that's attributed to yet; is that right?

9 **A** Exactly.

10 **Q** And so your question is, take this known pattern and
11 compare it over to this pattern and see whether or not you can
12 make any expert opinion according to these two patterns; is
13 that safe to say?

14 **A** Essentially, yes.

15 **Q** But it gets a little more complicated if you see multiple
16 numbers at these locations and you're going, "Hey, maybe
17 there's a mixture with somebody"; is that right?

18 **A** Yes, that is correct.

19 **Q** Now, tell us what process you go to if you develop the
20 profile but it looks like maybe there's a mixture between a
21 couple of people, how you deconvolute that to come up with an
22 opinion.

23 **A** The very first step, when I realize that there's more
24 than one person, is to determine how many people are actually
25 in the mixture. We know this and can identify this through

1 our training.

2 Once I determine how many people are in that profile, we
3 then turn to our software program for statistics called
4 STRmix. This program is what we call a probabilistic
5 genotyping system. All that means is that it's a combination
6 of biological modeling, meaning how many people are in the
7 mixture, and how much DNA each person is contributing to the
8 mixture; that, combined with statistical theory and
9 mathematical calculations.

10 The two basic steps for the software program are, one, it
11 deconvolutes the DNA profile, meaning it breaks it down into
12 every possible combination that could explain the profile
13 we're looking at, and the second step is that, when we compare
14 a known standard to it, it will then make a determination and
15 calculate a likelihood ratio associated with that individual.

16 Q Okay. So when you're talking about statistical software
17 and things like that, it sounds somewhat complicated, but let
18 me ask you a layperson's question. The statistics inside the
19 program, the computer program itself, if you had a piece of
20 paper and a pencil and enough time, could you write out in
21 actual long addition, kind of like a calculator adds up stuff
22 fast for an engineer and mathematician, could you take the
23 time, with a piece of paper, and chart out all the
24 combinations and form an opinion just from that, if you had
25 enough time to do that?

1 **A** Yes, I was trained in how to calculate all of this by
2 hand.

3 **Q** Okay. But, obviously, there's a lot of time and a lot of
4 work; right?

5 **A** That is correct.

6 **Q** So instead of using a calculator, as an engineer, I guess
7 you use STRmix as an forensic scientist; is that safe to say?

8 **A** Yes.

9 **Q** Okay. Then once you get a result that comes out from
10 STRmix, do you do anything to make sure that the output from
11 the computer program, you verified the accuracy of that
12 somehow?

13 **A** Yes. We have a large output, and we evaluate every
14 aspect of that before we even compare known standards to the
15 broken-down profiles.

16 **Q** Okay. So once you have a known standard like, "Hey, I
17 think this may be a known individual," known -- me, and
18 compare it to an unknown standard and you get a result from
19 STRmix, how do you report that? How do you communicate those
20 findings to police, to the courts, to the juries? What form
21 do you use to try to explain that to them?

22 **A** Whenever there is a possible positive association
23 associated with one of those known standards, we report that
24 with a statistic showing weight to what that number means.

25 **Q** Okay. So, to use kind of good old-fashioned scientific

1 hypothesis to say, I'm going to pose Question A and then I'm
2 going to compare it to -- pose it to Question B and then I'm
3 going to see which one is the more likely answer to the
4 question.

5 **A** Yes. We use likelihood ratios. This statistic is just a
6 comparison of two possible scenarios that could best explain
7 the DNA profile. The scenarios are always, Scenario 1, the
8 individual that we're comparing to the profile is included
9 versus Scenario 2, that they're excluded. And then the number
10 that we report is supporting which of those two scenarios is
11 more likely to explain the DNA profile.

12 **Q** So is it safe to say, like in general scientific theory,
13 like, by way of example, that you have -- you want to
14 determine whether or not a fertilizer helps a tree grow. So
15 you plant a tree here and you plant a tree here. Don't
16 fertilize this one; fertilize this one. And if this one grows
17 faster, is it safe to say -- perhaps your hypothesis might be,
18 "Hey, in my opinion, fertilizer helps the tree grow because
19 this grew better than this one"? Is that an example of a
20 hypothesis, the concept of comparing two propositions to
21 determine an outcome?

22 **A** Yes.

23 **Q** Okay. So, in this situation, you compare to an unknown
24 and then compare it to the profile, and then you're able to
25 develop a likelihood ratio between the two to say, "In my

1 expert opinion, we believe it's more likely that this explains
2 the stuff that we found"?

3 **A** Yes.

4 **Q** Okay. So did you do that process in this case?

5 **A** I did.

6 **Q** All right. And I'm going to refer you to your report
7 dated September 13th of 2021. Okay? And let me show you a
8 couple of items, been marked as State's 58. It's already into
9 evidence. And see if those items -- I'm handing up swabs from
10 the crotch of the gray pants, a reddish stain; another swab,
11 which is from the thigh area of the red stain in grayish
12 pants; as well as the knee of gray pants. I say that because
13 I believe they're all reflected in your report.

14 **A** Yes, that is correct.

15 **Q** Okay. So, to be organized, I think, did you perform any
16 -- extract any DNA -- did you perform any analysis on those
17 items of evidence?

18 **A** Yes. I performed analysis on all three of these items.

19 **Q** Okay. And to compare those unknowns that are in that
20 bag, did you have any known standards that you compared that
21 to?

22 **A** There were two known standards that were completed under
23 another analyst, and I used those two standards to compare to
24 this evidence.

25 **Q** Okay. And I'm specifically drawing your attention to did

1 you have a known DNA sample, a buccal swab, from Bradford
2 Britton?

3 A I did.

4 Q And did you have a known DNA buccal swab standard from
5 Derrick Rivera?

6 A I did.

7 Q And were you able to develop DNA profiles from those
8 buccal swabs?

9 A The analyst who developed the DNA profile from those
10 buccal swabs was Agent Sara Goodman. I used her profile then
11 to compare it to my standards or to my evidence. I apologize.

12 Q Okay. So you know that this profile with these numbers
13 in these locations is Bradford Britton's, and you have one
14 with known alleles at known locations on Derrick Rivera; is
15 that right?

16 A Yes, that is correct.

17 Q Okay. And now comes in these unknowns; is that right?
18 The unknown swabs?

19 A Yes.

20 Q And did you determine testing and were you able to
21 extract readable DNA profiles from those swabs from the gray
22 pants?

23 A Yes, I was.

24 Q So let's go to item of Evidence No. 1 on your report.
25 Okay? And what does that read?

1 **A** Item 1 are swabs from the crotch area of gray pants.

2 **Q** Okay. When you developed a profile off of that, were you
3 able to form any expert opinion concerning how many people may
4 have contributed to that? Was it a mixture or not?

5 **A** The DNA profile was interpreted as single source.

6 **Q** Okay. What does that mean?

7 **A** Meaning one individual contributed the profile.

8 **Q** So we're not talking about multiple locations here.
9 We're going, "Hey, wait a minute. This is one, two, one, two,
10 one" -- you know, multiple different alleles but consistent
11 with just one person's DNA sample there; is that right?

12 **A** Yes, that is correct.

13 **Q** Okay. And did you formulate, in Proposition Set 1, a DNA
14 profile on that item?

15 **A** I did.

16 **Q** And what were the findings on Proposition Set 1 on the
17 swab from the crotch of the gray pants?

18 **A** Situation 1 is that Derrick Rivera contributed the DNA
19 profile versus Scenario 2 where an unidentified, unrelated
20 individual contributed the DNA profile, meaning not Derrick
21 Rivera. The result of those two possibilities is the DNA
22 profile is approximately 210 million times more likely if
23 Derrick Rivera contributed the profile than if an
24 unidentified, unrelated individual contributed the profile.

25 Under those same scenarios but comparing Bradford Britton

1 to the profile, the result of that comparison is Bradford
2 Britton is excluded as the contributor to the profile under
3 the listed propositions.

4 Q Okay. So is the crotch area swab, it's a single-source
5 swab, developed the profile, compare it to Derrick and
6 Bradford Britton's, and your expert opinion is, when you
7 compare Derrick's to an unknown, it's 210 million times more
8 likely it's Derrick Rivera's in your expert opinion?

9 A It's 210 million times more likely to see that DNA
10 profile if Derrick Rivera contributed the profile rather than
11 if it was unidentified, unrelated individual that contributed
12 the profile.

13 Q Very good. And the same profile, the same thing you're
14 looking at, you also ran a proposition set and say let's just
15 see if the profiles match if we assume it's Bradford
16 Britton's?

17 A Yes, that is correct.

18 Q And based on that, you were able to exclude him meaning
19 he was excluded from that profile?

20 A Yes, that is correct.

21 Q Okay. Let's go to swab from the right thigh area of gray
22 pants. All right? That would be your Item 2?

23 A Yes.

24 Q Okay. Were you able to develop a DNA profile from that
25 unknown swab submitted to you by Horry County Police

1 Department?

2 **A** Yes, I was.

3 **Q** Okay. And based on that profile that you looked at
4 these, were you able to determine whether it was a single
5 source or was it a mixture?

6 **A** Yes. The DNA profile was interpreted as a mixture
7 originating from two individuals.

8 **Q** Okay. So, at these locations, instead of seeing two
9 numbers, you're seeing a couple more numbers and going, Man,
10 this may be a mixture of some kind; right?

11 **A** That is correct.

12 **Q** Okay. Then, based on that, were you have able to
13 deconvolute that mixture by using STRmix?

14 **A** I was.

15 **Q** And please tell us the results.

16 **A** The first scenario is Derrick Rivera and an unidentified,
17 unrelated individual contributed to the mixture versus the
18 possibility or Scenario 2 that it's two unidentified,
19 unrelated individuals that contributed to the mixture.

20 The result of that comparison is: The DNA profile is
21 approximately 13 million times more likely if Derrick Rivera
22 and an unidentified, unrelated individual contributed to the
23 mixture than if two unidentified, unrelated individuals
24 contributed to the mixture.

25 Using those same scenarios but comparing Bradford

1 Britton, the result of that comparison is: Bradford Britton
2 is excluded as a contributor to the mixture under the listed
3 propositions.

4 Q Okay. And let's talk about Swab No. 3. That's from the
5 right knee area of the gray pants. That swab, were you able
6 to develop a DNA profile from that unknown sample?

7 A Yes, I was.

8 Q And based on your developing a profile and reviewing that
9 profile, were you able to interpret whether that was a single
10 source or a mixture of some kind?

11 A Yes. The DNA profile was interpreted as a mixture
12 originating from two individuals.

13 Q Okay. And then, based on that interpretation, were you
14 able to deconvolute that to the point that you developed an
15 opinion as to the more likely scenario explaining that
16 profile?

17 A I was.

18 Q Okay. Please tell this jury.

19 A The first scenario is Derrick Rivera and an unidentified,
20 unrelated individual contributed to the mixture versus
21 Scenario 2 where it's two unidentified, unrelated individuals
22 that contributed to the mixture.

23 The result of that comparison is: The DNA profile is
24 approximately 180 septillion times more likely if Derrick
25 Rivera and an unidentified, unrelated individual contributed

1 to the mixture than if two unidentified, unrelated individuals
2 contributed to the mixture.

3 Using those same scenarios but comparing Bradford
4 Britton, the result of that comparison is: Bradford Britton
5 is excluded as a contributor to the mixture under the listed
6 propositions.

7 Q Okay. Now, another thing that -- my understanding is
8 another thing that SLED tries to do, instead of using numbers
9 to try to explain this, that you try to use words or phrasing
10 to try to relay the findings of your expert opinion; is that
11 right?

12 A Yes. We have what we call a verbal scale, and basically,
13 it's just using words to help add a meaning to the number.

14 Q Okay. And you actually have a scale, is that right, that
15 talks about the number, the likelihood ratio, and then words
16 you try to use to translate for juries and stuff what we're
17 trying to say here. Okay? So could you explain that just for
18 a second?

19 A Yes. We have different categories that go up in strength
20 of the number. So if you have a likelihood ratio between 2
21 and 99, that is in our weak support range. A likelihood ratio
22 of 100 to 9,999 is our moderate support range. 10,000 to
23 999,999 is our strong support range. And a likelihood ratio
24 of 1 million or greater is in our very strong support range.

25 Q Okay. So your SLED's expert opinion that very strong

1 support for the proposition that this DNA profile was
2 supported by a certain hypothesis starts at 1 million, right,
3 for very strong support, the highest category?

4 **A** Yes, that is correct.

5 **Q** And of the three swabs that you're giving your expert
6 opinion on, as you developed a DNA profile from them, range
7 anywhere from 13 million up to the likelihood ratio is 180
8 septillion times for Proposition 1 that Derrick Rivera and two
9 other individuals explain that mixture over two other
10 unidentified people; isn't that right?

11 **A** Yes.

12 **Q** Thank you. I have no further questions on -- my
13 understanding is these are the items of evidence that you
14 tested, and Sara tested several more; is that right?

15 **A** That is correct.

16 **Q** Okay. I have no further questions. Thank you for what
17 you do.

18 THE COURT: All right. Cross-examination?

19 MR. MCGUIRE: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. MCGUIRE:

22 **Q** I'm just going to ask you if a certain scenario could be
23 consistent with your analysis. Derrick Rivera owns the pair
24 of pants from which the swabs came from, discards them in a
25 house. Unidentified person wears the pants, discards them,

1 and then they're swabbed, and you test the swabs. That's
2 consistent with your findings?

3 **A** Yes, that would be a possible scenario that could cause
4 my results.

5 MR. MCGUIRE: No further questions.

6 THE COURT: Anything on redirect?

7 MR. HIXSON: Just one.

8 REDIRECT EXAMINATION

9 BY MR. HIXSON:

10 **Q** Just to make sure we're clear, that all three of these --
11 Bradford Britton are excluded from all three of these; is that
12 right?

13 **A** Yes, that is correct.

14 **Q** And the first one is a single source, not a mixture of
15 any kind; right?

16 **A** That is correct.

17 MR. MCGUIRE: I have no further questions.

18 THE COURT: All right. You may step down.

19 Let me see the attorneys for a second.

20 BENCH CONFERENCE

21 (The following bench conference was held outside of the
22 hearing of the jury and others:)

23 THE COURT: How long is your next witness?

24 MR. HIXSON: It's Sara. I took them out of order to try
25 to get them done since he's been up and then down three times.

1 Sara will not have the foundation that this one did because
2 trying to explain DNA --

3 THE COURT: I mean, how long? It's ten till 5:00. How
4 long do you think?

5 MR. HIXSON: 15 minutes.

6 MR. MCGUIRE: Oh, I've got a little bit more for her than
7 that.

8 MR. HIXSON: For Sara?

9 MR. MCGUIRE: Yeah.

10 MR. HIXSON: Because I don't have to do all the
11 foundation. The foundation is done. I'm just trying to keep
12 them from having to come back tomorrow morning.

13 THE COURT: Yeah, but, unfortunately, I don't know how
14 we're going to be able to, unless you're telling me we're
15 going to get done by 5:30.

16 MR. HIXSON: What time is it now?

17 THE COURT: Ten till 5:00.

18 MR. MCGUIRE: I think we can be done by 5:20 for Sara.
19 I'll bring the other guys up and down the road, but...

20 THE COURT: I mean, this jury has been at it since 9:30
21 this morning.

22 MR. HIXSON: I know. I know.

23 MR. MCGUIRE: I mean, we're going in tomorrow anyway. Do
24 you want to just break?

25 MR. HIXSON: Well, no, I don't. I want to get her done

1 now, so...

2 I told her -- she's been up and down the road. I'd like
3 to try to give it a try. See, I don't have to do all the
4 foundation for what DNA means and all that stuff with her. I
5 already did that. Now we're report reading here, and that's
6 why I thought it will go faster.

7 THE COURT: Okay. Let's go on and do this.

8 MR. HIXSON: And then be done.

9 THE COURT: At 5:30, we're cutting it off.

10 MR. HIXSON: 100 percent.

11 THE COURT: If it's in the middle of her testimony --

12 MR. HIXSON: That's fine.

13 THE COURT: -- she's going to go and come back.

14 MR. HIXSON: Fair enough.

15 THE COURT: All right.

16 MR. HIXSON: I appreciate that. Thank you, Your Honor.
17 I appreciate that. And I'll get it done faster than that.

18 THE COURT: All right.

19 (Open court resumes as follows:)

20 THE COURT: The State can call your next witness.

21 MR. HIXSON: Sara Goodman from the State Law Enforcement
22 Division.

23 SARA GOODMAN,

24 the witness, after having been duly sworn, was examined and
25 testified to as follows:

1 THE CLERK: State your full name and spell your last name
2 for the Court.

3 THE WITNESS: My name is Sara Goodman. Last name is
4 G-o-o-d-m-a-n.

5 DIRECT EXAMINATION

6 BY MR. HIXSON:

7 Q Thank you, ma'am. You're a forensic DNA analyst with the
8 State Law Enforcement Division?

9 A That is correct.

10 Q And I think I need to qualify you as an expert too.

11 MR. HIXSON: Are you --

12 MR. MCGUIRE: I'll stipulate.

13 MR. HIXSON: You'll stipulate to it?

14 BY MR. HIXSON:

15 Q So you have specialized training and education in order
16 to do your job?

17 A I do.

18 Q Okay. We have already stipulated that you're going to be
19 an expert.

20 Have you testified in court quite a few times?

21 A I have. Approximately 23 times.

22 Q Okay. And how long have you been working for SLED as a
23 DNA analyst?

24 A About six and a half years.

25 MR. HIXSON: At this time, we'd offer Sara Goodman as an

1 expert in forensic DNA science, as a forensic DNA analyst.

2 THE COURT: All right. Any objection?

3 MR. MCGUIRE: I agree.

4 THE COURT: All right. I find this witness to be an
5 expert in the field of the forensic DNA analysis.

6 BY MR. HIXSON:

7 Q So you heard -- I think you were present in the court
8 when you heard Ryan Dewane talking about the basics of
9 forensic DNA kind of as a primer for us to understand that.

10 Were you able to hear some of that testimony?

11 A Yes, sir.

12 Q Do you have anything to add to that? Would you kind of
13 concur with your colleague that that's kind of the basics of
14 what we're kind of dealing with in trying to explain your
15 results to the jury?

16 A I concur with her explanations.

17 Q Okay. Let me ask you this, generally speaking, about
18 SLED and forensic DNA: Are you the only forensic state DNA
19 laboratory in South Carolina?

20 A We are the only state laboratory, yes. There are some
21 county laboratories, but they are private laboratories and not
22 a state entity.

23 Q And, as a result of that, do you provide your forensic
24 services to state law enforcement officers for free?

25 A Yes.

1 Q And paid by the taxpayer, don't get me wrong, but they
2 don't have to pay a fee to do that. That's the difference
3 between private and public; right?

4 A That's correct.

5 Q And, as a result, do you have a significant workload?

6 A Yes, we do.

7 Q Do you have upwards of 10,000 pending DNA cases?

8 A Approximately, yes.

9 Q Okay. And, as a result of that, has the State Law
10 Enforcement Division done anything to try to minimize -- and I
11 shouldn't say "minimize" -- deal with the overwhelming amount
12 of requests for forensic services the State Law Enforcement
13 Division gets?

14 A There are a few ways that we can try to mitigate that.
15 One way for DNA cases is that, for some cases, we have
16 guidelines as to how many items we would like to test, at
17 least to begin with, just in the interest of time for both us
18 and the Agency.

19 So, for example, for a homicide, we typically ask that
20 they start with five items, and we can always go back and test
21 more than that or we can test more initially if there are
22 extenuating circumstances. But some of our guidelines like
23 that kind of help us cut down on time for both us and the
24 agency.

25 Q Okay. And so if it's not -- if it's a property crime or

1 something like that, I guess, you're trying -- SLED is trying
2 to do something to preserve precious resources, I guess, for
3 crime-fighting, given the context we're dealing with today; is
4 that right?

5 **A** That's correct. And we generally prioritize violent
6 crimes first before property crimes as well.

7 **Q** Okay. Thank you very much.

8 Now, what does -- prior to items receiving you -- from
9 time to time, do they go for additional analysis, in other
10 words, to take a look at an item and do scrapings from an item
11 to preserve them for you to see if you can extract a DNA
12 profile from it?

13 **A** Yes. At times, items will go through our serology
14 department. They will do evidence processing at times, which
15 can be things similar to scraping an item to try to --
16 typically for items of clothing, they will take a long plastic
17 stick, sort of. It looks a little like a fake sword. It has
18 a sharp edge, so they will scrape that item of clothing to try
19 to get DNA off of that, and then will then swab that stick
20 that they scraped and send us the swabs.

21 They can also test for certain serological fluids, which
22 are things like blood, semen, saliva, and also forward it to
23 the DNA department.

24 **Q** Okay. So prior to a couple of items reaching you, is it
25 your understanding they were swabbed by your department? I'm

1 specifically drawing your attention to Item 4 described as a
2 Nike shoe left on the scene. Do you recognize that?

3 **A** Yes. I did not receive the shoe itself, but it does have
4 our case and item number on it.

5 **Q** Thanks for correcting me. That's right. You wouldn't
6 see this; you'd see the swab.

7 Let me do this: So your serology would receive this, and
8 from this, would generate this; is that right?

9 **A** Yes, that's correct.

10 **Q** Let me show you what we have marked as State's 106. See
11 if you recognize that.

12 **A** Yes. These are items that were generated by serologist
13 Kimberly Spainhour and then forwarded to myself for DNA
14 analysis.

15 **Q** And most specifically, as it relates to the item I showed
16 you, which is indicated a right Nike shoe left on the scene,
17 there's a scraping or a swab from the exterior of the shoe in
18 the red area, is that right, as well as a scraping from a swab
19 from the interior of the shoe; right?

20 **A** That's correct.

21 **Q** Okay. And that was provided to you for forensic DNA
22 analysis; is that right?

23 **A** Yes.

24 **Q** Let's talk about State's 51. You wouldn't have seen
25 this, right, because it went to serology?

1 **A** Correct.

2 **Q** So is it your understanding that the serologist took
3 scrapings from the inside of this hat?

4 **A** Yes.

5 **Q** And that was provided to you for forensic DNA analysis?

6 **A** Yes. The swabs from that scraping were provided to me.

7 **Q** And also, during the course of scraping, hair was located
8 inside that as well; is that right?

9 **A** Yes. A hair was collected from the inside of the hat as
10 well.

11 **Q** And the hair from in there was also submitted to you for
12 forensic DNA testing; is that right?

13 **A** That is correct. There were two hairs from the hat that
14 were forwarded to me for DNA analysis.

15 **Q** Okay. And, finally, at some point in time, did you also
16 receive -- so you have those packets from serology to test.
17 You also received some swabs directly from -- that had already
18 been processed by the Horry County Police Department; is that
19 right?

20 **A** Yes, I did.

21 **Q** And, specifically, did you receive swabs from the
22 drawstring of a black Eastport bag?

23 **A** Excuse me as I refer to my report.

24 **Q** And I'm specifically referring to State's 50.

25 **A** Yes, I did receive that.

1 Q And that's a swab?

2 A Yes. These are swabs from the strings of the bag that I
3 processed.

4 Q Okay. Very good.

5 MR. HIXSON: At this time, I think the only thing I
6 haven't moved in yet, Your Honor, is -- this is State's 106.
7 It's marked as exterior Nike shoe, interior Nike shoe,
8 scraping from hat with dreadlocks and a hair from hat with
9 dreadlocks. At this time, we'd move State's 106 into
10 evidence.

11 THE COURT: Any objection?

12 MR. MCGUIRE: No objection.

13 THE COURT: All right. State's Exhibit 106 is admitted
14 into evidence without objection.

15 (State's Exhibit No. 106, swabs, was received into
16 evidence.)

17 BY MR. HIXSON:

18 Q And so did you go through the process? I'm trying to get
19 this jury out of here, trying to go kind of quickly.

20 Did you begin by trying to process and see if you can
21 extract any DNA profiles from those items?

22 A Yes, I did.

23 Q And so, if you can, let's go through your report as it
24 relates to those items. Let me ask you something else: Were
25 you also provided known DNA standards from certain individuals

1 of interest in this case?

2 **A** Yes, I was.

3 **Q** Specifically, were you provided a swab from Teresa
4 Holyfield?

5 **A** Yes, sir.

6 **Q** As well as Stephen Johnson, Sr.?

7 **A** Yes, sir.

8 **Q** Stephen Johnson, Jr.?

9 **A** Yes.

10 **Q** Bradford Britton?

11 **A** Yes.

12 **Q** Did you receive a swab from -- a known standard from
13 Elijah Britton?

14 **A** Yes.

15 **Q** As well as Derrick Rivera?

16 **A** Yes, that's correct.

17 **Q** So you have those known standards to compare these items
18 of evidence with known standards at these locations to see
19 what it looks like, what finding you can come up with after
20 that; is that right?

21 **A** Yes. They were used for comparison to the evidence.

22 **Q** Okay. So let's start with the swab from the strings from
23 the black bookbag. Okay? That's Item No. 2. And I'll
24 specifically draw your attention to your Proposition Set No.
25 6.

1 **A** Sure. So, for this item, the DNA profile was interpreted
2 as a mixture originating from three individuals. I also
3 performed STRmix, so I was comparing two different possible
4 scenarios to explain the profile.

5 The first was Derrick Rivera and two unidentified,
6 unrelated individuals contributed versus a second that it was
7 three unidentified, unrelated individuals. The result of that
8 comparison is: The DNA profile is approximately 31 trillion
9 times more likely if Derrick Rivera and two unidentified,
10 unrelated individuals contributed to the mixture than if three
11 unidentified, unrelated individuals contributed.

12 **Q** So as it relates to the performance of your DNA analysis
13 on the strings from the black backpack is it's 31 trillion
14 times more likely if Rivera and two unknowns contributed to
15 this than -- the support for that proposition is extremely
16 very high, very strong support for that proposition; is that
17 right?

18 **A** There is very strong support for that proposition versus
19 it being three unidentified individuals.

20 **Q** Okay. And then let's go to Proposition -- make sure I'm
21 on the right one; there's a lot going on here.

22 So let's go to swabs from the exterior, left side,
23 gray/black Nike shoe. Okay?

24 **A** Yes.

25 **Q** That's 4.1 for you?

1 **A** That's correct.

2 **Q** Were you able to develop a readable DNA profile from that
3 item of evidence?

4 **A** Yes. I developed a DNA profile that was a mixture of two
5 individuals.

6 **Q** Okay. Given the fact it's a mixture now, you got a
7 couple of different things here. Do you decide to take it
8 through STRmix to try to deconvolute that mixture?

9 **A** That's correct.

10 **Q** Okay. And, based on that, were you able to -- and I'll
11 refer to Proposition Set 3. Could you -- I'm sorry, I
12 apologize. On Proposition Set 3 on your DNA analysis on the
13 swab from the exterior, were you able to develop -- on that
14 mixture, could you read us Proposition Set 3?

15 **A** Yes. The two comparisons I made for this two-person
16 mixture in this proposition set are that Stephen Johnson, Jr.,
17 and an unidentified, unrelated individual contributed to the
18 mixture versus if two unidentified, unrelated individuals
19 contributed.

20 The result of that comparison is: The DNA profile is
21 approximately 100 septillion times more likely if Stephen
22 Johnson, Jr., and an unidentified, unrelated individual
23 contributed versus if two unidentified, unrelated individuals
24 contributed.

25 **Q** Okay. So that -- there's strong support for that idea to

1 explain the source of that swab on the outside of the shoe in
2 your opinion?

3 **A** There is very strong support for that first scenario.

4 **Q** Okay. Now, 4.2 is a swab from the interior of that shoe;
5 is that right?

6 **A** That's correct.

7 **Q** Were you able to extract a profile from the interior of
8 the shoe?

9 **A** Yes, I did. This was a mixture of three individuals.

10 **Q** And I'll refer you to Proposition Set 6.

11 **A** Would you like for me to read it?

12 **Q** Yes, please. I'm sorry.

13 **A** So this was a mixture of three individuals. The two
14 scenarios that I was comparing is that Derrick Rivera and two
15 unidentified, unrelated individuals contributed versus of
16 three unidentified, unrelated individuals contributed.

17 The result is: The DNA profile is approximately
18 1.2 billion times more likely if Derrick Rivera and two
19 unidentified, unrelated individuals contributed than if three
20 unidentified, unrelated individuals contributed.

21 **Q** Now, in an effort to further refine those propositions,
22 because you have three, did you propose, since your earlier
23 one said you have an exterior swab that shows Stephen
24 Johnson's profile as highly supported to be the source of --
25 on the outside of that shoe, did you run Proposition Set 10,

1 which would allege that Stephen Johnson, Jr., Derrick Rivera,
2 and an unknown sample may be the explanation for that profile?

3 Did you do that?

4 **A** I did, because for another proposition set for this same
5 item, there was an another indication that Stephen Johnson,
6 Jr., could be supported as being included. So then I ran a
7 proposition set or a likelihood ratio to see whether it could
8 be Stephen Johnson, Jr., and Derrick Rivera contributing
9 together to the mixture, along with another individual.

10 **Q** And when I say that, that's an effort to explain maybe
11 these numbers would be explained by that hypothesis?

12 **A** Yes.

13 **Q** Okay. Did you make some findings on Proposition Set 10?

14 **A** Yes. The scenarios were that Stephen Johnson, Jr.,
15 Derrick Rivera, and an unidentified, unrelated individual
16 contributed versus of three -- excuse me, individuals
17 contributed.

18 The DNA profile is approximately 33 quadrillion times
19 more likely if Stephen Johnson, Jr., Derrick Rivera, and an
20 unidentified, unrelated individual contributed than if three
21 unidentified, unrelated individuals contributed.

22 **Q** Okay. Thank you. And, if I can, is it the case -- we're
23 not just dealing with numbers, what STRmix reads. Are they
24 also dealing with the allele length in addition to the number
25 which makes the possible combinations to be more and more

1 unique in your proposition sets?

2 **A** That's correct. So as Agent Dewane explained before, we
3 have peaks that we look at that are the numbers that are
4 represented. Those peaks can have different heights, and that
5 is because sometimes people can share the same numbers or they
6 can get the same number from their mother and father. So we
7 take that information into account as well when we are
8 deciding how many individuals are in a mixture.

9 **Q** All right. So we're not just talking 24 numbers times
10 two. We're talking lengths and frequency of a lot of other
11 stuff that really makes it more and more unique in your
12 proposition sets; is that safe to say?

13 **A** Yes, that's correct.

14 **Q** And also 8.2.2 -- or let me back up. I skipped one, I
15 believe. Maybe I went out of order. Where is it? There it
16 is. I'm sorry. Very top of the page.

17 8.1. Did you process a swab from the scraping of the
18 interior of a red, green, and yellow hat with dreadlocks that
19 were on the crime scene?

20 **A** Yes, I did.

21 **Q** And were you able to develop a DNA profile from that
22 item?

23 **A** Yes, I did. Yes, it was a mixture of two individuals.

24 **Q** Okay. And then, as you processed that -- can you go to
25 Proposition Set 2?

1 **A** Yes. The scenarios are that Derrick Rivera and an
2 unidentified, unrelated individual contributed to the mixture
3 versus if two unidentified individuals contributed.

4 The result is: The DNA profile is approximately 180
5 septillion times more likely if Derrick Rivera and an
6 unidentified, unrelated individual contributed to the mixture
7 than if two unidentified individuals contributed.

8 **Q** Okay. And my understanding, under Proposition Set 1, you
9 were able to exclude several individuals from Proposition --
10 in Proposition Set 1 on a scraping from the inside of the
11 dreadlock hat?

12 **A** Yes. Teresa Holyfield; Stephen Johnson, Sr.; Stephen
13 Johnson, Jr.; Bradford Britton; and Elijah Britton are all
14 excluded as contributors to this mixture.

15 **Q** Okay. And then, finally -- I think this is the last one;
16 getting close -- 8.2.2, that's listed as a hair from the red,
17 green, and yellow dread. During the scraping, I think you
18 testified that a hair was taken from the inside of that hat?

19 **A** Yes, that's correct.

20 **Q** Okay. Were you able to develop a DNA profile? Were you
21 able to develop numbers on these spots to give you some
22 guidance on forming your opinion?

23 **A** Yes. This was also a mixture of two individuals.

24 **Q** Okay. And then let me see your proposition set. On
25 Proposition Set 5, I believe, is --

1 **A** Yes. The scenarios are Derrick Rivera and an
2 unidentified, unrelated individual contributed versus that two
3 unidentified, unrelated individuals contributed. The result
4 is: The DNA profile is approximately 47 septillion times more
5 likely if Derrick Rivera and an unidentified, unrelated
6 individual contributed versus if it were two unidentified,
7 unrelated individuals.

8 **Q** Okay. I have got to tell you, as it relates to
9 septillion, I don't know how many zeros is in septillion.
10 What's the verbal support for septillion?'

11 **A** Septillion is in our very strong support range.

12 **Q** Okay. And so, based on those number of items that you
13 tested, right -- the five items that you test -- it's actually
14 a little over. Seven. There were quite a few items that were
15 sent to you. It looks like, based on your findings, you
16 resubmitted -- sent the other items back and said, We're done.
17 If you want this tested, we'll test some more later on, but
18 we're done testing after we got these findings; is that right?

19 **A** I tested the items that the Agency initially requested me
20 to test and sent the other items back, per their request.

21 MR. HIXSON: Beg the Court's indulgence just for a
22 second.

23 THE COURT: All right.

24 MR. HIXSON: I don't have any further questions for you.
25 Please answer any questions defense counsel has.

1 THE COURT: Cross-examination?

2 MR. MCGUIRE: Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MR. MCGUIRE:

5 Q Sara, I met with you in Columbia, and we discussed this
6 case?

7 A Yes, sir.

8 Q And we went over your findings; right?

9 A Yes, that's correct.

10 Q And some of the science behind it?

11 A Yes, sir.

12 Q And I just want to tell you, I appreciate that. It's
13 very helpful to me. And I hope I understand it better now
14 thanks to your help.

15 One -- let me give you a couple of scenarios, and you
16 just tell me if it's consistent with your analysis. Okay?

17 Scenario No. 1: Derrick Rivera wears a shirt, some
18 pants, leaves them at another person's house where he hangs
19 out, and an unidentified person uses his shirt, his pants.
20 The unidentified person handles the hat, the backpack, that
21 sort of thing. And that explains why his DNA is on all of
22 these items, right, through a principle calls transference?
23 That could be possible?

24 A That could be a possibility for how his DNA got on the
25 items.

1 Q Okay. It's possible he's never touched, worn, or handled
2 a red, yellow, and green hat that you got swabs from?

3 A It could be possible.

4 Q It's possible he's never handled or touched or worn this
5 backpack that you got swabs from?

6 A It could be possible, yes.

7 Q It's possible he's never worn, handled, or touched the
8 shoes?

9 A It's possible, yes.

10 Q In all of these items, there was, in fact, somebody
11 unidentified? Their DNA is on all of these items; right?

12 A Yes. I believe there are mixtures for all of the items I
13 testified to.

14 Q And we don't know who the unidentified person is, do we?

15 A We do not.

16 Q If you had information from a law enforcement officer
17 saying that one of the items we recovered appears to be a face
18 covering that the suspect wore to rob a place and then we had
19 further information that that was ripped off of the suspect's
20 face and the victim was, unfortunately, murdered and
21 fingernail clippings were taken from the forensic pathologist,
22 and a law enforcement officer in this case said, "Could you
23 please test the fingernail clippings," you would do that?

24 A I would, yes.

25 Q If you got a phone call from a law enforcement officer in

1 this case saying, "We have video of the robber scooping money
2 out of a wooden cash drawer," and they said, "We have swabbed
3 that wooden cash drawer and we'd like you to test those
4 swabs," you would do it?

5 **A** Yes. I can test what they request.

6 **Q** If you had information from a law enforcement officer
7 that they had a gun, and witness testimony indicated there was
8 a fight, a struggle between the suspect and the victim, and
9 the law enforcement officer said, "I think they may have
10 struggled over the gun and we swabbed it; could you test it,"
11 you would say yes, you would?

12 **A** Yes, I could, if they requested it.

13 **Q** And, again, it's possible that Derrick Rivera has never
14 handled, touched any of this stuff; right?

15 **A** It could be a possibility.

16 **Q** That's all I have. Thank you.

17 THE COURT: Redirect?

18 MR. HIXSON: Yes, just briefly.

19 REDIRECT EXAMINATION

20 BY MR. HIXSON:

21 **Q** I think you heard our conversation we had with Ryan
22 Dewane on this idea of epithelial DNA and DNA coming off your
23 skin cells, that versus fluid, semen, those kind of things
24 like that. Your expert opinion indicates that Derrick
25 Rivera's DNA -- I mean, the probability ratios are

1 astronomical relating to the proposition that Derrick Rivera's
2 DNA is present on those items.

3 Now, your question is more of a factual inquiry on how
4 the DNA gets there; is that safe to say?

5 **A** I'm sorry; could you rephrase?

6 **Q** Is it safe to say those questions are relating to how DNA
7 gets located on it, not so much that the DNA is on it?

8 **A** Correct, yes.

9 **Q** And so that's a factual interpretation by folks -- crime
10 scene, juries, and anything else on how it got there. Your
11 testimony is relating to whether or not it's present; is that
12 safe to say?

13 **A** That's correct.

14 **Q** And let's talk about the epithelial stuff. You know, if
15 everybody's got dandruff or stuff on your shoulder, you
16 understand the concept of skin cells coming off; right?

17 **A** Yes.

18 **Q** And so, if you're living in a house or in an individual's
19 house, there's a pretty high likelihood that the person that
20 lives in that house has skin cells coming off in their house.
21 That's why you vacuum your carpet; right?

22 **A** It could be possible that their skin cells would be in
23 the house.

24 **Q** Sure. And so if items were in an individual's house,
25 it's a pretty high likelihood that the items might have DNA

1 from the person that lives in that house?

2 **A** It is possible, yes.

3 **Q** Such as items in Bradford Britton's house would have
4 Bradford Britton's DNA on them?

5 **A** That is possible.

6 **Q** And Bradford Britton is excluded three times; is that
7 right? Four, actually.

8 **A** I believe so, yes. I'd have to check my report.

9 **Q** No further questions. Thank you so much. I didn't mean
10 to be dismissive. I'm sorry.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Ladies and gentlemen, it's 5:20.
14 I think we're going to call it a day. I'm going to allow you
15 to go home for the evening. Leave your notepads in the jury
16 box. Do not discuss the case, even among yourselves. It's
17 too early for deliberations. Don't conduct any independent
18 investigation.

19 Hope everybody has a good evening. Please be back at
20 9:15 tomorrow morning. Thank you very much.

21 Everyone else please remain seated while the jury is
22 excused.

23 (The jury exited the courtroom at 5:21 p.m.)

24 THE COURT: All right. Anything from the State before we
25 recess?

1 MR. HIXSON: No, sir. And thank you for your patience.
2 I wanted to get those two done.

3 THE COURT: You got another witness?

4 MR. HIXSON: Overall?

5 THE COURT: Yeah. How many more witnesses have you got?
6 And I'm just doing it for planning purposes?

7 MR. HIXSON: We've got to deal with Colleton County.
8 We'll talk about that here in a second. And also Sean Wydra.
9 And we have Jana Weaver from SLED. She's from Columbia.

10 THE COURT: All right. I just wanted to make sure, just
11 for planning purposes.

12 Now, you wanted to go ahead and put something on the
13 record?

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: All right. Let me heard from you.

16 MR. MCGUIRE: Yeah, I just wanted to put on the record
17 that, during the first SLED agent's testimony regarding DNA,
18 before she got into the specifics of this case, Mr. Hixson and
19 I approached the bench, and I just placed on the -- or I told
20 the Court that I was objecting or renewing my objection
21 regarding the DNA in this case pursuant to Jones, Council,
22 Phillips, and Rule 403. I just wanted to put that on the
23 record.

24 THE COURT: All right.

25 MR. HIXSON: Yes, Your Honor. Your Honor ruled on this

1 pretrial, and at that time, you reserved some discussions
2 relating to 403 balancing, specifically a finding by the
3 Court of the probative value of the testimony versus its
4 prejudicial effect. And we would just ask the Court to make a
5 ruling on that, and we would submit that the evidence is
6 presented a factual basis as well as the testimony as highly
7 probative of an issue that the jury has to decide, and its
8 prejudicial effect has been minimized as much as we possibly
9 can. We'd ask the Court to find on the record balancing under
10 403.

11 THE COURT: All right. I do find that it is reliable,
12 admissible, and that the probative value outweighs any
13 prejudicial effects, so I will allow it. All right?

14 MR. MCGUIRE: Thank you, Judge.

15 THE COURT: Thank you.

16 All right. Anything from the State before we recess?

17 MR. HIXSON: No, sir.

18 THE COURT: Anything from the defense?

19 MR. MCGUIRE: No, sir.

20 THE COURT: All right. We'll be in recess. I'll try to
21 take the bench at 9:30 tomorrow morning. All right. Thank
22 you very much.

23 (At 5:23 p.m., the trial was adjourned until Tuesday,
24 October 21, 2021, at 9:30 a.m.)
25

CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Horry)

I, Bobbi J. Fisher, Registered Professional Reporter
(RPR) and Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the proceedings
had and evidence introduced in the trial of the captioned case
in the General Sessions Court for Horry County, South
Carolina, on the 20th of October, 2021.

Prepared: January 22, 2022

 /s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter

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1 STATE OF SOUTH CAROLINA

2 COURT OF GENERAL SESSIONS

3 COUNTY OF HORRY

4 -----x

5 STATE OF SOUTH CAROLINA,)

6 Plaintiff,)

7 vs.)

Transcript of Record

2019-GS-26-04928 to

2019-GS-26-04933

9 DERRICK JAJUAN RIVERA,)

10 Defendant.)

11 -----x

12 Thursday, October 21, 2021

13 TRIAL - DAY 4 of 5

14
15 B E F O R E:

16 The Honorable Benjamin H. Culbertson, Presiding Judge;

17 and a jury.

18
19 A P P E A R A N C E S:

20 Scott R. Hixson, Esq.

Attorney for the State

21 William S. McGuire, Esq.

22 Attorney for the Defendant

23
24
25 Court Reporter: Bobbi Fisher, RPR

I N D E X (Continued)

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
DET. SEAN WYDRA	
Direct by Mr. Hixson	586
Cross by Mr. McGuire	641
Redirect by Mr. Hixson	665
JANA WEAVER	
Direct by Mr. Hixson	672
Cross by Mr. McGuire	686
MATTERS OF LAW/MOTION TO SUPPRESS	690
LT. DAVID LONG	
Direct by Mr. Hixson	695
Cross by Mr. McGuire	703
PLAINTIFF RESTS	705
MATTERS OF LAW/MOTION FOR DIRECTED VERDICT	706
DEFENDANT'S RIGHTS	707
DEFENDANT RESTS	714
MATTERS OF LAW/RENEW MOTION FOR DIRECTED	714
VERDICT	
CHARGE CONFERENCE	715

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:40 a.m.)

THE COURT: All right. Anything from the State before we bring in the jury?

MR. HIXSON: No, sir.

THE COURT: Anything from the defense?

MR. McGUIRE: No, sir.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 9:42 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. Hope everybody had a good evening. Again, I want to thank you very much for being prompt and on time. That's a great assistance to the Court, and I appreciate it.

I remind you, make sure you have got your own notepads, that you don't have anyone else's notepads. Also, if you inadvertently brought any cell phones or pager devices into the courtroom, turn them off completely at this time. We're ready to resume the trial of this case.

Mr. Hixson, the State can call your next witness.

MR. HIXSON: Thank you, sir. At this time, the State would call Detective Sean Wydra from the Horry County Police Department.

DET. SEAN WYDRA,

the witness, after having been duly sworn, was examined and testified to as follows:

1 THE CLERK: State your full name and spell your last name
2 for the Court.

3 THE WITNESS: Yes, ma'am. Sean Wydra. And that's
4 W-y-d-r-a.

5 DIRECT EXAMINATION

6 BY MR. HIXSON:

7 Q Good morning, sir. How are you?

8 A Good morning. I'm doing well, sir. How about you?

9 Q I think we already know, but tell this jury what you do
10 for a living.

11 A I'm a detective with the Horry County Police Department,
12 currently assigned to the Homicide Unit.

13 Q Okay. And about how long have you worked in that
14 capacity for Horry County?

15 A Several years as a detective, and prior to that, I was a
16 patrol officer. Been a police officer for approximately 12
17 years.

18 Q Okay. And so were you working as a detective for Horry
19 County Police Department back in July 26 of 2019?

20 A I was.

21 Q And did you have an occasion to become involved in the
22 matter that's before the Court today, and that is the State of
23 South Carolina versus Derrick Rivera?

24 A Yes, sir.

25 Q Okay. Were you involved in the earlier stages of the

1 investigation and kind of right up July 26 around 9:45 and the
2 proceeding events thereafter?

3 **A** Yes, I was. I responded to the initial incident on scene
4 as a detective.

5 **Q** Okay. And then, during the course of that investigation,
6 did you, I guess, participate in fact-finding and narrowing
7 the universe of subjects down to particular individuals? And
8 specifically, I'm talking about Bradford Britton and Derrick
9 Rivera.

10 **A** I did.

11 **Q** Okay. And, at some point in time, did you come to be
12 involved and sit in on an interview with Bradford Britton
13 and -- in the Georgetown County Police Department?

14 **A** I did.

15 **Q** I'm going to show you what's marked as State's Exhibit
16 92. See if you recognize that. It's already admitted into
17 evidence.

18 **A** All right. So I do. This was a DNA consent form. You
19 see my signature at the bottom that I was a witness of, and
20 that was completed by and signed by Bradford Britton.

21 **Q** Okay. And most -- I'm handing you this document. Did
22 Bradford Britton give you this cell phone number on this
23 document?

24 **A** Yeah, he does.

25 **Q** And what is that cell phone number?

1 **A** (843) 240-0367.

2 **Q** Okay. And part of -- during the course of your
3 investigation, did you obtain a search warrant for cell phone
4 records relating to this account?

5 **A** Detective Edwards actually obtained the search warrant,
6 but I did eventually review the cell phone records for that
7 account and Derrick Rivera.

8 **Q** Thanks for correcting me. So your agency did, and then
9 you got the records to review them?

10 **A** I did.

11 **Q** Okay. And then, in addition to that, during the course
12 of that interview, did you come to understand that there was a
13 target number that was of interest in determining some facts
14 at issue in this case?

15 **A** Yes, sir.

16 **Q** And I'm going to show you what's marked as State's 91.
17 See if you recognize that.

18 **A** I do. That came from Bradford Britton's cell phone.
19 It's a contact in his phone marked Big Bro: (843) 287-8558.

20 **Q** Okay. And so, based on your written investigation at
21 that point, did you have a contact number that your agency was
22 interested in getting a search warrant for to see if you could
23 find any information relating to that phone number?

24 **A** Yes, sir.

25 **Q** And did you get information pursuant to a search warrant

1 on (843) 287-8558?

2 A I did. And Detective Edwards got the information that it
3 was eventually forwarded to me.

4 Q Okay. Now, during the course of your duties relating to
5 Horry County Police Department, of course you're a general
6 homicide investigator and violent crime investigator; is that
7 right?

8 A Yes, sir.

9 Q Did you make an effort to kind of educate yourself to
10 some degree or has your agency asked you to educate yourself
11 on these of kind of basic cell phone concepts, send you to
12 special schools or anything like that?

13 A They did, yes, sir.

14 Q Just tell us about that a little bit.

15 A So I went to a cell phone class back in the end of
16 September/early October in 2019. Basically had to do -- it
17 was put on by a company called CellHawk. It was approximately
18 five days. It had to do with cellular analysis, mapping cell
19 phone records, and also utilizing the CellHawk system. The
20 CellHawk system just basically takes the records that we
21 receive and puts them into a visual format so we can look at
22 them easier.

23 Q Okay. And so all that information that you're talking
24 about is really based on the subscriber or whatever records,
25 say Verizon or T-Mobile or AT&T, whoever the individual number

1 service provider is that's provided to you, and then you try
2 to take a look at them and read on the paper and, through your
3 education and experience, try to get some information --
4 conclusions from that?

5 **A** Yes, sir. So the cell phone companies provide us with
6 the records for the phone number that we're asking for.

7 **Q** Okay. And so did you do some of that in this case?

8 **A** I did.

9 **Q** I think probably it's a good time to talk a little bit
10 about the basics of cell phones. Super, super basic. Okay?

11 **A** Okay.

12 **Q** Are we talking about GPS-level precision here where you
13 can see where a cell phone and stuff, like the stuff that you
14 see on TV?

15 **A** Absolutely not.

16 **Q** Okay. What are we talking about here?

17 **A** We're talking about a cell phone tower, and we can --
18 depending on the record, we can say that the cell phone
19 utilized a certain cell phone tower and the signal came and
20 went in a certain direction. So we're talking a very
21 generalized area that we can say that that cell phone was in
22 based on the fact that it used a specific cell phone tower,
23 and it used a specific sector of cell phone tower.

24 Cell phone towers are split up into sectors. Most of the
25 time, they have approximately three sectors. Each sector has

1 a series of antennas, and those antennas go down to a radio
2 transceiver. And, basically, we get information back from the
3 cell phone company and we know what sector of the cell phone
4 tower was used so we can get a direction from that.

5 Q So is it safe to say -- we all know we're driving down
6 the road and you look up and see there's a cell phone tower
7 over there. I think we all, in our experience -- our life
8 experience see cell phone towers.

9 A Yes, sir.

10 Q And so those are fixed locations?

11 A They are.

12 Q But the phone that's connected to that tower,
13 theoretically, can go all the way around like a bulls-eye,
14 right, at first?

15 A Yes, sir.

16 Q But there's arrays on that tower that point like slices
17 of a pie in certain areas; is that right?

18 A That is right.

19 Q But that's a sector on that tower? Is that the right
20 term to use?

21 A Yeah.

22 Q So you kind of get a little closer, and is it safe to say
23 you get a little closer by saying there's a tower here in this
24 big circle and they were on this slice of that pie, that
25 wedge, just because it hits on that one array on this side of

1 the tower versus hitting on the array on this side of the
2 tower; is that right?

3 **A** That's right.

4 **Q** Yeah. So it's real general stuff, but it does give you a
5 little bit of a guideline, something to go by?

6 **A** It can tell us that a cell phone is in a specific area,
7 but that area is large, and we certainly cannot say that that
8 cell phone is on a certain road or an address or anything even
9 close to that.

10 **Q** And so is that information -- you know we have all heard
11 roaming, the old school phones, roaming. Is that phone
12 continuously giving information to that tower, whichever the
13 closest tower it's hitting, as the target is moving, driving
14 down the road?

15 **A** So, no, phones do not continuously give information. You
16 have to have some kind of usage on the phone, so a phone call,
17 a text message, a data session, something to that effect. You
18 know, obviously, you also could be driving down the road, and
19 if you are making a phone call while you're driving, you could
20 see one tower eventually transition to another cell phone
21 tower. The whole point of a cellular network is to have a
22 seamless operation so the phone companies position their
23 towers in strategic locations to try to make your coverage is
24 as best as possible for you as the customer.

25 **Q** Very good. So just by way to summarize, I think we're

1 getting pretty clear, if you've got a phone -- anybody has got
2 a phone in here -- and hopefully it's off by order of the
3 Supreme Court -- if we have got a phone in here, with a
4 person's phone off in that room, in this courtroom right now,
5 it's not providing any information to any cell tower on where
6 that phone is when the phone is off; right?

7 **A** We would have no idea where the phone is if the phone is
8 turned off.

9 **Q** And so if you have -- your phone off and you leave court
10 today and we go home and you don't turn your phone on and you
11 get home and "Man, I haven't had any calls today," and you
12 look at your phone and your phone has been off all day, and
13 then you turn your phone on, is the moment you turn your phone
14 on, is that going to say -- try to connect to a cell tower
15 there?

16 **A** Not necessarily, unless the moment you turn your phone on
17 you use the phone, you know, in some manner. Again, you have
18 to have some sort of usage event.

19 **Q** So from the time that you go, "Oh, man, I left my phone
20 off in court," turn it back on, and then you decide to call
21 your mom a couple of hours later, when that connects, that's
22 when you may get some location information because it's
23 hitting a tower then; is that right?

24 **A** Yes, sir.

25 **Q** Or how about if your mom called you when you were in

1 court, she forgot, she didn't know you were in court, didn't
2 know you had jury duty or a witness or something, when she is
3 sending something to you, is that giving you information on
4 where the destination phone is?

5 **A** No, not the destination phone.

6 **Q** So tell us about that a little bit.

7 **A** How so?

8 **Q** Let me back up. So you got your phone off because you're
9 in court, because the Supreme Court says you have to have it
10 off, and your mom is trying to call you.

11 **A** Okay.

12 **Q** Because your mom tried to call you and is trying to hit
13 your phone, is that going to help anybody show where you are?

14 **A** No, so that's not going to help show where the target
15 phone would be, you know, not at that point in time. I mean,
16 the cell phone records should still have the phone call on
17 them, but the records are going to show that there was not a
18 connection made. But there's not going to be any location
19 information as far as, you know, for the target phone as far
20 as the destination, you know, as far as a tower or anything
21 along those lines.

22 **Q** Okay. Very good. So I think we're getting pretty
23 good -- so the phone records that you have relating to
24 subscriber information, let's talk about information that
25 might be contained in the physical phone itself.

1 **A** Okay.

2 **Q** Okay? So when you get subscriber information, say, from
3 Verizon or AT&T or one of the providers, do they provide
4 pictures and do they provide new searches and pictures of the
5 enchilada that you cooked at your neighbor's house and all
6 that stuff in those records in Verizon?

7 **A** It depends. They can provide come content. I mean, it
8 just depends on, you know, how long they keep them and how
9 long the records are obtained and when they're obtained and
10 those types of things. I mean, if you took a picture on your
11 phone or you did other things, I mean, some of that content
12 could be obtained. Again, it just depends on how quickly you
13 get a search warrant in. There's text message content that
14 you can sometimes obtain, but those things depend on a variety
15 of factors.

16 **Q** But there's no question that Verizon isn't saving records
17 for court purposes.

18 **A** Oh, no.

19 **Q** They're saving them for business purpose; right?

20 **A** Business purpose, absolutely, yeah.

21 **Q** And so they want to get rid of -- they want to -- don't
22 be flooded with paperwork so they're rotating this stuff off
23 as time goes by in a fairly short period of time; is that
24 right?

25 **A** Yes. They don't obtain -- they keep the records

1 indefinitely, and like you said, the records are kept for
2 operation of their business, not for law enforcement or for
3 anything else.

4 Q Okay. So I guess the point that we're trying to develop
5 before we talk about the detail in this case is, if you have a
6 physical phone, you can see a look at a lot more detail of
7 what's going on in the physical phone than you can just from
8 your account information, your -- I made a call on this time,
9 this time, this time, and this time; right?

10 A I mean, theoretically, if you had the physical phone,
11 you'd be able to see everything in the phone as long as it
12 wasn't deleted or anything like that.

13 Q So, interestingly enough, is it the case that, if you
14 delete a call -- like you had a call and you delete that call,
15 but that call may still be preserved in a record from -- a
16 call detail record from Verizon because you can't delete the
17 phone call from Verizon?

18 A I mean, that would be true.

19 Q Okay. So during the course of this investigation, did
20 you perform some of this -- kind of taking a look at some of
21 these phone records on the phone of Bradford Britton's and the
22 phone of Derrick Rivera's?

23 A Yes, sir.

24 Q Okay. I'm going to hand you a couple of documents.

25 A All right.

1 Q Let me get the -- let's start with this. So let's talk
2 about the concept of a prepaid phone. All right? Just,
3 generally speaking, a prepaid phone. What are some of the --
4 a lot of different mainstream providers have prepaid phone
5 plans; is that right?

6 A That's right.

7 Q And, as a result of that, does a prepaid phone plan, is
8 that any different than an overall general phone plan where
9 you walk in an AT&T store and you set up a contract in your
10 name and your address and all that information?

11 A Well, I mean, generally, if you have a prepaid phone --
12 and I'm just going to use this as an example through TracFone.
13 You know, your subscriber information and all that would be
14 through TracFone, but TracFone would operate on, you know,
15 one of the larger cell phone networks, you know, like Verizon
16 or AT&T or something like that. They would use their cellular
17 network for the phone to operate.

18 Q So through your training and experience, is it common to
19 have someone who has a prepaid phone plan that doesn't put
20 personal biographical information in order to start that
21 account?

22 A Sure.

23 Q So it would just be a number but it wouldn't be name,
24 address, boom, boom? And sometimes, it would be auto pay,
25 checking accounts and everything linked to your phone; is that

1 right?

2 A Yes, sir.

3 Q So, in this case, 287-8558, that number attributed to
4 Derrick Rivera, was that a prepaid plan?

5 A Yes.

6 Q And were there any biographical account information
7 attached to that?

8 A It did not have his information attached to it.

9 (Counsel confer off the record.)

10 BY MR. HIXSON:

11 Q Let me show you what's been marked as State's Exhibit 96.
12 It's called Verizon account information. See if you recognize
13 that.

14 A Thank you, sir. (Reviewing document.) I do.

15 Q Okay. And tell the jury what is it that you are looking
16 at.

17 A So this has account information attached to telephone
18 number (843) 287-8558. The number that, during our
19 investigation, we were able to identify as belonging to
20 Derrick Rivera.

21 Q And is that a portion of the volume of documents that you
22 got from the search warrant for Verizon?

23 A It is.

24 Q Okay. And of interest in there, does it have -- it has
25 the target number that you just indicated; right?

1 **A** It does.

2 **Q** And does it also have any documentation in that account
3 on changes to the number attributed to that account? And the
4 number changes, in other words, you're still going to get a
5 call but you change the number repeatedly?

6 **A** It does.

7 **Q** Tell us about that.

8 **A** So, if you look on here, there's approximately five cell
9 phone number changes from July 14th, 2019, to July 24th, 2019.

10 **Q** Okay. So you have five number changes on the same
11 account holder in what period of time?

12 **A** Approximately ten days.

13 **Q** So the person that possesses that -- the account holder
14 of that phone changed that phone number five times in ten
15 days?

16 **A** According to these records, yes, sir.

17 **Q** And those are the Verizon records that provide the
18 service to that phone number; right?

19 **A** Yes, sir.

20 **Q** To the account?

21 **A** Yes, sir.

22 **Q** The prepaid account.

23 The final number, what date was the final number
24 changed -- when it changed to (843) 287-8558?

25 **A** July 24th of 2019.

1 Q It changed that number two days before the bingo parlor
2 killing; right?

3 A Yes, sir.

4 Q Let's talk about just for a second what an IMEI number
5 means to you or to law enforcement in general.

6 A It's just a way to identify a specific phone, to put it
7 simply. You know, each phone would have a unique number, and
8 that is an IMEI number, so...

9 Q For lack of a better term, is it kind of like a serial
10 number or our social security number or something like that?

11 A Sure.

12 Q To that device?

13 A Yes.

14 Q Is there any other ways, I guess, to specifically take a
15 look at what physical device is attributed to that account
16 besides the IMEI number?

17 A I mean, you have, you know, a model number, you know, a
18 type of phone.

19 Q And so, I guess, the records -- Verizon would know what
20 device they're allowing the account holder to send information
21 to through the model number and IMEI number; right?

22 A Sure.

23 Q And were you able to get some of those records from
24 Verizon?

25 A Yes, sir.

1 MR. HIXSON: At this time, I move State's 96 into
2 evidence.

3 THE COURT: Any objection?

4 MR. McGUIRE: No objection.

5 THE COURT: State's Exhibit 96 admitted into evidence
6 without objection.

7 (State's Exhibit No. 96, Verizon Record, was received
8 into evidence.)

9 (Counsel confer off the record.)

10 BY MR. HIXSON:

11 Q All right. So were you able to acquire, through your
12 search warrant, information pertaining to the model of the
13 phone attributed to 287-8558?

14 A Sure.

15 Q Okay. Take a look at State's 97, please.

16 A All right.

17 Q Okay. Do you see that that's records from the target
18 phone from the search warrant you got?

19 A I do.

20 Q And what model phone is that account attributed to?

21 A I identifies it as a K8-V, and it's says prepaid Verizon
22 wireless.

23 Q Okay. So it's a Verizon prepaid K8-V?

24 A And it's an LG.

25 Q And LG brand. Very good.

1 MR. HIXSON: We move State's 97 into evidence.

2 THE COURT: Any objection?

3 MR. MCGUIRE: No objection.

4 THE COURT: State's Exhibit 97 admitted into evidence
5 without objection.

6 (State's Exhibit No. 97, Verizon K8-V Phone, was received
7 into evidence.)

8 BY MR. HIXSON:

9 Q So is it common for modern cell phone carriers to
10 purchase from the manufacturers like Samsung or LG or Motorola
11 or any of those cell phone they market and sell in their
12 stores -- Verizon stores, AT&T stores -- and label them with
13 their own model numbers, for lack of a better term?

14 A Sure, yeah.

15 Q And those correlate with a manufacturer model number. So
16 you have the Verizon model and a manufacturer model number?

17 A Yes.

18 Q Show you what's been marked as 98. Let me show you
19 State's 98. See if you recognize that.

20 A I do.

21 Q What is that you're looking at?

22 A It's just, like, a stock photo from Verizon for an LG
23 phone, and it's the LG K8-V, also known as VS500.

24 Q So is it safe to say LG calls it a SV500 and Verizon also
25 has -- I want to make sure I say it right on the record -- the

1 8K-V? I lost track.

2 A LG K8-V.

3 Q And is that a fair and accurate representation of the LG
4 stock photos of what that phone model looks like?

5 A Yes, sir.

6 Q And the backside of that, the next picture, what is that?

7 A Just a picture of the front and back of that style of
8 phone.

9 MR. HIXSON: At this time, we would move State's 98 into
10 evidence.

11 THE COURT: Any objection?

12 MR. McGUIRE: No objection.

13 THE COURT: State's Exhibit 98 admitted into evidence
14 without objection.

15 (State's Exhibit No. 98, K8-V Photos, was received into
16 evidence.)

17 BY MR. HIXSON:

18 Q Now, Detective Wydra, at some time, did you come in
19 contact with some evidence that was recovered from Colleton
20 County and transferred back up to Horry County and was placed
21 in the Horry County evidence section?

22 A Yes, sir.

23 Q Take a look at this.

24 MR. HIXSON: I'm offering the witness State's 102.

25 BY MR. HIXSON:

1 Q See if you recognize that item.

2 A I do.

3 Q And what is that that you're looking at?

4 A That's the phone that was recovered by Colleton County
5 when Derrick Rivera was arrested.

6 Q Okay. And is there a model number on that phone?

7 A Yes. VS500.

8 Q Okay. And how would you characterize the condition of
9 the phone that you're looking at right there?

10 A It's destroyed. It's in pieces.

11 Q Okay. Also, is there a location on that phone where an
12 IMEI number, basically the social security number, of that
13 phone would be?

14 A I believe it would be right there.

15 Q And is there any indication to you that that has been
16 removed or damaged in any way?

17 A It's not there.

18 Q All right. Is there any indication that it was there?

19 A I mean, that's normally where it's kept. There is some
20 markings there where it should be. Normally, it's stuck on
21 with a --

22 Q In a corner, there is a piece of the decal left remaining
23 where it's been stripped off?

24 A Yep.

25 MR. HIXSON: At this time, we move State's 102 into

1 evidence.

2 THE COURT: Any objection?

3 MR. MCGUIRE: No objection.

4 THE COURT: State's Exhibit 102 -- what is it?

5 MR. HIXSON: It's an LG --

6 THE COURT: No, I mean, what is the exhibit number?

7 MR. HIXSON: 102. I apologize.

8 THE COURT: Okay. State's Exhibit 102 is admitted into
9 evidence without objection.

10 (State's Exhibit No. 102, LG Phone, was received into
11 evidence.)

12 BY MR. HIXSON:

13 Q Now, during the course of your investigations, have you
14 come across and had an opportunity to work on quite a few cell
15 phones during the course of these investigations?

16 A Yes, sir.

17 Q And have you seen attempts in other cases to destroy the
18 electronic value of a cell phone in other cases?

19 A Sure.

20 Q And how would someone go about if they don't want anybody
21 to be able to take a look at the inside of cell phone, through
22 your training and experience? How would they try and go about
23 to make sure that no law enforcement can see what was going on
24 inside the cell phone?

25 A You could destroy the phone.

1 Q In what way? Like physically destroy it so it won't
2 function anymore?

3 A Sure.

4 Q In your experience, is that consistent with an effort to
5 make sure no one can see what's in that?

6 A Yes, sir.

7 Q Did a pretty good job, huh?

8 A Yes, sir.

9 Q Do you know whether or not this phone was forensically
10 examined in an effort to try to see if it could somehow be
11 made to work?

12 A I believe it was sent to the Secret Service eventually,
13 and their efforts were made, but they were unable to restore
14 it.

15 Q Couldn't make it work again?

16 A Not that I'm aware of, yeah.

17 Q Thank you.

18 MR. HIXSON: Beg the Court's indulgence.

19 THE COURT: All right.

20 BY MR. HIXSON:

21 Q All right. Let's talk a little bit about -- you said
22 that you got phone records; right?

23 A Yes, sir.

24 Q When they say "call detail records," that isn't content
25 records; right? Call detail means this date and time, a call

1 exists?

2 **A** Yeah. Phone number, you know, duration of the call, who
3 called who, and things like that.

4 **Q** Okay. At this time, I'm going to show you an exhibit
5 that's been marked as State's 100. Take a look at that and
6 see if you recognize those.

7 **A** I do.

8 **Q** And what are those, so the jury understands what we're
9 looking at?

10 **A** Those are call detail records from Derrick Rivera's cell
11 phone.

12 **Q** And when you're taking a look at call detail records, is
13 it safe to say that, during the course of somebody's life,
14 there's a multitude of phone calls, phone numbers that are
15 innocent phone numbers all over the place, made to and from?
16 There's a lot of numbers in people's phones; is that safe to
17 say?

18 **A** Sure.

19 **Q** So in an investigation like that, do you try to focus on
20 a couple of numbers to compare if they're relevant or not
21 relevant to a case?

22 **A** We do. Normally, you have a vast amount of information,
23 and, you know, you've got to narrow it down to what matters
24 and what doesn't, basically.

25 **Q** So, at this point in time, were you aware of a series of

1 outright lies and story-telling and everything that Bradford
2 Britton was talking about in the run-up to this?

3 **A** Absolutely. You know, I did interview Bradford Britton
4 as well. I was in on those interviews, and he did lie to us
5 many times during those interviews.

6 **Q** Okay. So during the course of that, there was some level
7 of discussion concerning whether phone calls -- I'm just
8 trying to generally characterize it.

9 **A** Sure.

10 **Q** Whether phone calls had been made or not made or
11 communication made or not made between Bradford Britton and
12 Derrick Rivera; is that right?

13 **A** Yeah.

14 **Q** All right. And so did you make an effort to use some
15 objective information, such as cell phone records, to
16 determine whether or not any part of that was true or all a
17 lie or what?

18 **A** I did.

19 **Q** Okay. And so did you compare those phone records with
20 Bradford Britton's -- I believe it's a number ending in 67; is
21 that right? 240-0367, I think it is?

22 **A** Yep, you got it. 240-0367.

23 **Q** And then also Derrick Rivera's phone number of
24 (843) 287-8558; is that right?

25 **A** Yes, sir.

1 Q All right. And did you do that analysis?

2 A I did.

3 Q Did you read the records and see what was there?

4 A I did.

5 Q Okay. Please tell us about some of the findings you had
6 concerning those records.

7 A So there were, you know, many phone calls back between
8 the two of them on July --

9 Q I'm sorry; if you can, everything is a lot to understand.
10 So let's start the first time you see records. We know that
11 number started on the 24th; right?

12 A That's right.

13 Q So do you have any records of 287-8558 prior to the 24th?

14 A No.

15 Q All right. Next sentence.

16 A Now, you know, we don't have anything pertaining to the
17 previous phone numbers and stuff like that, obviously. But
18 I'm talking about just this number now.

19 Q And you're focusing on the 26th, right, because that's
20 when the crimes that we're here for today occurred; right?

21 A That's right.

22 Q So please tell us about any calls you see on the 25th.

23 A Okay. So, on the 25th, there are four phone calls
24 between the two of them. There's three outgoing calls and one
25 incoming call.

1 Q And when you say outgoing and incoming, what does that
2 mean?

3 A So, for an outgoing call, you know, you made a phone call
4 to somebody. For an incoming call, you received the phone
5 call.

6 Q Okay. I'm a simple man. So who called who?

7 A We're dealing with Derrick Rivera's phone records, so
8 outgoing call, Derrick Rivera called Bradford Britton.

9 Incoming phone call, Bradford Britton called Derrick Rivera.

10 Q Okay. Very good. So just let's go down. And just the
11 first time, give me an idea at that time. We don't have to go
12 down the seconds.

13 A Sure.

14 Q When is the first call? Rivera calls Britton when?

15 A Approximately 2:56 on July 25th, 2019.

16 Q The next call, please?

17 A 7:42 p.m.

18 Q Rivera calls Britton at 7:42?

19 A Yes, sir.

20 Q What's the next call that you see on the 25th?

21 A 7:53.

22 Q And who is calling who?

23 A Rivera is calling Britton.

24 Q Rivera is calling Britton.

25 And what are the timings of these calls?

1 **A** That was 2:56, 7:42, and 7:53.

2 **Q** Okay. And how long were these calls?

3 **A** The first one was 16 seconds; the second one, 13 seconds;

4 the third one, 17 seconds.

5 **Q** Those were pretty short calls, huh?

6 **A** Sure.

7 **Q** Okay. And then after -- on the fourth call now -- we're

8 up to the fourth, I think.

9 **A** Mm-hmm.

10 **Q** Okay. What's that one?

11 **A** It's at 11:58 p.m., and it's 177 seconds long.

12 **Q** And who is calling who on that one?

13 **A** That's an incoming call, so Bradford Britton is calling

14 Derrick Rivera.

15 **Q** So we have three calls earlier in the day: Rivera to

16 Britton three times.

17 **A** Mm-hmm.

18 **Q** In the teens of seconds long.

19 **A** Sure.

20 **Q** And then, towards the very end of the day on the 25th --

21 almost the 25th, like two minutes away from midnight, right --

22 **A** Mm-hmm.

23 **Q** -- Britton calls Rivera back, and they talk for how long?

24 **A** 177 seconds.

25 **Q** 177 seconds. Okay. So that's long enough to indicate

1 maybe more than just a short thing. That's a little bit of a
2 call there -- discussion there?

3 **A** They had some sort of conversation.

4 **Q** We don't know what they talked about because we don't
5 have detail or we don't have content. We have just got the
6 existence of these calls; right?

7 **A** That's right.

8 **Q** All right. Let's go into the next day, the witching
9 hour, as we talk about. That's the 26th. That's when Sparky
10 and Steve lost their life. Okay?

11 **A** Yes, sir.

12 **Q** What's the first call that you see involving these two
13 individuals on the 26th?

14 **A** So Derrick Rivera receives a call from Bradford Britton,
15 and that is approximately 11:15 a.m., and that's 109 seconds
16 long.

17 **Q** So 11, Britton calls Rivera and they talk for --

18 **A** 109 seconds.

19 **Q** -- 109 seconds. Okay.

20 How about after that? What's the next call between the
21 two?

22 **A** 12:52 p.m. And, again, Bradford calls Derrick, and
23 that's 79 seconds.

24 **Q** Okay. And then after that?

25 **A** There's one at 3:41 p.m., 28 seconds, and again, it's an

1 incoming call from Bradford to Britton -- or from Bradford to
2 Rivera. Sorry.

3 Q On the 26th, there are three calls from Bradford Britton
4 to Derrick Rivera prior to 4:00; is that right?

5 A That is right.

6 Q Okay. After 4:00 Eastern Time, are there any more calls
7 between those two individuals?

8 A Not on that day.

9 Q Right. Just on the 26th. We're just on the 26th; right?
10 Okay.

11 Now, let's talk about powering-off events that records
12 may show. Okay?

13 A Okay.

14 Q So, at some point in time, looking at these phone
15 records, do you see something that indicates to you that
16 there's a powering-off event on Derrick Rivera's phone?

17 A So there are some phone calls that occur later in the
18 day, that the phone does not appear to be receiving any signal
19 from the network, basically.

20 Q And so is that the conversation we had earlier, that if
21 you come into court and turn your phone off, there's not going
22 to be contact information on where you are at that point in
23 time?

24 A Yes, sir.

25 Q You would just know that you're deregistered from the

1 network at that point; is that right?

2 **A** Sure. We have two phone calls, and during those phone
3 calls, there's no tower information available or anything like
4 that. There was never a connection made from the phone
5 because the phone was not available to receive a connection,
6 basically.

7 **Q** Okay. So is there an indication -- let's start with one
8 thing that perhaps we can know, and that is what is the last
9 call that we know for sure that Derrick Rivera's phone
10 accepted so it contacted the cell phone tower?

11 **A** There was a phone call on July 26th, 2019, at
12 approximately 4:32 in the afternoon.

13 **Q** Okay. And that number was to what?

14 **A** That was to a voicemail.

15 **Q** The 611?

16 **A** 611.

17 **Q** He checked his voicemail?

18 **A** Yeah.

19 **Q** Right. That was the last thing, and there are Verizon
20 records that show that phone contacted that network; right?

21 **A** Yeah. So there is tower information available for that
22 phone call.

23 **Q** Right. And then, for that tower location, did you get an
24 indication of what tower that hit?

25 **A** The tower in Georgetown, South Carolina.

1 Q So we have some supporting information that shows, at
2 4:32 p.m., Derrick Rivera -- well, you can't say that. The
3 phone attributed to that phone, in other words, no one knows
4 who touched the buttons --

5 A That's right.

6 Q -- but the account hit the tower in Georgetown at 4:32?

7 A The cell phone used the tower in Georgetown.

8 Q Very good. Thank you for helping me try to be precise.

9 Then is there any information up until there's a missed
10 call around 8:14?

11 A So there's no information between those two calls, and
12 then there is a missed call at approximately 8:14, but there
13 is no -- no cell phone tower information as to what tower that
14 phone used.

15 Q Okay. Let's talk about that in more detail.

16 A Sure.

17 Q Okay. What does that mean when you're looking at those
18 phone records and you see -- is it safe to say someone tried,
19 whoever that person is, reached out to contact Derrick Rivera
20 but could not get through to him because his phone was
21 deregistered from the network?

22 A That's right.

23 Q Okay. So Derrick Rivera may not have known that phone
24 call was happening. Someone was reaching out to the number he
25 had at that moment in time, and the network is trying to --

1 **A** The phone was not available, yeah.

2 **Q** Right. And so let's talk about what time that was. Was
3 that 8:14 p.m. on July 26th of 2019?

4 **A** Yes, sir.

5 **Q** Okay. So there's evidence to show, at that point in
6 time, that phone wasn't -- that was off? There was evidence
7 to show?

8 **A** The phone could be off. The battery -- it could have
9 been turned off. The battery could have died or it could be
10 in an area where there's no coverage.

11 **Q** Okay. At some point in time, did somebody else try to
12 reach out and call Derrick Rivera's phone?

13 **A** They did.

14 **Q** And tell us about that call.

15 **A** So that one was, again, on the 26th, and it was at
16 approximately 10:36 p.m.

17 **Q** Okay. And so the next time someone tries to ask the
18 tower to find Derrick Rivera's phone so they can connect is
19 10:36 and 42 seconds p.m.; right?

20 **A** Yes, sir. Approximately.

21 **Q** But it is not connected to the network at that point?

22 **A** No. The call was very short in duration, and the records
23 indicate that it was not. There was no connection made.
24 There was no location information, no tower information, or
25 anything like that.

1 Q Okay. So we still don't know a bunch. Now, at some
2 point -- what's the next time we have a data point that we
3 know something about that phone connecting?

4 A So the following day, on the 27th, and that was at
5 approximately 1754.

6 Q So now we're going -- so let's see. We're going from
7 8:14, and we know it wasn't connected. We go to 10:36; it's
8 not connected. We go all the way to 11:00, 12:00, midnight,
9 1:00, 2:00 -- the 27th -- 3:00, 4:00, all the way to 5:00 in
10 the afternoon the next day with no activity on that phone?

11 A So that's the next time there's a usage on the phone. I
12 can't say at what point in time the phone came back on the
13 network, you know, with it being available on the network, but
14 I can say that between 26th at 10:36 and, you know, the next
15 usage on the phone where we have information available was not
16 until the following day, on the 27th, at 5:54 p.m.

17 Q Okay. At 5:54 p.m. on the 27th, the day after the double
18 murder, there's a phone call; right?

19 A There is.

20 Q And who is that phone call to and from?

21 A So that phone call was from Derrick Rivera and it was to
22 Bradford Britton.

23 Q So 5:00 the next day after the murder, the very first
24 call back from that phone is from Derrick to Bradford; right?

25 A That's right.

1 Q So, to kind of summarize, see if we can, if that's
2 accurate, we know the phone was working at 4:32, the phone
3 being 287-8558, because the call was made to voicemail then?

4 A That's right.

5 Q Don't know when it was turned off or deregistered, but we
6 know an effort was made at 8:14. At 8:14, it was
7 deregistered; right?

8 A Yeah. The phone was not available at that point in time.

9 Q We know an effort was made by -- someone reached Derrick
10 at 10:36, and it was deregistered?

11 A That's right.

12 Q And so 8:14 is about an hour and 30 minutes before the
13 murder, is that right, your understanding?

14 A Approximately.

15 Q 10:36 is 40 -- 30 minutes -- 45 minutes after the murder,
16 and it's still deregistered; right?

17 A Yes, sir.

18 Q And the next time we know it's working again is a full
19 day, and that first next phone call is from Derrick to
20 Bradford Britton; right?

21 A That's right.

22 Q Okay. Let me ask you this: During the course of you --
23 let me back up. I'll get into text content here in a second.

24 At what point in time did the service, to your
25 understanding, the records to that phone stop providing

1 account information?

2 **A** Do they stop providing account information?

3 **Q** Right, right.

4 **A** Approximately around August 1st.

5 **Q** Is that the time when Derrick Rivera was placed under
6 arrest by Colleton County --

7 **A** I believe it was early morning hours. You know, I wasn't
8 there, so I don't know the exact time.

9 **Q** Okay. Would a catastrophic failure of a cell phone
10 include shattering to the point that it doesn't work anymore?

11 **A** Would that -- excuse me?

12 **Q** Cause it to be deregistered from the network?

13 **A** Sure.

14 **Q** So was there any other point in time that you saw, from
15 the records that you have from the 24th up until the early
16 morning hours of July 31st into August 1st, was there any
17 other time that you see this period of deregistering from the
18 network? Any other time than this?

19 **A** Just give me a moment to look at the records.

20 **Q** No problem.

21 And I guess, by way to clarify that, there is a large
22 volume of cell phone usage after the -- into the 27th all the
23 way to the 31st; right? There's a lot of calls going on?

24 **A** There are.

25 **Q** Not just to Bradford and Derrick.

1 **A** Sure. I mean, during the time after the incident, there
2 may be a couple other small periods of time. Looks like on
3 the 31st. And, you know, then, obviously, into the 1st
4 eventually.

5 **Q** So it's safe to say that is the major deregistering
6 event, not just behind a concrete block building or something
7 like that?

8 **A** Yes.

9 **Q** Thank you.

10 MR. HIXSON: I'm not sure if I did this yet, but I'm
11 going to move State's 100 into evidence, if I didn't already
12 do so.

13 THE COURT: Any objection?

14 MR. MCGUIRE: No objection, Judge.

15 THE COURT: State's Exhibit 100 admitted into evidence
16 without objection.

17 (State's Exhibit No. 100, Phone Call Records, was
18 received into evidence.)

19 MR. HIXSON: If I can just generally publish to the jury
20 the concept of what we're talking about.

21 BY MR. HIXSON:

22 **Q** All right. We have mentioned briefly that sometimes when
23 you get subscriber information, you also get -- sometimes you
24 can get some content; is that right?

25 **A** Are you talking about text messages content?

1 Q Yes. Content generally speaking.

2 A Sure.

3 Q And the next question -- and you're way ahead of the game
4 -- is when we talk about text content. Can sometimes you get
5 text content?

6 A We can.

7 Q Okay. Were you able to get some text content pursuant to
8 your Verizon records request?

9 A We were.

10 Q And that is, once again, the text content would be coming
11 and going from 287-8558, which is Derrick Rivera's phone?

12 A That's right.

13 MR. HIXSON: I'm going to hand the witness what's been
14 marked State's 101.

15 THE COURT: All right.

16 (Counsel confer off the record.)

17 BY MR. HIXSON:

18 Q All right. Let me show you what's been marked State's
19 101. Take a look at that and see if you recognize that.

20 A I do.

21 Q Okay. Do those appear to be records concerning some text
22 message content that you got from your search warrant from the
23 Verizon records of Derrick Rivera's phone?

24 A They are.

25 Q Okay. Can I draw your attention -- there's quite a few

1 of them; right?

2 **A** There is.

3 **Q** And can I kind of direct your attention to early on in
4 the process and way back just before the twenty -- after the
5 24th into the 25th --

6 **A** Okay.

7 **Q** -- which kind of -- is there anything in that text
8 message to support a recent additional change of phone number
9 to 287-8558? And I think those records, right there -- when
10 you get records, the most recent text is first, generally
11 speaking. So the furthest one in time, you have to go back
12 and read the back page and work your way front; is that right?

13 **A** Sure. There is a message that says, "I got money. Call
14 this bruh. That came yesterday. I" -- I'm just going to
15 spell this; it's D-o-n-5. "...say my name over phones. Just
16 changed my num yesterday."

17 **Q** All right. So that text message on the 25th says, I
18 don't use my name over the phones, just changed my number
19 yesterday; right?

20 **A** Essentially, yes.

21 **Q** Okay. Before we get into this, let's make one little
22 point, because it's easy to get confused on it. Let's talk
23 about what GMT time is when you're looking at cell phone
24 records. Okay? I want to go back in time. I'm interrupting
25 your train of thought, but I left that out.

1 What is GMT time and why is that important in reading
2 cell phone records?

3 **A** So they'll put it in -- sometimes they'll put the records
4 in GMT time. It just depends. And it's just kind of like a
5 universal way to have the records so, that way, there's no
6 confusion amongst multiple time zones, basically.

7 **Q** So Verizon may be serving customers in Europe, to the
8 United States, to China, to anywhere else with multiple time
9 zones; right?

10 **A** That's right.

11 **Q** And so, when they give you records, oftentimes, it's done
12 just in GMT time, and the reader of the records has to figure
13 out how to change the time to where the cell phone target was;
14 is that right?

15 **A** That's right. So some of these records in the CDR that
16 we were discussing before, some of them are in GMT time. Some
17 of them are in Eastern Time. And it notes on them GMT minus
18 four or GMT minus zero, you know, obviously, minus four for
19 Eastern Time; GMT minus zero for GMT time.

20 **Q** Okay. So if you get a record that says the call is made
21 at noon and it says GMT minus four, that means the record
22 provider has already subtracted four hours for you and that's
23 noon?

24 **A** That's correct.

25 **Q** Right. If it gives you a line and it says GMT minus

1 zero, is it safe to say that it means that the cell phone
2 company doesn't know where the phone, what time zone the phone
3 is, so they can't make subtractions for you, so you're going
4 to have to be the one to make subtractions to make the right
5 time?

6 **A** Well, I don't know if it's that they don't know where the
7 phone is. It's just how they have the record listed. So you
8 will have to make the corrections as to the correct time in
9 order to convert it to eastern time, yeah.

10 **Q** So if the jury is looking through those records and you
11 see a four, it's already been subtracted for you. If it's a
12 zero, you've got to subtract four hours; right?

13 **A** That is correct.

14 **Q** Just a clarification.

15 **A** Sure.

16 **Q** GMT matters, doesn't it, in these things.

17 Okay. Let's go back to text message content. Sorry
18 about that.

19 **A** All right.

20 **Q** So I think we started back, on the 25th, there's text
21 message content indicating that the phone attributed to
22 Derrick Rivera says don't use the name on these phones, I just
23 changed my number yesterday; right?

24 **THE COURT:** Excuse me for a second. Let me see the
25 attorneys.

1 BENCH CONFERENCE

2 (The following bench conference was held outside of the
3 hearing of the jury and others:)

4 THE COURT: These text messages, that's State's Exhibit
5 101?

6 MR. HIXSON: Yes. I'll move it into evidence right now
7 before he starts going into it. I'm sorry.

8 MR. McGUIRE: And I have got no objection.

9 THE COURT: Okay. Well, let's go ahead and do that.

10 MR. HIXSON: I'm sorry. I've been doing that because
11 he's so easy to get along with. He goes, Don't worry about
12 it. I've not been closing the loop. I'm sorry.

13 THE COURT: All right.

14 (Open court resumes as follows:)

15 MR. HIXSON: I want to thank the Court for clarifying
16 that. I'm specifically referring to State's 101, and we're
17 moving State's 101 into evidence.

18 THE COURT: Any objection?

19 MR. McGUIRE: No objection.

20 THE COURT: All right. State's Exhibit 101 admitted into
21 evidence without objection.

22 MR. HIXSON: Thank you, Your Honor.

23 (State's Exhibit No. 101, Text Messages, was received
24 into evidence.)

25 BY MR. HIXSON:

1 **Q** Just in generally speaking, are there several points
2 during the course of the text messages in there attributed to
3 that number that identifies that number as Mug in those text
4 messages? And, specifically, are there text messages in there
5 that say this is Derrick AKA Mug?

6 **A** There is. There is a text message that says Derrick AKA
7 Mug, and that was sent on July 27th, 2019.

8 **Q** Are there times where the recipient of those messages
9 says, "Who is his?" And the text message follows?

10 **A** Yeah. That was -- that specific message was in response
11 to somebody asking for his name.

12 **Q** Because the numbers change, it's a different number
13 coming in; right?

14 **A** Sure.

15 **Q** Now, during the course of those, are there any text
16 messages -- you're aware of the phone calls. Are there any
17 text messages between Bradford Britton and Derrick Rivera?

18 **A** There are.

19 **Q** Are there any text messages you were able to find between
20 Bradford Britton, Derrick Rivera, prior to the double murders
21 at the bingo parlor -- bingo hall?

22 **A** I believe the ones that -- the ones in the content are
23 after.

24 **Q** Okay. So if we -- if I can direct your attention to the
25 July 29th, is there a text message -- excuse me. There's a

1 telephone call, right, from Derrick Rivera to Bradford
2 Britton, I think you said -- you may not have told the time.

3 Is there a telephone call from Derrick Rivera to Bradford
4 Britton at 6:07 p.m.?

5 **A** I'd need to look at the records.

6 **Q** Yeah, I figured that. If you know that off the top of
7 your head, it's amazing.

8 **A** It's hard to remember all those records.

9 What was the date you're discussing?

10 **Q** I'm looking to see -- let me back up.

11 Is there a text message on July 29th of 2019 from
12 Bradford Britton to Derrick Rivera, and in that, Bradford
13 Britton says, "I'll call you right back"?

14 **A** Yeah. So there is a message in the content, you know, on
15 the 29th of July, and it says, "I'll call you right back."

16 **Q** So was there a call --

17 **A** And that's from --

18 **Q** I'm sorry?

19 **A** That's okay. That's from Bradford to Derrick.

20 **Q** So is there any indication in the phone records that
21 actually Rivera did call Bradford, and Bradford was responding
22 to Derrick's call? And I'll direct your attention around 6:07
23 p.m.

24 **A** So there is a phone call -- there are phone calls on the
25 29th between them.

1 Q Yeah. From Derrick to Bradford; right?

2 A The one I'm looking at here on the 29th looks like it's
3 from Bradford to Derrick.

4 Q How about this? Going into daylight, going from the 27th
5 to the 28th on that call detail on that. And if I misread it,
6 so be it.

7 A So, on the 28th, there's multiple phone calls between
8 them. You're talking about specifically what time?

9 Q I'm looking around -- seeing whether or not prior to --
10 let me back up.

11 There are phone -- Bradford text messages -- Bradford
12 Britton text messages to Derrick Rivera, "I'll call you right
13 back," and I just want to see if that's --

14 A At 6:07, Derrick does call Bradford, and that is -- the
15 call duration is only two seconds. So I don't know. It
16 doesn't appear that he answered.

17 Q So, at 6:07, there's support for a phone call from
18 Derrick to Bradford, and then Bradford texts to Derrick, "I'll
19 call you right back"?

20 A Yes.

21 Q How about a text message later on the 29th, is there a
22 text message from the defendant to Bradford Britton around --
23 what is that? Midnight 36 --

24 A Yeah, it looks like it's --

25 Q So that's, like, 8:36 Eastern Standard Time?

1 **A** There's a text message that says, "Bet. I got gas money
2 for you."

3 **Q** Got what? I couldn't understand that.

4 **A** It says, "Bet. I got gas money for you."

5 **Q** Okay. And then is there another -- going in the late of
6 the night on the 29th into the 30th, do you guys -- do you
7 remember, off the top of your head, generally speaking, when
8 you guys went down to Kaminski? Because you went down to
9 Georgetown to Kaminski Street where the Jetta was where
10 Bradford Britton lived during that time; right?

11 **A** Yeah.

12 **Q** Was that on the 29th?

13 **A** I believe so.

14 **Q** So, at some point in time on the 29th, the focus of your
15 investigation was Bradford Britton, and you got Bradford
16 Britton in custody on the 29th; right?

17 **A** Yeah.

18 **Q** So during the time of texting between each other, at some
19 point in time, it became apparent that Bradford Britton, in
20 your interview, is not going to be able to text back; is that
21 right?

22 **A** Sure.

23 **Q** So, let's look at the 29th, after the text message
24 concerning, "I have got gas money for you." Look around, see
25 if -- around 10:00, at GMT 2207, is there a text message

1 there?

2 **A** At 2207, there is a text message that says, "What's
3 good?"

4 **Q** And is that from Derrick to Bradford?

5 **A** That is from Derrick to Bradford.

6 **Q** Subsequent to that, around the turn of the clock into the
7 30th, is there another text message from Derrick to Bradford?

8 **A** There is.

9 **Q** And what is the content of that?

10 **A** There is one -- there's one that says, "Gilbert Street."
11 And it's got, "Georgetown, South Carolina 29440. Call when
12 you in town."

13 **Q** If you look at that number, is that number 240-063 --

14 **A** Oh, no, that's a different -- correction: That's a
15 different number.

16 **Q** Okay.

17 **A** There is one that says, "Yo." And that is from -- it
18 looks like from Derrick to Bradford.

19 **Q** Okay. So, in looking at that, does it appear, from 6:07
20 p.m. on the 29th to -- was the "yo" text around 10:51 a.m. on
21 the 30th?

22 **A** It looks like, on the 30th, it's 1451.

23 **Q** Yeah, that's GMT time; right? So you take off four, and
24 it's 10:51; is that right? And that's a text message that
25 says "yo"; right?

1 **A** Yes, sir, it says, "Yo."

2 **Q** Okay. During that period of time, is there any text
3 messages back from Bradford Britton to Derrick Rivera during
4 then?

5 **A** After that?

6 **Q** Yeah. After the 29th through the 30th, into the end of
7 the phone records.

8 **A** I don't believe so.

9 **Q** Is that consistent with him being in custody?

10 **A** Sure.

11 **Q** Okay. Now, I think, the tail end of the 31st, is there a
12 text message generating from Derrick Rivera to an unidentified
13 phone number around GMT time 0335, which would be actually the
14 day before, 7/30 at 11:35 p.m.? Do you see that one? So I'm
15 looking at July 31st, 0335.

16 **A** Yep, I found it.

17 **Q** Source from (843) 287-8558 to destination number, and
18 it's somebody else's number.

19 **A** Sure. So there is a text message from Derrick to another
20 unknown number that says, "It's a emergency. I need a spot to
21 lay low at for tonight. This Mugga."

22 **Q** Okay. And the actual time of that, right, based on
23 subtracting four for GMT would be July 30th at 11:35 p.m.,
24 almost going into the 31st; right?

25 **A** Sure, yeah.

1 **Q** And that says, "It's an emergency. I need a spot to lay
2 low for tonight"?

3 **A** That's what it says, yeah.

4 **Q** Nickname Mug; right?

5 And so, by the time that text message goes out, Bradford
6 Britton is under arrest and in the Georgetown County Police
7 Department; right?

8 **A** Bradford Britton is already under arrest at that point.

9 **Q** Okay. Let's go to the last couple. All right. Is there
10 a text message from Derrick Rivera to (843) 666-9346 around
11 GMT time 1:28 a.m., which means you would go back to July
12 31st, 9:28 p.m.?

13 **A** There's a text message to the number ending in 9346 that
14 says, "See you in the a.m." Then, "Peace. I'm riding."

15 **Q** Okay. And then finally -- well, not finally -- is there,
16 later on that day, actually 39 seconds after that, is there a
17 text to the same number? And that would be at 9:40 -- 9:28
18 p.m. on July 31st going into August 1st? Is there a text
19 message?

20 **A** There's a text message to the same number, that one that
21 ends in 9346, and it says, "Couldn't tell no one no move I'm
22 making."

23 **Q** Okay. And then, at some point in time, on the cell phone
24 records you have, when is the last text message it looks like?
25 Just the GMT time on the text message when the records stop?

1 **A** So there's a message 8/1/2019, and it looks like it's at
2 1326, and it just says, "Call me."

3 **Q** And that is a destination phone number trying to reach to
4 Derrick Rivera's phone, and it goes unanswered; right?

5 **A** That's right.

6 **Q** And that's on August 1st?

7 **A** Yeah.

8 **Q** So based on taking a look at some of the cell phone
9 information, did that shed any light on some of -- on you
10 trying to make an evaluation, if any, of the information that
11 Bradford gave to you had some pieces of credibility to it?

12 **A** Sure.

13 **Q** And in what regard did some pieces maybe make sense?

14 **A** You know, obviously, you see there is a relationship
15 between the two of them. They did communicate. There was
16 communication after the incident. There was content in there
17 to suggest that Rivera had a problem, that he had an
18 emergency, and he needed to get out of town.

19 **Q** And so did some portion of that in the day prior to it
20 corroborate a communication? Like, for instance, the first
21 call was from Derrick Rivera to Bradford Britton? And then a
22 series of calls in the run-up to the 26th?

23 **A** So, the day before and the day of, there was multiple
24 calls exchanged between the two of them, yes.

25 **Q** And, I guess, is that a tool of corroboration you would

1 use to decide how much value you would put on what somebody
2 said to you or not?

3 **A** Sure. I mean, telephone calls and communications, things
4 like that, can be used in that way.

5 **Q** At some point in time during the course of your
6 investigation, did you think that the Scotchman store around
7 707 -- on Highway 707 would be important to take a look at?

8 **A** Yes, sir.

9 **Q** Tell us about that.

10 **A** When we interviewed Bradford, he indicated that him and
11 Derrick had stopped at a gas station along Highway 707 on the
12 way home.

13 **Q** And do you recall any specific details on why that
14 happened?

15 **A** He basically said that Derrick was nauseous and needed a
16 cup of water and he was going to vomit.

17 **Q** And did you go to that 707 station?

18 **A** I did.

19 **Q** And were able to view any surveillance video of that 707
20 location?

21 **A** I was.

22 **Q** Let me show you what's been marked as State's exhibit --
23 a series of them.

24 (Counsel confer off the record.)

25 BY MR. HIXSON:

1 Q Let me show you State's 95, 46, and 47. See if you
2 recognize those.

3 A I do.

4 Q And what is it that you're looking at?

5 A Still photographs from the surveillance video from the
6 Scotchman.

7 Q And while I'm up there standing by them, do you recognize
8 State's 94?

9 A I do.

10 Q What is that?

11 A That's the jump drive that contains the video from the
12 Scotchman.

13 Q And how do you know, looking at that, that you reviewed
14 the contents of that to make sure that --

15 A I reviewed the contents prior to trial today and signed
16 off on it. Reviewed it and confirmed that that's what it was.

17 Q Put your initials on it saying that's what I --

18 A I did.

19 Q Thank you. And so, just a clarification, State's 95, 46,
20 and 47 are screen captures, still shots from the video that's
21 on 94; is that right?

22 A That is right.

23 MR. HIXSON: At this time, we move State's 95, 46, and 47
24 into evidence.

25 THE COURT: Any objection?

1 MR. MCGUIRE: No objection.

2 THE COURT: All right. State's Exhibits 95, 46, and 47
3 are admitted into evidence without objection.

4 MR. HIXSON: And, finally, State's 94, a video.

5 THE COURT: Any objection?

6 MR. MCGUIRE: No objection.

7 THE COURT: State's Exhibit 94 admitted into evidence
8 without objection.

9 (State's Exhibit Nos. 94 and 95, Scotchman Video Still
10 and Thumb Drive, were received into evidence.

11 (State's Exhibit Nos. 46 and 47, Scotchman Photos, were
12 received into evidence.)

13 BY MR. HIXSON:

14 Q All right. So let's start with State's 95. Can you
15 describe that to the jury? It's hard to see some stuff up
16 there so if you need to get closer or something --

17 A Okay.

18 Q When you originally look at this video -- let me ask you
19 a question. When you look at this video, do you look at it on
20 a laptop screen that's got a better screen than this?

21 A That's right.

22 Q So if there's anything that you can't see, just bring it
23 to your attention. I guess we can play it on a laptop and
24 provide the jury later with a laptop if they need to see it.
25 Okay?

1 **A** All right.

2 **Q** All right. Tell us what we're looking at.

3 **A** That's Bradford Britton walking into the gas station.

4 **Q** Okay. And through that door, through the glass that you
5 see back there behind the vehicle that you see back there
6 behind it, is that the Jetta that we have heard so much about?

7 **A** Yes, sir.

8 **Q** And when you see the video of it, what will we see when
9 we see the video on the run-up to it? Just describe generally
10 the --

11 **A** So he -- I mean, he pulls up into the front of the
12 business. Derrick Rivera -- or Bradford Britton, excuse me,
13 gets out of the car, and he comes into the business and gets a
14 cup of water and goes back out to the car, gets in the car,
15 and leaves.

16 **Q** Okay. Now, the first thing: How would you describe for
17 Madam Court Reporter and whoever reads the record -- they
18 don't see what's going on in here -- how would you describe
19 Mr. Britton's build in that picture?

20 **A** He's, obviously, a heavy individual.

21 **Q** I mean, I was called it all my life. Is he pretty husky?

22 **A** Yes, sir.

23 **Q** And then, at some point in time, does an individual open
24 that door -- an unrelated individual open that door to get a
25 better look at the car?

1 **A** There is a gentleman, yeah, that opens the door that's
2 unrelated to this incident, and you can get a little bit
3 better view of the car with the door not there.

4 **Q** I'm going to show you State's 46. It's difficult to see
5 across the room. Can you see a white object in the left-hand
6 side of the passenger side of that car?

7 **A** Yeah, you can see the outline of a white object that
8 appears to be consistent with, like, an article or clothing or
9 something, like somebody sitting in the passenger seat.

10 **Q** And now, subsequent to that, on the video, you see
11 Bradford Britton -- this video may be, like, two minutes,
12 inside and out?

13 **A** Yeah. It's real short, yeah.

14 **Q** At some point in time, does Bradford Britton go back out
15 towards the car?

16 **A** He does.

17 **Q** And then what do you see Bradford Britton do, generally
18 speaking, when you watch the video? And I'm going to show you
19 -- excuse me -- State's 47. The glare and everything is kind
20 of tough. Is that, generally speaking, the shot that you see
21 through the door after Bradford Britton goes back out to the
22 car?

23 **A** Just a still shot of that portion, yeah.

24 **Q** And when you see it actually move, do you see any
25 objects?

1 **A** So he walks out back to the car with a cup in his hand,
2 what looks to be a cup, and he gets in the car. And it
3 appears that he passes an object over to the person in the
4 passenger seat.

5 **Q** Okay. Now, given the fact that you didn't have that
6 level of detail during the course of your investigation and
7 you acquired this video, take a look at that video, did that
8 do anything to enhance your understanding of what part of
9 Bradford Britton's story is a total fabrication and perhaps
10 may be supported somewhat by fact?

11 **A** It supported a portion of the story, I mean, that's true.

12 MR. HIXSON: All right. At this time, we'd publish
13 State's 94. I believe that's what it's called, the video.

14 THE COURT: All right.

15 BY MR. HIXSON:

16 **Q** And let me know, looking across this room at this TV, if
17 you can see that movement in there. I don't know if you'll be
18 able to see it or not.

19 MR. HIXSON: Let me see, if I may. That's okay. Just
20 play it.

21 (State's 94/Video plays.)

22 BY MR. HIXSON:

23 **Q** Can you see that moving from here across the room?

24 **A** It's not easy on this TV to see it from across the room.

25 **Q** Could you see it if you look at a laptop?

1 **A** A lot easier to see it on a laptop, yeah, where you can
2 replay it and it's closer.

3 **Q** Now, I guess, just a little small point on there, can you
4 see -- does the content of that cup look like it have
5 Coca-Cola or something dark in it?

6 **A** I can't tell.

7 MR. HIXSON: Beg the Court's indulgence for just a
8 minute.

9 THE COURT: All right.

10 BY MR. HIXSON:

11 **Q** Oh, a little small point. Just generally speaking, back
12 to your general investigation, I think you said that you had
13 interviewed Bradford Britton or you were involved with Drew
14 Edwards during the course of this back when he was taken into
15 custody in Georgetown on the 29th. And at the end of that
16 interview on the 29th, going into the interview at J. Reuben
17 Long Detention Center, he gave up this name Mug, and then, the
18 next day, said Mug's name is Derrick; is that right? I think,
19 generally speaking, are you aware of when the DNA evidence --
20 DNA report came back?

21 **A** I believe we got a copy of the DNA report on August 7th,
22 is when the report came back.

23 **Q** And so, at the time that Bradford Britton consents to a
24 buccal swab and gives the statement names, he's unaware of any
25 of the DNA evidence to come; right?

1 **A** We definitely don't have that report at that point in
2 time and he doesn't have a copy of the DNA report or anything.

3 MR. HIXSON: I have nothing further.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. MCGUIRE:

7 **Q** Is your name pronounced "Why-dra"?

8 **A** "Why-dra," yes, sir.

9 **Q** Okay. It is Detective Wydra?

10 **A** Yes, sir.

11 **Q** Okay. Detective Wydra, let's just start with the very,
12 very basics. Derrick Rivera's phone and the records regarding
13 his phone don't place that phone in Myrtle Beach at all?

14 **A** On the date of the incident, the phone is in Georgetown,
15 South Carolina.

16 **Q** Okay. With regard to all these phone numbers, calls
17 between Mr. Brittain and Derrick, I agree they communicate,
18 but you left out, like, who else are on those records. There
19 are a lot of people calling Bradford; right?

20 **A** I mean, he has phone calls with other people, yeah.

21 **Q** Do you have those records with you?

22 **A** Sure. Do you need them?

23 **Q** Mm-hmm. Do these contain all of the phone calls between
24 Bradford and all the people he's talking to?

25 **A** I don't know if they contain all of them.

1 Q Why would they not?

2 A I mean, I -- for the period of time that we requested
3 them is what we have. And these are the multi-CDR records,
4 the voice-over LTE records, so this isn't going to include
5 your basic CDR.

6 Q I mean, it's not your testimony in front of this jury
7 that the only people communicating on these phones are Derrick
8 and Bradford? There are plenty of other people; right?

9 A There are plenty of other people communicating, yes, sir.

10 MR. MCGUIRE: Can I get that marked?

11 (Defendant's Exhibit No. 3, Call Log, was marked for
12 identification.)

13 BY MR. MCGUIRE:

14 Q I'm going to show you what's marked Defense No. 3. Just
15 thumb through that, if you would.

16 A Okay.

17 Q And see if you recognize it.

18 A Okay. (Reviewing document.) Is there any specific page?

19 Q Sort of generally. I mean, you know what they are
20 generally; right?

21 A Sure. I mean it appears to me that this is probably from
22 the Cellebrite, from his cell phone.

23 Q Incoming and outgoing calls regarding Bradford Britton's
24 phone?

25 A Yeah.

1 Q Is that accurate?

2 A That's what it appears to be, yeah.

3 MR. MCGUIRE: All right. I move it into evidence, Judge.

4 THE COURT: Any objection?

5 MR. HIXSON: No, sir.

6 THE COURT: All right. Defendant's Exhibit No. 3

7 admitted into evidence without objection.

8 (Defendant's Exhibit No. 3, Call Log, was received into
9 evidence.)

10 BY MR. MCGUIRE:

11 Q And the jury will have this in the jury room; I'm not
12 going to publish it now. But you heard testimony yesterday;
13 right? You were sitting in the back?

14 A I was.

15 Q Okay. And I asked some questions about Bradford's friend
16 Chris, who goes by Bump?

17 A I heard that.

18 Q Okay. When you heard that, did you anticipate I would
19 might ask you about Bump?

20 A Oh, I figured you probably would.

21 Q Okay. And Bump is on there a lot calling Bradford;
22 right? And Bradford texts Bump? They're tight?

23 A Yeah, they obviously know each other.

24 Q And there's a high frequency of communication between
25 them?

1 **A** There is.

2 **Q** More so than Derrick; right?

3 **A** Yeah, he communicates more with Bump than Derrick.

4 **Q** Okay. Did you ever go and ask Bradford, "Where does Bump
5 stay?"

6 **A** I did not.

7 **Q** Anybody talk to Bump? Did any law enforcement officer
8 talk to Bump?

9 **A** I don't know about what the other detectives did. I can
10 tell you that I did not speak to Bump.

11 **Q** Okay. You had Bump's phone number?

12 **A** It's on the extraction report and the cell phone records.

13 **Q** Okay. One of the things -- and, again, you have heard
14 all this testimony. One of the things that Bradford Britton
15 has always stuck to, always hung onto was that his passenger,
16 on the way to the Myrtle Beach Bingo, made a phone call in the
17 parking lot of the Surfside Bingo. You've heard that?

18 **A** I've heard that.

19 **Q** He's never said that was untrue. He's always held onto
20 that; right?

21 **A** When I have spoken to him, that I'm aware of.

22 **Q** Okay.

23 **A** I didn't interview him every time, so...

24 **Q** As far as all your communication with him, as far as all
25 of your hearing his testimony in court, he's always maintained

1 that his passenger made a phone call using the passenger's
2 phone at the Surfside Bingo on the night of the Myrtle Beach
3 robbery?

4 **A** I heard his testimony, yeah.

5 **Q** Okay. Now, obviously, my position is that passenger is
6 somebody other than Derrick Rivera. Let's assume that's true.
7 You could make an effort to find out what phone made that
8 call; right?

9 **A** Made an effort to make which call?

10 **Q** You could make an effort to see who made the phone call
11 in the parking lot of the Surfside Bingo; right?

12 **A** Well, I mean, I'd have to have the phone number for the
13 phone.

14 **Q** You have it. Well, let me ask you this: You could do a
15 cell phone tower dump regarding phones that were making
16 contact with the system at the Surfside Bingo location; right?

17 **A** So what you're speaking about as far as a cell phone
18 tower dump goes would produce a very, very large amount of
19 information without a number to look for this, and that
20 information would be difficult to do it.

21 **Q** Okay.

22 **A** I mean, you could do a tower dump. Yeah, I mean, it's
23 possible to do a tower dump, but the amount of information
24 that you would have, without anything to compare it to, would
25 be very, very difficult to find the number that you were

1 looking for.

2 Q That's my next question. Without anything to compare it
3 to. You could do a cell phone tower dump at the Myrtle Beach
4 Bingo at the time of the robbery, a little bit before, a
5 little bit after, and that would give you all the phones that
6 connected to that cell phone tower; right?

7 A I mean, it would, but for all the purposes that we had,
8 as far as the individuals that were involved in this incident,
9 their phones were turned off prior to the incident, so there's
10 no information available.

11 Q You don't know that, do you?

12 A From Bradford Britton's statement.

13 Q From Bradford Britton's statement?

14 A And also from the cell phone records that we have.

15 Q You could do a cell phone tower dump at the Surfside
16 Bingo, you could do a cell phone tower dump at the Myrtle
17 Beach Bingo for a narrow window, and you could see if two
18 numbers -- I mean, the same number were in those two places,
19 and that would be significant; right?

20 A I mean, that's something that you could do.

21 Q But you didn't do it?

22 A I did not do it, no.

23 Q And this passenger that was with Bradford Britton who
24 made this phone call at the Surfside Bingo could have had his
25 phone on at the Myrtle Beach Bingo. If a number showed up at

1 Surfside, number shows up at Myrtle Beach for that narrow
2 window of time, you would follow up on that, wouldn't you?

3 A If I had two numbers that showed up in both locations?

4 Q One number, two places.

5 A One number for both places?

6 Q Right.

7 A That could be something we'd follow up on.

8 Q It could be or would you ignore that?

9 A No, I would not ignore it.

10 Q You would, obviously, follow up on that; right?

11 A Yeah, I said I would.

12 Q Let me ask you this: What if that number turned up to be
13 Bump? Would you go talk to him?

14 A I imagine somebody would go talk to him, yeah.

15 Q Would there be any reason not to?

16 A No, not at that point.

17 Q We know that wasn't done; right?

18 A I know that I did not speak with Bump.

19 Q There's a thing called geofence; right?

20 A I'm familiar with it.

21 Q And with geofence, you can look at a specific location
22 and gather all the Google accounts at a location, right,
23 anonymized?

24 A Well, you will get, yeah, an anonymous identifying number
25 or ID associated with a specific Google account.

1 Q Right.

2 A So you would have a list of those.

3 Q Right. So what you can do is you can do a geofence
4 location -- a Google geofence location, and it gives you
5 account numbers that you don't really know what they mean
6 because it's a privacy issue; right?

7 A Yeah. The initial step of a Google search warrant, you
8 will get essentially a list of anonymous, unique numbers that
9 listed accounts that were found in that location.

10 Q Okay. And you could do a geofence location and get all
11 of the account numbers at the Surfside Bingo; right?

12 A You could do that.

13 Q And you could do a geofence location at the Myrtle Beach
14 Bingo, and you can see if two accounts are the same; right?

15 A You could do that.

16 Q You could do that. You didn't do that; right?

17 A I did not do that, no.

18 Q Okay. And when you find those two account numbers that
19 are the same -- let me rephrase that.

20 When you find the one account number that's the same in
21 the two places, the next step is a specific search warrant to
22 get the subscriber information and the telephone number that
23 belongs to that phone; right?

24 A Typically, there's two steps, actually. The second step,
25 they'll give you more information on those accounts. They'll

1 still be anonymous, essentially. And your third step is when
2 you get the subscriber information.

3 Q Right. I understand that Google wants to keep their
4 customer's information private and it's a multi-step
5 process --

6 A Yes, sir.

7 Q -- but, ultimately, it leads you to the phone number;
8 right?

9 A It leads you to specific Google account.

10 Q That you can attach to a phone number, eventually?

11 A I mean, if it's on the Google account, yeah.

12 Q So the answer is yes, you can get to a phone number?

13 A It's possible.

14 Q And if you did the geofence location at Surfside and you
15 did it at Myrtle Beach, you say, "Hey, there's an account here
16 that's attached to a phone. There's the same account here
17 attached to a phone." And you don't have to be making phone
18 calls or anything; right? You don't have to make a phone call
19 and connect to a cell phone tower and get this information?

20 A You have to have a Google account and have to be
21 utilizing your phone. I mean, it would have to be turned on
22 and not dead, you know, or anything like that.

23 Q Right. And you could have done that, and, ultimately,
24 that could have come back to some unidentified person? It
25 could have come back to Chris or Bump, right, as far as you

1 know?

2 **A** It's possible that it could have come back to anybody at
3 that point.

4 **Q** And if it came back to somebody, other than Derrick
5 Rivera, you'd follow up on that; right? Go talk to them?

6 **A** If there was a geofence done and there was information
7 that came back to somebody -- one person at both locations
8 other than Derrick, yes, I would go speak to that person.

9 **Q** Sure. You could knock on Bump's door and say, "Hey, we
10 want to talk to you. Do you mind answering some questions?
11 By the way, do you mind giving us a little buccal swab?" Get
12 some DNA and send that up to Sara Goodman. And, lo and
13 behold, it could match the unidentified DNA that's all over
14 this case, right, as far as you know? Do you have anything to
15 say that's not possible?

16 **A** I didn't say that it's not possible.

17 **Q** Okay. When you were listening to Bradford Britton's
18 testimony and he said that -- he said Derrick turns his phone
19 off for a period of about 20 minutes; right? You heard that?

20 **A** I believe, yeah, it was about 20 minutes, if I remember
21 correctly.

22 **Q** Right. And I'm not saying that's true. I'm saying
23 Bradford Britton said that.

24 **A** Yeah, I understand that. Yes, sir.

25 **Q** Okay. That's inconsistent with your cell phone records

1 regarding Derrick Rivera; right?

2 **A** Well, what I can tell you, again, is for the period of
3 time from those two phone calls that we had from the one that
4 was a little bit after 8:00 and the one that was around 10:30,
5 we know, at that period of time, his phone appears to be off.

6 **Q** Right. So that's inconsistent with what Bradford said?

7 **A** It's longer than 20 minutes, yeah, absolutely.

8 **Q** Bradford said that the gun his passenger used was a .38.
9 Are you aware of that?

10 **A** I don't recall that. I mean, as far as his interview
11 went, I mean, it was lengthy. I might not remember every --

12 **Q** I read it in your report. Do you remember writing it in
13 your report?

14 **A** I don't know. If you'd want to give me a copy of my
15 report, I'd gladly take a look at it.

16 **Q** Yeah, let me do that for you.

17 To help you out, I have gone ahead and numbered the
18 pages. Police reports don't come numbered. If you could look
19 at page 7, line 7, just using my numbers there.

20 **A** All right. He said that -- what I noted in here is that
21 he thinks it was a .38 caliber revolver.

22 **Q** Yeah.

23 **A** Thank you. I appreciate that.

24 **Q** Yeah, yeah. Thank you.

25 You were talking about text messages a little while ago

1 saying, "Yo, emergency, got to lay low."

2 **A** Sure.

3 **Q** So you would have the number that Mr. Rivera was
4 communicating with; right?

5 **A** On the text message content?

6 **Q** Yeah.

7 **A** Yes.

8 **Q** So you had that phone number. You could have gone and
9 gotten subscriber information, the address. You could have
10 found out who that was he was talking to and gone and talked
11 to them; right?

12 **A** That would be possible.

13 **Q** Did you do that?

14 **A** I did not, no.

15 **Q** I mean, if he's sort of confiding in somebody -- I mean,
16 this is kind of weird language: "Need to lay low." You
17 didn't want to talk to that person?

18 **MR. HIXSON:** Your Honor, I just object. That requires
19 speculation. He says he didn't. He can't speculate.

20 **THE COURT:** He just asked him why he didn't do it.

21 Overruled. Go ahead.

22 **BY MR. HIXSON:**

23 **Q** I mean, is there a reason why you wouldn't want to talk
24 to that person?

25 **A** For me? No.

1 MR. MCGUIRE: Can you mark that?

2 (Defendant's Exhibit No. 4, Photo of Lady in a Bathroom,
3 was marked for identification.)

4 BY MR. HIXSON:

5 Q If someone sends you a picture via text to your mobile
6 phone, the phone number is right there? You can see that too;
7 right?

8 A The phone number on the picture message?

9 Q Yeah.

10 A Sure.

11 Q Did you match up the phone number in that "lay low" text
12 message with somebody who sent a picture to Derrick?

13 A No, I did not.

14 Q Why not? I mean, that phone number appears a couple of
15 times. Why didn't you see all of them? Why didn't you see
16 what they were saying the whole time?

17 A I mean, you have a lot of information to follow up on.
18 It's a large amount, and you just have to prioritize what you
19 have.

20 Q Have you ever seen this before, Defense No. 4?

21 MR. HIXSON: Can I take a look at that, Judge?

22 MR. MCGUIRE: Oh, man. I'm so sorry. You're right. I
23 apologize.

24 MR. HIXSON: Is there a date or stamp or anything on
25 that?

1 MR. MCGUIRE: I got it from you. I don't think so.

2 BY MR. HIXSON:

3 Q Again, Defense No. 4. Have you ever seen that before?

4 A It appears, probably, to be one of the pictures from the
5 picture content from Derrick Rivera's cell phone records.

6 Q Okay. Did you match that person up as the same person he
7 was talking to about laying low?

8 A I did not.

9 Q You don't know they're the same?

10 A No.

11 Q But they could be?

12 A I don't know, yeah.

13 Q In fact, they are.

14 A Okay.

15 Q Okay. But you never went and talked to that person?

16 MR. HIXSON: Your Honor, I'm going to object again. He
17 says he doesn't know and didn't follow up. He's trying to
18 assert that the witness knows that, and he said three times,
19 "I don't know; I didn't follow up."

20 THE COURT: It has been asked and answered, so let's go
21 ahead.

22 MR. MCGUIRE: I agree. I'm going to move on from that.
23 Move No. 4 into evidence.

24 THE COURT: Any objection?

25 MR. HIXSON: Yeah, I object. There's no foundation for

1 the witness to introduce that piece. He doesn't know anything
2 about it.

3 THE COURT: Yeah, but he said he got it off his phone.

4 I'm going to introduce or admit Defendant's Exhibit 4
5 over the State's objection.

6 (Defendant's Exhibit No. 4, Photo of Lady in a Bathroom,
7 was received into evidence.)

8 BY MR. MCGUIRE:

9 Q I'm going to ask you a little bit about a different
10 subject now: Bradford Britton and his tag on his car.

11 A Okay.

12 Q Do you remember noting in your report that tag readers in
13 Myrtle Beach indicated that Bradford's car was active in the
14 Myrtle Beach area?

15 A I'd have to look at my report.

16 Q Okay. Sure.

17 A I wrote it over two years ago.

18 Q You don't have it with you up there?

19 A I do not.

20 Q Okay. And, again, I went ahead and numbered it and
21 numbered all the lines to help you get to the right spot.

22 A All right.

23 Q Page 3, line 36.

24 A All right.

25 Q Take a look at that.

1 **A** Page 3, line 36. All right. Yep.

2 **Q** Do you remember noting in the police report that
3 Bradford's car was previously active in the Myrtle Beach area?

4 **A** Yes, it's right here.

5 **Q** Okay. So that's in your report?

6 **A** That is.

7 **Q** Can I have that back for a second?

8 **A** Sure.

9 **Q** So these license plate readers -- these license plate
10 readers that are around, they log in license plates,
11 obviously; right?

12 **A** Sure.

13 **Q** And law enforcement can go back, enter a tag, and then
14 you kind of get a report as to where the car is being
15 photographed on these license plate readers?

16 **A** Yeah, you can look a tag up in the system and -- exactly.

17 **Q** So when you make the note in your police report that
18 Bradford Britton's car was active in the Myrtle Beach area,
19 that's what it's based on; right? The license plate readers?

20 **A** Yeah, I believe we contacted the fusion center, I think.
21 Maybe SLED's fusion center.

22 **Q** Okay. And that would be the entity that has this
23 information?

24 **A** I mean, there's other entities, but yeah, they do.
25 They're not the only entity, but yeah.

1 Q Sure. And it's a simple thing. You phone them and just
2 say, "Hey, here's a tag. Can you give us what you got?"

3 A Yeah, there's a little bit of a process. I mean,
4 typically, they want you to fill out a request.

5 Q Sure. Okay. Any information at all that Derrick Rivera
6 had a car that was active in Myrtle Beach?

7 A Not that I'm aware of, no.

8 Q Bradford Britton had -- there were records of a residence
9 that he had, Glenns Bay Road in Myrtle Beach; right?

10 A I heard that in the testimony yesterday, but...

11 Q It's also in your --

12 A I don't -- yeah, you'd have to hand me a copy of the
13 report.

14 Q Page 3, line 44.

15 A All right. (Reviewing document.) Yep. It shows 1249
16 Glenns Bay Road.

17 Q Right. And -- thank you.

18 A You're welcome.

19 Q Did you have any information that Derrick Rivera ever
20 lived in Myrtle Beach or had a previous residence in Myrtle
21 Beach?

22 A Not that I'm aware of.

23 Q Okay. That's just Bradford Britton; right?

24 A Mm-hmm.

25 Q And Bradford Britton's car was also the one active in

1 Myrtle Beach, not Derrick Rivera; right?

2 **A** That's right.

3 **Q** Do you remember telling Bradford Britton, when you guys
4 were interviewing him that, "Hey, look, man, we went through
5 your phone. We know you're selling some drugs." Do you
6 remember that?

7 **A** I mean, it was a long interview. I don't remember
8 specifically everything that was said during the interview.

9 **Q** Okay. Do you remember seeing text messages with language
10 like, "Hey, I have got a 28, no stems. I have got a 14.
11 Anybody looking for some pain pills? I got some hydro." Do
12 you remember this?

13 **A** I remember there being text messages about --

14 **Q** Drugs?

15 **A** -- about drugs, in his phone, yeah.

16 **Q** For the record -- well, Bradford Britton said, for the
17 record, yesterday, that he's never sold drugs. That would be
18 inconsistent with his text messages?

19 **A** I'd have to look at the text messages and see whether
20 he's buying or selling, you know.

21 **Q** Do you have them up there?

22 **A** I don't have them in front of me, no. If you want to
23 bring them up here, I'd be happy to look at them.

24 **Q** Yeah. I'll let him find them. If I don't locate them,
25 fair to say that you did look through his phone and there's

1 information about drugs?

2 **A** There was information about drugs on the phone.

3 **Q** And the information about drugs, was it, like, slang
4 language like hydro, 14 -- what's a 14?

5 **A** It could be a number of things. I can't tell you what he
6 meant by 14.

7 **Q** Do you know what a 28 is?

8 **A** Again, it could be a number of things. I don't know.

9 **Q** Do you know that an ounce has 28 grams?

10 **A** I do know that an ounce has 28 grams.

11 **Q** So 28, make sense that that's an ounce; right?

12 **A** I mean, that would be the amount of grams in an ounce.

13 **Q** Have you worked Narcotics?

14 **A** No, I --

15 MR. HIXSON: Your Honor, I object.

16 **A** I can't speculate on --

17 THE COURT: Hold on one second. There's an objection.

18 MR. HIXSON: He said "I don't know" three times, and he's
19 trying to talk about drug slang terminology, and the witness
20 says he doesn't know.

21 THE COURT: Sustained.

22 BY MR. MCGUIRE:

23 **Q** I'll be more specific.

24 **A** I can't speculate on what he meant by that, is what I'm
25 trying to explain to you. I mean, I don't know what he meant

1 by 28 or 14.

2 Q Okay. Let me be more specific, because I don't think you
3 answered this specific question.

4 A Okay.

5 Q If somebody says, "Hey, I have a 28, no stems," does that
6 sound like marijuana?

7 A That does sound like marijuana.

8 Q Okay. So we can agree this sounds like drug slang?

9 A Yes, sir.

10 Q Okay.

11 (Defendant's Exhibit No. 5, Shoe Size Measuring Tool, was
12 marked for identification.)

13 (Defendant's Exhibit No. 6, Tape Measure, was marked for
14 identification.)

15 BY MR. MCGUIRE:

16 Q Do you remember putting in your report that you were the
17 one who collected Mr. Rivera's clothing when he was arrested?

18 A I'd have to see a copy of the report.

19 Q I think it's page 7, line 30.

20 A Page 7, line what now?

21 Q I think it's page 7, line 30.

22 A So this is -- the paragraph that you're talking about on
23 page 7 is the clothing that was at the jail?

24 Q Yes.

25 A So I believe that was collected via search warrant.

1 Q I'm just asking you, were the one that did that?

2 A No. Detective Edwards obtained the search warrant.

3 Q No, no, did you actually take physical custody of the
4 clothes?

5 A I'd have to see the evidence sheet. Again, that's a long
6 time ago.

7 Q You don't remember?

8 A No, sir.

9 Q Thanks. I want to ask you -- I want to go back to your
10 earlier testimony regarding Mr. Rivera's phone.

11 A Okay.

12 Q The prosecutor asked you about him changing his phone
13 number kind of frequently; right?

14 A Yeah, he did.

15 Q The first time, based on your records, the oldest time he
16 changed his phone number, what date was that?

17 A I believe it was the 14th -- the changes were made
18 between the 14th and the 24th of July.

19 Q Okay. So the first change would be on the 14th?

20 A I believe so.

21 Q What does that have to do with the Myrtle Beach robbery?
22 Anything?

23 A He just changed his phone number.

24 Q That's it? That's all you know; right?

25 A That's all I know.

1 Q And then he changes it again?

2 A He does.

3 Q And then he changes it again?

4 A He does.

5 Q And then he changes it again?

6 A Multiple times, yeah.

7 Q And he never changes it after the Myrtle Beach robbery;

8 right?

9 A Not that I'm aware of.

10 Q I mean, that would be significant.

11 A That's not in the records.

12 Q Right. I'm going to show you what's been marked 6 and 5,

13 Defense. Tell me if you can say what those items are.

14 A Looks like a device to measure a foot.

15 Q I agree with that.

16 A And a tape measure.

17 Q Right.

18 A All right.

19 Q You have heard all of the previous testimony regarding

20 the 9-and-a-half Nike found at the office, right -- office at

21 the bingo parlor?

22 A I heard some of the testimony, yeah. I don't know if I

23 was here for all of it.

24 Q Okay. Fair to say that you are aware that other law

25 enforcement officers recovered a shoe -- a Nike tennis shoe,

1 nine and a half size; right?

2 **A** I'm aware that there was a shoe recovered. I don't
3 necessarily know what size it was, off the top of my head.

4 **Q** Really?

5 **A** Yeah. I'm not the one that collected it or --

6 **Q** And you hadn't heard that in this courtroom?

7 **A** No, I know I heard it in the courtroom, is what I'm
8 saying, but I'm not aware of from the scene.

9 **Q** Okay. Can you tell me if I'm wrong, but it seems to me,
10 in the normal course of investigating a case, if you have a
11 9-and-a-half shoe left by a suspect and then you arrest
12 somebody and say that's the suspect, you want to know what
13 size shoe they wear; right?

14 **A** Sure, I can understand that. Right, yeah.

15 **Q** Did anybody ever measure Derrick Rivera's foot?

16 **A** I did not. I don't know if anybody else did.

17 **Q** Okay. Prosecutor introduced into evidence a chart where
18 you can try to guess someone's foot size by height. Do you
19 know how tall Derrick is?

20 **A** Off the top of my head, maybe around six foot or so.

21 **Q** I agree with you. He's not short. I'm a little short.
22 I'm definitely average or short. I'm not tall. And he's
23 taller than me. You have seen him come into court; right?

24 **A** Yeah.

25 **Q** Okay. But no one has ever taken his height?

1 **A** I'm not aware -- I know I did not measure his height. I
2 don't know if anybody else did.

3 **Q** Okay. Now, Detective Wydra, I can't make you measure
4 Derrick's foot, but if you want to, you can. And if we do it,
5 I'm going to that young lady --

6 MR. HIXSON: I'm going to object. This is testimony.

7 THE COURT: Sustained.

8 MR. HIXSON: Just a lot of --

9 THE COURT: I sustain it.

10 BY MR. MCGUIRE:

11 **Q** Do you want to measure his foot?

12 MR. HIXSON: Once again, I'd object.

13 THE COURT: Sustained.

14 MR. HIXSON: He understands what this process is like.

15 THE COURT: I sustain the objection.

16 **A** I understand what you're doing, but --

17 THE COURT: I sustain the objection. You don't need to
18 answer the question.

19 Ask your next question.

20 BY MR. MCGUIRE:

21 **Q** Do you remember seeing the shoes that Derrick was wearing
22 when he was arrested? Do you remember seeing them?

23 **A** Were they up here in the bag? Are those the right ones?

24 **Q** Uh-uh.

25 **A** Then, no, I don't.

1 Q Do you understand that you could have measured his foot
2 in the last two-and-some years; right?

3 A I do.

4 Q Okay. And that wasn't done?

5 A Not that I'm aware of.

6 MR. MCGUIRE: That's all I have.

7 THE COURT: Redirect?

8 MR. HIXSON: Yes, sir. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. HIXSON:

11 Q Let's unravel some of that for a second.

12 A Sure.

13 Q Let's talk in more detail now about tower dumps and
14 geofencing and all that. All right?

15 A Okay.

16 Q So right now, let's say in Conway, South Carolina, we
17 have one cell tower. How many cell phone users right this
18 second are contacting that one cell tower in the course of an
19 hour?

20 A I imagine probably thousands.

21 Q Tens of thousands?

22 A I'm sure.

23 Q Have you ever looked at a cellphone tower dump report
24 before --

25 A I have.

1 Q -- over a period of time?

2 A I have.

3 Q How big is that stack?

4 A It is a vast amount of information.

5 Q How many erroneous, innocent, unrelated phone numbers are
6 in a tower dump?

7 A Thousands upon thousands.

8 Q Right. Have nothing to do with anything; right?

9 A That's right.

10 Q Let alone a tower dump -- when -- is it safe to say that
11 you had information that the phones were deactivated from the
12 network and wouldn't hit the tower anyway?

13 A That is safe to say.

14 Q Right. And let's talk about that relates to the vast
15 quantity of information that will show nothing. And let's
16 talk about geofencing now next. All right?

17 So does everybody have a Google ID?

18 A No.

19 Q What happens if you have an Apple phone?

20 A You might not have a Google ID.

21 Q What happens if you have a prepaid phone that you don't
22 have internet connectivity?

23 A There's not going to be any information.

24 Q Right. So a geofence is specific to Android devices and
25 Google devices specifically so the universe of people in the

1 world who don't have Google IDs and geofence wouldn't even
2 touch them even if their phone was on; is that right?

3 **A** They're specific to a Google account. I mean, if you
4 don't have a Google account, you know, there's not going to be
5 any information in a Google search.

6 **Q** That's right. And so, if you change your phone ten times
7 -- five times in ten days, you have got to continue to update
8 your Google account, even if you had one, to make sure it
9 connects to that; is that right?

10 **A** That, I'm not sure about.

11 **Q** Well, you mentioned the Google account has to link to a
12 phone number through an account or it's just an ID -- an ID
13 with meaningless information?

14 **A** I don't know if it specifically has to link to a phone
15 number. That, I'm not sure about.

16 **Q** Okay. Fair enough. Fair enough.

17 I guess what I'm trying to say is, are you aware, during
18 the course of this investigation, if an effort was used to use
19 geofencing to see if it produced any information that could be
20 used during this case?

21 **A** I believe there was a geofence search warrant done, but I
22 mean, but it was not done by me, yeah.

23 **Q** To your knowledge, nothing from an effort to geofence
24 anything produced anything probative of any of the universe of
25 information?

1 **A** I was told by the investigator that did it that it did
2 not provide any information that was useful to our
3 investigation.

4 **Q** Okay. And so, when we're talking about sorting truth
5 from reality, from huge volumes of information to something
6 that is actually meaningful to an investigation, is that what
7 verification with actual cell phone content is useful to you
8 rather than tower dumps?

9 **A** I mean, sure, it's easier to verify information from that
10 than a tower dump. I mean, we have to prioritize our time and
11 the information that we have, and we only have so much time to
12 do things, and, you know, a tower dump requires a lot of
13 information, a lot of work, and, you know, text message
14 content would be, obviously, much more individualized, you
15 know, whereas a tower dump, you'll get a lot of information.

16 **Q** During the course of your investigation and going through
17 cell phones and everything, was there anything that you found
18 that connected Bump to anything in this thing?

19 **A** No, I didn't. I have never seen any evidence to connect
20 Bump to have anything to do with this incident.

21 **Q** During the course of your reviewing text information,
22 there was a lot of discussion over there concerning drug
23 dealing.

24 **A** True.

25 **Q** Did you see a text message in there where actually

1 Bradford Britton was bumming dope from his son?

2 **A** I don't recall the exact words on the content off the top
3 of my head, but, I mean, I don't -- so I'm not sure.

4 **Q** Was there anything through that text message to indicate
5 that any of the drug conversation text messages was going to
6 Bradford Britton about does Bradford want to buy pills, not
7 Bradford selling pills?

8 **A** If I remember correctly, the pills had to do with
9 somebody was asking him if he knew anybody that would want
10 them, somebody else had them for sale.

11 **Q** Okay. And then, finally, just to clarify this up,
12 State's 9, do you recognize that?

13 **A** I do. That's a DMV record for Derrick Rivera.

14 **Q** And what's his height he tells DMV?

15 **A** His height here is listed as five-ten on the DMV.

16 **Q** And you don't know if he's five-ten or not; right?
17 Sometimes you say -- follow up with DMV and he told them
18 five-ten; right?

19 **A** His DMV says five-ten.

20 **Q** All right. I have no further questions. Thank you, sir.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, we're going
24 to take our break for the morning. Take about a 10- or
25 15-minute break. Leave your notepads in the jury box. Do not

1 discuss the case, even among yourselves. It's too early for
2 deliberation. We'll take about a 15-minute break and come
3 back.

4 (The jury exited the courtroom at 11:31 a.m.)

5 THE COURT: All right. Anything from the State before we
6 take a recess?

7 MR. HIXSON: No, sir.

8 THE COURT: Anything from the defense?

9 MR. McGUIRE: No, sir.

10 THE COURT: All right. We'll take about a 15-minute
11 break.

12 (A brief recess was taken from 11:32 a.m. to 11:50 a.m.)

13 THE COURT: All right. Anything from the State before we
14 bring the jury in?

15 MR. HIXSON: No, sir.

16 THE COURT: Anything from the defense?

17 MR. McGUIRE: No, sir.

18 THE COURT: All right. Let's go ahead and bring the jury
19 in.

20 MR. McGUIRE: Judge, can we approach?

21 THE COURT: Yeah, come on up.

22 BENCH CONFERENCE

23 (The following bench conference was held outside the hearing
24 of the jury and others:)

25 MR. McGUIRE: We just thought we'd let you know it's

1 about to wrap up, if you wanted to order lunch from the jury.

2 THE COURT: Well, we've already got it on the way. It's
3 on the way now.

4 MR. MCGUIRE: Oh, okay. We were just trying to help.

5 THE COURT: Okay. Thank you.

6 MR. HIXSON: SLED on the gun up and then DJ from the
7 trailer in Smoaks.

8 MR. MCGUIRE: Short witnesses.

9 THE COURT: Okay. All right. Good. Thank you.

10 (Open court resumes as follows:)

11 (The jury entered the courtroom at 11:52 a.m.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 back. Please make sure you have your notepads and no one
14 else's notepads. We're ready to resume the trial of the case.

15 Mr. Hixson, the State can call your next witness.

16 MR. HIXSON: Thank you. At this time, the State of South
17 Carolina would call Jana Weaver from the State Law Enforcement
18 Division.

19 JANA WEAVER,

20 the witness, after having been duly sworn, was examined and
21 testified to as follows:

22 THE CLERK: State your full name and spell your last name
23 for the Court.

24 THE WITNESS: Jana Weaver. W-e-a-v-e-r.

25 MR. HIXSON: Beg the Court's indulgence just for a

1 second.

2 THE COURT: Ms. Weaver, if I can get you to spell your
3 first name as well.

4 THE WITNESS: J-a-n-a.

5 THE COURT: All right. Thank you.

6 DIRECT EXAMINATION

7 BY MR. HIXSON:

8 Q Good morning, ma'am. How are you?

9 A Doing well. How are you?

10 Q Could you please tell this Court what you do for a
11 living?

12 A I am a forensic firearms examiner at the South Carolina
13 Law Enforcement Division, also known as SLED.

14 Q Okay. In order to perform that job, do you have any
15 specialized education, training, or experience that allows you
16 to perform your duties?

17 A I do. I have a bachelor of science degree in criminal
18 justice. We do in-house training at SLED. So I have
19 completed the SLED's in-house training for firearms examiners.
20 It entails extensive reading, writing, many hands-on
21 practicals and practices, written and oral examinations.
22 During the timeframe, we do thousands of comparisons. We also
23 do serial number restorations. I completed the serial number
24 restoration course at the national laboratory center in
25 Maryland through the Bureau of Alcohol, Tobacco and Firearms,

1 or ATF.

2 I have also completed multiple GLOCK armorer courses. I
3 have also completed the ATF's -- the Integrated Ballistics
4 Identification Systems, or IBIS, entry systems as well as
5 their training course to be a national trainer.

6 Q And, during your coursework, what is it that you are
7 required to do? In other words, do you try to look at kind of
8 tool mark comparisons between metallurgical items, perhaps, to
9 determine origin or comparison between the two to come up with
10 answers to the questions that you've been asked?

11 A Right. We examine, like, ammunition components, fired
12 cartridge cases, fired bullets, and try to determine the marks
13 left on those to see if ammunition components were fired by
14 one firearm, multiple firearms, a specific firearm, things
15 like that.

16 Q Okay. And have you been qualified as an expert in the
17 area of tool mark identification in the firearm's field and
18 courts in the State of South Carolina in the past?

19 A Yes.

20 Q And have you testified in courts in South Carolina in the
21 past?

22 A Yes.

23 MR. HIXSON: At this time, we'd move Jana Weaver as an
24 expert.

25 MR. MCGUIRE: Stipulate, Judge.

1 THE COURT: All right.

2 MR. HIXSON: Specifically in the field of tool mark
3 identification and forensic firearms examination.

4 THE COURT: All right. Say that -- give it to me again.

5 MR. HIXSON: Tool mark identification.

6 THE COURT: Identification. All right. I find this
7 witness to be an expert in the field of tool mark
8 identification.

9 BY MR. HIXSON:

10 Q Okay. So when you go through tool mark identification,
11 briefly -- I'll just kind of get you started on it -- is that
12 when a harder surface creates -- impacts a softer surface and
13 leaves a mark; is that right?

14 A Correct, yes.

15 Q Tell us about that, and then we'll talk about what you
16 did in this case.

17 A So, in the case of firearms, when a firearm is fired, the
18 combustion built up by the cartridge -- to make it easier --
19 makes the gun, the action cycle. When that cycling occurs,
20 the friction on the breech face of the pistol will make a mark
21 on a cartridge case, and then the friction between the bullet
22 inside of the barrel or the bore also makes rifling
23 impressions on the bullet.

24 Q Okay. So you can compare it to a recovered fired
25 cartridge casing if it's a semiautomatic handgun and perhaps

1 you can find some tool mark on that; is that right?

2 A Yes.

3 Q And as well as, if you recover a bullet, perhaps you can
4 see tool mark on the rifling characteristics of the bullet to
5 determine for comparison and maybe inclusion of a category of
6 firearms that perhaps used it; is that safe to say?

7 A Yes. On a bullet, sometimes we can go with the general
8 rifling characteristics, or GRC, we call it. We just measure
9 the land and groove impression widths, and we have a database
10 that can enter those numbers into, and it will generate a
11 possible list of makes and manufacturers that could have
12 possibly fired those bullets.

13 Q Okay. Let me show you a couple of items in evidence,
14 already in evidence. State's 38 in evidence. And then I'm
15 also going to show you State's 39 that's already in evidence.

16 Did you take, by chance, those samples into your
17 laboratory in Columbia, South Carolina, for forensic
18 determinations of its functionality and fire test samples from
19 it?

20 A I'm just going to check the serial numbers here.

21 Q Okay.

22 A Yes, I did.

23 Q Okay. So as it relates to -- let me start out with this
24 .32 ACP Guardian, and I'm referring to State's 38. Able to
25 see that up on the screen, ma'am?

1 **A** Yes.

2 **Q** Okay. That's State's 38. I think it's a .32 ACP North
3 American Arms Guardian, I believe? NAA Guardian; is that
4 right?

5 **A** That's correct.

6 **Q** Did you perform any analysis on that weapon?

7 **A** I did.

8 **Q** Tell us about it.

9 **A** When I got it, we make sure the seals are intact on the
10 box, and obviously, they were. I opened it. We document with
11 photographs and paperwork on all of the evidence that we
12 examine.

13 I looked at it, and it -- it appeared that there was
14 debris kind of built up inside of the muzzle area, which is
15 kind of just where the bullet comes out at the end of the
16 barrel. But also, underneath the slide in that area where the
17 spring is, the recoil spring, there's also some debris in
18 there. That wouldn't allow the action to work properly on
19 that firearm.

20 **Q** And so when you talk about debris, can you kind of
21 characterize that? Is it, you know, for lack of a better
22 term, pocket -- I mean, what is the debris consistent with?

23 **A** Have to look at my notes here.

24 **Q** I mean, is it rust?

25 **A** On that one, it appeared to be just kind of lint.

1 Q Like pocket lint?

2 A Yeah, grime. Sometimes there's too much oil put on a
3 firearm, and at that point, it kind of just collects dust and
4 lint and dirt, and everything else just kind of sticks to that
5 oil in there, and it builds up.

6 Q Okay. So based on the presence of the debris you're
7 talking about, in the muzzle as well as the recoil spring
8 area, kind of below that, were you able to determine whether
9 or not that firearm was functional when you first received it?

10 A When I first received it, it was not.

11 Q Okay. What does that mean? The thing wouldn't go bang
12 if you pulled the trigger; right?

13 A We couldn't -- if I remember right, the slide wouldn't go
14 to the rear all the way to even chamber a round.

15 Q Okay. And then did you do anything subsequent to that to
16 try to -- did you clean it up to see if it would fire after
17 you cleaned it up?

18 A I did. I took it apart. I got all the lint and dirt and
19 everything outside of it. And then, after that, it fired
20 properly.

21 Q Okay. Based on you firing a test sample, were you able
22 to recover a bullet that was fired from that weapon for
23 additional analysis?

24 A Yes.

25 Q Okay. Very good. Let's take a look at this next one.

1 State's 39. Do you see that up on the screen, ma'am?

2 **A** Yes.

3 **Q** Okay. Did you have an opportunity to receive that item
4 into evidence from the Horry County Police and perform some
5 tool mark analysis of this weapon also?

6 **A** Yes, I did.

7 **Q** Tell us about some of your findings.

8 **A** Oh, did the same thing with that one. It was in a
9 evidence, tape-sealed box. Did the same worksheets and
10 photographs to document the firearm.

11 That one was in working order when I received it, so I
12 just -- I got ammunition and test-fired the firearm, and I
13 didn't have any issues test-firing that one.

14 **Q** Okay. So that one functioned fine, and you were able to
15 fire a test sample to collect that bullet to compare it to
16 other items of evidence; right?

17 **A** Yes.

18 **Q** Okay. I guess this is an easy one for you. This is a
19 ground ball; right? Was it safe to say it's easy that the .32
20 ACP silver Guardian does not fire the same ammunition that the
21 .45 ACP, State's 39; is that right?

22 **A** That's correct, yes.

23 **Q** And so, just generally speaking, I think people
24 understand this, but for non-gun people, talk about calibers,
25 different guns use different calibers, if you don't mind.

1 **A** Sure. So the caliber of a gun is determined by the
2 inside diameter of the bore or what size bullet will fit in
3 the bore. For a .45 auto, which is on the screen now, that's
4 typically a .450 inches in diameter bullet.

5 **Q** So that's getting close to half an inch almost. It's
6 getting close.

7 **A** Correct. As a .32 auto, or a .32 ACP, is more of a .32
8 or .313. Those vary a little bit for a .32 auto, but it's
9 essentially a good bit smaller than the .45, as you would see
10 in a .45 auto.

11 **Q** So is it just, for laypersons, you know, firearms
12 manufacturers market ammunition to sell to the public; is that
13 right?

14 **A** Mm-hmm.

15 **Q** And so sometimes they shorten the numbers to make it roll
16 off the tongue and sell on a shelf at Cabela's more than they
17 actually put out the .0355 diameter of the bullet or the bore
18 of a handgun; is that safe to say?

19 **A** Yes. Yeah, it's easier to say, you know, .32 ACP rather
20 than a .3 something-something inches diameter bullet.

21 **Q** Right. So, for instance, a .38 Special, a 38 -- a .38
22 Special would be 38/1000ths of an inch; right? It's .357
23 one-thousands of an inch, generally speaking; is that right?

24 **A** That is correct.

25 **Q** Okay. At some point in time -- well, let me say this:

1 Did you receive two bullets from autopsy, evidence samples,
2 from the Horry County Police?

3 **A** Yes.

4 MR. HIXSON: I'm handing the witness State's 85 and 86.

5 **A** I'm just looking for -- whenever we examine bullets, we
6 would try to scribe the information -- lab number, item
7 number, and our initials on it to make sure that is what we
8 examined it. And I did examine these.

9 MR. HIXSON: And both of those State's -- to be precise
10 here -- State's 85 has been introduced into evidence, Your
11 Honor, as the bullet from the autopsy of Stephen Johnson, Sr.,
12 and State's 86, Your Honor, has been entered into evidence,
13 described as a bullet from the body of Stephen Johnson, Jr.
14 BY MR. HIXSON:

15 **Q** And so were you able to perform any analysis on those two
16 bullets and make any findings as to the origin of the firearm
17 that fired them?

18 **A** I did perform examinations on the bullets. I was able to
19 negate both of the firearms that I was submitted due to
20 caliber. They were too big to be fired out of a .32 ACP and
21 too small to be fired out of the .45 auto. And I'm speaking
22 in diameter. Widths too small and too big.

23 I did, however, determine that they were fired by the
24 same firearm, just not the two that I had submitted.

25 **Q** Okay. So it's your expert opinion that those two bullets

1 didn't come from this one?

2 **A** Correct.

3 **Q** And I'm looking at State's 38.

4 Didn't come from State's 39?

5 **A** Correct.

6 **Q** But those two bullets did come from an unknown other
7 firearm?

8 **A** Yes.

9 **Q** Okay. And now, based on you taking a look at those, were
10 you able to make a determination of the caliber of the
11 firearm, the diameter of the bullet of the firearm that fired
12 those two bullets?

13 **A** Yes. When we get a bullet in, we'll do the diameter, the
14 weight, the makeup of the bullet, the different
15 characteristics that you see on the bullet. And I determined
16 that both of these were either a .38 Special or a .357 Magnum
17 caliber.

18 **Q** Okay. And when you say that, what do you mean when you
19 say .38 Special versus .357 Magnum? Sounds like two different
20 things. Can you explain that in more detail?

21 **A** Yes. A .357 Magnum can also shoot a .38 Special caliber
22 cartridge. So the .38 Special caliber cartridge is just
23 shorter in length than a .357 Magnum. Their bullet diameters
24 are the same, and some manufacturers actually use the same
25 bullets in both calibers. So -- rather than -- because we

1 don't have a gun to determine whether it's a .38 Special or a
2 .357, we have to include both of them because we don't know
3 which caliber gun it was fired out of.

4 Q So both of the other guns, a .32 ACP as well as a .45
5 ACP, aren't those cartridges designed, generally speaking, as
6 rimless cartridges that are designed to be used in
7 semiautomatic handguns?

8 A Yes.

9 Q The .38 Special, 357 Magnum cartridge, I guess, back in
10 the 1950s, is that a rimmed cartridge?

11 A That is correct.

12 Q Okay. And so, as a rimmed cartridge, generally speaking,
13 is that designed to be shot in a revolver-type firearm?

14 A Yes. Most .38 Specials and .357 Magnums are revolver.

15 Q Okay. And for those that don't understand guns,
16 semiautomatic pistols and revolvers, what is the distinction
17 between a revolver and a semi-automatic-style handgun as it
18 relates to a fired cartridge casing from that handgun?

19 A So a revolver has a cylinder within the frame, and it
20 holds a certain amount of cartridges. As it's fired, the
21 cylinder rotates, and the fired cartridge cases stay in that
22 cylinder.

23 A semiautomatic firearm has a magazine which cartridges
24 are loaded into and chambered, and every time -- typically,
25 unless there's something, you know, different about the

1 firearm or wrong with the firearm. Typically, every time it
2 fires, it ejects the fired cartridge case out of the firearm.
3 So the revolver keeps the cartridge cases in. A semiautomatic
4 firearm will typically eject the cartridge cases after firing.

5 Q So short of not finding a fired cartridge case or an
6 individual taking it out of a crime scene, if a semiautomatic
7 handgun was fired in an enclosed area, generally, you would
8 expect to -- somewhere there is fired cartridge casings
9 ejected from the weapon; is that right?

10 A That's typically what you would see.

11 Q And then, the converse of that, a revolver, I guess, an
12 old-fashioned wheel gun -- a wheel, talking about the
13 revolvers; right?

14 A Mm-hmm.

15 Q Those -- generally, are they six shots? There's some
16 five shots or so?

17 A Yeah, depending on the calendar -- or, sorry, caliber.

18 Q Yeah, I agree with you. That's right.

19 Generally speaking, all those stay inside the cylinder
20 until they are manually extracted or rejected from -- based on
21 the rim of the cartridge?

22 A Yes, that's correct.

23 Q Okay. Did you -- were you able to -- were you ever
24 produced a suspected murder weapon to compare to those bullets
25 recovered from the bodies to compare an actual firearm to

1 this? Were you ever able to find one to compare them -- those
2 to?

3 **A** No, I was not submitted a firearm to compare to those
4 bullets.

5 **Q** And so were you ever able to, based on that, just give
6 law enforcement general guidance of the rifling of the
7 bullets, what possible manufacturers may have manufactured in
8 order to look for one sometime down the road?

9 **A** I did. I gave a GRC list.

10 **Q** Okay. So what is that?

11 **A** Going off of the widths of the land and groove
12 impressions on the bullets, like I said, we have a database
13 that we enter that information into, and it produces a list
14 for us. And that database has been added to for -- I don't
15 know how many years, but it may not be all-inclusive, but it
16 is a very good list to give a good idea of potential firearm
17 makes that may have fired the bullets with specific rifling
18 characteristics.

19 **Q** And so, based on your specific rifling characteristics
20 that you got off of those two bullets -- and I continue to
21 refer to State's 85 and State's 86 -- you were able to produce
22 two different lists: One, a potential .357 Magnum revolvers
23 as well as some potential .38 Special revolvers; is that
24 right?

25 **A** Yes.

1 Q And did you put those findings in the form of a written
2 report that you provided to law enforcement?

3 A Yes, I did.

4 Q State's 105. Do you recognize that? Is that correct?

5 A Yes.

6 MR. HIXSON: All right. We move State's 105 into
7 evidence.

8 THE COURT: Any objection?

9 MR. McGUIRE: No objection.

10 THE COURT: State's Exhibit 105 admitted into evidence
11 without objection.

12 (State's Exhibit No. 105, Firearms Report, was received
13 into evidence.)

14 BY MR. HIXSON:

15 Q And so, in closing, some of the potential manufacturers
16 of firearms that would be consistent with this bullet coming
17 from -- in a .357 Magnum chamber would be Cuban (ph) Arms,
18 Ruger, Smith & Wesson, Casull, Llana, and Taurus; is that
19 right?

20 A That's correct.

21 Q As well as a lot of .38 Special potential revolvers that
22 could have, including Ruger, Smith, Taurus, etc.; right?

23 A Yes.

24 MR. HIXSON: Thank you. I have no further questions.

25 THE COURT: All right. Cross-examination?

1 MR. MCGUIRE: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. MCGUIRE:

4 Q Ma'am, you're from SLED?

5 A Yes, sir.

6 Q That's South Carolina Law Enforcement Division.

7 It's common for local jurisdictions -- counties and city
8 police departments -- to seek your assistance in the
9 investigation in their cases?

10 A Yes, that's correct.

11 Q And not just ballistics but fingerprint evidence,
12 computer evidence?

13 A Yes. Yeah, we have multiple units in the lab.

14 Q Right. It's like a science building, basically; right?

15 A Yeah.

16 Q And cell phone examiners?

17 A Yes.

18 Q I think I said fingerprint. Pretty much anything that's
19 sort of technical, scientific evidence, including tool mark
20 evidence, local governments come to you guys for assistance
21 all the time?

22 A Yes.

23 MR. MCGUIRE: That's all I have. Thank you.

24 THE COURT: Redirect?

25 MR. HIXSON: No, sir.

1 THE COURT: All right. You may step down.

2 Let me see the attorneys.

3 BENCH CONFERENCE

4 (The following bench conference was held outside of the
5 hearing of the jury and others:)

6 THE COURT: All right. Lunch is already here for the
7 jurors. Do you want to break now?

8 MR. MCGUIRE: Colleton is the phone and that's it, and
9 then I'm done.

10 THE COURT: Okay. But, I mean, how long are we talking
11 about? Their food is here and it's warm.

12 MR. MCGUIRE: Let's just break. Do you want to just
13 break and bring them back? Last witness after lunch?

14 MR. HIXSON: Well, I mean, I don't know.

15 MR. MCGUIRE: I'm not going to call my guy, so...

16 MR. HIXSON: I mean, I think I have done in ten minutes.

17 THE COURT: Okay. You have got ten minutes. If he says
18 ten minutes --

19 MR. MCGUIRE: It doesn't matter to me, Judge.

20 MR. HIXSON: I mean, that's up to you.

21 THE COURT: That's fine, no. Ten minutes.

22 (Open court resumes as follows:)

23 THE COURT: All right. The State can call your next
24 witness.

25 MR. MCGUIRE: Lieutenant David Long from the Colleton

1 County Sheriff's Office.

2 LT. DAVID LONG,

3 the witness, after having been duly sworn, was examined and
4 testified to as follows:

5 THE CLERK: State your full name and spell your last name
6 for the Court, please.

7 THE WITNESS: David Jeffrey long. Last name, L-o-n-g.

8 MR. McGUIRE: Judge, can we approach?

9 THE COURT: All right.

10 BENCH CONFERENCE

11 (The following bench conference was held outside of the
12 hearing of the jury and others.)

13 MR. McGUIRE: So, yesterday afternoon, the three of us
14 talked about the ammo, and I would object to it coming in.
15 It's .357.

16 MR. HIXSON: Right. And I'm going to put it at the tail
17 end. I'll do the cell phone records. I'll establish a
18 foundation. I'll put the phone picture in, put the phone in,
19 and I won't do this until last so the Court can hear the
20 run-up to that. And then before I --

21 THE COURT: Well, it sounds like it's going to be longer
22 than ten minutes, is what you're telling me.

23 MR. McGUIRE: Fair enough.

24 MR. HIXSON: Well, I guess, since he said that -- okay,
25 fair enough.

1 THE COURT: All right. Let's go ahead and break for
2 lunch, and then we'll come back and do it all after lunch.
3 Okay?

4 MR. HIXSON: Okay.

5 (Open court resumes as follows:)

6 THE COURT: All right. Ladies and gentlemen, we've been
7 -- these bench conferences have been to due some scheduling.
8 We have your lunch here. So we'll go ahead and break for
9 lunch. We'll probably take about an hour, come back. Leave
10 your notepads in the jury box. Do not discuss the case, even
11 among yourselves.

12 Hope you have a good lunch, and we'll come back at about
13 1:15. Thank you very much.

14 (The jury exited the courtroom at 12:16 p.m.)

15 THE COURT: All right. Anything from the State before we
16 recess for lunch?

17 MR. HIXSON: No, sir.

18 THE COURT: Anything from the defense?

19 MR. McGUIRE: No, sir.

20 THE COURT: All right. We'll be in recess for about an
21 hour.

22 (A lunch recess was taken from 12:17 p.m. to 1:25 p.m.)

23 THE COURT: All right. Anything from the State before we
24 bring the jury in?

25 MR. HIXSON: No, sir.

1 THE COURT: Anything from the defense?

2 MR. MCGUIRE: Yes, sir. We need to take up the bullets,
3 .357 live cartridges.

4 THE COURT: Do you want to go ahead and do that now?

5 MR. HIXSON: May as well. That way, when I try to
6 introduce it, we don't have to send the jury back out.

7 THE COURT: All right.

8 MATTER OF LAW/MOTION TO SUPPRESS

9 MR. HIXSON: I want to set the stage with what I
10 anticipate the proffered testimony to be, Your Honor.

11 THE COURT: All right. Go ahead and -- well, first, go
12 ahead and let's put on the record what it is you're seeking to
13 do. And then I'll hear Mr. McGuire's objection.

14 MR. HIXSON: Okay. So my next witness is going to be
15 Lieutenant David Long from the Colleton County Sheriff's
16 Department. And he was notified and his basic testimony will
17 be that he was contacted by the Horry County Police Department
18 because they had evidence that there was a fugitive in their
19 area.

20 Colleton County -- within Colleton County is Smoaks,
21 South Carolina. There was some -- long story. He received a
22 call from his captain to do an agency assist from the Horry
23 County Police Department, and he is part of the SWAT team
24 unit. So they geared up, went out to the location on Agora
25 (ph) -- I've got to remember to pronounce this name right.

1 But it's Agora Court in Smoaks, South Carolina.

2 He'll testify that there was basically a trailer of some
3 kind that did not look lived in, that power was attached to
4 the trailer. But once they went inside the trailer,
5 eventually, that's where Mr. Rivera was found and arrested, in
6 that trailer.

7 There was power to it, and but -- there was furniture in
8 it, but there was no fresh food in there. It didn't appear as
9 if it was a normal residence. It was very rarely used, but
10 there was power and service to the trailer. They weren't sure
11 if anybody was in it.

12 At first, they hear banging noises inside, and they
13 realize there is someone in that trailer. They did a search
14 warrant. They sat on the outside with the search warrant.
15 This is over about a period of two hours.

16 Once they conclude the two hours, I don't know of this
17 detail, basically make an announcement, bull horn, I don't
18 know, say, "Come out, we know you're in there." Sounds like a
19 classic cop show, but...

20 "You're surrounded. Give up." And, at that time,
21 Mr. Rivera comes out of the -- and he's placed into custody at
22 that time. They have the search warrant for that, so when
23 they go into the trailer to look around, that's when he
24 describes what the trailer basically looks like.

25 He'll testify that, in the hall bathroom, they recovered

1 the cell phone that we have been talking about, the cell phone
2 that was -- ultimately the ones that we're talking about the
3 entire time that's already into evidence.

4 And then, on the bedroom floor, there is loose -- and
5 this is where the photograph comes in. They also recovered
6 eleven .357 Magnum caliber cartridges that are on the floor of
7 the bedroom where Mr. Rivera was arrested from. We don't
8 intend to introduce the cartridges; just the photograph --
9 this photograph. It's State's 104 into evidence.

10 And the probative value of this is because we heard
11 testimony that, either, a .357 Magnum or a .38 Special
12 revolver was used in the killing. That weapon has never been
13 recovered. It makes a fact in issue more likely than not if
14 this defendant has access to the same caliber of ammunition,
15 of the type of weapon that was used to kill these people. It
16 makes the probative value higher than if this was a .9
17 millimeter, the probative value would be shockingly low. We
18 wouldn't even attempt to introduce it because I don't know how
19 you could argue why a .9 millimeter matters.

20 As a matter of fact, there's some gun boxes recovered at
21 Mr. Rivera's house that were .9 millimeters that we have no
22 intention of putting into evidence because the connection
23 there is non-existent.

24 So that's the basis for the foundation. The officer
25 can't say that these are the ones that were used. They were

1 spent. But access to ammunition of the type that was used to
2 kill two victims, we believe, is probative to the evidence in
3 the case, and that's why we're trying to admit them.

4 THE COURT: I mean, this structure where the defendant
5 was located, was there anybody else in there? Was he in there
6 by himself or what?

7 MR. HIXSON: I don't know if I'm going to say this in
8 front of the jury, but it was, like, a trap house. No one
9 else was in the house. He was the sole occupant of that
10 trailer. It was not registered to him in any other way. It
11 was a house that he was staying in, and no one else was in the
12 house.

13 THE COURT: But nobody else was in there, and you go in
14 there and you find the phone and the bullets.

15 MR. HIXSON: That's correct.

16 THE COURT: I gotcha.

17 All right. Let me hear your objection.

18 MR. McGUIRE: Your Honor, the testimony in this case has
19 been the murder weapon was either a .38 Special or a .357.
20 There's testimony that Bradford Britton told the officers he
21 thought the gun was a .38. These are not sufficiently
22 connected to have any real significant, probative value. The
23 danger of unfair prejudice, that he's this person who hangs
24 out places where there's ammunition, you know, that is
25 prejudicial, and the danger of unfair prejudice does outweigh

1 the whatever slight probative value it might have.

2 THE COURT: Okay. All right. And that's why I was
3 asking who all -- whether it was just the defendant. I think
4 going into the structure and finding the defendant's phone and
5 the bullets there does have a little bit more probative value
6 than just random bullets sitting around in a structure.

7 So I'm going to deny the motion to suppress it. I find
8 the probative value does outweigh the probative effect.

9 MR. MCGUIRE: And, Judge, could you classify that as a
10 final ruling so I don't have to object again?

11 THE COURT: Yeah, that will be my ruling, assuming the
12 witness's testimony is such as it's been portrayed to the
13 Court.

14 MR. MCGUIRE: Yes, sir.

15 MR. HIXSON: Yes, sir.

16 THE COURT: Anything from the State before we bring the
17 jury in?

18 MR. HIXSON: No, sir.

19 THE COURT: Anything from the defense?

20 MR. MCGUIRE: No, sir.

21 THE COURT: All right. Let's bring the jury in.

22 When they come in, he's going to call the witness and
23 we'll do it like the first time. Go ahead and swear him in.

24 (The jury entered the courtroom at 1:32 p.m.)

25 THE COURT: All right, ladies and gentlemen. Welcome

1 back. Hope everybody had a good lunch. Make sure you have
2 your own notepads. No one else's. Make sure, if you brought
3 any cell phones or pagers into the courtroom, they are turned
4 off completely at this time. We're now ready to resume the
5 trial of this case.

6 Mr. Hixson, the State can call your next witness.

7 MR. HIXSON: Thank you. At this time, we call Lieutenant
8 David Long from the Colleton County Sheriff's Office.

9 LT. DAVID LONG,

10 the witness, after having been duly sworn, was examined and
11 testified to as follows:

12 THE CLERK: State your full name and spell your last name
13 for the Court.

14 THE WITNESS: David Jeffrey Long. L-o-n-g.

15 DIRECT EXAMINATION

16 BY MR. HIXSON:

17 Q Good afternoon, sir. How are you?

18 A Good.

19 Q Please tell this jury what you do for a living.

20 A I work for the Colleton County Sheriff's Office. I'm in
21 charge of criminal investigations. I'm the SWAT commander for
22 the sheriff's department. I'm in charge of all special
23 operations and criminal investigations.

24 Q Okay. And some point in time -- and have you been doing
25 that for a period of time?

1 **A** November 11th will be 35 years.

2 **Q** All right. Thank you for that service. That's a long
3 time.

4 So that's easy for me to figure out you were working back
5 on July 26th -- excuse me, in this situation we're talking
6 about around July 31st into August 1st of 2019; is that right?

7 **A** Yes.

8 **Q** Okay. And did you have an occasion to receive a
9 telephone call or communication from the Horry County Police
10 Department asking for your assistance?

11 **A** My captain received that call.

12 **Q** Okay. Tell us about that.

13 **A** The captain's in charge of all operations that I do. I'm
14 in charge of the SWAT team. He called me and stated that
15 there was a fugitive in our area. He had been notified by
16 Horry County that a fugitive was in our area and they were on
17 the way down. That occurred about 10:00.

18 **Q** And "they," who is "they"? The Horry County Police
19 Department went to Colleton County?

20 **A** Horry County Police Department or Sheriff's Department,
21 whoever the investigators were from that division. I don't
22 know exactly who they were.

23 **Q** Okay. And so I don't have a map. So where is Colleton
24 County as compared to Myrtle Beach?

25 **A** Colleton County is between Beaufort and Charleston. If

1 you're traveling down US-17, when you leave Charleston County,
2 you enter Colleton County before you go into Beaufort County.

3 Q Okay. So south of Charleston, before you get to Hilton
4 Head; is that safe to say?

5 A Yes, yes.

6 Q For the jury who is not familiar with it.

7 A Yes.

8 Q Please continue.

9 A I received a call about 10:00 of the situation and was
10 instructed to gear up my men. We met at the sheriff's office,
11 did a quick briefing with the officers from Myrtle Beach area.
12 They instructed -- they had information that this fugitive
13 that they had a murder warrant for was in our area. At that
14 time, they had a location that was Angora Court.

15 Q Okay.

16 A We went to Angora Court. The location was a mobile home.
17 No vehicles around it. Just sitting in a yard.

18 Q And let's just for a second kind of describe -- describe
19 the mobile home on the outside. Does the mobile home look
20 lived in?

21 A It looked abandoned. It was in disarray in the yard. We
22 had to stumble around stuff to coordinate around the house.
23 There was a light on inside, so it did have power. We knew it
24 had power. There was no yard lights or anything, so we were
25 maneuvering in the dark with night vision.

1 We surrounded the entire dwelling, announced who we were.
2 One of the officers on the far end of the mobile home, which
3 would have been the bedroom area on the far end, right-hand
4 side from where I was, said there was bumping and banging in
5 that room.

6 We knew that someone was occupying that dwelling. We
7 assumed it to be the defendant. We acquired a search warrant.
8 A search warrant was issued by the magistrate on call.

9 Upon the search warrant being signed and delivered to us
10 at the scene, which took approximately three hours to do, we
11 had to call in an officer off night to go meet the judge,
12 prepare the warrant, and bring it to us. We were already in
13 place.

14 Once the warrant arrived on scene, we announced again --
15 prior to us making entry, we were at the stairs on the back of
16 the trailer -- or front of the trailer; whichever you look at
17 it. It's a stairwell going up. The door started to pry open.
18 By "pry open," I mean, this door was affixed around the
19 outside and was being forced out.

20 **Q** When you say "affixed," what do you mean by that?

21 **A** It appeared to be screwed or nailed together around the
22 outside as if to secure it from vandalism or burglary or
23 anything else.

24 **Q** Like permanently shut in an effort to -- well...

25 **A** This particular door was, yes.

1 Q The back door was the more one that you would use?

2 A Correct.

3 That's the side I was on, was the side that the suspect
4 was exiting from. He exited out of the trailer. We took him
5 into custody. Turned him over to Horry County or Horry
6 Police, whichever were there, the Myrtle Beach investigators.
7 And he was NCIC. We confirmed that. We released him to him,
8 and they took him away.

9 Q Now, based on the search warrant, did you -- after the
10 defendant was taken into custody and taken out of the trailer,
11 did you go into the trailer?

12 A Yes, sir. We executed a search warrant on the trailer.

13 Q Was there anybody else in that trailer?

14 A No one.

15 Q And can you generally describe the condition of the
16 trailer for the jury?

17 A There was minimal furniture in the living room. The
18 bedroom had one trash can, a box with a few little items in
19 it. Nothing -- no clothing. The kitchen was void of plates,
20 dishes, glasses, food, any type of items that the normal
21 person would have in their home that lived in the home
22 day-to-day. The rest of the trailer had, beyond that room,
23 the two back rooms and the bathroom on the further end, had
24 nothing in them.

25 Q During the course of the walking through -- doing a

1 walk-through or looking around inside that trailer, did you
2 find anything that, at that point in time, you considered of
3 evidentiary value? And specifically --

4 **A** I did.

5 **Q** -- did you recover anything in the back bathroom?

6 **A** I did.

7 **Q** Okay. And do you recall what you recovered?

8 **A** A cell phone that had been, apparently, crushed.

9 **Q** Okay. Let me show you a photograph that's been marked as
10 State's 103. See if you recognize that.

11 **A** Yes. The bag in the photo is a bag with my handwriting
12 on it, placing this cell phone from the trash can in the
13 bathroom into that bag.

14 **Q** And is that photograph a fair and accurate representation
15 of that phone that you got out of it?

16 **A** Well, that's the backside of it. The front side, the
17 glass, is crushed.

18 **MR. HIXSON:** That's State's 103. We'd move that into
19 evidence.

20 **THE COURT:** Any objection?

21 **MR. MCGUIRE:** No objection.

22 **THE COURT:** State's Exhibit 103 admitted into evidence
23 without objection.

24 (State's Exhibit No. 103, Photo from Smoaks, was received
25 into evidence.)

1 BY MR. HIXSON:

2 Q And I'm going to show the witness what's already in
3 evidence, State's 102. Do you recognize that?

4 A That appears to be the cell phone that was crushed, yes.

5 Q Okay. And did you see that -- I guess when you saw that
6 down in that location, was there any other indication of
7 damage to that phone?

8 A Well, when we lifted it up and realized it was a cell
9 phone, shards of glass were dripping off of it into the trash
10 can. It, apparently, had just --

11 Q It appeared to have just been damaged?

12 A Damaged.

13 Q Okay. And I think you indicated that you took that in
14 property evidence and turned that over to Horry County?

15 A Yes, sir.

16 Q Thank you.

17 Also, while you're back in the back bedroom area, I think
18 that's the area you indicated that you saw a light -- there
19 was a light in that area?

20 A Yes.

21 Q Did you find anything else of evidentiary value in that
22 area?

23 A Eleven .357 Magnum rounds, loose, lying on the floor.

24 Q Okay. You said that kind of fast. Tell me that again.
25 What did you find?

1 **A** Eleven .357 Magnum rounds, single live ammunition rounds,
2 lying on the floor.

3 **Q** Okay. Let me show you what's been marked as State's 104.
4 See if you recognize that. What is that?

5 **A** That is the evidence bag that I labeled, "Eleven .357
6 Magnum rounds, full metal jackets." They're in the photo on
7 top of the bag that I placed them in.

8 MR. HIXSON: At this time, we'd move State's 104 into
9 evidence.

10 THE COURT: State's Exhibit 104 admitted into evidence.

11 MR. HIXSON: At this time, I'd publish, Your Honor.

12 THE COURT: All right.

13 (State's Exhibit No. 104, Photo of Bullets, was received
14 into evidence.)

15 MR. HIXSON: Before you do that, I haven't showed the
16 jury this picture yet. This is State's 103. Publish that,
17 Your Honor?

18 THE COURT: All right.

19 MR. HIXSON: And now if you want to publish State's 104.

20 BY MR. HIXSON:

21 **Q** Can you see that picture there?

22 **A** Yes, I can.

23 **Q** That's a photograph of the rounds you recovered in the
24 trailer in Smoaks?

25 **A** Yes, sir. That's my handwriting on the bag behind it.

1 Q And those items were turned over to Horry County Police?

2 A At the scene, yes, sir.

3 Q After you got Mr. Rivera into custody, you provided these
4 items of evidence, does that end your involvement in this
5 particular situation?

6 A We escorted them back to the main highway. It was a
7 rural area we were in.

8 Q Okay. And from that on?

9 A From that, we were done.

10 Q Thank you for your service. I have no further questions.

11 THE COURT: Cross-examination?

12 MR. MCGUIRE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. MCGUIRE:

15 Q You have been here in the courtroom hearing testimony.
16 Do you know that the murder weapon is either a .38 Special or
17 a .357?

18 A I heard the gentleman yesterday state that, yes.

19 Q Which gentleman?

20 A The one that was in custody.

21 Q Oh, Mr. Bradford Britton?

22 A Yeah. I don't know who these people are.

23 Q Right. He actually said it was a .38. Did you know
24 that?

25 A No. When I heard him say it, he said a revolver, dark in

1 color with wooden handle. I didn't hear him specify a
2 caliber.

3 Q Okay. Did you hear the police officer who testified
4 today --

5 MR. HIXSON: Your Honor, I'm going to object on witness
6 pitting. This is a little witness pitting, a witness against
7 what witness testified and what the other witness said.

8 MR. MCGUIRE: I'll just move on.

9 THE COURT: All right.

10 BY MR. MCGUIRE:

11 Q You don't know if those bullets are connected to this
12 Myrtle Beach robbery or not, do you?

13 A No, sir, I do not.

14 Q No idea?

15 A No, sir. We collected all ammunition that we could find
16 in the house. That was the only ammunition inside the
17 dwelling.

18 Q Sure. Who owns the trailer?

19 A Have no idea.

20 Q Okay. Were these swabbed for DNA to try to connect them
21 to any person?

22 A I do not know that. I placed them in that bag and handed
23 them to the Horry County officer.

24 Q Okay. And that's it?

25 A That's it.

THE PLAINTIFF RESTS

705

1 Q As far as you know, they have no connection to the Myrtle
2 Beach robbery at all?

3 A None whatsoever. I had gloves on when I placed them in
4 that bag.

5 Q They could still be tested?

6 A Sir?

7 Q Could they still be swabbed for DNA; do you know?

8 A I do not know. I assume they could. Evidence is swabbed
9 after the fact several times.

10 Q Right, right.

11 As far as you know, no one's handled them?

12 A I don't know once they left that -- once I place them in
13 that bag and handed them off.

14 Q All right. Fair enough. Thank you.

15 THE COURT: Redirect?

16 MR. HIXSON: No, sir.

17 THE COURT: Thank you. You may step down.

18 The State may call your next witness.

19 MR. HIXSON: At this time, the State of South Carolina
20 rests.

21 THE PLAINTIFF RESTS

22 THE COURT: All right. Ladies and gentlemen, the State
23 has rested their case. Now is the time of the trial where I
24 must discuss some issues of law with the attorneys before we
25 proceed any further, so we're going to need to take a short

1 break.

2 In any event, it will give you an opportunity to stretch
3 your legs, get something to drink, whatever the case may be.
4 Leave your notepads in the jury box. Do not discuss the case,
5 even among yourselves. It's too early for deliberations.

6 We'll take a break and bring you back in just a few
7 minutes. Thank you very much.

8 (The jury exited the courtroom at 1:46 p.m.)

9 THE COURT: All right. Any motions?

10 MATTERS OF LAW/MOTION FOR DIRECTED VERDICT

11 MR. MCGUIRE: Your Honor, for the record, we make a
12 motion for a directed verdict of acquittal.

13 THE COURT: All right. I note your motion. I'm going to
14 deny it.

15 Anything else?

16 MR. MCGUIRE: Nothing from the defense at this time.

17 THE COURT: All right. Let me go ahead and -- do we want
18 to go ahead now and let me question your client regarding his
19 right to testify?

20 MR. MCGUIRE: Can I talk to him for one second?

21 THE COURT: All right. Or if we want to take a break,
22 however you want to do it.

23 MR. MCGUIRE: We can take a break. That would be great.

24 THE COURT: Okay. And we'll come back. And you'll
25 explain to him what we're going to do.

DEFENDANT'S RIGHTS

707

1 MR. McGUIRE: Yes, sir.

2 THE COURT: All right. Let's take about a 10-minute
3 break.

4 (A brief recess was taken from 1:47 p.m. to 2:04 p.m.)

5 THE COURT: All right. Mr. McGuire, are we ready to
6 question your client regarding his right to testify?

7 MR. McGUIRE: Yes, sir.

8 DEFENDANT'S RIGHTS

9 THE COURT: All right, sir.

10 All right, Mr. Rivera. If I could get you to stand,
11 please.

12 Put him under oath.

13 DERRICK JAJUAN RIVERA,

14 the defendant, after having been duly sworn, was examined and
15 testified to as follows:

16 THE COURT: All right, sir. Your name is Derrick Jajuan
17 Rivera?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Rivera, at this time, I'm going to
20 explain to you certain rights that you have. If you do not
21 understand anything I say, please let me know. If you want me
22 to explain anything in more detail, please let me know. Do
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. We have now reached the stage of

1 the trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the United States Constitution. This amendment
4 states in part that no person shall be compelled in any
5 criminal case to be a witness against himself. This means
6 that you cannot be required to testify in this case.

7 You have the right to testify on your own behalf;
8 however, no one can make you testify. This is a personal
9 right, and no one can waive this right except you. If you
10 decide to testify, you will be subject to the same rules that
11 govern other witnesses, and you may be examined and
12 cross-examined on any relevant issue in this case.

13 In addition, if you have any convictions involving
14 dishonesty or false statement or for crimes punishable by
15 imprisonment for more than one year and this Court determines
16 that the probative value of admitting this evidence outweighs
17 its prejudicial effect to you, the solicitor will be able to
18 introduce your record to attack your credibility.

19 Now, is there any prior convictions that the State would
20 use?

21 MR. HIXSON: Yes, Your Honor. There are quite a few.
22 Would you like me to -- or how would you like me to handle
23 that?

24 THE COURT: Whatever you would expect to challenge his
25 credibility on. What would that be?

1 MR. HIXSON: There's a burglary in the second degree,
2 violent offense, with a sentencing date of September 19 of
3 '11.

4 There's a strong armed robbery --

5 THE COURT: Excuse me. September what now?

6 MR. HIXSON: September 19th of 2011.

7 THE COURT: Oh, okay.

8 MR. HIXSON: That's the date he was sentenced.

9 There was a strong arm robbery offense. There was a
10 sentencing date of the same day: September 19th of '11.

11 There was a B&E motor vehicle offense, that is,
12 obviously, past the ten years, but we would argue about the
13 prejudicial probative effect. That's April of 2008. We
14 believe it's a crime involving dishonesty, is why we would
15 advance that, so the ten-year limit doesn't matter.

16 There's another breaking and entering a motor vehicle
17 offense on that same date. That's April 7th of 2008.

18 There's a burglary in the second degree, nonviolent
19 offense, Your Honor. That is February 27th, 2006.

20 On that same day, there's an additional burglary, second
21 degree, nonviolent offense. Three of them; I apologize.
22 February 27th, 2006.

23 And then there are juvenile offenses, Your Honor, but I
24 won't bring those up right now.

25 THE COURT: All right. Mr. McGuire, what's your position

1 on the State's use of those prior convictions?

2 MR. MCGUIRE: If Mr. Rivera was to testify, we would
3 object to the use of all of them.

4 THE COURT: All right. I would not allow you to bring
5 out the B&Es and the burglary seconds in 2006. I'm inclined
6 to allow the burglary second in 2011 and the strong armed
7 robbery in 2011.

8 MR. HIXSON: Yes, Your Honor.

9 THE COURT: Okay? All right.

10 So, Mr. Rivera, if you take the stand, they would be able
11 to challenge your credibility based upon your convictions for
12 burglary in the second degree in 2011 and strong armed robbery
13 in September of 2011. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. If you decide to testify, this
16 decision on your part must be freely, voluntarily, and
17 intelligently made, with knowledge of the protections given to
18 you by the Fifth Amendment and the consequences of your
19 decision to testify.

20 If you decide not to testify, I will instruct the jurors
21 that they cannot give the fact that you did not testify any
22 consideration whatsoever, and that there is to be absolutely
23 no prejudice to you because you did not testify.

24 So it's left entirely up to you whether or not you
25 testify. You may talk to your attorney, your family and

1 friends, or anyone else, but the final decision will be left
2 entirely up to you. Now, do you understand what I have
3 explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions that you want to
6 either ask me or your attorney about what I have explained to
7 you?

8 THE DEFENDANT: No, sir. I already spoke with my
9 attorney, and we came to an agreement. You know, I don't want
10 to waste no more time or my time. I just want to get this
11 over with, sir. Like, I'm innocent. I'm not guilty. You
12 know? There's no reason for me to -- you know, I don't know.
13 I just -- what else do you want me to say? I didn't do it.

14 THE COURT: All right. Do you want to testify -- or do
15 you want to talk to your lawyer anymore about this?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Do you want to talk to anybody
18 else -- anybody else anymore about this?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Do you want to testify in this
21 case?

22 THE DEFENDANT: No, sir.

23 THE COURT: Is this your decision?

24 THE DEFENDANT: Yes. It ain't nothing to testify about.
25 I don't know nothing.

1 THE COURT: Okay. All right.

2 Anything further the State wants on the record in that
3 regard?

4 MR. HIXSON: No, sir.

5 THE COURT: Anything further you want on the record,
6 Mr. McGuire?

7 MR. MCGUIRE: No, sir.

8 THE COURT: Thank you very much, Mr. Rivera.

9 Now, is there going to be any witnesses called by the
10 defense?

11 MR. MCGUIRE: No, sir.

12 THE COURT: Okay. What do y'all want to do? I mean, I'm
13 still working on some charges. Do we want to do closing
14 arguments and charges and deliberations tomorrow morning or do
15 you want to try to get them -- I will not --

16 MR. HIXSON: Can we approach, Your Honor?

17 THE COURT: Yeah. I don't want the -- I'm not going to
18 charge the jury after 4:00.

19 MR. HIXSON: He's going to take a long time.

20 THE COURT: And, see, that's what I was wondering is I
21 didn't know how long your closing -- and I don't want to limit
22 you. And I'll give you all the time you need. But since we
23 have got tomorrow, I hesitate to charge the jury after 4:00
24 today.

25 BENCH CONFERENCE

1 (The following bench conference was held outside of the
2 hearing of the jury and others:)

3 MR. McGUIRE: I'm inclined to ask the Court to just let
4 us start argue and charge first thing in the morning, and we
5 can talk about charges this afternoon.

6 MR. HIXSON: Yeah.

7 THE COURT: Let me go ahead I'll just go ahead and bring
8 the jury in --

9 MR. McGUIRE: And I'll need to renew my motion.

10 THE COURT: You can rest on the record, and I'll excuse
11 them, have them come back tomorrow, and finish up.

12 MR. McGUIRE: Yes, sir.

13 MR. HIXSON: Yes, sir.

14 (Open court resumes as follows:)

15 THE COURT: Anything from the State before we bring the
16 jury in?

17 MR. HIXSON: No, sir.

18 THE COURT: Anything from the defense?

19 MR. McGUIRE: No, sir.

20 THE COURT: All right. Let's bring the jury in.

21 (The jury entered the courtroom at 2:13 p.m.)

22 THE COURT: All right, ladies and gentlemen. Welcome
23 back. We're ready to proceed.

24 Mr. McGuire, does the defense have anything to present?

25 MR. McGUIRE: Your Honor, we choose not to call

1 witnesses. We're going to rest right now.

2 THE DEFENDANT RESTS

3 THE COURT: All right. Ladies and gentlemen, the State
4 has rested their case. The defense has rested their case.
5 All the evidence has been presented to you. The only thing
6 remaining is for the attorneys to make their closing arguments
7 and me to charge you on the law in the case and for your
8 deliberations.

9 Given the time of time of day, it's going to take a while
10 for them to do their arguments, and I need to have what's
11 called a conference with the attorneys to discuss the law to
12 be charged in this case.

13 So I'm going to go ahead and excuse you for the remainder
14 of the day. I'm going to ask that you please be back at 9:15
15 tomorrow morning. Leave your notepads in the jury box. Do
16 not discuss the case. It's still too early for deliberations.
17 Don't talk to anyone. Don't talk to your fellow jurors.
18 Don't conduct any independent investigations. I hope
19 everybody has a good evening, and we'll see you back at 9:15
20 tomorrow morning. Thank you very much.

21 (The jury exited the courtroom at 2:15 p.m.)

22 MATTERS OF LAW/RENEWING DIRECTED VERDICT MOTION

23 THE COURT: Mr. McGuire, you said you wanted to renew
24 some motions?

25 MR. MCGUIRE: Oh, just directed verdict motion. Just

1 wanted to renew that before the charge.

2 THE COURT: All right. I'm going to deny the motion.

3 CHARGE CONFERENCE

4 THE COURT: Jury charge. Now, you did introduce some
5 exhibits.

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: So closing arguments, the State will close in .
8 full. Defense will close in full. The State can only reply
9 briefly to matters address in the defendant's closing argument
10 that you have not already addressed in your first closing
11 argument. Okay?

12 Anything, charge besides murder and armed robbery?

13 MR. MCGUIRE: So the only charge that I would ask for
14 specifically would be a hesitate to act/reasonable doubt
15 charge.

16 THE COURT: Yep, I have got that.

17 MR. MCGUIRE: And a circumstantial evidence charge where,
18 if the State relies in part on circumstantial evidence, that
19 each and every fact relied on would have to be consistent with
20 each other and probative to the point where they exclude any
21 other reasonable hypothesis.

22 THE COURT: Well, let me tell you...

23 MR. HIXSON: Yeah, I believe the Court's recently
24 loosened that up a little bit. I don't think it's the
25 inescapable conclusion language. I can pull that case if need

1 be but...

2 THE COURT: Let me tell you what I have got with regard
3 to direct and circumstantial evidence. Well, first, you
4 brought up reasonable doubt. All right? My charge -- and
5 I'll provide y'all with a written copy of this tomorrow
6 morning. But just hearing me charge it, let me know if this
7 is acceptable.

8 So what is a reasonable doubt in the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act. Proof beyond a reasonable doubt is
11 proof that leaves you firmly convinced of the defendant's
12 guilt.

13 We know very few things in this world with absolute
14 certainty, and, in criminal cases, the law does not require
15 proof that overcomes every possible doubt.

16 If, based on your consideration of the evidence, you are
17 firmly convinced that the defendant is guilty of the crime
18 charged, you must find the defendant guilty. If, on the other
19 hand, you think a real possibility exists that the defendant
20 is not guilty, you must give the defendant the benefit of that
21 doubt and find him not guilty.

22 MR. McGUIRE: Yes, sir.

23 THE COURT: That's my charge on the reasonable doubt.

24 All right. Direct and circumstantial evidence. Two
25 types of evidence are generally presented during a trial:

1 Direct evidence and circumstantial evidence. Direct evidence
2 is evidence that directly establishes the existence of a fact.
3 It directly proves the existence of a fact and does not
4 require deduction. An example of direct evidence may be the
5 testimony of an eyewitness who claims personal knowledge of
6 the facts sought to be proved.

7 Circumstantial evidence is proof of a chain of facts and
8 circumstances that indicate the existence of a fact. The law
9 makes absolutely no distinction between the weight or value to
10 be given to either direct or circumstantial evidence nor is a
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence. Crimes may be proven by
13 circumstantial evidence; however, to the extent the State
14 relies on circumstantial evidence, all of the circumstances
15 must be consistent with each other and, when taken together,
16 point conclusively to the guilt of the accused beyond a
17 reasonable doubt. If these circumstances merely portray the
18 defendant's behavior as suspicious, the proof has failed.

19 As previously stated, the State has the burden of proving
20 the defendant guilty beyond a reasonable doubt. This burden
21 rests with the State regardless of whether the State relies on
22 direct evidence, circumstantial evidence, or some combination
23 of the two.

24 You should weigh all of the evidence in the case. After
25 weighing all the evidence, if you are firmly convinced of the

1 defendant's guilt beyond a reasonable doubt, you should find
2 the defendant guilty. On the other hand, after weighing all
3 of the evidence, if you are not firmly convinced of the guilt
4 of the defendant beyond a reasonable doubt, you must find the
5 defendant not guilty.

6 MR. MCGUIRE: Your Honor, what I would say is that is an
7 accurate charge with current law, but I'm just requesting, if
8 I could give the old Edwards charge that does have the
9 language, "All circumstances must be consistent with each
10 other, point conclusively to guilt to the exclusion of any
11 reasonable hypothesis."

12 I understand you're not, at this time, with the state of
13 the law, required to give that charge, but that would be my
14 request. And I understand the courts have bounced back and
15 forth on circumstantial evidence through the years. Edwards,
16 Cherry, Greppon (ph), Leads, these are all cases that have
17 addressed it, and it has -- the pendulum has swung in both
18 directions over the years, and, obviously, I'm requesting the
19 one most favorable to my client.

20 THE COURT: And I understand that, and I really think
21 that I am saying that, with the exception of the point to the
22 exclusion.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All other considers -- because I do say, "To
25 the extent the State relies on circumstantial evidence, all of

1 the circumstances must be consistent with each other, and when
2 taken together, point conclusively to the guilt of the accused
3 beyond a reasonable doubt."

4 MR. HIXSON: Yes, Your Honor. I would concur with that,
5 that that's an accurate statement of the law. And I would
6 actually go a little bit further, as I understand that there
7 are some opinions floating around out there that kind of even
8 loosen up the conclusively aspect of it.

9 But it clearly doesn't go so far as to almost be a burden
10 shifting to say it must be to the exclusion of any other
11 hypothesis. That's an undue burden. That's not an accurate
12 -- we would argue, not an accurate statement of the law, and
13 we would concur with Your Honor's position on --

14 THE COURT: Well, I can tell you, this is the charge that
15 came out of the charge book, and as I have reviewed the case
16 law, whatever you want, whatever you want, get me a copy of it
17 with your authority for it, and I'll take a look at it
18 tomorrow. Okay?

19 MR. HIXSON: Thank you, Your Honor.

20 MR. McGUIRE: Yes, sir.

21 MR. HIXSON: If I can maybe approach and I can email it
22 to your law clerk later on?

23 THE COURT: That would be fine. However you want to do
24 it.

25 All right. Anything else?

1 As I understand -- but do y'all agree with me? It's just
2 guilty or not guilty on one indictment of murder, a second
3 indictment of murder, and a third indictment for armed
4 robbery?

5 MR. MCGUIRE: Yes, sir. No lesser includedes.

6 THE COURT: Yeah, I'm not aware of them.

7 MR. HIXSON: That's right. I do have -- I don't know
8 that a distinction I would try to bring to the Court's
9 attention, if Your Honor wants, is the asportation part of the
10 larceny, since there is testimony that the proceeds of the
11 crime were left inside the scene itself in a backpack.

12 There is also testimony that the -- there are -- the
13 bingo parlor was missing a certain amount of money. I did a
14 little -- *State vs. Moultrie*, for instance, is the case that
15 stands that the asportation component of taking and carrying
16 away. It doesn't have to be removed from the premises. Just
17 being moved from the presence of is enough to satisfy that
18 element. I don't know that the Court is overly concerned with
19 it.

20 MR. MCGUIRE: Judge, we're not contesting that. There's
21 evidence in the record that there was some money stuffed in
22 the pants of the suspect, so there would be evidence of
23 asportation, and we're not challenging that part -- that
24 element of the offense.

25 MR. HIXSON: I would just highlight for the Court about

1 asportation, about defining what "carrying away" means, as
2 there may be some confusion. Do you have to actually get out
3 of the bingo parlor with money in order to sustain a
4 conviction for armed robbery? *Moultrie* stands for the
5 proposition -- I have other authority too -- that taking it
6 from the presence of the person -- and you'll see that's the
7 import of the picture of the box with money right in front of
8 where Steve was standing at the conclusion of the crime of
9 armed robbery at that moment in time. There may be some
10 confusion. That's why I, perhaps, requested a charge on
11 asportation under *Moultrie* and others.

12 THE COURT: Well, let me tell you -- this is what I have
13 got in this: "The State must also prove, beyond a reasonable
14 doubt, that the defendant carried the property away, intending
15 to permanently deprive the owner of the property and to keep
16 the property for the defendant's own use. The slightest
17 removal of the property or the complete possession of the
18 property, even for an instant, by the defendant is sufficient
19 to show a taking and carrying away."

20 MR. HIXSON: Yeah, well, that's *Moultrie* without saying
21 *Moultrie*. So, thank you, sir.

22 THE COURT: All right. Anything else?

23 MR. HIXSON: No, sir.

24 THE COURT: Now, since it is just a guilty or not guilty
25 on each indictment, usually when there's a lesser included

1 offense, I'll do a verdict form where you can choose. Any
2 objection to them just writing on the indictment itself?

3 MR. MCGUIRE: No, sir. I don't think a verdict form is
4 necessary.

5 THE COURT: Okay. So I'll just let them take the
6 indictments back there and write their verdict on it.

7 Okay. Anything from the State before we break for the
8 evening?

9 MR. HIXSON: No, sir.

10 THE COURT: Anything from the defense?

11 MR. MCGUIRE: No, sir.

12 THE COURT: All right. We'll be in recess until -- the
13 jury is coming in at 9:15. I'll try to take the bench at
14 9:30, but certainly I'll get you the jury charges before then
15 and give you plenty of opportunity to take a look at it before
16 I charge them. Okay?

17 MR. HIXSON: Thank you, Your Honor.

18 MR. MCGUIRE: Yes, sir. Thank you.

19 THE COURT: Thank you very much.

20 (At 2:45 p.m., the trial was adjourned until Friday,
21 October 22, 2021, at 9:30 a.m.)
22
23
24
25

1 CERTIFICATE OF COURT REPORTER

2

3 State of South Carolina)
4 County of Horry)

5

6 I, Bobbi J. Fisher, Registered Professional Reporter
7 (RPR) and Official Court Reporter for the State of South
8 Carolina, do hereby certify that the foregoing is a true,
9 accurate and complete Transcript of Record of the proceedings
10 had and evidence introduced in the trial of the captioned case
11 in the General Sessions Court for Horry County, South
12 Carolina, on the 21st day of October, 2021.

13

14

15

16 Prepared: January 22, 2022

17

18 /s/ Bobbi Fisher

19 Bobbi J. Fisher, RPR

20 Official Court Reporter

21

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1 STATE OF SOUTH CAROLINA

2 COURT OF GENERAL SESSIONS

3 COUNTY OF HORRY

4 -----x

5 STATE OF SOUTH CAROLINA,)

)

6 Plaintiff,)

)

7 vs.)

)

Transcript of Record

)

2019-GS-26-04928 to

)

2019-GS-26-04933

)

9 DERRICK JAJUAN RIVERA,)

)

10 Defendant.)

)

11 -----x

12 Friday, October 22, 2021

13 TRIAL - DAY 5 of 5

14
15 B E F O R E:

16 The Honorable Benjamin H. Culbertson, Presiding Judge;

17 and a jury.

18
19 A P P E A R A N C E S:

20 Scott R. Hixson, Esq.

Attorney for the State

21 William S. McGuire, Esq.

22 Attorney for the Defendant

23
24
25 Court Reporter: Bobbi Fisher, RPR

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
CLOSING ARGUMENTS	
By Mr. Hixson	729
By Mr. McGuire	768
By Mr. Hixson	784
JURY CHARGE	785
VERDICT	802
SENTENCE	813
CERTIFICATE OF COURT REPORTER	815

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:52 a.m.)

THE COURT: All right. Gentlemen, I have provided you with a copy of my written charge. I know that there's probably going to be some objections or some issues that you want to address in it.

Any from the State at this time?

MR. HIXSON: No, Your Honor. We just believe that the charges proposed properly reflects *Logan* and then as kind of recently modified by *Herndon*, and we think that properly reflects the circumstantial evidence charge, Your Honor.

THE COURT: All right. Mr. McGuire?

MR. MCGUIRE: Thank you, Your Honor. As the Court knows, the circumstantial evidence charge has bounced around a bit in South Carolina, the pendulum swinging both ways. We stand by our request for the old *Edwards* charge, which would be to the extent the State relies on circumstantial evidence, each and every fact has to be wholly consistent with each other, point conclusively to the guilt of the accused to the exclusion of any other reasonable hypothesis. Of course, that's our request. We still stand by it.

But then, yesterday, Your Honor read some language to us that included the phrase "real possibility," if there's any real possibility of another explanation. And I can't recall exactly what the language was, but I think you read it to us

1 from your computer, and we ask that also be included in the
2 circumstantial evidence charge.

3 THE COURT: Okay. I have got that in the reasonable
4 doubt charge. I'm going to go ahead at this time and just
5 leave -- I note your motion. I'm going to deny it. *State v.*
6 *Herndon* is the most recent Supreme Court decision we have on
7 the circumstantial evidence charge, and so I'm just going
8 straight by what the Supreme Court said in that case.

9 MR. MCGUIRE: Yes, sir. I understand the Court's ruling.

10 THE COURT: All right. Anything from the State before we
11 bring the jury in?

12 MR. HIXSON: No, sir.

13 THE COURT: Anything from the defense?

14 MR. MCGUIRE: No, sir.

15 THE COURT: As I said yesterday, it's going to be the
16 Defen- -- I mean, the State must close in full, Defense must
17 close in full, State will be allowed a brief reply only as to
18 matters addressed in the defense's closing argument that you
19 did not address in your opening argument. If you have already
20 addressed it in your opening argument, you can't go over it
21 again. Okay?

22 All right. Let's bring the jury in.

23 (The jury entered the courtroom at 9:57 a.m.)

24 THE COURT: All right. Ladies and gentlemen, welcome
25 back. Hope everybody had a good evening. I appreciate you

1 being on time. I apologize for keeping you in the jury room
2 for so long, but when you reach this stage of the trial,
3 that's not uncommon, and I appreciate your patience.

4 Please make sure that you have your own notepads and do
5 not have anybody else's notepads. Make sure you have turned
6 all cell phones or pager devices, other communications devices
7 off, if you inadvertently brought them into the courtroom.

8 Now, we have now reached the stage of the trial where the
9 attorney will make their closing arguments to you. Just like
10 their opening statements, these closing arguments are not
11 evidence in this case. It is simply the attorney's contention
12 as to what they feel the facts are in the case, what they feel
13 the evidence has shown, and the law to be applied in this
14 case.

15 If, at any time, an attorney references a factual issue
16 that is different from the facts as you find them to be or
17 references the law that is different from the law as I will
18 instruct you at the close of their arguments, then you're to
19 disregard that portion of their closing arguments because this
20 is not evidence of any facts in this case and it's not a
21 charge on the law. It's just their opinion as to what they
22 think the facts are and the law to be applied.

23 All right. Mr. Hixson?

24 MR. HIXSON: Thank you, Your Honor. May it please the
25 Court.

1 CLOSING ARGUMENT ON BEHALF OF THE STATE

2 MR. HIXSON: Bingo. You have heard that word a bunch.
3 But prior to the death of Sparky and Steve, probably never
4 really thought much about what that word might mean. Bingo.
5 I mean, we all know that it's the name of a game. We have
6 probably all played bingo at some during our youth. Sometimes
7 we have played it as an adult.

8 Modern day bingo card kind of looks something like this.
9 Random numbers put on a piece of paper. Somebody sets up and,
10 one at a time, they call numbers. And if those numbers come
11 to you in a certain order and you get five of those numbers in
12 a row: Bingo. You got a match.

13 Now, during the way, as these numbers are called on this
14 card, you might get a number over here or here that doesn't
15 match your pattern. But those random, irrelevant distracting
16 numbers don't keep you from winning bingo in the end. In the
17 end, if you get five in a row, straight up and down, across,
18 or diagonal: Bingo. I just won.

19 You know, thinking about that word "bingo" also kind of
20 means something else. It's kind of a public acknowledgment
21 that everything fits and you're comfortable that everything
22 fits, and honestly, you're celebrating that point that you
23 just won. Through this process of finding these numbers, at
24 the very end, you're comfortable, and it's a public
25 acknowledgment: "Bingo!" And you're not afraid to stand up

1 and you're motivated to act and say, I'm the winner in this
2 one.

3 You know, when we think about that process, as we go
4 through here, through the evidence and the steps that this
5 trial has presented you, you have been given a lot of numbers
6 one at a time. Those have been in the forms of witnesses, of
7 testimony, of actual numbers, of phone numbers, and of course,
8 ultimately, of DNA numbers.

9 And some of those DNA numbers that we're going to talk
10 about in a little bit aren't five numbers. They're in the
11 septillion of numbers. Septillion of numbers are -- a
12 quadrillion is a thousand trillions. A septillion is 24 zeros
13 after that. I don't even know what that is. What that means
14 for us? Bingo. That's what that means.

15 So let's talk about the data points that we get to as we
16 finally are quite confident and want to publicly express our
17 confidence that we are successful in this game. Because this
18 is not a game. Let's talk about what we know without any
19 doubt.

20 We know that Bradford Britton lives in Georgetown County.
21 We know that Derrick Rivera lives in Georgetown County.
22 Kaminski Street. That's what the testimony was. No question
23 about that.

24 We know that they knew each other, and we know that
25 there's multiple telephone calls between each other on the

1 days prior to the 26th. We know, without a doubt, those phone
2 records show that Derrick Rivera was the first one to initiate
3 a telephone call to Bradford Britton, three of them, and we
4 ultimately know that Bradford Britton called him back on the
5 25th.

6 We know that, on the 26th, there was additional telephone
7 calls in the morning, this time coming from Bradford Britton
8 to Derrick Rivera. We know that. No question.

9 At some point in time, we know, without a doubt, that
10 Derrick Rivera's telephone was cut off at 4:04 or 4:14 --
11 excuse me, 4:14 p.m., and you'll look at all those records
12 yourself as much as you can. And please remember the GMT
13 times make it sometimes hard to read. If it's four hours, if
14 it's GMT, it's already adjusted. If it's zero, it's not
15 adjusted.

16 When you look at these phone records, be aware that, on
17 the front sheet, it's almost like a cheat sheet. Those
18 numbers and times have already been adjusted. It's just, when
19 you look through these records, you just got to be -- just be
20 aware of the adjustment. We talked about that.

21 And we know that that phone, during this period of time,
22 is not receiving a signal to be registered. We have testimony
23 that he turned it off. That came from the mouth of Bradford
24 Britton. And we'll talk about Bradford Britton in a second.
25 But that testimony said he turned it off. Said he turned it

1 off in the driveway. Turned it off there. I don't want to
2 interject myself in it. Do not know if that's true.

3 Do know it's proven beyond any reasonable doubt that it
4 is off. It is off prior to a murder, and it is back on --
5 when do we know it comes back on? We know it comes back on
6 the day after the murder, on the 25th when Derrick Rivera
7 calls Bradford Britton. First phone call after the phone
8 comes back on is the guy that drives him to the bingo parlor
9 and drives him back. We know that.

10 We got a couple of numbers, don't we?

11 Phone calls are conclusive to the relationship between
12 the two. It doesn't describe the nature of the relationship.
13 We don't really know what the nature of the relationship is.
14 But we can look at the text messages to get an idea what the
15 nature of the relationship is. You'll see a text message in
16 there from Derrick Rivera to Bradford Britton that says, "Hey,
17 bruh. Hey, bet, I got gas money for you." Doesn't say are
18 you going to try to buy weed from you. Doesn't say anything
19 about pills or drugs. It says, "Hey, you're the neighborhood
20 Uber driver, and I think I got some gas money for you."
21 Because that's what Bradford Britton says he was.

22 The man lives in his mom's house. He bums weed off his
23 17-year-old son. Seeing Bradford Britton in court is as much
24 about seeing what Bradford Britton is than what Bradford
25 Britton says. Because when you see that man come shuffling

1 around this corner, a husky man with flip-flops way too big,
2 in handcuffs, you're seeing him after he has accepted his
3 reality. You're seeing him waiting to be sentenced for an
4 armed robbery and accessory after the fact of murder.

5 But what you saw him when he was up here testifying on
6 the witness stand is recounting Bradford Britton, in his
7 glory, two years ago, two years ago when he was telling the
8 police anything in the world that he could do to get out from
9 being responsible for this. I can't speak for you guys. You
10 decide yourself. But do you think for a second that the guy
11 sitting right here, that couldn't understand the difference
12 between nine and ten, is a criminal mastermind? Figures out a
13 conspiracy to plant DNA with Bump and with who knows who else?

14 You know, initially, I don't know that he understood the
15 questions that were being asked. That's entirely consistent
16 with a man that drives a car with a plate that doesn't match
17 the car in the neighborhood for anybody that needs a ride.
18 Law enforcement found that shockingly hard to believe that
19 that man didn't know that he was driving a man to an armed
20 robbery.

21 But the end of his testimony, it's very possible he
22 really didn't get it. But he did say sometime during that
23 period of time he knew it was for a lick. He knew it was for
24 a lick, thus he has prior guilty knowledge. It is very
25 possible that, until he got an attorney that talked to him,

1 that he understood that, driving a person to an armed robbery
2 makes you guilty of that armed robbery because you're playing
3 a role in the armed robbery. That's another step to talk
4 about that, if someone dies during the commission of that
5 armed robbery, you're guilty of a principle as the murderer.
6 Because he acknowledges, "I drove the person back." It's an
7 accessory after the fact. Don't know if anybody's killed in
8 there. I didn't know anybody got hurt in there. Saw the
9 ambulances. Said, What happened? Come on, bud. Come on,
10 man. I don't think it's even tough for us to figure it out
11 like that [snapping fingers]. But I'm not too sure he figured
12 it out. He's figured it out now, though.

13 So, during the course of that process two years ago when
14 confronted and arrested, remember, on failure to pay his child
15 support, Bradford Britton is confronted with county police,
16 and he started asking the questions. And the first thing he
17 does? Just interesting, paying attention to the tactics.
18 Those tactics are kind of universal really. Kids do them when
19 they're confronted on whether or not they were where they were
20 supposed to be or not.

21 People try and get away with stuff doing the same tactics
22 all the time. The first one is, "I don't know what you're
23 talking about."

24 "Where were you last night?", "Mom says?"

25 Kid says, "I was upstairs."

1 "Come on, man. I know you weren't upstairs because you
2 -- you know, I went up and checked on you, and you weren't
3 there."

4 "Oh, I was with a friend."

5 "What's the friend's name?"

6 "I just met her. I don't remember the friend."

7 "No, you were at your boyfriend's house, weren't you?"

8 "Okay, Mom. You're right. I was at my boyfriend's
9 house."

10 "I told you not to go with that boyfriend."

11 We saw Bradford Britton do the same thing. First thing
12 was, "I don't know what you're talking about. I don't know
13 nothing."

14 Come on, man. We got your car on video.

15 "I loaned that Trey. I gave that to Trey."

16 Come on, Man. Who is Trey? Where is he at?

17 "Hey, I'm going to make you look at evidence to make you
18 think this is really true. Go look at the video at the Money
19 Saver, man. That will take care of the whole problem."

20 You're not on the video at the Money Saver.

21 "You're right. Trey doesn't exist. I did drive to
22 Myrtle Beach. But I'm not really sure who it was. I don't
23 know."

24 "Well, you know, we're going to get your phone and we're
25 going to look at the phone and going to find out the phone

1 records you got. Do you want to come off who you were with?"

2 "All right. I was with G. But I don't know who G is."

3 Law enforcement thought that terribly hard to believe
4 too. You know exactly who it is. There's no way, man.
5 Either you're heading on it or you drove the man out there,
6 but you're in it.

7 But, you know, after looking at Derrick Rivera's phone
8 records, it's very possible he didn't know who G was other
9 than the nickname, because Derrick Rivera texted, "Don't put
10 my -- I don't put my name in this phone. Don't call me Mug."

11 Derrick Rivera says, "Don't put my name in it." So,
12 suddenly, it's very possible that he knew him as Big Bro, knew
13 him as G, or knew him as Mug but didn't know his name, knew it
14 was Derrick. Because we have a text message that you'll see,
15 that you've already seen, Derrick AKA Mug.

16 So, suddenly, not knowing some guy from the neighborhood,
17 in Derrick Rivera's own words, seems to support the idea that
18 I don't put my name in the phone, Derrick AKA Mug. Bradford
19 said, I don't know his last name; I know him as Derrick or
20 Mug.

21 Holy cow. Maybe that -- liar, no question about that.
22 But, once again, maybe that clock from time to time is right.
23 It's supported that -- you know, it's a broken clock. He
24 didn't get that analogy. I don't know, maybe I'm the only one
25 who gets that. Maybe you guys don't get it. But you know

1 when a clock is on the wall and it's 3:00, it's broken, when
2 it's really 3:00, it's right at that time, and then once
3 again, 12 hours away, it will be right again. The rest of the
4 time, it's totally off. But that clock is right twice.

5 And, actually, he was right a couple more times than
6 that, wasn't he? Like when you see the husky man, you can
7 tell the guy walking down the alley is not. He's a thin,
8 relatively fit fellow. You know that.

9 You know the messages support all of that. You see the
10 Jetta moving around, going in and out; right? And then the
11 other little tidbit that you have no idea whether it's true or
12 not is this idea that he told law enforcement about, he said,
13 When Derrick came out of there, was breathing hard, running,
14 kind of, "Whew, man, I need some water." And so, based on
15 that, they go to 707 Scotchman.

16 We get a video from the 707 Scotchman. And daggone,
17 guess what? He pulls the Jetta in there, and Bradford Britton
18 gets out. He don't buy chewing tobacco, he don't buy smokes,
19 doesn't buy a 12-pack of beer. He goes straight in, comes out
20 with a Styrofoam foam cup of water.

21 Does that mean Derrick Rivera did it? No, it doesn't.
22 It doesn't.

23 But is that a corroboration that maybe the clock is right
24 on that point too? Sure, it is. Sure, it is. Sure, it is.

25 So when you see Bradford Britton, the mess that this guy

1 is nine out of ten? What? He even raised a couple of
2 snickers when he's clearly lying or doesn't understand. Get
3 out of that what you will.

4 But that person right there facing the wrath of a
5 sentencing judge is the end of that fourth story, not the
6 beginning of it.

7 When you listen to it, pay a little attention to -- I
8 think this is an interesting tactic, if you want to call it
9 that -- is to discount the entire statement is a lie, yet have
10 the defendant try to pull one statement out of it and say,
11 "Hey, you were at Surfside," and you said that phone call is
12 right. He said that part's true. So that part's true, lack
13 of phone records must mean that is a tactic of distraction.
14 Because he said all of that stuff. It can't be all lie or all
15 true unless you can corroborate that point. We know the phone
16 records don't show him in Surfside stuff at all and we know
17 that. So the Surfside stuff is a distraction.

18 This is what we have or don't look at it, and you get to
19 look at it. He tried to delete his phone. He said he tried
20 to delete his phone. Not only that, Derrick Rivera destroyed
21 his phone in an effort to have you not see this. But Verizon
22 holds on to this. That's why you get to see it.

23 So let's go through the rest of what you do now. We'll
24 talk in more detail on the phone records in a little bit. We
25 know, without a doubt, because we get to see it with our own

1 eyes. I think, through the testimony of Drew Edwards and Sean
2 Wydra, people lie to them all the time. They all want to get
3 out of being held accountable for what they do.

4 And I don't expect you to take anybody's word for it.
5 You've got a serious job to do. I'm expecting you to use your
6 common sense and your eyes and your senses also, just like the
7 police officers do when they exonerate people that have not
8 done this and when they find people guilty that there's
9 evidence that they did do it.

10 What an absolute miscarriage of justice would it be to
11 drag everybody that hit a cell phone tower dump in Conway,
12 South Carolina, as having to have something to do with this
13 because, theoretically, it's possible to sort out 10,000 phone
14 numbers when we have an admission in DNA that this guy did it.
15 Shocking.

16 When the State Law Enforcement Division has a five-sample
17 limit because they have 10,000-plus DNA cases pending, and we
18 get DNA hits back on 310 million, 300 quadrillion on all five.
19 But you should have tested more? Even though SLED is waiting
20 to get DNA results back to perhaps exonerate people, perhaps
21 say you didn't do it. Get that guy out of jail. Get this
22 stuff going for other people. We have got five, we're good.
23 Send the rest back. That's what happened.

24 So let's go to what we know about at the crime scene now.
25 Okay? We see the vehicle -- and you'll see it on video. You

1 saw it in the courtroom. See the Jetta come by, consistent
2 with what Mr. Britton had said about circling the bingo
3 parlor. You see the Jetta come in. You can see -- you'll see
4 in the picture, the still photos and on the video. You have
5 to stop the video to see it, and that's why the still photos
6 are helpful. You can see through it and two heads -- what
7 appears to be two heads in that car.

8 You'll see the car come and turn towards the left, which
9 goes towards Tuscany Bay. And the timestamps on the LPR
10 reader set the time that it's well after the time that those
11 phones are shut off. Well after. I'll call it the witching
12 hour.

13 Right there at that time, when the phones are off, so
14 there's no location data, nothing is hitting any towers, so
15 you don't know where it is. You're able to say that the last
16 time the phone hit the tower is at 4:00 in the afternoon in
17 Georgetown, but after that, it's a dead zone until 5:00 the
18 next day. All right?

19 And before I forget this point, I don't know about you
20 guys, but I can't remember the last time I turned my phone
21 off. You have to answer that question for yourself. Prior to
22 coming to court, you may not have shut your phone off for
23 years.

24 I don't know about Derrick Rivera's pattern of life, but
25 he got five phone number changes in ten days on the run-up to

1 that. Turns the phone off during a double murder and armed
2 robbery. And then look at the rest of the records and see if
3 there's a time for hours after that that phone was
4 deregistered from service.

5 Now, does that prove he did it? But it's certainly solid
6 circumstantial evidence to indicate preparation for the intent
7 to commit a crime, and we'll talk about preparation here in a
8 second.

9 Circling the Jetta. Look in the front window. Look in
10 the back window. You remember the pictures, when you drive by
11 the back of the bingo parlor, you can see into the bingo
12 parlor. You'll see photographs -- crime scene photographs of
13 the front and back pictures that, anybody in the parking lot
14 or anybody in the front, can look in there and see whether or
15 not it's open for business, if anybody is in there or not.
16 That's not a surprise.

17 If you drive by and look in, hey, man, they're open, and
18 there are people in there playing bingo. Go down the alley,
19 come around, turn around and come back, turn around, and then
20 that's when you see the slow roll past. You see the car slow
21 down for a little bit, it goes right past, and then you'll see
22 a figure in the disguise. And we have all seen that before
23 and you'll see that repeatedly. You know, look until your
24 heart's content. Long-sleeve -- gray thermal long-sleeve
25 shirt, gray-looking pants, a white covering on the face, what

1 appears to be dreadlock-style haircut, and a black type of hat
2 on top of the dreadlock.

3 And you'll also see the shoes. I can't wait to talk
4 about the shoes. You'll see the shoes on there. You can
5 clearly tell they're gray and black Nike shoes on the
6 individual.

7 And of most importance, you see the string on this black
8 drawstring bag that's a string type that comes across. Okay?

9 Seeing it, coming in, sets the time of the crime, and you
10 see, boom [snapping fingers].

11 Now, you also heard testimony concerning the idea that
12 Bradford Britton says he didn't know what was going to happen
13 but he, later on, thought it was a quick lick, in and out,
14 going to be fast. And the timing of that thing is fast. It's
15 fast.

16 We don't know exactly when he left because the camera was
17 damaged in there, but you'll see that masked assailant runs in
18 there super fast, and then you'll see Sparky get after it, and
19 then the cameras go.

20 You see hands trying to -- or you see hands putting money
21 in a bag. You see hands getting money into the wooden part,
22 grabbing the money and putting it in the bag, and then the
23 video goes dark. Uncontroverted, beyond a reasonable doubt.
24 Beyond any doubt; right?

25 Now, where there was a lot of doubt were the 40-some

1 people that are playing bingo. You can even see in some of
2 the videos, the one fellow -- Derrick Rivera is steady putting
3 money in the bag, and some of them are still playing bingo.
4 They didn't even hear it. Some of them get up right away and
5 jump up and go, "Woah." But some of them are over there. You
6 see the armed robber grabbing it, putting the money in the
7 bag, and they're still sitting there.

8 Because you see a shocking amount of unreliable
9 descriptions on what they saw or didn't see. Red shirts. All
10 kinds of different descriptions that are just unreliable.
11 That's why law enforcement is thankful that they have a video
12 of what the guy was wearing. Red shirt. T-shirt. Black
13 shirt. This shirt.

14 You heard some testimony concerning, you know, we
15 interviewed a lot of people and they were all over the place,
16 including the distraction of Jason Sapanic about, magically,
17 there was a guy, the face covering was ripped off and then,
18 for some reason, the State of South Carolina doesn't want to
19 call the guy that ID'd. That's a distraction. It's an
20 unreliable ID. And we have a duty to not put unreliable
21 information to you when we don't have the belief that it's
22 reliable.

23 So I put DNA evidence in and phone records in that are
24 not beyond reliable. They're incontrovertible. There's an
25 effort to explain it, and we'll talk about explanation, but

1 they're incontrovertible.

2 So, after leaving, then we go to getting in a vehicle.
3 We see, quickly running, past the gap in the video. You'll
4 see him quickly running past the other gap towards the Jewish
5 temple, Temple Shalom right there.

6 And you heard testimony from Bradford Britton where he
7 said, "I parked down in the bushes." The plan, if that's what
8 it was, "Don't come pick me up. I'll run to you. Run down
9 that way."

10 We have, from the license plate readers -- we'll start
11 with Marcus Stitzer, who sometimes just -- happenstance is
12 what solves crimes. Early on, they thought the guy may have
13 left on foot, running through the woods back that way because
14 he went out the back door. In the interim, we know that now,
15 right? Because we have Marcus Stitzer, who just happened to
16 be helping some elderly people across the -- literally helping
17 old ladies cross the street by the clubhouse in the Tuscany
18 Grande. And you heard him say, "I was sitting there, and I
19 had a scanner, and I see this car that didn't belong in our
20 neighborhood flying through there." Okay? And he goes,
21 "Woah, that doesn't make any sense to me. That didn't make
22 any sense. I'm going to try to position myself to see where
23 that car goes."

24 So he helps them get away -- home from the clubhouse, and
25 then he sees the car come back out after it had gone down the

1 Livorn Loop area. And it goes to Livorn Loop and comes back
2 out. So "I heard on the scanner that there was just something
3 going on at the bingo hall, so I get on the scanner and I call
4 the county police and say there's some kind of light-colored
5 car -- tan, beige, I'm not sure -- but it's going at a high
6 right of speed and it doesn't belong there."

7 Interestingly enough, so that's on the radar. Then he
8 sees the car again come back in again. Says, "Woah, that's
9 that car. Wouldn't just leave."

10 So he tries to position himself to see where it goes, and
11 he sees it leave and go back down Tuscan Bay that way, and
12 that's the end of his involvement. That's what he does.
13 Minor point. Tremendously important in order to determine
14 what happened because now County Police can go into that area
15 and look around and see what they find.

16 Fortunately, the homeowners association, Tuscan Bay, did
17 get a thing. They put cameras up and license plate readers
18 up. And so they have the license plate readers, and but for
19 those license plate readers, the County Police would never
20 have gotten the license plate number. Because the phones were
21 off. Right? Nothing there.

22 So we see the video of a car consistent as the Jetta
23 coming through there, and then we get the LPR that says now we
24 have QAK-456. And now they go and canvass the neighborhood.
25 And guess what they find in the neighborhood? And we know

1 what they find; right? They find the other right shoe thrown
2 out the window. We find the face mask consistent with the
3 pictures of what you cover your face with, thrown out the
4 window. You find the thermal gray T-shirt thrown out the
5 window.

6 And it wasn't until the next morning when the sun came up
7 that the pants were the last to go. Kind of makes sense;
8 right? You're sitting in your car, getting your stuff off.
9 This is easy (indicating). This is easy (indicating). Shoes,
10 easy. Top shirt's easy. Getting your drawers off in the car
11 is a little tougher. So by the time that car comes all the
12 way around, it's coming back up Grosseto Way on the map, pants
13 go out. Pants are the last thing to go.

14 Now, there was a question on why in the world you thought
15 you could drive right back in front of the bingo parlor when
16 you see blue lights and sirens. I'd submit to you the reason
17 they had to go back in there is all of a sudden they go, "Man,
18 the County Police got here fast," and blue lights in front of
19 the bingo parlor [snapping fingers] that fast. "I got to get
20 this stuff off now, because I can't drive back in front of
21 there wearing the exact same clothes that I just wore in the
22 comission of an armed robbery and a murder. I got to get this
23 off."

24 And the third time he rolled past there, wearing clothes
25 that don't match the description. The dreadlocks are gone.

1 Unfortunately, for the defendant, lost in the struggle in the
2 crime scene. The gray shirt's off. The pants are off. The
3 robbery shoes are off. And now I can ride right back in front
4 of. Not because it's a different person, because the person
5 looks different, because the robber knows you couldn't have
6 seen his face.

7 So those pants go. And now we drive back to Georgetown.
8 Right? And we know all that. We absolutely know all that.
9 If we follow the trail of the items, they're almost like bread
10 crumbs. The numbers are getting good. We're up to about
11 three.

12 Now, we talked about distracting numbers now. Let's talk
13 about distractions. What the distractions are in this case is
14 it's surprisingly, it's really -- I talked about universality
15 of distraction tactics where little kids do them. They come
16 in and go, "I don't know what you're talking about it." Your
17 brother got the lick because "I didn't do it." Your brother
18 is with your grandpa. "Well, Kaitlin (ph) was over here and
19 did that."

20 And, finally -- honestly, honestly, you hear the
21 defendant trying to do a lot of distraction tactics here. A
22 lot. And I understand that. Because you have got to look at
23 over here so they don't see what my hands are doing.

24 Y'all look up here. Woah, the truth is here. The truth
25 is in the DNA and what we can prove. The truth is fingernail

1 clippings are meaningless. Do you think for one second -- and
2 it's video evidence of it -- that a man with a gun inside that
3 business -- you saw Sparky running towards him with a gun in
4 his hand. Do you think, in the mind of Sparky, of Stephen
5 Johnson, Jr., the solution to the threat posed by Derrick
6 Rivera is his fingernails or his gun, with his hands wrapped
7 around that gun to shoot that person?

8 Stephen Johnson tried to get his too. Don't know if he
9 didn't get it in time. Don't know if he tried and couldn't.
10 But Stephen Johnson, Sr.'s solution to the threat posed by
11 Derrick Rivera was the gun. Not his fingernails, man. He
12 ain't scratching him. He's trying to kill you.

13 It's true that fingernail clippings are helpful in a CSC
14 and in rape cases with one-on-one contact where, a lot of
15 times, females with long fingernails can scratch the
16 assailant's back during a rape or something like that.
17 Absolutely true.

18 And so when you hear someone say, "Is it possible?", it's
19 possible. You have to say it's possible. It's just not
20 probable at all. Not even close to a reasonable doubt
21 probability. It's not a real probability or possibility.

22 We know he had his gun around his hand with his
23 fingernails wrapped in here, trying to shoot him. You see him
24 struggling, both hands, with the gun to try to shoot him. The
25 solution to the problem is holding onto that gun and make it

1 work. That's the solution to the problem they failed in. And
2 they died. Not scratching. There's no evidence that they
3 were ever scratched with anything, especially men's
4 fingernails, which are generally shorter, compared to females'
5 fingernails, who sometimes do get into a person that did it.

6 And so you swab those fingernails, you waste that
7 precious five DNA swabs on erroneous evidence, and you don't
8 test the hat the guy was wearing that proved the guy wearing
9 the had did it? That's a distraction. That's not true.
10 We'll talk about the DNA fairy in a little bit more here in
11 just a second.

12 Another distraction would be cellphone dumps. You guys,
13 if you have a cell phone, are in that cell tower right now.
14 Everybody in this courtroom, everybody hit that tower on the
15 way here. If you dumped here, everybody is in there. Is that
16 a meaningful way to separate the innocence from the guilty?
17 Absolutely not. It's a distraction.

18 Is it possible that, in 10,000 cell phones, that the
19 defendant -- the victim -- the person's phone is in there?
20 It's a possibility. Once again, it's an unreasonable
21 possibility. It's absolutely a distraction.

22 I'll give you another example. Those same tactics that
23 you see Bradford Britton try to employ, you see this defendant
24 try to employ to avoid being held responsible for his actions.
25 The first one is make up Bump and somebody else that conspired

1 with him. So when Bradford tried to create Trey, you see this
2 defendant try to create Bump and this criminal mastermind,
3 getting other people in the car to go create some armed
4 robbery. That's a tactic. It's not supportable by any
5 evidence. Just another fictitious Trey.

6 Then, after that happens, I know the County Police got
7 this evidence, this evidence, this evidence, this evidence,
8 this evidence, this evidence, but if you had not gotten eight
9 swabs in the septillion, if you had just swabbed the money, we
10 would have found out who did it, and we would have swept up
11 every bingo player in the entire place, innocent people that
12 had nothing to do with this, because of the mixtures in dollar
13 bills handed in a convenience store and in the trade at bingo
14 parlors and the astronomical numbers.

15 You heard the crime scene analyst say, "I looked at the
16 video to try to determine who I thought -- what would be the
17 most probative thing that was touched. I couldn't see if he
18 touched this tray. I can't see if he touched the wooden
19 stuff. I couldn't see it. And I made a conscious decision
20 about swabbing it because it's erroneous." It's a tactic to
21 distract the truth down here.

22 And that's the same stuff you see as to inflate the value
23 of the evidence that we don't have, inflate it so you're not
24 talking -- you're talking about the inflated, irrelevant
25 evidence, like a geofence. "If we just had a geofence, we'd

1 know. We know who did this." A geofence doesn't add to that.
2 It will add everybody with a Google account, and there's no
3 evidence that Mr. Rivera had a Google account. He has a
4 prepaid phone that changes phone numbers in five days. So the
5 absence of information doesn't help you at all.

6 What helps you is to focus on the information that you
7 know that we do have. So that's another example of
8 distraction.

9 And then let's get to the -- kind of the big one. We
10 talked a lot about shoes, shoe, shoes; right? Think about
11 this just for a second. Think about what we know. We know
12 that this was a planned event. No matter who did it, it's
13 planned. How do we know it's planned? Because the person
14 went in when there are eyewitness everywhere, with a mask on,
15 with a massive effort to change their appearance so you
16 couldn't see them.

17 So let's think about this process. It takes a very hard,
18 determined individual, whoever that individual is, to wake up
19 one morning and say, "You know what? I'm going to tote a gun
20 in front of people, and I'm going to go right into that spot.
21 I'm going to go right at that person, and I'm going to force a
22 confrontation with them. I'm going to force that
23 confrontation with them on their turf, in their office, in
24 their place of business. And I'm going to get away with it."

25 That's some hard stuff, man. That's not even stealing

1 somebody's lawnmower away from the back of someone's shed when
2 no one is looking. That's a conscious decision, knowing that
3 confrontation is going to occur.

4 Now, do we know when that decision was formed? We don't
5 know. We have some evidence from Bradford Britton. Once
6 again, believe it or not, I don't know, but we do know phone
7 records show that Derrick Rivera called the driver on the day
8 prior. Three times, short times. And then we know that
9 Britton called Rivera back, and that's a longer call.

10 So let's just assume, "Hey, give me a ride, give me a
11 ride." Says, "It ain't for a lick, it ain't for a lick. Just
12 take me to Myrtle Beach." That's fine.

13 We know at some point in time that he knows it's for a
14 lick, but right now, "just take me up there." If it's true
15 that Derrick Rivera is the one who did it and he has to make a
16 decision knowing full well that I'm going to go into a bingo
17 parlor with 40-plus people, probably with surveillance
18 cameras, rob it, and get away with it, and they will not know
19 it's me. That's a heavy lift, man. That's a heavy lift.

20 So how do you do that? Disguise, disguise, disguise, as
21 old as a Pink Panther movie. You remember the old Pink
22 Panther movies? Some of you may be too young to remember it.

23 Here's a master of disguise. So you change your hair
24 style, you change everything about you, so you get a chance to
25 get away with it when everybody is going to see you.

1 And not only that, this ain't stealing a lawnmower behind
2 somebody's house. The County Police, the Marshal service,
3 people are going to look at this thing. They're going to try
4 to figure out who did this.

5 So you're going to borrow clothes, you're going to do
6 whatever disguise that you can do. You're going to do
7 everything you possibly can. Everybody, since the beginning
8 of time, knows that footprints matters, knows that footwear --
9 you can go into a scene and do what you can to make sure you
10 take everything that you touch. You got to take everything
11 that you touch. Because, if you touch something, you may
12 leave a fingerprint or you may leave DNA. So take everything
13 that you touch. But there's some things, unless you're a
14 fairy floating above the ground, you have got to touch the
15 ground. You have got to touch the ground.

16 So you cannot wear anything that leaves a footwear
17 impression that gives some concept of who was wearing those
18 shoes, because you have to touch the ground. So you cannot
19 wear shoes that connect yourself to you. You got to get --
20 you got to wear robbery shoes, man.

21 You know, some people have dress-up shoes so they dress
22 to impress. A committed robber wearing disposal shoes. They
23 dress to disguise. They dress to disguise. They wear
24 disposable clothing, change the hairstyle so the first initial
25 reports comes in and say, "The dude wore dreadlocks. He wore

1 dreadlocks."

2 Now, I'll submit to you that the fact that there's a
3 toboggan over top of that red, yellow, and green hat is
4 because that thing's pretty cartoonish. Back in the old days,
5 used to go to the mall, and they had a place called Spencer's
6 Gifts where they had all kinds of novelty hairstyles and
7 things like that. I don't know if that still exists or not.
8 But that's a Halloween costume he had, man.

9 But you know what? You put a black toboggan on top of
10 that, and suddenly, it looks pretty realistic from a distance.
11 From a surveillance camera, the assailant had dreadlocks. No,
12 he doesn't. It was a wig. It was a disguise, just like the
13 distraction of this shoe size thing.

14 What size the man's shoes when he's preparing to commit
15 an armed robbery has nothing to do with what his real shoe
16 size, his fake shoe size. I don't know about you guys. I
17 don't know what range of shoes you can wear and get away with.
18 I mean, we're talking about little baby shoes and great big
19 guys shoes maybe.

20 But if I knew or if somebody knew they left their shoe in
21 there, the next time you see me, I'm walking around with these
22 clown shoes on. I got the biggest shoes you can imagine. "It
23 ain't me, dude. I wear 28 and a halves." If that's what
24 keeps me and allows me to get away with this, shoe size is a
25 distraction.

1 Now, take a look at this, just in case, to address this
2 specific point. There's much discussion about that. A normal
3 person, normal rational people. I don't know what personal
4 shoes -- and it's none of my business. You guys know.
5 There's a reason why it's really tough to order shoes online;
6 right? Because they don't fit when you get them, even if you
7 try to get them in your size.

8 So you go, sit down old school, you sit down and you try
9 shoes on. No, that one don't fit. Bring me a 12. Oh, that
10 one doesn't fit. Bring me another size. All right. This one
11 fits. Because they're all over the place. Big, small.

12 Some people have -- normally an 11 shoe in Nike, you have
13 a 13 shoe in something else. It's a distraction. There was
14 an effort to look you in the face and to say disposable
15 robbery shoe size is more probative than guilt -- than the DNA
16 in the shoe. Disposable robbery shoes are more probative of
17 guilt than the DNA in the shoe. That is unreasonable.

18 But just, as a general concept, generalities,
19 generalities, that's what this chart is for, to try to set a
20 little bit of the -- calm that concept down. That generally
21 means, if you wear a 9-and-a-half shoe, you're 70 inches -- 69
22 and a half inches tall. That's the average of all adult males
23 all across the country.

24 Does that mean this guy's shoe is this and this? No.
25 That is the average of everybody in the world. Of course it

1 doesn't mean that's the shoe size. I don't know if he prefers
2 loose, tight. No idea. But if you're five-foot-ten, like his
3 driver's license says he is, that's 70 inches. Right? And
4 the 9-and-a-half shoes is, on average, 69 and an eighth inch.
5 That is the human average of this shoe, whatever it is. Take
6 for it what you will. But that is in the range of wearing an
7 11 and a half to a 9 and a half to whatever it is, and that's
8 still a distraction, talking shoe size. Because what we're
9 talking about is the DNA swab that's inside the shoe.

10 Is there any reasonable doubt that that's the dead man's
11 blood on the outside of that shoe? Stephen Johnson, Sr., 310
12 septillion. Excuse me; that's not quite right. It's in the
13 billions.

14 But when you combine the dead man's blood with Rivera's
15 DNA inside, that's 310 septillions. That's his shoe. That's
16 what we know. All right?

17 As it relates to other particular distractions, I think
18 we touched on them all. This is a big distraction. It is the
19 intersection now that the DNA results are so compelling for
20 your consideration, is that a DNA scientist, a laboratory, has
21 to say to you, "Well, there is a possibility that a person's
22 epithelial DNA can get on someone without touching them." And
23 that is true. Absolutely true. The DNA analyst said that.

24 An example of this, I can get this and I can do that, and
25 I can get an epithelial cell. I can't even see it, but it hit

1 the ground, and I didn't touch the carpet. And that cell is
2 there. It is. Well, I don't know if it is or not, but you
3 get the idea; that I can get a DNA on there without touching
4 it.

5 In a laboratory, theoretically, that's true. Absolutely
6 that's true. The odds of that getting into eight consecutive
7 swabs of the same thing, of the same people over and over
8 again, there's not 24 zeros in that probability. It's
9 astronomical.

10 I'll give you a small example. Everybody in this
11 courtroom, I'm sure -- tell me if I'm wrong -- is planning on
12 going on home after this thing is over, wants to go home after
13 this thing is over. I'll just leave it to you guys. You guys
14 want to go home after this thing is over; right? And you're
15 planning on going home.

16 Now, statistically, one of us may not make it home. One
17 of us may get in a car wreck on the way home and not make it
18 home. The odds of that are significantly higher than
19 septillions. I mean, it may be 1 in a thousand that one of us
20 may get hit by a car, killed on the way home. But you won't
21 hesitate to act and leave this courtroom as soon as you can,
22 even though the odds are shockingly higher that maybe you
23 won't make it home. You won't hesitate to act in even a
24 second.

25 And the odds of the DNA fairy dropping something when no

1 one else touched it is so astronomical, you won't hesitate to
2 act and use this DNA evidence to convict Derrick Rivera.

3 Let's talk about phone records just for a little bit. I
4 think you kind of get pretty much the idea, and I certainly
5 don't want to beat a dead horse. We've been at this for a
6 while. The phone records don't show content that show
7 conclusive contact between them. You can rely on it because
8 it doesn't involve the words of Bradford Britton. All right?

9 Those phone calls show continued contact after the fact.
10 And it shows Derrick Rivera talking to Bradford Britton, of
11 most importance, around July 29th. We know what happens on
12 July 29th. That's a lot to digest. If you remember, by that
13 time, Marcus Stitzer said he saw the car in the Tuscan Grande
14 neighborhood. Ryan Keefe had looked at the video and provided
15 license plate numbers for the County Police to take a look at.

16 Once, he got those, they see these numbers. They run it
17 and find out, Wait a minute, this is a covert license plate.
18 This plate is not attached to any car. It's a Passat some
19 place in Orangeburg or someplace like that.

20 And, honestly, they called Bradford's mom, lady named
21 Stella, and she says, "Bradford's driving that car." All
22 right. Doesn't sound like a mastermind criminal conspiracy,
23 trying to keep people from finding out what's going on there.
24 Stella gives up her son like that. "Bradford's got that car."
25 And that's registered to a Passat. I don't know if he has

1 that or not.

2 So they go right to Bradford on the 29th. Bradford is
3 taken into custody on that family court order on the 29th. If
4 you committed a -- driven to Myrtle Beach and committed a
5 double murder and armed robbery and you find out that Bradford
6 is now going to the police department, I'd start to get a
7 little bit concerned. I'd start thinking about buying some
8 clown shoes. I'd start thinking about -- and I would text
9 Bradford, "You good? Are you good?" Bradford can't answer,
10 because Bradford doesn't have his phone anymore.

11 And this criminal mastermind that is Bradford Britton --
12 and I say that with massive air quotes that the record doesn't
13 reflect. I don't know the difference between a nine or ten.
14 He consents to DNA. Talks with the police for hours. Gives
15 him his phone. Have at it. Look at it. The mastermind drug
16 dealer, look at my phone. Gives it all up and says, "I took
17 him up there, but I didn't know what was going to happen." I
18 knew what was going to happen; I'm just trying to keep from
19 getting in prison. And that's true. He didn't want to go to
20 prison. Nobody does.

21 There's another text message after Bradford Britton
22 doesn't answer, and that text message is, "Yo." Yo. Little
23 silence here, man. I don't know what's going on. I'm getting
24 a little nervous about this." That's on the 29th. Right?

25 And then you'll see the text message going into the 30th

1 and the 31st. We won't know what was in the mind of Derrick
2 Rivera at that moment in time, but we do know what he
3 outwardly expresses to being in his mind at that moment in
4 time is, "It's an emergency. I need a place to lay low." I
5 need to get out of town. Bradford ain't calling. I don't
6 know if anybody talked to him. Don't know that. We don't
7 know that.

8 But you can reasonably infer from the circumstances that
9 when you say it's an emergency, I have got to leave town, that
10 means he anticipates something bad is about to happen to him.
11 Right?

12 And so, from that, we know there's another text message
13 briefly following that that says, "See you in the a.m." and
14 then, "Peace. I'm riding." You interpret that however you
15 want. I don't know. When I read it, the first thing I
16 thought was like, peace, I'm out. I'll see you, and then I'm
17 getting out of here. I'm riding. I'm out. You interpret
18 that however you want. That's your job.

19 But I don't think there's any other interpretation for
20 "it's an emergency, I need a place to lay low." I think I
21 heard that ever since the first time I saw that first Clint
22 Eastwood movie when the Desperados are trying to get out of
23 town, a place to hide.

24 And we can infer we know what that means because we knew,
25 ultimately, where he was: A place to hide. We know, when the

1 U.S. Marshal Service asked Colleton County -- the county
2 police asked the Marshals and Colleton County to help, we know
3 he made it all the way down to Smoaks, South Carolina, which
4 is significantly out of this area. We know that they looked
5 at the phone records. You'll see multiple calls from Derrick
6 Rivera's phone to Bradford Britton, with no answer back from
7 Bradford Britton, because we know that Bradford Britton was in
8 custody and has been in custody ever since that 30th, going
9 into the 31st. Call, call, call. That frequency of calls --
10 you ever wait for a loved one of yours to get home and they
11 don't show up and they're past the time that they're supposed
12 to be there, and you start burning the phone up? Man. And
13 the further past time that they're there, you keep calling
14 more like, Whew, now I'm really getting nervous because you're
15 not answering me. I'm getting tense, man. It's an emergency.
16 I got to ride.

17 Then we know, when we get there, Colleton County
18 surrounds what appears to be an abandoned trailer, but there
19 is power into it. Sounds like a great place to lay low,
20 doesn't it? It's not particularly lived in. There's some
21 furniture items but there's not food items. It's not
22 someone's house. It sounds kind of like a safe house. Little
23 off the radar. Great place to lay low.

24 Then, they're not sure if anybody is in there, because of
25 the way it looks. And then they hear thumping and they see a

1 light bulb on in the back bedroom there and hear thumping in
2 the back, thumping in the back, and they don't know what it
3 is. But that tells them, boom, somebody's in there. Go get a
4 search warrant from the magistrate and let us know when you
5 got it.

6 They go get the search warrant, come back. You hear
7 testimony that says they gear up, surround it. I mean, that
8 sounds kind of like an old fashioned cop movie there, doesn't
9 it? They all sound it, "Come out, come out with your hands
10 up." And Derrick Rivera peacefully surrenders, comes out.

11 When they go in there, in that back bathroom, they find
12 this (indicating). We have kind of a rule in the business
13 about consciousness of guilt, that you can infer consciousness
14 of guilt by evidence of flight. Like an example of that would
15 be you can infer consciousness of guilt by someone that -- for
16 instance, Bradford Britton sitting there talking to the cops,
17 for instance, or utterly trying to destroy evidence in a case
18 is a concept of consciousness of guilt.

19 So every blow that was struck onto this phone in an
20 effort to be put in this position, that's an example that you
21 can infer that he's trying to make sure that you'll never know
22 what's on this phone. "Boom! Boom!" "If I keep doing this
23 before I come out, they'll never be able to catch me." That's
24 what consciousness of guilt is. And it was successful.

25 The IMEI identification number was ripped off the back.

1 You guys didn't even know there was an IMEI number on the
2 phone. Ripped off the back. But the model number show it,
3 the log shows it, the records show, and this is his phone.

4 And the County Police sent this to the Secret Service,
5 the department that does technical stuff, and they weren't
6 able to get this thing back. Very successful effort to
7 destroy evidence.

8 Do you think someone would do this, will make an effort
9 to disguise a shoe size? That's why that's a distraction.

10 And then also in that house, there are eleven rounds of
11 .357 Magnum ammunition. No gun was recovered. No gun was
12 recovered. Don't know if we'll ever find the gun. But the
13 ammunition that he had access to is consistent with the
14 testimony you heard, ammunition of the type that was used to
15 kill those two people. And that's purely circumstantial. No
16 one can say that. They can say it's the same kind. That will
17 go in a gun like that, and it will go bang. That's the import
18 of that testimony.

19 Let's talk about DNA for a second, and then kind of wrap
20 this up, and let you listen to Mr. McGuire here for a little
21 bit.

22 You heard SLED talk about they have a limit because of
23 the size of the cases they had, of five. Well, let's take a
24 look at this. Right? Swab from the black drawstring bag.
25 Why do I keep talking about that, that's so important?

1 Because that's exactly an example of good police work that the
2 State Law Enforcement wants the County to do. They use other
3 information in doing the case and looked at to try to
4 determine where a probative swab might be taken to show if
5 someone did this or not. So they didn't swab the back push
6 door or something where everybody could have touched. The
7 only place really that they can really narrow it down to,
8 confident evidence of this person's guilt of the still videos
9 you saw when you see that string being pulled like that, when
10 Mr. Rivera is running in it. You see him pull it. Y'all see
11 it.

12 If you're a crime scene detective, is that a spot you
13 pick to swab? Absolutely you would. And so she did. And
14 that one swab comes back into the trillions -- I'll pull it if
15 you want to read the number. You get the point. Derrick
16 Rivera's swab.

17 Now, the fact that she's able to read that as a mixture
18 is right, because we don't know whether or not the other
19 unknown is the person that made the bag in Vietnam or China or
20 something. We don't know where it was. We know it wasn't
21 Bradford Britton. It wasn't laid up in Bradford Britton's
22 house.

23 We know it was Derrick Rivera and an unknown person.
24 Don't know who the unknown person. We know it wasn't
25 Bradford. It wasn't Stephen Johnson, it wasn't Holyfield, it

1 wasn't Elijah. We know that. Very probative because you see
2 the person touching it.

3 What else do we have? We have two swabs from the Nike
4 shoe. We talked about that before; right? So the swab on the
5 outside of the shoe, is, God rest his soul, Sparky Johnson.
6 That's Sparky Johnson's blood, according to the DNA analysis.

7 Swab from the interior of the shoe is Derrick Rivera
8 mixed with somebody else, and that other person it's mixed
9 with is Stephen Johnson, Jr. In the quadrillions that the DNA
10 inside that shoe is Derrick Rivera. So the string of the bag
11 and inside the shoe is exactly the same guy. We're up to two.

12 Swab the hat. If you were a crime scene analyst and you
13 found the hat and you had a video of someone wearing
14 dreadlocks and that hat, with a black toboggan cap on the
15 outside of it, of anywhere you could swab that, wouldn't where
16 it contacts your head be the most probative of who was wearing
17 that hat? And so that, they did.

18 And so they swabbed the interior of that hat, and that
19 DNA comes back in the septillions to Derrick Rivera.
20 Likelihood ratio is in the septillions. And also in that hat
21 and specifically we have got -- and Bradford Britton is
22 excluded from DNA inside that hat. Laid up in Bradford's
23 house. The man can't even afford washing soap, but this is in
24 his house, and none of his DNA is on it.

25 And then there is more significance: A human hair inside

1 that hat. And that isn't from the DNA fairy kind of drifting
2 and somehow possibly getting there. That's from actual
3 contact in the hat. That's a hat that's Derrick Rivera's to
4 the trillionths. That's actual evidence.

5 So those are two more. I think we're up to four.

6 Gray pants. Take a look at the pictures of the gray
7 pants. One of the reasons you see the gray pants in that is
8 because those match the chain of things, almost like crumbs.
9 Circumstantial evidence. This stuff matches that shoe, those
10 pants. The video or the still photo shows there's some gray
11 pants in it. That's blood on those pants.

12 And you'll look at the serological thing when you see the
13 DNA swabs, and you'll see the serologist -- the serologist
14 marks what these are. The blood on the shoe is marked here.
15 When you look at the red swab, the reddish stain, excuse me,
16 on the pants, and you take a look at that and see whether you
17 think it that's blood. The point being, it's a single source.
18 What that means is it wasn't interpreted as a mixture. Single
19 source makes sense; right?

20 A single source on the crotch area of that pants was
21 Derrick Rivera. Nobody else's. Bradford Britton is excluded
22 from that.

23 Right there, you can take a look at the picture and you
24 tell me whether you think that it's a reddish stain. You
25 interpret it however you want. That's Derrick Rivera on the

1 knee area, and Bradford Britton's excluded.

2 And, finally, on the DNA on his pants in the
3 septillionths is Derrick Rivera on those pants.

4 There was some testimony on the struggle, did anybody get
5 scraped with the fingernails? Did this? I don't know. Did
6 Derrick Rivera, during the course of that, cut himself at some
7 point that he dropped his own blood on his shirt? I don't
8 know. I don't know.

9 But I know Derrick Rivera's blood's on his pants or
10 reddish stain is on his pants, and the DNA spots on those
11 pants, and Bradford Britton is excluded from those pants.
12 Those pants weren't laid up on a -- dirty in Bradford
13 Britton's house.

14 So I'm going to be generous and just include that into
15 five. I'm going to use the pants as five. There's five.
16 Bingo.

17 Bingo is an expression of quiet confidence to the public
18 that, through all of this time, you put this piece into this
19 piece into this piece.

20 Now, during the course of playing this through this
21 process, we did get a couple of numbers different places. We
22 did talk about clippings. We did talk about shoes. We did
23 talk about absent phone records in Surfside, but none of those
24 distractions have anything to do with the fact that we got
25 five in a row.

1 Here, in a little bit, you're going to take this case and
2 you're going to go back in the jury room, and you're going to
3 get a chance to look at all this stuff, look at the video,
4 look at the items back there, and confirm the things that
5 we're talking about. And when you do, you're going to put a
6 middle spot. We got that one, we got that one, we got that
7 one, we got that one. In the end, every single one of you
8 will realize we got five. Some of you may already know it
9 right now. Some of you, it may take a little longer, but
10 that's okay. This is a tough process. It's been a week.

11 But, in the end, all 12 of you will come back out and be
12 unified in one voice, and you'll write your verdict. You'll
13 write "guilty." You won't write "bingo," but you'll mean the
14 same thing.

15 Bingo. The State of South Carolina proved the fact that
16 Derrick Rivera committed the murder of Sparky Johnson, Derrick
17 Rivera is guilty of the murder of Steve Johnson, and Derrick
18 Rivera is guilty of armed robbery in the Waccamaw Bingo on
19 July 26th, 2019, in Horry County.

20 Thank you.

21 THE COURT: All right. Mr. McGuire?

22 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

23 MR. MCGUIRE: I'm going to use some notes. I don't want
24 to forget anything. Sometimes I make mistakes, and I can't
25 make one today.

1 What I want us to do, you and I, is to partner up. Let's
2 be detectives together, like Starsky and Hutch. Let's partner
3 up. And let's pretend that we are assigned to this case as
4 the lead investigators. And let's go through it together and
5 what could have happened or what might have happened.

6 So we're assigned to the case, and we're reviewing all
7 the records. The case file. And the first thing we come
8 across is that there's a 9-and-a-half size Nike shoe at the
9 crime scene, clearly left by the suspect, but ultimately, when
10 Mr. Rivera is arrested, he's wearing 11-and-a-halves. And
11 that is completely inconsistent with him being the robber.

12 So what do we do as detectives? We're partners. We task
13 an officer to go down to the jail with a little plastic
14 easy-to-buy device to measure his foot. And the officer comes
15 back and says, "Detective, he's an 11-and-a-half. For real."

16 Now, we have to keep going. Let's review this case file
17 together. We're partners. And there's a paragraph in a
18 report from an officer on the scene, and it says, "I
19 interviewed a man named Jason Sapanic, and he says he was
20 right there by the office, that the robber's face covering had
21 come down, and he got a good look at him." But he doesn't
22 stop there. Jason Sapanic says, "And I can ID him if I see
23 him again."

24 We're partners. We're going to do a competent, complete,
25 and thorough investigation. So we task an officer to go see

1 Jason Sapanic. This is a normal police procedure used every
2 day. It would be negligent not to do this.

3 We have tasked an officer to go see Mr. Sapanic, and he
4 has what's called a six-pack lineup: Three photographs on the
5 top, three photographs on the bottom. And they're all
6 similar. There's a program you can put into a computer to get
7 similar photos of people that have been arrested prior so that
8 everybody is pretty close. It's not like you would put five
9 white people and one black person. That's crazy. We do a
10 good lineup. You and I are good detectives. Good partners.
11 We put a good lineup together, and we task an officer to go
12 out and talk to Mr. Sapanic.

13 And this is how it works. The officer has a cover sheet.
14 On that cover sheet, it says, "Mr. Sapanic, I am going to show
15 you a number of photographs on a piece of paper. I want you
16 to take a look at it. The suspect may or may not be in there,
17 but if you see somebody who matches the description of the
18 robber, you let me know."

19 And we're good detectives. We do a good lineup. We have
20 Derrick Rivera's picture. We put him on the top row, right in
21 the middle. And our officer goes out, sees Mr. Sapanic, shows
22 him the photographs, and Mr. Sapanic says -- now, remember,
23 Derrick Rivera's photo is right there in the middle on the
24 top. He looks at the photograph and says, "I don't see him.
25 I don't see him. The robber is not in there."

1 Officer makes a note, does a short report. He brings it
2 back to us, the lead detectives, the partners that are running
3 this thorough, complete, competent investigation.

4 Let's keep going. We're reviewing the case file, and we
5 have this report from Sara Goodman, the DNA analyst who says
6 it's like 300 trillion to 1 chance that this combination of
7 DNA is explained by Mr. Rivera and some unknown person on some
8 items.

9 So we go and look at the items, and we go see Sara
10 Goodman in Columbia. Remember, she sat down with me. She'll
11 do that for us, the detectives. We can do that. So we get in
12 our car, and we go to Columbia, and we have these items, and
13 we say, "Sara, explain this to us. If somebody in court says
14 there's a real possibility that Derrick Rivera never touched,
15 handled, or wore these items, what would you say?"

16 And Sara would tell us, the detectives, "I'd have to say
17 that's a real possibility, based on the phenomena of
18 transference."

19 "Is it possible that Derrick Rivera wore one of those
20 items and then the robber handles it, gets the DNA on the
21 other stuff? Maybe they're Derrick's pants. He leaves them
22 over at Bradford Britton's house. Robber uses his pants, gets
23 DNA on other stuff?"

24 Sara would tell us, "Yeah, that's a real possibility."

25 All right. We have a problem here. These are all

1 portable items. Derrick Rivera may never have touched any of
2 them or maybe one of them. So we can't put Derrick Rivera at
3 the bingo parlor. We can put him around Bradford Britton, but
4 that's kind of it.

5 So we, the detectives, we have something. We have
6 Bradford Britton. He's turning State's. We can go see him
7 again.

8 So let's go see Bradford Britton. Let's you and I go
9 over to the J. Reuben Long Detention Center, and say,
10 "Bradford, we went over your interview with the detectives
11 that first interviewed you. Now, you indicated that there was
12 a time where you let Derrick have the run of your house, he
13 was there with a female, and then you left. And when you came
14 back, he was gone. So, Bradford, how often would something
15 like this happen? Is this a normal thing? A
16 once-in-a-million thing?"

17 He says, "No, the guy used my house. He'd entertain
18 ladies there. He lived about eight blocks away on Gilbert
19 Street in our neighborhood. He lived with his mama, and he
20 didn't want to bring girls over to his mama's house, so I let
21 him use my house. He paid me a little cash on the side. Buy
22 a little marijuana from me. He'd let me smoke his blunt.
23 Yeah, he'd crash at my place. Used it to entertain ladies."

24 "Did he leave stuff there? Take a shower there? Change
25 clothes there? Leave a bag there?"

1 "Yes, sir, all that."

2 All right. Now, we can't use these clothing items really
3 at all. They almost have no evidentiary value. All we know
4 is that Derrick may have handled some, one, none of these
5 items, and they absolutely can't put them in the Myrtle Beach
6 bingo hall.

7 So you and I are reviewing the case file, and it's not
8 just papers. It's got other stuff in there. So let's go back
9 from the beginning. Let's look at the video of the robbery of
10 the bingo hall. And we're watching it and we're watching it,
11 and we see the robber go to a wooden cash drawer and just
12 scoop money out. I mean, just scooping money out of this
13 little wooden drawer -- this little wooden plywood cash
14 drawer.

15 And then he goes down to the end of the counter, and he's
16 doing something down there. So we go back to Teresa
17 Holyfield, and we say, "Ma'am, we're contemplating testing
18 this wooden cash drawer for DNA because we can see the
19 robber's hands scooping up money right out of it. And we want
20 to get an idea of how many people may have gone in the office
21 and handled the money, been able to touch all that stuff."

22 "Oh, just Steve, just Sparky, and me."

23 "Okay, good. Small number of people. Let's swab the
24 cash drawer. Let's swab the wooden cash drawer, because it's
25 still locked up in the bingo parlor." It hasn't been sold

1 yet. It hasn't been cleaned out. Remember, you and I, the
2 detectives, got assigned to this thing about two years ago.
3 Thank God we're able to go get the cash drawer and swab it.

4 And we talked to Teresa, "What's this other object the
5 robber is manipulating down the counter?"

6 "Well, that's another basket that would have cash in it.
7 We sell markers and cigarette lighters and stuff like that, so
8 there's cash there too."

9 So we go back to the bingo hall, and there's the basket
10 right on the counter. All right. You and I put gloves on,
11 and we take it, and we put it in a large evidence bag, and we
12 call Sarah at SLED. Sara Goodman.

13 "Sara, we have a video, and it shows the robber touching
14 certain objects that a very limited number of people had
15 access to. We want you to test it. This could be it for us.
16 Will you do that for us, Sara?"

17 "Yes, sir. Of course. Of course."

18 So we send her the cash drawer. Swabs from the cash
19 drawer, the basket. And you and I, we're now awaiting those
20 results. So let's keep going.

21 We talk to Mr. Sapanic again to say, "What did you see
22 exactly in the office? Was it a -- what kind of fight was
23 this, this struggle -- life-and-death struggle? Can you give
24 us an idea of what you saw?"

25 "I saw Mr. Johnson go in there, try to fire his gun. And

1 then they're on the floor. Mr. Johnson is on top of him. It
2 was a fight." The word Mr. Sapanic uses "fight." And what
3 happens in a fight? People pull, push, put their hands all
4 over each other.

5 So we call Sara again. "Sara, we went and talked to a
6 witness. That witness says there was a struggle, a fight
7 between the robber and Mr. Johnson. We think the robber's DNA
8 is on Mr. Johnson's shirt. That's very probable, Sara. Can
9 you help us out? Can you test -- can we swab that and send
10 that to you and will you test that for us?"

11 "Yes. Of course. Of course I would do that."

12 So now we're awaiting the DNA results on that.

13 And we say, "Sara, Mr. Johnson went in there with a gun.
14 And the gun didn't work, and we think maybe the struggle
15 focused on the gun. Maybe someone's grabbing the gun. Can we
16 swab that and send that to you, Sara? Can you test that for
17 us? We think the robber's DNA could be on that gun."

18 And Sara says, "Yes, of course. I will test that for
19 you."

20 And then some time passes, and Sara 's report comes to
21 us. It says, "Detective, Mr. Rivera's DNA is not on these
22 items. Detective, Mr. Rivera's DNA is not on the cash box.
23 Detective, Mr. Rivera's DNA is not on the gun. Detective, I
24 don't have anybody to say -- I can't say whose DNA that is.
25 Detective, it's an unknown person. Detective, it's an unknown

1 person who matches nobody in this investigation so far."

2 So we keep going. You and I, we partner up. We go
3 through the file some more. We have to do a complete,
4 competent, and thorough investigation.

5 So we call the forensic pathologist who does the
6 fingernail clippings. She puts the clippings in envelopes.
7 Left hand, right hand. And those clippings are in our
8 Evidence Department. All we have to do is walk down the
9 hallway. We don't have to go see a forensic pathologist.
10 They sent them to us. We have it. We own it.

11 So, as good detectives, of course we're going to test the
12 fingernail clippings. Why? Because we know there was a
13 fight, a struggle -- a life-and-death struggle, and we know
14 the robber's mask came off. I'm sure the robber would not
15 offer to take his mask off. It was pulled from him, snatched
16 from his face. And you would expect DNA from the robber to be
17 under somebody's fingernail.

18 So we say, "Sara, Sara, right down the hallway from us we
19 have fingernail clippings, and we have witness testimony to
20 indicate that there was a struggle, a fight, and that the
21 robber's mask was snatched off his face. Should we test these
22 fingernail clippings, Sara? Should we send them to you?"

23 And Sara says, "Of course. Of course, yes. Send them.
24 I will test them."

25 So now you and I are waiting for those results, and some

1 time passes, and we gets Sara's report, and it says -- or she
2 calls us. Let's say she calls us, "Detective, I'm about to
3 write the report, but I thought I'd call you to say Rivera's
4 DNA is not in the fingernail clippings. It's Mr. Johnson's
5 DNA combined with an unknown person, and I can't tell you who
6 the unknown person is. But it's not Derrick Rivera's DNA."

7 So you and I go through the case file. We look at all
8 Bradford Britton's testimony and answers when he was being
9 interviewed, and you say to me -- you say to me, "Detective,
10 he's always maintained that his passenger made a phone call at
11 the Surfside Bingo. He's never let that go. He's always held
12 onto it." And you say to me", Detective, let's see if that's
13 true. Let's prove that true or prove that false."

14 So we go and get cellphone tower records from a very
15 specific location at a very specific time. It's the Surfside
16 Bingo. What, 25, 50 customers? Some people in the parking
17 lot. Does that sound like 10,000 calls we have to go through?
18 Uh-uh. Not at all.

19 We go and do a geofence location, same thing. Very small
20 area, very small time, and we pick up the accounts. We do the
21 same thing at the Myrtle Beach Bingo. We find out what cell
22 phone tower and vector aims right at the bingo. That's the
23 only little part of that tower that we need. And we get it.
24 And again, how many people in the bingo place? 40? Some cars
25 in the parking lot. Do you see 10,000 people? No. "We can

1 do this, Detective. We can do this." And we do it.

2 One account, one number is at both places. And we get
3 that number. And it belongs to somebody named Chris. It's a
4 number in Bradford Britton's phone. And you say, "Detective,
5 we need to go talk to this guy." And I say, "I agree."

6 So we go over to Chris's house, say, "Hey, your name's
7 come up in an investigation," and this is a tactic law
8 enforcement officers use and that we are going to use because
9 we know it works. We get Bump to say he's completely
10 innocent, that he doesn't know anything about this, and then
11 we follow that up with this: "So you can go ahead and give us
12 your DNA sample, right?" That's how you do it. That's how
13 you get his DNA.

14 You and I are going to use that tactic as good
15 detectives, go visit Chris and say, "Chris, your name has come
16 up. We're just going ahead and testing people to make sure
17 they don't have anything to do with it. You're innocent. Go
18 ahead and give us your sample." And we take Chris's sample.

19 And we say, "Sara" -- we call Sara up at SLED in
20 Columbia. "Sara, we have got a sample that we want you to
21 compare to the unknown DNA." And we send it to her. And we
22 wait, and she calls us. And she says the sample you sent me
23 matches your suspect Chris on all the items found in the bingo
24 parlor: On the cash drawer, on the basket, on the gun,
25 underneath the fingernail clippings. All of it."

1 And to borrow my respective colleague's phrase: Bingo.

2 These aren't just borrowed clothes or DNA that's spread
3 around by leaving stuff in someone's house. This is the
4 robber touching the cash drawer in the bingo parlor, the
5 basket, Mr. Johnson's gun, the shirt. This puts Chris there
6 with no other reasonable explanation.

7 And you say, "Detective, what's our next step?"

8 And I say, "Detective, draw up the murder warrants for
9 Chris right now."

10 And you say, "Detective, aren't we being a little hasty?
11 Because when Derrick Rivera was arrested, he smashed his phone
12 and that looks kind of bad. That's suspicious."

13 And I say, "You're right. Detective, you are right."

14 And we have a text message on the phone from Mr. Rivera
15 from getting billings records, because we didn't just stop at
16 the phone; we have billing records. And it has a conversation
17 about laying low, and we have that phone number that
18 Mr. Rivera is talking to.

19 And you tell me, "Detective, let's go talk to that
20 person."

21 And I say, "You're right, detective. We need to do
22 that."

23 So we go. We have the number, we have the address, and
24 we go and we knock on her door, and it turns out it's Derrick
25 Rivera's girlfriend. And we say, "Ma'am, we have this text

1 message where he said he wanted to lay low and maybe leave the
2 area. Can you help us with that?"

3 Say, "Yeah. He told me Bradford Britton got arrested.
4 Word on the street was he was trying to put a murder on him,
5 and they just did a search warrant at his parents' house and
6 he was scared and he left."

7 And you say, "Detective, while that's suspicious, the
8 evidence we have on Chris is a mountain. And while that looks
9 suspicious, let's draw up those warrants for Chris for
10 murder."

11 You know, we heard in this case phrases from the law
12 enforcement officers, phrases like, "Well, that's not really
13 my job" or "I didn't think that was important" or "that would
14 just be kind of too much work for us to do." And I don't like
15 that. And I lose my temper a little bit. And if you think I
16 treated somebody a little harshly or took them to task a
17 little bit, you hold that against me and not Mr. Rivera.

18 And when I started to lose my temper a little bit and
19 getting impatient was when a law enforcement officer was on
20 the stand. His name was Cestare. And when he figured out
21 that it was important to me that I get evidence that there was
22 a fight in the office, he said, "Well, you know, it's a very
23 small office, very tight quarters. Somebody could just run in
24 there and just knock stuff around." And that made me angry,
25 because that's baloney. You know, we've all heard the phrase,

1 you know, "Don't pee on my back and tell me it's raining."

2 And we got some of that. And I don't like that.

3 Why didn't he go see Sapanic? "Well, you know, sometimes
4 witness IDs are just unreliable." Can you believe that? I
5 don't. Not for a second.

6 The shoes aren't important. Do you believe that? If
7 they did a search warrant on Derrick Rivera's house and every
8 shoe in his closet was a 9-and-a-half, they'd be here saying,
9 "We have got all his shoes, and with regard to shoe size, they
10 were [snapping fingers] identical." But because he doesn't
11 match, just ignore it.

12 I have never seen a police officer so fearful of just
13 confronting the very most basic fact of what size his shoe is.
14 I can't make them measure his foot, but I have never seen
15 someone so afraid of doing something like that. So
16 deliberately turning away from facts, saying they're not
17 important.

18 And Cestare, I mean, he just basically lied to you.
19 There was a fight; right? A struggle? Well, you know, he
20 could just knock stuff over. Well, that's baloney. We all
21 know that's baloney.

22 I'm not even going to talk to you about Bradford Britton.
23 I don't have to. He's a ten when it comes to being honest.
24 He insulted your intelligence. No more about him.

25 I want -- now, we're not detectives anymore. I'm a

1 lawyer. You're a juror. I'm going to ask you please, please
2 listen to the judge's instruction on the law. When the State
3 relies on circumstantial evidence, each fact has to be wholly
4 consistent with each other, point conclusively to the guilt of
5 the accused. Conclusively. If it's circumstantial evidence,
6 it has to point conclusively to guilt. And it does not in
7 this case.

8 If there's a real possibility somebody else did this, you
9 must render a verdict of not guilty. It's your oath, it's
10 your duty, and it's the only way that you can comply with this
11 Court's instructions and follow the law.

12 The one last thing I'm going to tell you is sometimes I
13 have a fear that these numbers -- these DNA numbers, you know,
14 300 trillion and all this stuff, that that can have some very
15 persuasive effect.

16 So I went to college at Coastal here, and I used to be a
17 pretty decent baseball player. I'm not anymore; I'm old. But
18 I was good. And we used to get together and play softball all
19 the time. And you guys may have noticed I'm left-handed. So
20 if somebody on the other team didn't have a glove and they
21 were left-handed, it was usually my glove they were going to
22 borrow. I was usually the only left-handed guy out there.

23 So I'm going to tell you a story. Just a story. This is
24 not true, by the way. I'm playing softball. Got my fielder's
25 mitt. Dude on the other team does not have his glove. He

1 borrows mine. He's putting it in, taking his hand out,
2 putting his hand in, using it in the field. When he takes it
3 off, he's messing with his hat, messing with his shirt,
4 touching his bat to go bat. My DNA is in my glove. His DNA
5 is in my glove.

6 We all used to walk from the fields across the highway to
7 the apartment complex where a lot of us stayed, and let's say
8 this guy, he robs a convenience store using this baseball bat.
9 And there's a video of it. Law enforcement -- let's say he
10 leaves his bat there. His hat flies off. His hat's there.
11 So they have the bat and they have his hat.

12 They do swabs. They do DNA testing. The chancellor, the
13 dean at Coastal sends out a message: "Hey, if you were at the
14 softball field playing, something happened after that, we'd
15 like to talk to you guys."

16 I see the message. I say, "Hey, I was one of the guys
17 playing softball."

18 And he says, "Okay. Thank you. Just want to know who
19 was out there."

20 And then, all of a sudden, a police car pulls up to my
21 apartment. It's 700 trillion to 1 that your DNA is on the
22 baseball bat that was waved to the cashier in the robbery.
23 It's 300 trillion to 1 that it's more likely your DNA than
24 some unknown person on the hat. Those are some big numbers.
25 And they don't mean a darn thing. And that's exactly what you

1 have in this case. Exactly.

2 I started talking -- when I gave my opening statement,
3 the first thing I said was this case is a tragedy.
4 Mr. Johnson and his son are gone, and we cannot bring them
5 back. I said, I wish I could. I wish I could. I said, You
6 will have to write a verdict of not guilty in this case, not
7 because I asked for it, but because justice demands it. It's
8 the only way to comply with the Court's instructions.

9 And if there was an erroneous conviction in this case and
10 Derrick's life and liberty were stripped from him, he would be
11 gone too, and I couldn't get him back.

12 Thank you.

13 THE COURT: Anything in reply?

14 MR. HIXSON: Yes, sir. Very, very, very briefly.

15 CLOSING ARGUMENT ON BEHALF OF THE STATE

16 MR. HIXSON: Of interest in that hypothetical we just
17 heard, those numbers conclusively prove that Mr. McGuire's
18 hand was in that baseball glove. And when we get the standard
19 from the other guy, both of their DNA is going to be in that
20 glove, because they actually touched it. The DNA fairy didn't
21 drop it in there. They touched it. And those numbers show
22 that Derrick Rivera's head's in that hat, hands on the string,
23 foot's in the shoe, blood's on the pants. Conclusive.

24 And, lastly, of little interest, I'm looking at the
25 clock, and that clock is still moving, so I'm not looking at a

JURY CHARGE

785

1 broken clock. We're looking at a working clock. I want you
2 guys to think about one thing: Bradford Britton gave up the
3 name Derrick Rivera before any DNA testing was done, and we
4 knew the results --

5 MR. MCGUIRE: Judge, that's beyond my closing.

6 THE COURT: Sustained.

7 MR. HIXSON: Take a look at how you can corroborate the
8 veracity of Bradford Britton's testimony --

9 MR. MCGUIRE: Judge, that's beyond the scope of my
10 closing. I didn't address Bradford Britton at all.

11 THE COURT: Sustained.

12 MR. HIXSON: The clock's still moving, and it's time for
13 me to sit down. Bradford Britton's watch is correct two times
14 a day, and he's right when he said Derrick Rivera murdered
15 these two people.

16 Thank you.

17 JURY CHARGE

18 THE COURT: All right. Ladies and gentlemen, all the
19 evidence has been presented to you in this case. The
20 attorneys have made their closing arguments, and now is the
21 time of the trial when I charge you with the law to be applied
22 in this case.

23 The indictments in this case allege several different
24 offenses against the defendant. One indictment charges the
25 defendant with murder. A second indictment charges the

1 defendant with another count of murder. A third indictment
2 charges the defendant with armed robbery. Each indictment
3 charges a separate and distinct offense. You must decide each
4 indictment separately on the evidence and the law applicable
5 to it, uninfluenced by your decision as to any other
6 indictment.

7 The defendant may be convicted or acquitted on any or all
8 of the offenses charged. You'll be asked to write a separate
9 verdict of guilty or not guilty for each indictment.

10 I remind you that the fact that the defendant was
11 arrested, charged, and indicted in this case is not evidence
12 in this case and cannot be considered by you as evidence of
13 guilt. Nor does the defendant's arrest, charge, or indictment
14 create any presumption or inference of guilt. These documents
15 are simply the formal written instruments which contain the
16 charges made against the defendant. They are the formal
17 documents by which this case is brought into this court.

18 The defendant pleads not guilty to these indictments.
19 That plea puts the burden on the State to prove the defendant
20 guilty. A person charged with committing a criminal offense
21 in South Carolina is never required to prove his innocence.

22 I charge you that an important rule of the law is that
23 the defendant in a criminal trial, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which the indictment was issued

1 unless guilt has been proven by evidence satisfying you of
2 that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when you begin
4 your deliberations, but it accompanies the defendant
5 throughout the trial, until you reach a verdict of guilt based
6 on evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the defendant,
10 which remains with the defendant until it has been stripped
11 from the defendant by evidence satisfying you of the
12 defendant's guilt beyond a reasonable doubt.

13 The presumption of innocence is not a mere legal theory.
14 It is not just a legal phrase. It is a substantial right to
15 which every defendant is entitled unless you, the jury, are
16 satisfied from the evidence of the defendant's guilt beyond a
17 reasonable doubt.

18 Now, what is a reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. Proof beyond a reasonable doubt is
21 proof that leaves you firmly convinced of the defendant's
22 guilt. We know very few things in this world with absolute
23 certainty, and in criminal cases, the law does not require
24 proof that overcomes every possible doubt.

25 If, based on your consideration of the evidence, you are

1 firmly convinced that the defendant is guilty of the crime
2 charged, you must find the defendant guilty. If, on the other
3 hand, you think a real possibility exists that the defendant
4 is not guilty, you must give the defendant the benefit of that
5 doubt and find him not guilty.

6 I remind you that, during this trial, you and I have
7 certain duties to perform. As the trial judge, my
8 responsibility is to preside over the trial of this case. I
9 also have the duty to rule on the admissibility of the
10 evidence offered during this trial. You are to consider only
11 the competent evidence before you. If any testimony was
12 ordered stricken from the record in this case during this
13 trial, you must disregard that testimony.

14 You are to consider only the testimony which has been
15 presented from the witness stand, any exhibits which have been
16 made a part of the record in this case, and any stipulations
17 of counsel.

18 I have the additional duty to charge you the law
19 applicable to this case. As the presiding judge, I am the
20 sole judge of the law of this case. Your duty as jurors is to
21 accept and apply the law as I now state it to you. If you
22 have any idea as what the law is or what the law ought to be,
23 and your idea is different from what I now tell you the law
24 is, you must disregard your idea of what the law is or ought
25 to be because you were sworn to accept the law and apply the

1 law exactly as I state it to you.

2 In every case tried in this court before a jury, the jury
3 is the sole and exclusive judge of the facts in a case. A
4 trial judge cannot intimate, state, comment on, or make any
5 statement to a trial jury about the facts in a case. Since
6 you, the jury, are the sole judge of the facts in this case,
7 you are not to infer from what I have said during the progress
8 of this trial in ruling upon the admissibility of evidence or
9 otherwise or anything that I say now during the course of this
10 instruction to you that I have any opinion about the facts in
11 this case. The law does not allow me to have an opinion about
12 the facts in this case. This is a matter solely for you, the
13 jury, to determine. As jurors, your duty is to determine the
14 effect, value, weight, and truth of the evidence presented
15 during this trial.

16 Now, two types of evidence are generally presented during
17 a trial: Direct evidence and circumstantial evidence. Direct
18 evidence is evidence that directly establishes the existence
19 of a fact. It directly proves the existence of a fact and
20 does not require deduction. An example of direct evidence may
21 be the testimony of an eyewitness who claims personal
22 knowledge of the facts sought to be proved.

23 Circumstantial evidence is proof of a chain of facts and
24 circumstances which indicate the existence of a fact. The law
25 makes absolutely no distinction between the weight or value to

1 be given to either direct or circumstantial evidence, nor is a
2 greater degree of certainty required of circumstantial
3 evidence than of direct evidence.

4 Crimes may be proven by circumstantial evidence; however,
5 to the extent the State relies on circumstantial evidence, the
6 circumstances must be consistent with each other, and when
7 taken together, point conclusively to the guilt of the accused
8 beyond a reasonable doubt.

9 If circumstances merely portray the defendant's behavior
10 as suspicious, the proof has failed. As previously stated,
11 the State has the burden of proving the defendant guilty
12 beyond a reasonable doubt. This burden rests with the State
13 regardless of whether the State relies on direct evidence,
14 circumstantial evidence, or some combination of the two.

15 You should weigh all of the evidence in the case. After
16 weighing all of the evidence, if you are firmly convinced of
17 the defendant's guilt beyond a reasonable doubt, you should
18 find the defendant guilty. On the other hand, after weighing
19 all of the evidence, if you are not firmly convinced of the
20 guilt of the defendant beyond a reasonable doubt, you must
21 find the defendant not guilty.

22 Necessarily, you must determine the credibility of
23 witnesses who have testified in this case. Credibility simply
24 means believability. Your duty as jurors is to analyze and to
25 evaluate the evidence and determine which evidence convinces

1 you of its truth.

2 In determining the believability of witnesses who have
3 testified in this case, you may believe one witness over
4 several witnesses or several witnesses over one witness. You
5 may believe a part of the testimony of a witness and reject
6 the remaining part of the testimony of that same witness. You
7 may believe the testimony of a witness in its entirety or
8 reject the testimony of a witness in its entirety. You may
9 consider whether the witness has exhibited to you any
10 interest, bias, prejudice, or other motive in this case. You
11 may also consider the appearance and manner of the witness
12 while on the witness stand.

13 The Rules of Evidence ordinarily do not permit witnesses
14 to testify to opinions or conclusions. An exception to this
15 rule exists for witnesses we call expert witnesses, a witness
16 who, by education and experience, has become expert in some
17 art, science, profession, or calling may state an opinion as
18 to the relevant and material matter in which the witness
19 claims to be an expert and may also state the reasons for the
20 opinion.

21 You should consider any expert opinion received in
22 evidence in this case and, like any other evidence, give it
23 the weight you think it deserves. If you decide that the
24 opinion of an expert witness is not based on sufficient
25 education and experience or if you conclude that the reasons

1 given in support of the opinion are not sound or that the
2 opinion is outweighed by other evidence, you may disregard the
3 opinion entirely.

4 An expert witness's testimony is to be given no greater
5 weight than that of other witnesses simply because the witness
6 is an expert. Further, you are not required to accept an
7 expert's opinion even though it is not contradicted.

8 Evidence has been presented that a witness made prior
9 statements which are not consistent with the witness's present
10 testimony. You may use this evidence to decide whether to
11 believe the witness. You may also use evidence of the earlier
12 contradictory statements to determine the truth of those
13 statements. It is up to you to decide whether to believe the
14 earlier statements or the testimony given at trial.

15 If a witness is shown to have knowingly testified
16 untruthfully concerning any material matter, you may consider
17 this in determining whether to trust the witness's testimony
18 as to other matters. You may reject all testimony of that
19 witness or give all or a part of the testimony the weight you
20 think it deserves.

21 A witness in this case has already pled guilty to
22 committing one or more crimes. A person who has a past
23 criminal record is competent to testify during a trial. A
24 past record does not affect the ability of that witness to
25 testify. However, the witness's record may be considered by

1 you, if at all, in determining the witness's believability.

2 Remember, you are the sole judges of the facts in the case and
3 of the believability of any and all of the witnesses.

4 I instruct you and emphasize that the fact the defendant
5 did not testify is not a factor to be considered by you in any
6 way in your deliberation and in your consideration of the
7 question of the guilt or the innocence of the defendant. The
8 defendant's decision not to testify in this case must not be
9 considered by you in any manner whatsoever.

10 A defendant has the constitutional right to remain
11 silent, and the assertion of this right must not be considered
12 by you in your deliberations.

13 I repeat: Under your oath, you are to draw no conclusion
14 whatsoever from the fact that the defendant in this case did
15 not testify. The fact that the defendant did not testify
16 should not even be discussed in the jury room.

17 The burden of proof, as I stated to you, is on the State.
18 The defendant is not required to prove his innocence. The
19 burden of proof remains on the State to prove guilt beyond a
20 reasonable doubt.

21 Now, in order to establish criminal liability, criminal
22 intent is required. For example, the mental state required to
23 be proven by the State for a particular crime might be
24 purpose, intent, knowledge, recklessness, or criminal
25 negligence. Criminal intent must be proven by the State

1 beyond a reasonable doubt. Criminal intent is always a matter
2 that must be determined by the jury from the circumstances
3 surrounding the situation. Intent cannot be proven to a
4 mathematical certainty. Medical science cannot dissect a
5 person's brain and determine what the person had in mind, so
6 the law says that criminal intent may be inferred from the
7 circumstances shown to have existed. This is how you make a
8 determination of whether or not the element requiring intent
9 was present. Intent does not have to be established by direct
10 and positive evidence, but intent may be established by
11 inference in the same way as any other fact by taking into
12 consideration the acts of the parties and all the facts and
13 circumstances of the case.

14 Criminal intent is a mental state, a conscious
15 wrongdoing. You must determine what the defendant intended to
16 do based on the circumstances shown to have existed. Criminal
17 intent can arise from an action or a failure to act. It may
18 arise from negligence, recklessness, or an indifference to
19 duty, or to consequences that is considered by the law to be
20 the equivalent of criminal intent.

21 The defendant is charged with two counts of murder. To
22 convict the Defendant of murder, the State must prove beyond a
23 reasonable doubt that the defendant killed another person with
24 malice aforethought. Malice is hatred, ill will, or hostility
25 towards another person. It is the intentional doing of a

1 wrongful act without just cause or excuse and with an intent
2 to inflict an injury or under circumstances that the law will
3 infer an evil intent.

4 Malice aforethought does not require that malice exist
5 for any particular time before the act is committed, but
6 malice must exist in the mind of the defendant just before and
7 at the time of the act or at the time the act is committed.
8 Therefore, a combination of previous evil intent and the act
9 itself must exist.

10 Malice aforethought may be expressed or inferred. These
11 terms "expressed" and "inferred" do not mean different kinds
12 of malice but merely the manner in which malice is shown to
13 exist, either by direct evidence or by inference from the
14 facts and circumstances which are proved.

15 Expressed malice is shown when a person speaks words with
16 expressed hatred or ill will for another person or when the
17 person prepared beforehand to do the act which was later
18 accomplished. For example, lying in wait for a person or any
19 other acts of preparation, going to show that the deed was
20 within the defendant's mind would be expressed malice.

21 Malice may be inferred from conduct or actions of the
22 defendant that show a total disregard for human life. An
23 inference of malice may arise from one intention if one
24 intentionally kills another during the commission of a felony.
25 If facts are proved beyond a reasonable doubt sufficient to

1 raise an inference of malice in your satisfaction, this
2 inference would simply be an evidentiary fact to be taken into
3 consideration by you along with all other evidence in the
4 case, and you may give it the weight you decide it should
5 receive.

6 The defendant is also charged with armed robbery. To
7 convict the defendant of armed robbery, the State must first
8 prove beyond a reasonable doubt that the defendant took
9 personal property from the person or presence of another
10 person. Property is in the presence of a person if it is
11 within the person's reach, inspection, observation, or control
12 so that the person could, if not overcome with violence or
13 prevented by fear, keep possession of the property.

14 The State must also prove beyond a reasonable doubt that
15 the defendant carried the property away, intending to
16 permanently deprive the owner of the property and to keep the
17 property for the defendant's own use. The slightest removal
18 of the property or the complete possession of the property,
19 even for an instant, by the defendant is sufficient to show a
20 taking and carrying away of the property.

21 The taking and carrying away of the property must have
22 been done with violence or by putting the owner of the
23 property in fear of violence.

24 Finally, the State must prove beyond a reasonable doubt
25 that the defendant was armed with a deadly weapon during the

1 robbery. A deadly weapon is any article, instrument, or
2 substance which is likely to cause death or great bodily harm.
3 Whether an instrument has been used as a deadly weapon depends
4 on the facts and circumstances of each case.

5 The following are examples of instruments which may be
6 deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
7 dagger, a knife, a slingshot, metal knuckles, a razor,
8 gasoline, a fire bomb, a Molotov cocktail, and lighter fluid.
9 A gun may be a deadly weapon even if it is not operating.

10 Now, you may find one of two possible verdicts for each
11 indictment in this case. No significance is to be given to
12 the order in which I state these possible verdicts to you. I
13 simply have to say one first and one second. The possible
14 verdicts for each indictment in this case is either guilty or
15 not guilty.

16 Ladies and gentlemen, your verdict for each indictment
17 must be a unanimous one. As I previously instructed you, you
18 must decide each indictment separately on the evidence and the
19 law applicable to it, uninfluenced by your decision as to the
20 other indictments.

21 Mr. Booker, as foreperson, when the jury agrees on a
22 verdict for an indictment, you will write the verdict on each
23 indictment underneath, in the section provided for verdict.
24 Then you will sign your name as the foreperson of the jury and
25 then date the indictment.

1 Now, you have been allowed to take notes during the trial
2 of this case. Now, I will allow you to take your notes with
3 you to the jury room. Please remember that some people are
4 better note-takers than others. Juror notes should not be
5 given any greater weight than the recollection of other jurors
6 who may or may not have taken notes. The recollection of
7 individual jurors should be considered as reliable as notes
8 taken by any other jurors.

9 Now, I'm getting ready to excuse you back to the jury
10 room, but please do not begin your deliberations until you're
11 instructed to do so by the bailiff. I have to check with the
12 attorneys to see if there's any additional charges that need
13 to be made or any correction to the charges that I have given
14 you. If there are and I deem them appropriate, I'll bring you
15 back in and make whatever additional charges or corrections
16 are needed, but please do not begin your deliberations until
17 you're told to do so by the bailiff.

18 Also, we have ordered lunch for you, and it will be
19 coming here shortly. It hasn't gotten here yet, I don't
20 think. When your lunch gets here, you can do one of two
21 things: You can either stop your deliberations and eat your
22 lunch and then resume your deliberations after lunch, or you
23 can continue to deliberate while you eat lunch. It's up to
24 you as to what you want to do. The only requirement is that
25 everybody must do the same thing. You can't have some jurors

1 stop deliberations and eat their lunch while others continue
2 their deliberations. But, as a group, if all of you want to
3 eat while you deliberate, you can do that. If you want to
4 stop your deliberations, eat your lunch, and then resume your
5 deliberations later, you can do that as well.

6 So I'm going to excuse you back to the jury room. You
7 can take your notes with you, but do not start deliberations
8 until you're told to do so by the bailiff.

9 Thank you very much.

10 (The jury exited the courtroom at 11:51 a.m.)

11 THE COURT: All right. Any exceptions or challenges to
12 the charge by the State?

13 MR. HIXSON: No, sir.

14 THE COURT: Any by the defense?

15 MR. MCGUIRE: Only the same issues I raised prior to the
16 charge.

17 THE COURT: All right. Thank you very much.

18 All right. Let's make sure -- if y'all want to come up
19 and make sure we have got all the proper exhibits.

20 (A discussion was held off the record to review exhibits
21 with the court reporter.)

22 THE COURT: Have we got everything? Let's go ahead and
23 take it to the jury, but I need you bring the alternates:
24 Mr. Brown, Ms. Dry, and Mr. Warner. Mr. Brown, Mr. Warner,
25 and Ms. Dry, the alternates, bring them out. And you can tell

1 them to go ahead and begin their deliberations.

2 (Pause in the proceedings.)

3 (The alternate jurors entered the courtroom at 12:12
4 p.m.)

5 THE COURT: Mr. Brown, Mr. Warner, and Ms. Dry, this is
6 the part of the trial I hate. Since we still have our 12
7 panel, the law says that, as alternates, you're not allowed to
8 participate in the deliberations. I hate it because we make
9 you sit through the whole trial, through everything all the
10 jurors do, but then we don't let you participate in the
11 decision-making process.

12 But I want to thank you for your service. You can do
13 whatever you want to do. If you want to stay, eat lunch, see
14 the outcome, you can do that. If you want to leave now, you
15 can do that.

16 Does anyone have anything in the jury room they need to
17 get? Okay. All right. They'll get you a place back there if
18 you want to eat your lunch and leave after that, or stay for
19 awhile and leave when you want to. It's up to you, whatever
20 you want to do. But I do want to thank you for your service.

21 So it's up to y'all as to what you wish to do. Okay?
22 All right. Thank you very much. Just let the bailiff know
23 what you want to do, and they'll take care of you. Thank you
24 very much.

25 (The alternate jurors exited the courtroom at

JURY CHARGE

801

1 12:13 p.m.).

2 THE COURT: All right. Anything from the State before we
3 recess?

4 MR. HIXSON: No, sir.

5 THE COURT: Anything from the defense?

6 MR. McGUIRE: No, sir.

7 THE COURT: All right. We'll be in recess until we hear
8 something from the jury. Thank you very much.

9 (A brief recess was taken from 12:14 p.m. to 1:47 p.m.,
10 awaiting the jury verdict).

11 THE COURT: I understand the jury has reached a verdict.
12 Anything from the State before we bring the jury in?

13 MR. HIXSON: No, sir.

14 THE COURT: Anything from the defense?

15 MR. McGUIRE: No, sir.

16 THE COURT: All right. Ladies and gentlemen, before we
17 bring the jury verdict in, I just want to let everybody know:
18 Regardless of what this verdict is, there is to be no emotion,
19 no outbursts, no display of any emotions whatsoever in the
20 courtroom. I don't want this jury being second-guessed about
21 their decision. This has been a tough job for them.

22 If there is any outbursts, I'll deal with it accordingly.
23 And I say this not to condemn anybody or to threaten anybody
24 but to simply let you know that, if you do not feel that you
25 can control your emotions, please go ahead and excuse yourself

1 from the courtroom now just so that you'll avoid even the
2 chance of running into a conflict with the law, because
3 there's to be no display of emotion one way or the other.
4 Okay?

5 All right. Let's go ahead and bring the jury in.

6 (The jury entered the courtroom at 1:49 p.m.)

7 VERDICT

8 THE COURT: All right. Ladies and gentlemen, welcome
9 back.

10 Mr. Booker, I understand the jury has reached a verdict;
11 is that correct?

12 MR. FOREPERSON: Yes, sir.

13 THE COURT: All right. Have you written the verdicts on
14 each indictment, signed your name, and dated the indictment?

15 MR. FOREPERSON: Yes, sir.

16 THE COURT: All right. If you would please hand those to
17 the bailiff.

18 All right. I'll ask the clerk if she would please
19 publish the verdict.

20 THE CLERK: The State of South Carolina, County of Horry,
21 in the case of the *State of South Carolina vs. Derrick Jajuan*
22 *Rivera*, regarding Indictment 2019-GS-26-04929, charging the
23 defendant with murder of Stephen Lamar Johnson, we, the jury,
24 unanimously find the defendant guilty.

25 Regarding Indictment No. 2019-GS-26-04930, charging the

1 defendant with murder of Stephen Lamar Johnson, Jr., we, the
2 jury, unanimously find the defendant guilty.

3 Regarding Indictment 2019-GS-26-04928, charging the
4 defendant with armed robbery, we, the jury, unanimously find
5 the defendant guilty.

6 Signed by foreperson, Cicero Booker, dated October 22nd,
7 2021.

8 Ladies and gentlemen, if this is your verdict, please so
9 signify by raising your right hand.

10 (All jurors raise their right hands.)

11 THE CLERK: Thank you.

12 THE COURT: All right. Let the record reflect that all
13 jurors raised their right hand.

14 Any polling of the jury, by the defense?

15 MR. MCGUIRE: No, sir.

16 THE COURT: All right. Ladies and gentlemen, that will
17 conclude your duties as jurors for this trial, as well as for
18 this week. I want to thank you for your service. I know it's
19 not an easy job, but I want to let you know that you did it
20 consciously and the way it's supposed to go. I think you did
21 a fine job, and I want to thank you for your service this week
22 and your patience this week.

23 I know it takes a week out of your lives, but everybody
24 did what you're supposed to do when you're serving jury duty.
25 You listened intently, you deliberated intently, and I want to

1 thank you for your service.

2 You have a one-year disqualification from serving jury
3 duty. You have got a three-year exemption. I hope you don't
4 exercise your exemption because we do need good jurors.

5 I want to thank you for your service. You're free to go
6 for the remainder of the day, the remainder of the week, and
7 with the thanks of the Court. Thank you very much.

8 (The jury exited the courtroom at 1:53 p.m.)

9 THE COURT: All right. Any post-trial motions at this
10 time?

11 MR. McGUIRE: Not at this time, Judge.

12 THE COURT: All right. Any reason why we cannot go ahead
13 and impose sentencing at this time?

14 MR. HIXSON: No, sir, Your Honor.

15 THE COURT: All right. We have got sentencing sheets?

16 MR. HIXSON: I do, Your Honor.

17 THE COURT: All right. All right. Mr. McGuire, anything
18 in mitigation?

19 MR. McGUIRE: Your Honor, based on my advice, Mr. Rivera
20 is not going to address the Court. We're not going to present
21 anything.

22 THE COURT: All right. You don't want to say anything?
23 Nobody wants to present anything on his behalf?

24 MR. McGUIRE: Not at this time.

25 THE COURT: All right. On behalf of the State, any

1 victims wish to speak at this time?

2 MR. HIXSON: We do, Your Honor. I would begin with just
3 presentation before we get into what I anticipate to be some
4 emotional testimony.

5 I indicated to Your Honor during the course of the
6 impeachment inquiry what Mr. Rivera's criminal history was. I
7 know the Court's aware of that. If Your Honor would like me
8 to do that again, that's fine. If Your Honor is aware of
9 that, then I wouldn't go through that. It's up to you.

10 THE COURT: Well, let me go ahead and hear his prior
11 record.

12 MR. HIXSON: As it relates to relevance for sentencing,
13 back in -- Mr. Rivera was sentenced in 2008 to a B&E motor
14 vehicle. Also, in 2008, a second B&E motor vehicle.

15 In February of 2006, he was sentenced to a burglary in
16 the second-degree, nonviolent offense. Also in February of
17 2006, he was also sentenced to a second burglary and a
18 second-degree, nonviolent offense. That same day, he also
19 pled guilty to a third burglary in the second-degree,
20 nonviolent offense. Notice, Your Honor, those are nonviolent
21 offenses, and as such, the predicate LWOP mandatory
22 life-in-prison sentence is not mandatory in this matter. He
23 would need another additional and fourth for it to be a
24 mandatory life-in-prison sentence. We're dealing with a
25 30-year-to-life sentence on both murders, 10 to 30 on the

1 armed robbery, Your Honor.

2 Additionally, in September of 2011, Mr. Rivera was
3 convicted of strong armed robbery, and then he -- in September
4 of 2011, on that same date, he also was convicted of burglary
5 in the second degree, and that is a violent offense, Your
6 Honor.

7 Beg the Court's indulgence. Can I -- I know that my
8 understanding is Pamela Johnson -- Pam is the wife of Sparky;
9 Savannah Johnson is Sparky's daughter; as well as Christi
10 Johnson-Brunson; that is Sparky's sister, and they have
11 indicated to me that they would like to address the Court, and
12 if Your Honor could give them a few minutes, I would like to
13 make sure that we kind of lay out some parameters on what's
14 appropriate in this situation, if that's okay.

15 THE COURT: That will be fine.

16 (Pause in the proceedings.)

17 THE COURT: First thing, I'll need you to do is give the
18 court reporter your name and spell your name, please.

19 MS. JOHNSON: Pamela Johnson. J-o-h-n-s-o-n.

20 THE COURT: All right, Ms. Johnson.

21 MS. JOHNSON: On July 26th, 2019, our lives were forever
22 altered when Derrick Rivera took the lives of my husband,
23 Sparky, and father-in-law, Steve.

24 Earlier that day, Sparky, Savannah, and I were together
25 prior to him leaving for work. We were laughing and talking

1 about the preparation of her leaving for college. She had
2 just been accepted to the University of South Carolina, and I
3 have to say that Sparky was probably the most excited and
4 proud that his strong little girl was going to college.

5 He did not get to share the joy of us moving her to
6 college nor will he share in the joy come May 2022 when she
7 graduates with her degree.

8 Our sons no longer have their hunting buddy to go after
9 the next big freak nasty deer or fish. We will never hear his
10 infectious laugh or see his beautiful smile again except for
11 in videos and pictures.

12 Our sons will never have their dad stand by them as their
13 best man nor will my daughter, Savannah, have her daddy to
14 walk her down the aisle or do her daddy-daughter dance.

15 Their future children will never know their granddaddy or
16 their great-grandfather. All we are left with are the
17 memories and hopes and dreams of the future that was destroyed
18 on this day.

19 I have watched our triplets struggle through fear, grief,
20 anxiety, and loss of their independence. After Sparky passed
21 away, our middle son out of our triplets, he would not go in
22 his room for a year, because that's the last place he saw his
23 daddy alive.

24 For a year, we slept on the couch, a sectional sofa, and
25 I would wake up to my son's hand on my shoulder and the other

1 one on my head, holding me as he slept.

2 They fear going anywhere alone at the risk of something
3 happening, and at work, I have watched them run and hide when
4 someone suspicious has walked through the door of our
5 business. They have called me in fear of someone doing the
6 same thing that they did to their daddy and their grandfather.
7 They have grown more protective of me because I'm their own
8 surviving parent now.

9 I have fear of allowing them to work our front desk at
10 our office. I have my sister go and stand up there. I have
11 him leave the front desk because I have witnessed some people
12 come through that look suspicious.

13 The only thing I'm grateful for in this tragic situation
14 is that these two great men are with our 14-year-old son,
15 Skylar, who we lost in 2016, and we are promised that we will
16 see our loved ones again.

17 Judge, I ask you to sentence this man to the fullest
18 extent of the law. Thank you.

19 THE COURT: Thank you.

20 Your name?

21 MISS JOHNSON: My name is Savannah Johnson.

22 THE COURT: All right. Miss Johnson, what would you like
23 to say?

24 MISS JOHNSON: I'm here today because I made a promise to
25 my dad. I promised him that I was always going to stand up

1 for him and fight for him, that I was going to be his voice
2 because he's not here to fight for his self. The last
3 conversation I had with my dad, he told me that he loved me.
4 When we said good-bye and we did our little pinky promise
5 thing that we always did; it was our way of saying I love you
6 and I got your back no matter what.

7 We planned to have a daddy-daughter day the next day, but
8 he never got to come home. I never got to have that
9 daddy-daughter day.

10 You have no idea what it's like to have someone take your
11 dad from you. The pain that you feel, it's indescribable. It
12 hurts. It feels like there's a hole in your heart. My life
13 and my brothers' lives have never been the same.

14 From the time we wake up to the time we go to sleep, we
15 live in fear. Imagine seeing your friends with their dads, so
16 you run into the bathroom so no one sees you cry because all
17 you want is your dad, but you can't have him.

18 I have cried myself to sleep so many times that I can't
19 even count. I have had nightmares about my dad. You have no
20 idea what it's like to see your brothers cry themselves to
21 sleep or see your mom in pain and there's nothing that you can
22 do to help them.

23 I have so many panic attacks to where I can't even
24 breathe. I have to sit close to the door in class just to
25 feel safe, and whenever I see a guy in a hoodie and his hands

1 in his pocket, I get scared.

2 I have to go to therapy now every single week to handle
3 it. I live with survivor's guilt every day of my life now.
4 You have no idea what it's like to know that your dad saved
5 your life but you didn't get to save him.

6 I can tell you, if I could go back, I wouldn't have
7 listened to my dad, and I would have been there. I would have
8 stood right in front of my dad and taken every bullet I could
9 to save him. It hurts.

10 When I want to see my dad now, I have to drive to a
11 cemetery, and I look at dirt. When I want to talk to my dad,
12 I can't even do that, so I sit there and I cry my eyes out in
13 my mom's arms or I sit there and I listen to a voicemail from
14 him saying, "Hey, Sav, I just wanted to call and tell you that
15 I love you and I'll see you later," only the "see you later"
16 never comes.

17 My dad won't get me see graduate college this year. He
18 won't get to walk me down the aisle. He won't get to be a
19 granddad. Every big moment, every small moment, my dad is
20 going to miss. You have no idea how hard it is on me and my
21 brothers.

22 My dad loved being a dad. He always tried to provide for
23 me and my brothers, to make sure we had what we needed to be
24 the best we could be. He always taught us that nothing is
25 ever handed to you in your life. You get off your butt and

1 you work for it and make it happen. He taught us what the
2 real definition of what love and sacrifice was because he did
3 in the last minutes of his life.

4 Your Honor, I'm asking you, from a daughter, to please
5 hear my voice and to hear my dad's voice. My dad's life
6 mattered. I'm asking you, from the bottom of my heart, to
7 sentence him to life, because I never want to have to see him
8 ever again, and I would hate to see another daughter have to
9 go through the pain I'm having to go through now. Thank you.

10 THE COURT: Thank you.

11 Your name?

12 MS. JOHNSON-BRUNSON: Christi Johnson-Brunson.

13 THE COURT: All right. Ms. Brunson, what would you like
14 to say?

15 MS. JOHNSON-BRUNSON: Your Honor, on July 26th of 2019,
16 my family lost the greatest patriarch and brother and father
17 and uncle and business partners I could have ever or anyone
18 could have ever asked for.

19 I know that when the trial started, it was all about
20 numbers, and we were in the business of numbers. My dad was
21 in his 70s. My brother, in his 40s. And if I could
22 quantitate the amount of life that was taken from them, my
23 dad, between a life with my mom, with his kids, with his
24 grandkids, maybe would have had 80 years altogether. Ten
25 years with my mom, ten years of life left, and for each of us,

1 if we got 10 years left of him, then, basically, we would have
2 had 60 between his grandkids and two kids. He didn't get that
3 extra 80 years.

4 If you look at my brother, who was in his 40s, let's say
5 he lived another 30. I would have gotten 30 more years with
6 my brother, I hope, or at least somewhere near there. My
7 parents would have gotten some time with him and his kids and
8 his nephew and his niece and all the people that love him
9 dearly would have gotten that. So he should have gotten
10 another 210 years for us that we could have enjoyed his life.

11 I'm begging you to please consider the life that was
12 taken from these two men and the time that was taken from all
13 of us to spend with them. Please, please, please grant --
14 give him taking the time away that his family -- from his
15 family that he took from us. Please give him the life
16 sentence, the most you can possibly give this man.

17 Thank you for your time.

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

19 Anything else from the State?

20 MR. HIXSON: Briefly, Your Honor. I think, during the
21 course of the State's closing argument, there was a little bit
22 of a discussion concerning the fact that, going into this
23 situation, there was no question the conflict was going to
24 occur. There's no way that you could go in and commit an
25 armed robbery and not know there was going to be an

SENTENCE

813

1 intentional conflict with individuals involved in that and a
2 variety of different people, and that's a situation that is
3 significantly different than some other accidental shootings
4 or things like that. Intentional conduct, intentionality to
5 the whole thing is what really aggravates the situation. And,
6 for that reason, the family, his prior record, the State would
7 respectfully request that you sentence the defendant to two
8 life sentences and 30 years on the armed robbery, Your Honor.
9 Thank you.

10 THE COURT: Thank you.

11 (Pause in the proceedings while the Court reviews
12 documents.)

SENTENCE

13
14 THE COURT: All right. Mr. Rivera, you have been found
15 guilty on two counts of murder, one count of armed robbery.
16 Sentence of the Court -- for each count of murder, the
17 sentence of the Court is that you be confined to the State
18 Department of Corrections for life.

19 On the charge of armed robbery, the sentence of the Court
20 is that you be confined to the State Department of Corrections
21 for 30 years. Sentences will run concurrently.

22 Thank you very much.

23 Anything else before we recess?

24 MR. HIXSON: No, sir.

25 THE COURT: All right. Anything else from defense at

1 this time?

2 MR. MCGUIRE: Not at this time, Judge.

3 THE COURT: All right.

4 MR. HIXSON: Thank you, Your Honor.

5 THE COURT: Court is adjourned.

6 MR. HIXSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (At 2:12 p.m., the above trial concluded.)

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CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Horry)

I, Bobbi J. Fisher, Registered Professional Reporter
(RPR) and Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the proceedings
had and evidence introduced in the trial of the captioned case
in the General Sessions Court for Horry County, South
Carolina, on the 22nd day of October, 2021.

Prepared: January 22, 2022

/s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter

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REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL
REQUESTS FOR COPIES (FORM 800) OF THE ATTACHED TRANSCRIPT FROM
OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT
BFISHER@SCCOURTS.ORG.**

816
STATE OF SOUTH CAROLINA
COUNTY OF HORRY
STATE _____
VS.
Derrick Jajuan Rivera
AKA: _____
Race: BLACK Sex: M Age: 31
DOB: _____ SS# _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS2604928

A/W#: 2019A2610201901

Date of Offense: 7/26/2019

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

RECEIVED

NOV 03 2021

SENTENCE SHEET
SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Scott R. Hixson
Hixson, Scott R.

SCB69635

SC Bar#

Defendant

McGuire, William Sean
Attorney for Defendant

SCB09722

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X provided that upon the service of X days/months/years/Time Served and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/22/2021

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. _____ days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning : _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

- §14-1-206 (Assessments 107.5 %)
- §14-1-211(A)(1) (Conv. Surcharge)
- §14-1-211(A)(2) (DUI Surcharge)
- §56-5-2995 (DUI Assessment)
- §56-1-286 (DUI Breath Test)
- §14-1-212 (Law Enforce. Funding)
- §14-1-213 (Drug Court Surcharge)
- §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)
- §50-21-114(BUI Breath Test Fee)
- §56-5-2942(J) (Vehicle Assessment)
- 3% to County (if paid in installments)

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
- ☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
	\$
\$100	\$
\$100	\$
\$12	\$
\$25	\$
\$25	\$
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$
\$500	\$
TBD	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk:

Court Reporter:

Renee Elvis
Bobbi Fisher

Presiding Judge:

Judge Code:

Sentence Date:

Margaret Culbertson
2148
Oct. 22, 2021

818
STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

Derrick Jajuan Rivera

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS#

Address:

City, State, Zip:

DL#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS2604929

A/W#: 2019A2610201902

Date of Offense: 7/26/2019

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

RECEIVED

NOV 03 2021

SC Court of Appeals
SENTENCE SHEET*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB69635

SCB09722

Hixson, Scott R.

SC Bar#

Defendant

McGuire, William Sean
Attorney for Defendant

SC Bar#

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months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/22/2021☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years
And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing
☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning : _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
☐ Other: _____

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

- §14-1-206 (Assessments 107.5 %)
 §14-1-211(A)(1) (Conv. Surcharge)
 §14-1-211(A)(2) (DUI Surcharge)
 §56-5-2995 (DUI Assessment)
 §56-1-286 (DUI Breath Test)
 §14-1-212 (Law Enforce. Funding)
 §14-1-213 (Drug Court Surcharge)
 §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)
 §50-21-114(BUI Breath Test Fee)
 §56-5-2942(J) (Vehicle Assessment)
 3% to County (if paid in installments)

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
\$100	\$
\$100	\$
\$12	\$
\$25	\$
\$25	\$
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$
\$500	\$
TBD	\$
TOTAL	\$

Life
19-4930
19-4970

Clerk of Court/ Deputy Clerk:

Benee Elvis
Bobbi Fisher

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

Mariann Culbertson
2148
Oct. 22, 2021

STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

Derrick Jajuan Rivera

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS#

Address:

City, State, Zip:

DL#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS2604930

AW#: 2019A2610201903

Date of Offense: 7/26/2019

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

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SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Scott R. Hixson

SCB69635

SCB09722

Hixson, Scott R.

SC Bar#

Defendant

McGuire, William Sean
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of Life days/months/years/Time Served ☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X provided that upon the service of X days/months/years/Time Served and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/22/2021

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

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And Other Terms Listed Below:

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☐ Other: _____

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

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\$25	\$
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\$50	\$
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TBD	\$
\$500	\$
TBD	\$
TOTAL	\$

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

Clerk of Court/ Deputy Clerk: Renee Elvis
 Court Reporter: Bobbi Fisher

Presiding Judge: Margaret Culbertson
 Judge Code: 2148
 Sentence Date: Oct. 22, 2021

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

s/David Alexander

Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

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Jul 27 2022

SC Court of Appeals

This 27th day of July, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jul 27 2022

SC Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK JAJUAN RIVERA,

APPELLANT.

APPELLATE CASE NO. 2021-001285

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Derrick Rivera, #314195, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of July, 2022.

s/David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT