

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

Oct 28 2022

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CORREY TREMAYNE BROWN,

APPELLANT.

APPELLATE CASE NO. 2021-001231

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
COURT’S EXH. #3 (UNREDACTED CD); STATE’S EXH. #139 (GAS STATION CD)**

1 THE COURT: All right.

2 All right, bring them on in.

3 (WHEREUPON, the jury came into open
4 court at 4:38 p.m.)

5 THE BAILIFF: The jury the all present, Your
6 Honor.

7 THE COURT: All right. Call your next
8 witness.

9 MR. MCGLOTHIN: The State calls Nicole Hardin.
10 (Witness approaches.)

11 THE BAILIFF: Face the clerk right there.
12 Raise your right hand, and put your left hand on
13 the Bible.

14 (Witness complies.)

15 THE CLERK: You might need to remove your
16 mask. State your full name, please.

17 THE WITNESS: Nicole Hardin.

18 THE CLERK: Do you solemnly swear the
19 testimony you are about to give in this case will
20 be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: You can have a seat right up there
24 for me. Thank you.

25 (Witness seated.)

1 NICOLE HARDIN,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCGLOTHIN:

5 Q Good afternoon, Ms. Hardin. Could you please tell
6 the jury where you work?

7 A I work for the South Carolina Law Enforcement
8 Division, also known as SLED.

9 Q And what you do there?

10 A I am a forensic scientist in the trace evidence
11 department.

12 Q And is part of your job analyzing gunshot
13 residue -- or determining whether gunshot residue
14 exists on kits presented by law enforcement
15 agencies?

16 A Yes.

17 Q And could you briefly tell the jury about your
18 education?

19 A I have a bachelor of science degree in chemistry
20 with a concentration in forensic science from
21 Methodist University.

22 Q And what sort of training have you received for
23 your position there at SLED?

24 A Upon beginning at SLED, I began a year and a half
25 long training program that consisted of written,

1 practical, and oral examinations, all which I had
2 to pass. Those covered all aspects of my duties.

3 After I passed those, I had a competency exam
4 where had to correctly report my findings. And
5 then I had a mock trial based on that case. And I
6 also have attended classes at the Hope College of
7 Applied Sciences, and some of those being scanning
8 electron microscopy and gunshot residue items.

9 Q And do you receive continuing education in this
10 field?

11 A I do.

12 Q And have you ever been qualified as an expert in
13 the past?

14 A Yes, sir.

15 Q Do you know how many times?

16 A Four.

17 Q And how long have you been in this role with SLED?

18 A Three years.

19 MR. MCGLOTHIN: At this time the State would
20 move Ms. Hardin in as an expert in gunshot residue
21 analysis.

22 THE COURT: Any objection? Any voir dire or
23 objection?

24 MS. DAVIS: Neither, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury,

1 this witness will be qualified in the area of
2 gunshot residue analysis to give opinion testimony
3 in that area. That does not mean that you must
4 accept the opinion, but it is evidence that you can
5 use in any way you see fit and give it the weight
6 and credibility you deem appropriate.

7 Thank you.

8 Yes, sir?

9 BY MR. MCGLOTHIN:

10 Q Ms. Hardin, could you please tell the jury what
11 gunshot residue is?

12 A Gunshot residue is the mixture of chemicals that
13 comes out of the gun when it is discharged. The
14 mixtures comes from the primer --

15 THE COURT REPORTER: I'm sorry, I can't hear
16 you.

17 BY MR. MCGLOTHIN:

18 Q Scoot the microphone a little closer in.

19 A Gunshot residue is a mixture of chemicals that
20 comes out of a gun when it is discharged. The
21 mixture comes from a primer, the propellant, and a
22 projectile. What we are specifically looking for
23 comes from the primer portion, and are microscopic
24 molten particles containing the elements lead,
25 barium, and antimony.

1 Q And are they only found from the firing of a
2 firearm, I guess?

3 A Lead, barium, and antimony particles only come from
4 a gun, the primer of gunshot residue.

5 Q Okay. And so can you kind of describe where, I
6 guess -- does it stick around on things? How does
7 it get to where it can be found?

8 A So when the trigger of a gun is pulled, the firing
9 pin comes down and strikes the base of the primer
10 cap. Inside the primer cap are shot sensitive
11 chemicals. They start a reaction. They set off
12 the gun powder. The high heat and pressure that
13 occurs is what discharges the bullet towards its
14 target. When that happens, gunshot residue exits
15 through any opening of the gun, as well as followed
16 the path of the bullet. So that forms a plume, or
17 a type of cloud. If you can imagine like a western
18 movie, sometimes you see a cloud or a little plume
19 outside of the gun. And that lands on anything in
20 the vicinity to that shooting.

21 Q How long does it stay on a surface? Does it stick
22 to a surface? Does it stay there?

23 A So, for inanimate surface, not a living individual,
24 not a person, it will remain on something until it
25 is removed. For a living individual, they are not

1 expected to be found for longer than around four to
2 six hours because we use our hands a lot, and
3 anything that you do can remove it. So putting
4 your hands in and out of your pocket, shaking
5 someone else's hand, running your hand through your
6 hair, sweating, all those things can remove it.
7 That is for living individuals. For a deceased
8 individual, I would expect it to be there longer
9 because their movement has ceased.

10 Q And does the environment around it become a factor
11 in how long it can stay around?

12 A It can.

13 Q Things like water or wind, and things like that?
14 Could that play a factor?

15 A It can. Environmental. So if the shooting
16 occurred outside in a field, you have to take into
17 consideration environmental factors, such as is it
18 super windy, is it raining, is it super humid,
19 things like that.

20 Q So how do you specifically detect gunshot residue
21 on an item?

22 A So I analyze -- they are little particle lifts.
23 They look like the top of a roofing nail and have
24 something super sticky like tape on top of that.

25 The investigator, or whoever is at the scene,

1 will dab that repeatedly on either a person's hands
2 or the surface that they are collecting from. They
3 will cap that, put it in the packaging GSR kit, and
4 send it into the lab.

5 When I get it, I analyze it using a scanning
6 electron microscope paired with an X-ray detector.
7 The scanning electron microscope is a very high
8 powered microscope that allows me to see tiny
9 things unable to be seen with the naked eye, such
10 as gunshot residue. And the X-ray detector allows
11 me to see what elements are present in what I'm
12 looking at in gunshot residue, such as lead,
13 barium, and antimony.

14 Q So when you are looking at one of these samples
15 given to you for analysis, are you just looking for
16 one single particle of those three elements?

17 A So in one particle, all three elements would have
18 to be present in order for it to be called GSR.

19 Q Okay. And did you perform analysis for this case,
20 I believe -- well, did you perform analysis for
21 this case?

22 A I did.

23 Q Okay. Do you remember how many kits you -- how
24 many submissions there were to you?

25 A I analyzed one GSR kit from Donald Antonio Young,

1 and then another item was submitted as two GSR kits
2 from a white Infinity I35.

3 Q I am going to show you State's 115 and 121. Do you
4 recognize those? And I can give you scissors if
5 you need them.

6 A I do. This yellow sticker is the SLED lab number
7 associated with this case, and the item number.
8 And then down here is my initials and the date in
9 which I touched this piece of evidence.

10 So this would be Item 7., and this would be
11 Item 8. And, again, here is the SLED sticker, and
12 here are my initials, date and the analysis that I
13 was performing.

14 Q And those were the two kits you performed analysis
15 on?

16 A Yes.

17 Q Okay.

18 MR. MCGLOTHIN: At this time we would move
19 State's 115 and 121 into evidence.

20 THE COURT: Any objection?

21 MS. DAVIS: No objection.

22 THE COURT: They will be entered without
23 objection.

24 (WHEREUPON, State's Exhibit No. 115 was
25 marked for identification and received

1 into evidence.)

2 (WHEREUPON, State's Exhibit No. 121 was
3 marked for identification and received
4 into evidence.)

5 BY MR. MCGLOTHIN:

6 Q So let's start with, I believe you have it as Item
7 7, the GSR kit for Donald Young. You did analysis
8 on this item?

9 A Yes, sir.

10 Q Okay. And what were your findings?

11 A Form Item 7, on GSR kit from Donald Antonio Young.
12 The result is: Particle characteristics of gunshot
13 primer residue were found.

14 In general, particles characteristic of
15 gunshot primer residue are microscopic molten
16 particles that contain the elements lead, barium,
17 and antimony.

18 Gunshot primer residue can come from being in
19 the vicinity to the discharge of a firearm to
20 include sustaining a gunshot wound, discharging a
21 firearm, or coming into contact with a surface that
22 has gunshot primer residue on it.

23 It should be noted that the presence or
24 absence of gunshot primer residue on the victim of
25 the gunshot wound cannot determine whether the

1 shooting was a result of a homicide, assault,
2 accident, suicide, or self-defense.

3 Q And so particles characteristic of gunshot residue
4 primer were found?

5 A Yes.

6 Q Right? Was the beginning of that? Can you say
7 where those particles were found based on the
8 information provided to you in that kit?

9 A I found -- I had particle lift collected from the
10 right hand and the left hand, and I found particles
11 on both.

12 Q And can you say when those particles were left on
13 his hands?

14 A I cannot.

15 Q Okay. Is it typical to find gunshot residue on the
16 victim of a shooting?

17 A I would expect to find gunshot residue on the
18 victim of a shooting because gunshot residue
19 follows the path of the bullet, and this person had
20 been struck by a bullet and it left a gunshot
21 wound.

22 Q Does it matter where the person who collected
23 the -- who used the kit on the deceased, where they
24 use it on him, or would you -- let me rephrase
25 that. Would you expect to find gunshot residue on

1 the victim of a gunshot wound all over their body,
2 or just the specific locations near --

3 MS. DAVIS: Objection to the compound
4 question.

5 MR. MCGLOTHIN: Okay.

6 THE COURT: Rephrase the question.

7 MR. MCGLOTHIN: Thank you.

8 BY MR. MCGLOTHIN:

9 Q Does it matter where they take the lift for the
10 victim of a gunshot wound?

11 A For the victim of a gunshot wound, it is normally
12 the hands that are collected from.

13 Q Okay. If this individual was shot in the neck,
14 would that change your analysis of expecting
15 gunshot residue to be found on the person?

16 A It would not.

17 Q On their hands?

18 A It would not.

19 Q Why is that?

20 A Because, as I mentioned earlier, the way that the
21 gunshot residue exits the gun in the vicinity, I
22 would expect them to be in the vicinity to the
23 shooting, and since the gunshot residue also
24 follows the path of the bullet, I would expect to
25 see it on the victim.

1 Q So I'm going to move to what is State's 121. I
2 believe you have it as Item 8 in the report, which
3 is the GSR kits from the vehicle. What were the
4 results from that?

5 A For Item 8: Particles characteristic of gunshot
6 primer residue were found.

7 In general, particles characteristic of
8 gunshot primer residue are microscopic, molten
9 particles that contain the elements lead, barium,
10 and antimony.

11 Gunshot primer residue can come from being in
12 the vicinity to the discharge of a firearm or
13 coming into contact with a surface that has gunshot
14 primer residue on it.

15 However, no information can be provided as to
16 the timeframe in which these particles were
17 deposited.

18 Q And to clarify is last sentence about the
19 timeframe, you are saying you can't say when those
20 particles were --

21 MS. DAVIS: Objection. Leading.

22 THE COURT: Sustained.

23 BY MR. MCGLOTHIN:

24 Q Can you say when those particles were deposited
25 from where the kits were taken?

1 A I cannot.

2 Q Okay. Do you know where those were -- those were
3 lifted from?

4 A Yes. There was one lift collected from the front
5 passenger side headliner, one from the rear
6 passenger side headliner, one from the rear
7 passenger side interior door, and one from the back
8 of the front passenger's side seat.

9 Q Okay. Would you consider that consistent with a
10 gun being fired in the vehicle?

11 A If a gun were fired in the vehicle, I would expect
12 there to be gunshot residue within the car.

13 Q Okay. And I asked you about the environment.
14 Would things like open windows or a sunroof or
15 doors being open, could that play a factor in that,
16 in whether or not you find GSR?

17 A It is a possibility.

18 Q Okay. But you did find particles characteristic
19 here?

20 A In the four locations I mentioned, yes.

21 Q But you can't say whether --

22 MS. DAVIS: Objection. Leading.

23 BY MR. MCGLOTHIN:

24 Q Can you say whether these particles came from the
25 same incident as the ones on -- that were lifted

1 from Mr. Young?

2 A I cannot. I just test for presence or absence.

3 Q Okay.

4 MR. MCGLOTHIN: Beg the Court's indulgence for
5 just a minute.

6 (Pause.)

7 BY MR. MCGLOTHIN:

8 Q Thank you. No further questions. Please answer
9 anything the Defense may have.

10 THE COURT: Yes, ma'am?

11 MS. DAVIS: Thank you, Your Honor. May it
12 please the Court?

13 CROSS-EXAMINATION

14 BY MS. DAVIS:

15 Q Is it Investigator Hardin?

16 A You can call me Ms. Hardin.

17 Q Ms. Hardin. Just a couple of questions. You just
18 analyze the swabs that you are given, correct?

19 A The particle lifts, yes.

20 Q So you don't have any say of where those come from,
21 where the lifts are done?

22 A I do not.

23 Q Okay. And you mentioned GSR, the cloud, the GSR
24 particles. That will settle on anything that is in
25 the vicinity, right?

1 A Yes, ma'am.

2 Q And the vicinity is usually about eight feet?

3 A Give or take.

4 Q Give or take? And so I think you just said, well,
5 since it is in a vehicle, you would expect there to
6 be GSR particles?

7 A If there was a shooting in a vehicle, because of
8 the contained space, I would.

9 Q And you also mentioned inanimate objects. The GSR
10 is going to remain there until it is removed by
11 somebody?

12 A Yes, ma'am.

13 Q And in this particular case, the only GSR testing
14 you did were from the victim's hands, right?

15 A Yes, ma'am.

16 Q And then those swabs -- those two kits from the
17 vehicle?

18 A Yes, ma'am.

19 Q You weren't asked to analyze any other GSR?

20 A I wasn't.

21 Q Correct? Thank you.

22 THE COURT: Any redirection?

23 MR. MCGLOTHIN: Nothing, Your Honor.

24 THE COURT: All right, you may step down. Any
25 objection to this witness being excused?

1 MR. MCGLOTHIN: None from the State.

2 THE COURT: All right, you are free to leave,
3 ma'am.

4 (Witness steps down and is excused.)

5 THE COURT: Call your next witness.

6 MS. CAVANAUGH: The State calls Anteyan Davis.

7 THE BAILIFF: Come forward to be sworn.

8 (Witness approaches.)

9 THE BAILIFF: Turn around and face the clerk
10 right there. Place your left hand on the Bible,
11 and raise your right.

12 (Witness complies.)

13 THE CLERK: State your full name, please.

14 THE WITNESS: Anteyan Xavier Davis.

15 THE CLERK: Could you spell your first name,
16 please?

17 THE WITNESS: A-N-T-E-Y-A-N.

18 THE CLERK: Do you solemnly swear the
19 testimony you are about to give in this case will
20 be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Have a seat right
24 there.

25 (Witness seated.)

1 ANTEYAN DAVIS,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q And, Mr. Davis, when you testify, you can take down
6 your mask. Good afternoon.

7 A Good afternoon.

8 Q Mr. Davis, where do you work?

9 A Shaw Industries.

10 Q Shaw Industrial, you said?

11 A Yes, ma'am.

12 Q What is that?

13 A It is a carpet plant.

14 Q You need to speak up.

15 A A floor company.

16 Q And what do you do there?

17 A I'm a creel operator. A creeler.

18 Q What is that?

19 A Operate the machines for the carpet.

20 Q And where are you from?

21 A Gadsden, South Carolina.

22 Q And do you know -- did you know Donald Young?

23 A Yes, I did.

24 Q And how have you known him?

25 A Many years.

- 1 Q How --
- 2 A You said?
- 3 Q How long? Well, no, I actually said how do you
- 4 know him?
- 5 A Through my neighborhood, family.
- 6 Q And you were getting ready to say how long have you
- 7 known him?
- 8 A Uh-huh.
- 9 Q How long?
- 10 A At least 20 something years.
- 11 Q Twenty something years?
- 12 A Uh-huh.
- 13 Q Were you friends with him?
- 14 A Yes.
- 15 Q Do you know the Defendant, Correy Brown?
- 16 A Yes.
- 17 Q Okay. And how long have you known the Defendant?
- 18 A Give or take, five or six years.
- 19 Q And were you -- how would you -- were you friends
- 20 with Mr. Brown?
- 21 A Somewhat.
- 22 Q Now, have you -- back in 2016, were you convicted
- 23 of criminal domestic violence?
- 24 A Yes, ma'am.
- 25 Q And 2016, assault and battery in the second degree?

1 A Yes, ma'am.

2 Q Okay. And then also in 2016, neglect by a legal
3 custodian?

4 A Uh-huh.

5 Q Moving to December 28th and 29th of 2018, did you
6 see the victim?

7 A Yes, I did.

8 Q All right. When did you first see him?

9 A At Tony's.

10 Q And where is Tony's?

11 A It is down the street from his side of the
12 neighborhood. I mean, it is like a little bar in
13 Gadsden.

14 Q And who were you with at Tony's besides Mr. Young?

15 A I wasn't there with him. I mean, I was there by
16 myself, but I seen him there.

17 Q And did you see anyone else at Tony's that night?

18 A As in?

19 Q Did you see Mr. Brown at Tony's?

20 A Yes.

21 Q After Tony's, where -- well, at Tony's did you get
22 into --

23 MS. DAVIS: Objection. Leading.

24 THE COURT: Sustained.

25

- 1 BY MS. CAVANAUGH:
- 2 Q Did anything happen with you at Tony's?
- 3 A No.
- 4 Q What about with Don P, the victim?
- 5 A No.
- 6 Q Is that how you knew him? Did you have a nickname
- 7 for the victim?
- 8 A Just the name as Don P.
- 9 Q Now, after Tony's Lounge, where did you go?
- 10 A To my house.
- 11 Q And who else went with you?
- 12 A They followed me. That was Correy Brown and Don P.
- 13 Q And were you driving?
- 14 A Uh-huh.
- 15 Q And was anyone -- who else was driving?
- 16 A Don P was driving.
- 17 Q And did you see who was in the car with Don P at
- 18 that point?
- 19 A He was by himself.
- 20 Q Who got to your house -- you said you were going to
- 21 your house?
- 22 A Uh-huh.
- 23 Q And who -- did anybody else come to your house?
- 24 A Later on Benjo came, then Correy came later on.
- 25 Q And who else was there?

- 1 A Correy girlfriend.
- 2 Q Okay.
- 3 A And that was it.
- 4 Q Was Correy there?
- 5 A Yes, Correy was there, his girlfriend, and me.
- 6 Q And who?
- 7 A And me.
- 8 Q Okay. And do you remember his girlfriend's name?
- 9 A I don't.
- 10 Q Okay. Did you see -- while -- do you remember time
- 11 frames of this?
- 12 A I know it was around, when they left my house,
- 13 around 11:00, 12:00 o'clock, 12:00 o'clock-ish.
- 14 Q And this was two and a half years ago?
- 15 A Yes.
- 16 Q Could it have been later?
- 17 A Yes, it definitely could have been later.
- 18 Q Did you see the Defendant with anything that night?
- 19 A Yes, I saw him with a gun.
- 20 Q A what?
- 21 A A gun.
- 22 Q And where did you see him with a gun?
- 23 A In my room.
- 24 Q And what did the gun look like?
- 25 A It had a black handle on it.

- 1 Q And did you notice anything else about it?
- 2 A No.
- 3 Q You indicated earlier that you saw Benjamin Parker?
- 4 A Uh-huh.
- 5 Q At your house?
- 6 A Uh-huh.
- 7 Q Did you see Mr. Parker with a gun that night?
- 8 A No.
- 9 Q Later that -- what time did people leave your house
- 10 that night?
- 11 A In the timeframe of 11:00, 12:00, 1:00, around them
- 12 hours.
- 13 Q All right. And do you remember -- I mean, why did
- 14 they leave?
- 15 A I mean, that was really like it was time to go, and
- 16 I was drinking, and I had to go to work in the
- 17 morning. And, yeah. I was trying to get my girl
- 18 to come over there.
- 19 Q Okay. Did you see people leave?
- 20 A Yes.
- 21 Q Okay. And who did you -- did you see them get into
- 22 cars?
- 23 A Uh-huh.
- 24 Q All right. Who did you see get into cars?
- 25 A The girl -- Correy Brown and his girlfriend got in

- 1 Benjo's car, and Don P went out by hisself.
- 2 Q Did you speak to investigators later that same day?
- 3 A Uh-huh.
- 4 Q Well, let me back up.
- 5 A Well, the next day, I guess. Well, you know, it
- 6 would be the same day if you are looking at
- 7 12:00 o'clock.
- 8 Q Okay. Prior to speaking with the investigators and
- 9 after they left your house, did you see any of
- 10 those individuals again that night?
- 11 A No.
- 12 Q Did you see any -- did you observe any particular
- 13 interactions between the Defendant and anyone at
- 14 the house?
- 15 A Yes.
- 16 Q Okay. Did you sense any tension?
- 17 A Yes, definitely.
- 18 Q Okay. And between -- you said what?
- 19 A Yes, definitely.
- 20 Q Between who?
- 21 A Correy Brown and Don P.
- 22 Q Once again, this is what you related to
- 23 investigators when you spoke to them?
- 24 A Yes.
- 25 Q Did you -- did they -- did you go -- did you drive

1 yourself to speak to the investigators?

2 A My dad took me.

3 MS. CAVANAUGH: Beg the Court's indulgence.

4 (Pause.)

5 BY MS. CAVANAUGH:

6 Q Thank you. Please answer any questions from the
7 Defense.

8 THE COURT: Yes, ma'am?

9 MS. DAVIS: Thank you, Your Honor. May it
10 please the Court?

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. DAVIS:

14 Q Hey, Anteyan.

15 A How you doing?

16 Q Am I saying your name right, Anteyan? So this day,
17 the [REDACTED], 2018?

18 A Uh-huh.

19 Q Do you remember that was Correy's birthday?

20 A Uh-huh.

21 Q Y'all were calling Ben kind of throughout the day
22 to get him to hang out?

23 A What you mean, throughout the day? I didn't talk
24 to him all day until that night.

25 Q You didn't call Ben at all that day?

- 1 A Yeah, I called Ben that night, yes. But you said
2 throughout the day.
- 3 Q Yes, I'm sorry. I was just trying to clarify. So
4 you only started calling him that evening?
- 5 A That night.
- 6 Q That night?
- 7 A Yes.
- 8 Q Okay. And then before he came to hang out, y'all
9 were at Tony's?
- 10 A Uh-huh.
- 11 Q And you ran into Don P there?
- 12 A No, I ran into Correy Brown there.
- 13 Q You saw Don P there as well, though, right?
- 14 A Yes.
- 15 Q So were you saying that you did not run into Don P
16 at Tony's?
- 17 A We went there -- I mean, I -- yeah, I ran into
18 them, but you making it seem like I was with Don P.
19 We wasn't together. Like I ran into him when I
20 came at Tony's. But you are making it seem like I
21 ran into him, like -- no. I mean, I pulled up and
22 he was there.
- 23 Q Okay. So you are just saying that you two planned
24 to meet up at Tony's?
- 25 A No, I didn't plan to meet up. When I pulled up

- 1 there, he was there.
- 2 Q Okay. So when you got to Tony's, you saw Don P?
- 3 A Yes.
- 4 Q Okay. And then you also saw Correy Brown?
- 5 A Yes.
- 6 Q Okay. And then you guys all kind of started
- 7 hanging out?
- 8 A Yes.
- 9 Q And everybody was drinking?
- 10 A Uh-huh.
- 11 Q And at that point at Tony's, it was you, Don P,
- 12 Correy, and then his girlfriend?
- 13 A Yes.
- 14 Q Okay. And at some point, you go back to your
- 15 place?
- 16 A Yes.
- 17 Q And just in general about Tony's, what kind of bar
- 18 is that? What kind of place is it?
- 19 A It's been in the neighborhood for a long time.
- 20 Shoot pool there. It has been in the neighborhood
- 21 for a long time. We shoot pool there and drink a
- 22 little beer.
- 23 Q Shoot pool?
- 24 A Uh-huh.
- 25 Q Okay. Is that kind of a -- is that a place where

1 there have been like shootings that have happened
2 before?

3 A Yes. The average club have shootings, yes.

4 Q Okay.

5 THE COURT: If you can back up. The closer
6 you get to it, it makes a noise. So if you move a
7 little bit closer to it, but not --

8 THE WITNESS: Now?

9 THE COURT: There you go.

10 BY MS. DAVIS:

11 Q And, Anteyan, once you guys get back to your house,
12 I think you just said it was Correy and his
13 girlfriend, and then Don P drove over too?

14 A Yes.

15 Q And eventually Ben Parker comes?

16 A Yes.

17 Q And then you guys are kind of hanging out at your
18 house a little bit?

19 A Yes.

20 Q And you are drinking, right?

21 A Uh-huh.

22 Q I think you said you got a little bit drunk?

23 A Yes, I was drinking a little bit.

24 Q Yes. And at some point you said you kind of told
25 everybody they had to go?

- 1 A Yes.
- 2 Q And that was because you had to work in the
- 3 morning?
- 4 A Right.
- 5 Q And also I think you just said maybe that you had a
- 6 girlfriend or --
- 7 A Yes, I was trying to come over.
- 8 Q Might come over?
- 9 A Yes, ma'am.
- 10 Q And at that point when everyone leaves, that is
- 11 when Ben gives Correy and his girlfriend a ride?
- 12 A Right.
- 13 Q And then Don is in his own car?
- 14 A Right.
- 15 Q And he follows them out?
- 16 A Yes.
- 17 Q Okay. And I think you told the investigators back
- 18 in your interview in 2018 that your brother's
- 19 girlfriend was on the porch?
- 20 A Yes.
- 21 Q At the time too?
- 22 A Uh-huh.
- 23 Q And you just mentioned that you had said you saw a
- 24 little tension that night?
- 25 A Yes.

1 Q And when you were interviewed from back in 2018,
2 you remember you were interviewed by Investigator
3 Laurita?

4 A Uh-huh.

5 Q And then Investigator Caldwell?

6 A Right.

7 Q And do you remember saying, Like my home boy, Big
8 C, I felt like they had some little tension going
9 on, but I don't know, you know what I'm saying.
10 Everybody was drinking, you know what I'm saying.
11 People talk shit when they drink. But they was
12 following each other.

13 A Right. So I didn't think that nothing would
14 happen, like, well, I mean, I didn't know what
15 happened after they left my house.

16 Q Right. No, no, I understand that. I'm saying in
17 terms of the description of the tension, that is
18 what you told them in 2018, right?

19 A Right.

20 Q That people were there kind of like drunk?

21 A Yes.

22 Q And they were talking shit to each other?

23 A Right.

24 Q Okay. And at some point -- or not at some point.
25 When they are leaving, everyone is heading out, at

1 some point you consider like maybe you are going to
2 go with them, right?

3 A No.

4 Q Did you tell the law enforcement back in 2018, you
5 said, There was a moment there where I was like, Oh
6 I'm about to -- we're about to go?

7 A I don't recall.

8 Q Okay. And then you say, But, no, I got to work in
9 the morning, so I ain't going?

10 A Yes, that's what I said, I'm not going.

11 Q Right. You ultimately decided you are staying
12 home?

13 A Yes. I mean, that is the reason I was trying to
14 get them to leave, because that I wanted my girl to
15 come over, so, yes.

16 Q Right. I'm just saying that at some point you
17 described a brief moment where you think, Maybe I'm
18 going to go too, right? That's what you said back
19 in 2018?

20 A Possibly.

21 Q And you spoke to the investigators on the 29th of
22 December, 2018, right?

23 A Yes.

24 Q And that was -- I'm not sure if you remember, but
25 it was around 3:00 o'clock in the afternoon?

1 A Yes, I do remember that.

2 Q And you talked to Ben Parker before that, right?

3 A Yes.

4 Q Sorry?

5 A Yes, I have.

6 Q And you definitely wanted to clear your name
7 from this?

8 A Yes.

9 Q And you told the investigators, I am coming down
10 here because I want to get my name out of this?

11 A Right.

12 Q You told them that a couple of times, right?

13 A Right.

14 Q And they interviewed you and y'all talked for maybe
15 15, 20 minutes?

16 A About 20 minutes.

17 Q About 20 minutes?

18 MS. DAVIS: Nothing further.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MS. CAVANAUGH:

22 Q Just to be clear, what -- who -- the tension that
23 you did describe to the investigators, who was it
24 between?

25 A Between Don P and Correy Brown.

1 Q I mean, I know she said that you didn't think
2 anything of it, but that is who you saw the tension
3 between?

4 A Yes.

5 Q And, once again, who did you see with the gun?

6 A Correy Brown.

7 Q Thank you.

8 THE COURT: Anything else? Any recross?

9 MS. DAVIS: No, Your Honor.

10 THE COURT: All right, you may step down. Any
11 objection to this witness being excused?

12 MS. CAVANAUGH: No, Your Honor.

13 (Witness steps down and is excused.)

14 THE COURT: Call your next witness.

15 MR. MCGLOTHIN: The State calls Tom Amaro.

16 THE BAILIFF: Come forward to be sworn.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, raise your right, and face the clerk right
20 there.

21 (Witness complies.)

22 THE CLERK: Would you state your full name,
23 please?

24 THE WITNESS: Thomas Nito Amaro, Jr.

25 THE CLERK: Would you spell your last name,

1 please?

2 THE WITNESS: A-M-A-R-O.

3 THE CLERK: Do you solemnly swear the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat right there. Thank
9 you.

10 (Witness seated.)

11 THOMAS AMARO, JR.,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCGLOTHIN:

15 Q Good afternoon. Is it Deputy Amaro? Investigator?

16 A Lieutenant.

17 Q Lieutenant, excuse me.

18 A It's okay.

19 Q I apologize. Where are you employed currently?

20 A Where?

21 Q Where?

22 A Where I was born?

23 Q No, where are you employed?

24 A Oh, Richland County Sheriff's Department.

25 THE COURT: Sir, you can pull your mask down.

1 be the truth, the whole truth, and nothing but the
2 truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: Have a seat right up there. Thank
5 you.

6 (Witness seated.)

7 TRISH ODOM,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. CAVANAUGH:

11 Q While you're testifying, you can take your mask
12 down so everybody can hear you.

13 A Thank you.

14 Q Good evening.

15 A Hi.

16 Q Investigator Odom, where are you employed?

17 A I work for the crime scene latent print section of
18 the Richland County Sheriff's Department.

19 Q Okay. And you said latent print section?

20 A Yes, ma'am.

21 Q And can you describe what is meant by latent
22 prints?

23 A So a latent print is, we use the umbrella term
24 latent to describe any kind of fingerprint that is
25 collected from the crime scene or --

1 THE COURT REPORTER: I'm sorry, please don't
2 turn your back to me, I can't hear you. Start
3 over.

4 A I'm sorry. Okay. So the term latent is just an
5 umbrella term that we use to describe any kind of
6 fingerprint evidence that is recovered from the
7 crime scene or from a piece of evidence, or
8 something like that.

9 Q Okay. And how long have you been in that
10 particular role?

11 A For a little over 20 years.

12 Q And in this case, did you receive a latent print
13 card that is connected to this case?

14 A Yes, ma'am.

15 Q All right. I'm going to show you what is marked as
16 State's Exhibit 116. Is that the item that you
17 reviewed?

18 A Yes, ma'am.

19 MS. CAVANAUGH: And, Your Honor, at this time
20 I ask that State's Exhibit 116 be admitted into
21 evidence.

22 THE COURT: Any objection to 116?

23 MS. YOUNG: Your Honor, can we approach?

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 BY MS. CAVANAUGH:

3 Q I'm going to show you -- is there a property report
4 kept as far as items of evidence that are collected
5 at the Sheriff's Department?

6 A Yes.

7 Q Okay. I'm going to show you the property report.
8 Would that help refresh your memory as far as who
9 you actually received it from?

10 A Certainly.

11 Q Okay.

12 A I received it from Howard Kleber, who is one of our
13 property evidence folks, on January 3rd, 2019, at
14 2:35 in the afternoon.

15 Q Okay.

16 MS. CAVANAUGH: Your Honor, at this point I
17 ask 116 be admitted into evidence.

18 MS. YOUNG: No objection.

19 THE COURT: All right, it will be entered
20 without objection.

21 (WHEREUPON, State's Exhibit No. 116 was
22 marked for identification and received
23 into evidence.)

24 BY MS. CAVANAUGH:

25 Q Now, as far as this particular print, or latent

1 print card, were you able to make any sort of
2 match?

3 A No.

4 Q Okay. And why was that?

5 A When I examined it, I found that the -- what was on
6 the card was of no value.

7 Q And when you say no value, what does that mean?

8 A That means I won't be able to identify it or, as
9 far as I can tell from the paperwork I have, that
10 there was nothing even to submit or look at.

11 Q Okay. And in your experience in this field for 20
12 years, is that necessarily uncommon to receive a
13 card that you are unable to do any further analysis
14 with?

15 A No, it happens.

16 Q But you did attempt -- you did look at it to see if
17 you could?

18 A I examined it, yes.

19 Q Okay. Thank you, Investigator.

20 MS. YOUNG: No questions from the Defense.

21 THE COURT: Any questions from the Defense?

22 MS. YOUNG: No, Your Honor.

23 THE COURT: Any objection to the witness being
24 excused?

25 MS. CAVANAUGH: No objection.

1 THE COURT: All right, ma'am, you are free to
2 leave.

3 (Witness steps down and is excused.)

4 THE COURT: All right, ladies and gentlemen of
5 the jury, it is about 5:45, and so we will go ahead
6 and take our evening break.

7 Please do not discuss the case with anyone.
8 Please do not do any independent research. When
9 you leave the courtroom, think about something
10 else. That's not hard to convince you of. Think
11 about something else.

12 Have a wonderful evening, and we will start
13 back at 9:30 in the morning. We will order lunch
14 in the morning, and so our clerk will have menus
15 for you to order your lunch. All right? That way
16 we will take a shorter lunch break and try to keep
17 moving. I know tomorrow is Thursday.

18 All right, have a wonderful evening.

19 (WHEREUPON, the jury is excused for the
20 evening at 5:48 p.m.)

21 THE COURT: All right. Anything we need to
22 take up tonight?

23 MS. CAVANAUGH: Yes, Your Honor. Based on how
24 things have been going, I did ask -- I indicated to
25 Jennifer that I didn't plan on calling Investigator

1 Rast as an expert witness. You know, I do have a
2 his statement of qualifications. Based on some of
3 the things they have asked, you know, I do -- and
4 how some of their cross is going, I would
5 anticipate attempting to qualify him as an expert.
6 I will hand over --

7 THE COURT: Expert in what?

8 MS. CAVANAUGH: Cellular analysis. He is the
9 one who downloaded the phones.

10 THE COURT: Anything else we need to take up?

11 MS. DAVIS: Not from us, Your Honor.

12 THE COURT: All right. So we will start at
13 9:30 in the morning. My plan would be to try to
14 take a shorter lunch break so we can get
15 everything, maybe try to get everything in
16 tomorrow. I don't -- of course don't know what
17 they have. You are saying 3:00 o'clock. I am
18 hoping earlier. But I know you have still got
19 quite a few witnesses to call. I don't want to be
20 here Friday night. And I would say we would finish
21 it up on Monday, but apparently I have another
22 murder trial on Monday. So it will be nice to try
23 to the finish up on Friday. Assatta is already
24 working on the jury charge. If there is some
25 issues that we need to research, anything we need

1 to know, let us know and we can work on it before
2 Friday.

3 All right, y'all have a good evening. I will
4 see you in the morning.

5 (WHEREUPON, the proceedings adjourned
6 for the evening at 5:51 p.m.)

7 JUNE 10, 2021

8 (WHEREUPON, the proceedings commenced at
9 9:54 a.m.)

10 THE COURT: All right, good morning.

11 All right, it is my understanding that the
12 Defendant won't be here probably until -- I don't
13 know, what time do you expect him, 10:30?

14 THE DEPUTY: About.

15 THE COURT: About 10:30? But my law clerk
16 informed me that she received a bunch of emails
17 from you all of cases, or something, about I guess
18 Officer Rast testifying?

19 MS. DAVIS: And, Your Honor, I think if we are
20 going to address any legal issues, we need to wait
21 for the Mr. Brown.

22 THE COURT: I'm not going to address it, I'm
23 just trying to figure out what the issue is, and
24 then we'll go back, because I'm guess what I'm
25 trying to figure out is if it is a 702 issue and we

1 have got to do an in camera, then we will -- just
2 for scheduling purposes. Yes, but I am not going
3 to address -- I am not going to rule on the issue
4 until the Defendant gets here.

5 MS. CAVANAUGH: Yes, Your Honor. So I
6 forwarded State v. White and referenced Rule 702,
7 because, as I stated yesterday, the investigator,
8 we do intend on qualifying Investigator Rast as an
9 expert in the area of cellular phone downloads, and
10 so we would -- you know, we have no problem doing
11 it -- obviously we would do an in camera hearing
12 for that purpose, so that is why I forwarded that
13 case. And --

14 THE COURT: I guess the question is, are you
15 all objecting to Officer Rast being --

16 MS. DAVIS: Your Honor, I'm not sure what she
17 is trying to elicit from him, so I'm not sure.
18 Prior, when we had a conversation with him, he said
19 all he did was extract the phone, and that he
20 didn't do any sort of analysis on the record. So
21 if it is just that she is getting out that they did
22 an extraction, that will be different than if she
23 is saying there was some analysis done.

24 MS. CAVANAUGH: Well, what he also said in
25 that conversation was that in preparation for this

1 case he had to look at the work that had been done,
2 and I would just be asking him about the work that
3 he has done in preparation for his testimony. I'm
4 not asking him to do any sort of, you know,
5 anything outside of what the downloads show. I'm
6 not getting into longitude and latitude, or any
7 sort of thing like that, I'm just getting into what
8 he did as far as the process that he used, the
9 machines that he used, things of that nature, to
10 produce the report in this case. I mean, he
11 performed the phone downloads.

12 THE COURT: I guess what I'm asking is do we
13 need to have an in camera hearing under 702?

14 MS. DAVIS: I don't expect it, Your Honor. I
15 guess I'll know more when he testifies if I have
16 any voir dire that then causes me concern, I would
17 certainly then ask for one, but at this point --

18 THE COURT: Because usually I'll do it in
19 camera, but -- and I was going to wait on the -- of
20 course, we would do that as soon as the Defendant
21 got here if we needed to. But it sounds like --

22 MS. DAVIS: I mean, the only thing we know is
23 that he extracted the phone, so it is just hard for
24 me to know until I hear what is actually trying to
25 be elicited from him and if it is admissible

1 evidence and it is not hearsay or objectionable for
2 any other reason.

3 THE COURT: All right. So we are just going
4 to call him in front of the jury, and then if I
5 need to stop and do it in camera, I guess I'll do
6 it. Well, I will give you an opportunity to voir
7 dire.

8 MS. DAVIS: Right. I mean, if he testifies to
9 all his training and my question doesn't raise any
10 red flags.

11 THE COURT: Okay. All right. Anything else
12 that we are going to need to take up before they
13 start?

14 MS. CAVANAUGH: Yes, Your Honor. Ms. -- just
15 so that we don't have to interrupt while we are
16 going with our witnesses this morning, Ms. Young
17 forwarded me some information that she received
18 from Ben's work.

19 THE COURT: From who?

20 MS. CAVANAUGH: Excuse me, Mr. Parker's,
21 Benjamin Parker's work. It goes back to the 608(c)
22 issue with Ms. Guyton. Thank you. And so we
23 have -- I mean, we are ready to argue that. We
24 have Deputy Sullivan here, who is the arresting
25 officer, if you need to hear from him. I have

1 Investigator Matt McCoy, with our office, who was
2 present when I asked her specifically whether he
3 was -- you know, I have --

4 THE COURT: I don't know what the issue is.

5 MS. CAVANAUGH: Right. I am just letting you
6 know that there might be another pretrial issue
7 that we need to address before the jury gets in
8 here.

9 MS. YOUNG: And that is totally fine with me,
10 Your Honor. I believe that is correct, that
11 instead of interrupting later in the day it might
12 be best if we do it first.

13 THE COURT REPORTER: Ms. Young, I'm sorry, I
14 can't hear you.

15 THE COURT: I'm not making any rulings, I am
16 just trying to figure out what it is we need to do
17 for scheduling purposes.

18 MS. YOUNG: There is impeachment information
19 that I would like to elicit from Jessica Guyton
20 that I think that she is going to ask for a
21 pretrial ruling on from Your Honor, so we probably
22 should take that up first.

23 THE COURT: Okay. So we need to take that up.
24 We don't need to take up the 702 issue. If we need
25 to, we'll have to stop. And is there any other

1 issues that we need to take up before we bring the
2 jury in, once the Defendant get here?

3 MS. CAVANAUGH: Right. Not that I'm aware of,
4 Your Honor.

5 THE COURT: Okay. All right. Well, I don't
6 know what time -- they didn't give us an exact
7 time. So we will just -- I mean, because the
8 jurors are here. They were back there ordering
9 their lunch. So we'll just, I guess, be at ease
10 until he gets here. And so we'll -- Assatta will
11 give you all a call as soon as we find out. And
12 then we'll do the Jessica Guyton. You all are
13 calling her today?

14 MS. CAVANAUGH: Yes, Your Honor.

15 THE COURT: This morning?

16 MS. CAVANAUGH: Yes, Your Honor.

17 THE COURT: Okay. All right, so we need to
18 handle that pretrial matter before she testifies,
19 and then we'll go on.

20 Okay. All right, y'all are free to leave.

21 (WHEREUPON, a break was taken at 10:02
22 a.m.)

23 (WHEREUPON, the proceedings resumed at
24 10:40 a.m.)

25 THE COURT: All right, what do we need to take

1 up before we start?

2 MS. DAVIS: Your Honor, because I don't know
3 what to expect with Investigator Rast, it may just
4 be better to go ahead and do it in camera.

5 MS. CAVANAUGH: Well, Your Honor, at this
6 time, just because of Deputy Sullivan, that has
7 nothing to do with this case other than Ms.
8 Guyton's arrest from a few months ago, I would like
9 him to at least -- I mean, I would like to address
10 that issue prior to what actually has to do with
11 this case substantially.

12 THE COURT: Who is your first witness?
13 Because I want to get the jury in here. They have
14 been sitting back there.

15 MS. CAVANAUGH: I mean, after she makes her
16 argument relating to the issue she brought up
17 regarding Ben Parker's work --

18 MS. YOUNG: And, Your Honor, I believe what
19 you are saying is if Jessica Guyton isn't going
20 first, we need to --

21 THE COURT REPORTER: I'm sorry, Ms. Young?

22 MS. YOUNG: If Jessica Guyton is going first,
23 maybe we do need to address this now, but if
24 Jessica Guyton was going later on in the day, we
25 can wait until then. I don't know that Deputy

1 Sullivan is necessary.

2 MS. CAVANAUGH: All right, we are not starting
3 with Jessica Guyton, we are starting with DNA,
4 which is why I would like to just go ahead and get
5 him out of here if he is not necessary.

6 MS. DAVIS: And just to clarify, Your Honor,
7 as far as I know, Deputy Sullivan is on standby for
8 our subpoena. We didn't tell him to be here today.
9 They asked him for him to be here.

10 THE COURT: What does Deputy Sullivan have to
11 do with it?

12 MS. DAVIS: We subpoenaed him last week when
13 we were gathering information about the attempted
14 murder and if there was any involvement with Ben or
15 any statements given to the Solicitor's Office. We
16 had him on standby depending on what the testimony
17 was. We didn't ask him to be here and did not plan
18 to have him be here unless something had changed in
19 the course of testimony. So he is not here on our
20 accord at this time.

21 MS. YOUNG: Right.

22 THE COURT: Why don't you just release him and
23 tell him to be on standby and let's go ahead and do
24 the DNA. I just don't want to be sitting in here
25 another 30 minutes listening to arguments when the

1 jury has been sitting -- been in the jury room for
2 an hour.

3 MS. CAVANAUGH: Yes, Your Honor, I agree.

4 THE COURT: And then have your DNA expert
5 ready.

6 Are you ready? All right, let's bring them on
7 in.

8 (WHEREUPON, the jury came into open
9 court at 10:42 a.m.)

10 THE BAILIFF: The jury is present, Your Honor.

11 THE COURT: All right. Good morning, ladies
12 and gentlemen of the jury. I would like to
13 apologize for the delay. We were handling some
14 legal matters, so therefore instead of bringing you
15 in and sending you back out, it just took a little
16 bit longer than we expected.

17 So, with that being said, we are ready to
18 continue with the State's case.

19 Please call your next witness.

20 MR. MCGLOTHIN: The State calls Dr. Gray
21 Amick.

22 THE BAILIFF: Come forward to be sworn.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible, raise your right, and face the clerk.

1 (Witness complies.)

2 THE CLERK: Could you state your name for the
3 record, please?

4 THE WITNESS: Gray Amick.

5 THE CLERK: Could you spell your first name,
6 please?

7 THE WITNESS: G-R-A-Y.

8 THE CLERK: Do you solemnly swear the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Have a seat right there. Thank
14 you.

15 (Witness seated.)

16 THE COURT: All right, thank you, sir. You
17 may pull your mask down while testifying.

18 DR. GRAY AMICK,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCGLOTHIN:

22 Q Good morning, Dr. Amick. How are you?

23 A Good morning.

24 Q Could you please tell the jury where you work?

25 A I currently work at a biotech company called IMCS

- 1 in Irmo, South Carolina.
- 2 Q Okay. And how long have you worked there?
- 3 A Two years.
- 4 Q And prior to that, where did you work?
- 5 A The Richland County Sheriff's Department.
- 6 Q And approximately how long were you with Richland
- 7 County?
- 8 A I was there approximately 16 years.
- 9 Q And what was your job there?
- 10 A When I left, I was lab director right before I
- 11 left.
- 12 Q And when you say lab director, what do you mean by
- 13 that?
- 14 A The director of all the forensic services there:
- 15 DNA, firearms, crime scene, fingerprints, drug ID.
- 16 Q Did you do DNA analysis yourself?
- 17 A I did. So prior to that, I was a DNA technical
- 18 leader from 2004 to about 2016, I think, which
- 19 means I supervised the DNA laboratory.
- 20 Q And could you tell the jury a little about your
- 21 education?
- 22 A Yes. I have a bachelor's degree in biology in
- 23 1989, and a PhD in biochemistry in 1993 from USC.
- 24 I was employed at that point in '93 by the State
- 25 Law Enforcement Division. I worked at SLED for 11

1 years in forensics and toxicology and DNA. And in
2 2004 I was hired by the Richland County Sheriff's
3 Department with John Barron to start up their DNA
4 laboratory at the time. So from 2004 to 2019, I
5 was employed there in forensics.

6 Q And did you receive training during that time
7 regarding DNA analysis and serology?

8 A Yes. So at SLED, my initial training in DNA was
9 from court qualified experts in that field and
10 several other fields. And then in the field every
11 year you are required to continue my education in
12 the field of DNA and serology.

13 Q Okay. So you received continuing education
14 throughout all those years?

15 A Twenty-six years, that's right.

16 Q And how many -- have you ever testified as an
17 expert before in this field?

18 A I have.

19 Q Do you know how many times?

20 A Approximately 95 times.

21 MR. MCGLOTHIN: At this time we would admit
22 Dr. Amick as an expert in DNA analysis and
23 serology.

24 MS. YOUNG: No objection, Your Honor.

25 THE COURT: All right. Ladies and gentlemen

1 of the jury, Dr. Amick will be qualified to give
2 opinion testimony in the area of DNA analysis and
3 serology to give opinion testimony in that area.
4 That does not mean that you must accept the
5 opinion, but it is evidence for you to use in any
6 way you see fit and give it the weight and
7 credibility you believe is appropriate.

8 Thank you.

9 Yes, sir?

10 MR. MCGLOTHIN: Thank you, Your Honor.

11 BY MR. MCGLOTHIN:

12 Q And I failed to ask you this, am I pronouncing your
13 name correctly, is it Amick?

14 A That's correct.

15 Q Dr. Amick, could you please describe to the jury
16 what DNA is?

17 A Yes. DNA is a molecule in every cell in every --
18 in your body, except for a few. That is kind of
19 the blueprint of what makes you you, so it makes
20 you human or it makes you a tree or it makes you an
21 earthworm. And it is unique to every individual.
22 So that is what is exploited in forensics as DNA.
23 The only exception is identical twins. They do
24 have the same DNA profile. So in forensic DNA, we
25 can use that uniqueness to differentiate people.

1 Q And so you said -- so am I correct in saying DNA is
2 in every part of your body except for, as you said,
3 a few?

4 A So, yes, every cell in your body has a nucleus, and
5 that has DNA in it. So your skin cells, your hair,
6 your hair follicles, your bone, your saliva, your
7 semen, your -- any kind of cell that is from your
8 body has DNA, has your DNA, your unique DNA
9 profile.

10 Q And that includes blood?

11 A Yes. That includes white blood cells.

12 Q Okay.

13 A So the exception is a mature red blood cell
14 actually does not have DNA in it. It is the white
15 blood cells in blood that have DNA.

16 Q So are there different types of DNA? And I'm kind
17 of getting at that same question. Is there any
18 difference in DNA from your saliva or your blood or
19 any of those other skin cells? Do they differ in
20 any way?

21 A No, it would be the same profile from all the
22 fluids from the same person.

23 Q So how do you find someone's DNA?

24 A How do you find it?

25 Q Yes, like if you wanted to get my DNA, how would

1 you do that?

2 A I'd probably give you a Q-tip and let you swab your
3 mouth.

4 Q Okay.

5 A That would be the easiest, most non-invasive way.

6 Q And then what would you do with Q-tip?

7 A So at that point I would, in the laboratory, make a
8 cutting of that, distract the DNA, and run it on
9 the instrumentation there to identify several
10 locations that would allow me to say that you are
11 unique when compared to other people.

12 Q And what do you mean when you say -- when you
13 mention those locations that would deem me unique?

14 A Well, the field has evolved to where we test
15 several locations on the human genome. And this is
16 called loci. And you might hear that word again.
17 But, so every cell has a huge string of DNA. And
18 the kit that we use is, human identification kit,
19 specify locations on that strand of DNA to test.
20 And those are what we are able to develop a profile
21 of you from.

22 Q And so I am going to ask you the same question but
23 kind of in a different context. How could you find
24 someone's DNA if you were looking for it say at the
25 scene of a crime?

1 A So at a crime scene, you would look -- depending on
2 the type of crime. The most common source would be
3 blood. However, semen and saliva are also very
4 common sources, depending on the crime. So on a
5 criminal sexual conduct case, semen is probably the
6 primary one we extract the DNA from. You can also
7 get it from, like I said, the root of a hair. So
8 hair and any other skin cells at the scene of a
9 crime.

10 Q And can you, under ideal conditions, if someone
11 touches something, just touches it, could you
12 theoretically get their DNA from that item that
13 they touched?

14 A It is possible, yes.

15 Q Okay. And how does that work? If you don't mind
16 explaining.

17 A So it works by, basically you are always shedding
18 skin cells. So depending on the person, when you
19 touch something, you may or may not shed enough
20 skin cells onto that surface, and also depending on
21 the surface to be able to have enough DNA to
22 develop a profile.

23 Q And I used a term of art, serology. What is that?

24 A Serology is the study of the identification of body
25 fluid. So is it just blood, is it human blood, is

1 it saliva, is it semen. That would be serology,
2 for instance.

3 Q So kind of jumping back to DNA there, how if you
4 believe you have what you believe to be a sample of
5 unknown DNA, how would you match that to a known
6 individual?

7 A So what we do in the laboratory is we would receive
8 items from the crime scene that are unknown, like
9 we don't know what the DNA profile is on them,
10 whether it be swabs from the scene, swabs from a
11 vehicle, swabs from wherever the evidence was
12 collected from. And then we would request from the
13 investigators swabs of people or individuals
14 involved in the case, whether they are victims or
15 suspects or witnesses. So we would independently
16 run those two swabs, piece of evidence from the
17 crime scene and an individual involved in the case,
18 and then we would compare the two to see if they
19 are alike or not.

20 Q Okay. And when you have those two things and you
21 have -- I am going to use the word match, is that
22 the correct terminology if you have a sample that
23 matches from a known standard to an unknown
24 standard?

25 A That is correct.

1 Q Okay.

2 A Yes, we use the word match.

3 Q Okay. And is that -- how is that generally -- do
4 you have a probability standard or something of
5 that nature as to the reliability of that match?

6 A Yes. So we don't use the word reliability, but we
7 do make a match statement. So what we would do is
8 say Item X matches Person Y, and then we would
9 attach a weight to that match, and it is usually in
10 statistical form, it is drastic, and so in the form
11 of probability. So, you know, one in a billion
12 individuals would share that same profile,
13 something like that. But it is a 2-part statement.
14 There is a match statement and then there is a
15 weight associated with that in the form of a
16 probability.

17 Q What is a mixture?

18 A A mixture is, logically, the mixture of two things.
19 So in a DNA world, the mixture is of two or more
20 individuals, two or more profiles.

21 Q Okay. And then just going through some more
22 vocabulary here. What does it mean when an
23 individual is excluded from a result?

24 A So exclusion means they do not match whatever you
25 are comparing to. So you may see the terms, This

1 individual is excluded. So when I do that
2 comparison and they don't match, then it may be
3 stated as, The person was excluded. So it is like
4 a non-match, but the word we use is excluded.

5 Q And when you get a sample, do you always get a
6 result, a DNA result, from a swab or whatever form
7 of evidence is given to you?

8 A No, I do not.

9 Q Okay. Can you kind of explain the different types
10 of non-result, if you will?

11 A Yes. So that result depends on how much DNA is
12 there. So if we have enough DNA, we'll get a full
13 profile. If we have less than optimal amount of
14 DNA, we'll get what we call a partial profile. If
15 we don't have enough DNA there, or a very, very
16 small amount, there may just not be enough DNA at
17 all, and we may get, No result or No profile.

18 Q Okay. And can that -- in that same line, can it be
19 a -- that sample be too weak, is that what you are
20 saying?

21 A Right. That is another way to put it. So too weak
22 would be there wasn't enough DNA there either if
23 you get a profile or to make a comparison to an
24 individual or another item.

25 Q Did you do any DNA analysis for this case?

1 A I did.

2 Q Okay. I am going to show you State's 119, 117,
3 141, and 140. Do you recognize those items?

4 A I recognize them as evidence bags from Richland
5 County.

6 Q Did you do DNA analysis on those items?

7 A So these first two items here, State's 140 and 141,
8 Items 1 and 2, I did do the analysis on those two.
9 And then 7, 8, 9, 10, 11, State's 117, all those,
10 and 12, I did the analysis on all of those. And
11 then 14, 15, 16, 17, 18, and 19. These are all
12 Richland County item numbers that I'm reading out.
13 State's 119, I did do the analysis on all of those.

14 MR. MCGLOTHIN: At this time --

15 BY MR. MCGLOTHIN:

16 Q When you received those items, did they appear to
17 have been tampered with prior to your analysis?

18 A So what happens is, all these items would have been
19 processed by Ashleigh Dixon, and that is why her
20 initials appear on all these bags. So when I
21 receive them, they are actually already processed,
22 they are already cut, they are extracted, and I
23 would do the DNA component of them. So I would not
24 actually have opened these, Ashleigh would have.

25 Q Right. I guess to clarify, did those samples that

1 you received from Ms. Dixon appear to have been
2 tampered with in any way other than her process in
3 preparing them?

4 A No, they did not.

5 Q And that is true for all of those items there?

6 A Yes.

7 MR. MCGLOTHIN: At this time, the State would
8 move State's I believe 140, 142, 117, and 119.

9 THE COURT REPORTER: Is it 142 or 141?

10 THE COURT: Earlier I think you identified it
11 as 141.

12 MR. MCGLOTHIN: Beg the Court's indulgence for
13 just one moment.

14 (Pause.)

15 MR. MCGLOTHIN: Excuse me, 140, 141, 117, and
16 119.

17 THE COURT: Any objection?

18 MS. YOUNG: No objection, Your Honor.

19 THE COURT: Those will be entered without
20 objection, 140, 141, 117, and 119.

21 MR. MCGLOTHIN: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit No. 140 was
23 marked for identification and received
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 141 was
2 marked for identification and received
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 117 was
5 marked for identification and received
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 119 was
8 marked for identification and received
9 into evidence.)

10 BY MR. MCGLOTHIN:

11 Q And did you -- were you able to identify if any of
12 these items -- well, what type of body fluid these
13 items were?

14 A Yes. So, again, on the report, is the easiest
15 probably to just go by the report, blood was
16 indicated on Items 9, 10, 17, 18, 19. And then two
17 items that John Barron ultimately analyzed, that is
18 29A and 29B.

19 Q Okay. And so as to your portion --

20 MR. MCGLOTHIN: Beg the Court's indulgence for
21 just one moment.

22 (Pause.)

23 MR. MCGLOTHIN: I apologize.

24 BY MR. MCGLOTHIN:

25 Q So with this evidence, did you make any comparisons

1 between the unknown items and the buccal swabs you
2 were given there?

3 A Yes. So from the items that I analyzed,
4 comparisons were made to Items 1 and 2, which were
5 swabs from Benjamin Parker and Anteyan Davis.
6 Those are the only standards I had at the time that
7 I did my analysis.

8 Q Okay. And what were the results of those -- of
9 that analysis?

10 A So, again, from the report -- and you have to
11 pardon me, this report is authored by John Barron,
12 who kind of picked this case up after I left the
13 Sheriff's Department -- so I left in 2019 -- and
14 started this case. And from what I recollect, I
15 did everything that was requested at the time, and
16 then additional swabs were requested, and he did
17 the analysis and authored the report. So let me
18 look at the report statement and I can answer your
19 question.

20 Q Please take a moment to make sure you have got
21 that.

22 A So --

23 Q If you need a copy, I have got it.

24 A I have it. So in regards to Benjamin Parker and
25 Davis, those two people were excluded from Item 7.

1 Q And can you read the detail line on that item?

2 A Yes. So the DNA result from Item 7 is a mixture.
3 Benjamin Parker, Anteyan Davis, and Donald Young
4 are excluded as contributors.

5 Q And you can wait there since I know the next part
6 is from Mr. Barron.

7 A Okay.

8 Q And can you -- going back to -- referring to your
9 first page, can you read what Item 7 was?

10 A Item 7 is a swab from front passenger side door,
11 exterior.

12 Q Okay. And going on to that second bullet point on
13 the second page of your report, what did you find
14 as Items 8 and 15?

15 A So the DNA result from Items 8 and 15 are too weak
16 for match purposes.

17 Q Okay. And can you explain again what that means?

18 A That meant that the profile at that time that I
19 developed from Items 8 and 15, there just wasn't
20 enough DNA there to make a statement about whether
21 they match or don't match with the individuals
22 involved.

23 Q Okay. And skipping down to Number 4. What, if
24 any, result came from Item 14?

25 A Item 14? No DNA result was developed from Item 14,

1 meaning there wasn't enough DNA to get any kind of
2 DNA profile from Item 14.

3 Q And were all the items submitted to you analyzed?

4 A Were they what, I'm sorry?

5 Q Analyzed?

6 A No. So there were two that there were no analysis
7 performed, and those were Items 11 and 12. Eleven,
8 swab from a white LG cell phone, E1. And 12 was a
9 swab from a fired cartridge casing, Ruger
10 9-millimeter, E2.

11 Q Do you know why that analysis would have been
12 performed?

13 A I don't. Usually when we have no analysis
14 performed, either they weren't requested by
15 investigations for whatever reason, deemed not
16 probative. Again, as the laboratory, we are
17 helping the investigation, but we are also trying
18 to fulfill what they request to be analyzed. We
19 didn't collect the evidence. So it gets collected
20 and the investigators will decide what they need to
21 be analyzed.

22 Q And you don't go out and do any investigation
23 yourself as to collecting evidence?

24 A Not -- not in this case, no.

25 Q Okay. And as to the rest of the results from these

1 items and in this report, that all came from
2 Mr. Barron, is that right?

3 A Yes. So those comparisons that are published on
4 the report, those he did. I analyzed and developed
5 profiles from Items 1, 2, 7, 8, 9, 10, 11, 12 --
6 well, 10, 14, 15, 16, 17, 18, and 19, and then 11
7 and 12 there was no analysis performed.

8 Q And is that information stored somewhere?

9 A It is on -- it is -- well, stored as in who did
10 what?

11 Q I just mean in this context, with Mr. Barron
12 picking up, as you said earlier, is that
13 information stored somewhere that he would have
14 been able to access it?

15 A Oh, yes, yes. So he would have the entire case
16 file of what I did and then as needed he would have
17 to do more analysis and author the report. He has
18 all that to do and comparisons to do.

19 Q And none of that information is out open to the
20 public? It would have been --

21 A No, no.

22 Q It couldn't have been tampered with from anybody?

23 A No.

24 MR. MCGLOTHIN: Beg the Court's indulgence
25 just one moment.

1 (Pause.)

2 BY MR. MCGLOTHIN:

3 Q I think just a couple more questions just to
4 clarify. When you say your case file, does that
5 include all of the data from whatever machines and
6 processes you use to analyze this and create these
7 comparisons?

8 A Yes. Everything I would do in the case, any notes
9 I would take, any data that I generated from
10 analysis, that all is the case file.

11 Q And that includes the profiles that you created
12 based on the unknown items and from the known
13 standards?

14 A That's correct.

15 Q Nothing further. Please answer any questions the
16 Defense may have.

17 THE COURT: Yes, ma'am?

18 MS. YOUNG: Just very briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. YOUNG:

21 Q Thank you. Dr. Amick?

22 A Yes, ma'am.

23 Q So I assume from what you told Mr. McGlothlin that
24 you don't generate a report right away after you
25 conduct your testing?

1 A That's correct. It is done when everything is
2 deemed complete as far as requests on items. And
3 you may generate a report and additional items
4 would come in after that, and you would generate a
5 supplemental record.

6 Q Okay. But that is the reason your name isn't
7 anywhere on this report?

8 A The reason my name is not on this report is what I
9 said earlier. It kind of landed -- probably when I
10 was about to leave the Sheriff's Department. When
11 I look at the date of the initial analysis, it was
12 February of 2019. I left May 31st, 2019. So I
13 probably did all the items that were requested and
14 realized I don't have a victim standard, I don't
15 have a suspect standard. So it is really not
16 complete. We are waiting on those other samples to
17 be able to write a report that means anything.

18 Q So you just didn't generate a report?

19 A So I didn't generate a report, correct.

20 Q And the reason -- you told Mr. McGlothlin that the
21 reason you didn't test the white LG cell phone is
22 because the investigators didn't request it?

23 A I said that is one possible reason. I can look at
24 the request and see if it was requested in there
25 for a different reason possibly, but the notes

1 indicate No Analysis Performed, and those were the
2 normal reasons.

3 Q Okay. And the same thing with the shell casing,
4 the Ruger 9-millimeter shell casing?

5 A Yes. Most of those are listed as NAP, or No
6 Analysis Performed.

7 Q Thank you. I don't have any other questions.

8 THE COURT: Any redirect?

9 MR. MCGLOTHIN: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MCGLOTHIN:

12 Q Ms. Young just asked you a few questions about the
13 report and why you wouldn't have generated one.
14 Looking at your notes outside of this report, how
15 can you tell that you did work on this?

16 A So that is a good question. My initials are all
17 over the first part of every page, so you have to
18 initial every page. So you will see my initials
19 throughout. In addition -- and the case kind of
20 falls chronologically, so you can kind of see all
21 the first ones have my initials, and then John
22 Barron's initials would be at the end. In
23 addition, the actual data or the actual DNA profile
24 data sheets from the instrumentation also have my
25 initials on the final page.

1 Q And I am going to show you -- do you recognize what
2 that form is?

3 A Yes, this is a request form.

4 Q Okay. And does that generally how items -- how you
5 know what items to test?

6 A Yes.

7 Q Is that the one used from this incident or with the
8 items that were collected from this incident?

9 A They are the same case number, so they would be
10 from this case.

11 Q And were Items 11 and 12 on that request form?

12 A They are.

13 Q Okay. Thank you.

14 A And seeing this, I don't know why they weren't
15 analyzed, so I'm glad you showed me this. So the
16 other reason could be we deemed them unsuitable for
17 analysis or it could be a reason, again,
18 investigatively we were told not to pursue them. I
19 don't have anything further in the notes as to why,
20 all I have is No Analysis Performed. So, yes, they
21 were requested, but I don't know why.

22 Q So you can't give the actual reason, but there is a
23 request for those?

24 A There is a request for items -- if you give me one
25 second I will look through the case and make sure I

1 am not missing anything.

2 Q Take your time.

3 A Okay.

4 (Pause.)

5 A Yes, I don't see anything else. Again, the lab,
6 somehow we determined, you know, that we are not
7 going to analyze that. We would have probably
8 talked with the investigators at that point, you
9 know, Do you need these? You know, a lot of times
10 it could be like a cell phone that came from
11 somebody and we would rationalize that, you know,
12 my cell phone is going to have my DNA on it, so why
13 does an analysis of that need to take place. Those
14 type items sometimes those conversations take place
15 as to the probative nature of it. But I don't -- I
16 don't see any notes to that effect, but that would
17 be my answer seeing this request.

18 Q Thank you very much. No further questions.

19 THE COURT: Anything else?

20 MS. YOUNG: Nothing further, Your Honor.

21 THE COURT: All right, you may step down,
22 Doctor. Any objection to this witness being
23 excused?

24 MR. MCGLOTHIN: No, Your Honor.

25 THE COURT: All right, sir, you are free to

1 BY MR. MCGLOTHIN:

2 Q Good morning. Is it Mr. Barron? Investigator? I
3 don't know what your title is.

4 A Just John Barron will be fine.

5 Q Can I call you John? Is that okay?

6 A Hey, you.

7 Q Could you please tell the jury where you are
8 employed?

9 A Presently at Richland County Sheriff's Department.

10 Q How long you been with Richland County?

11 A Since 2004.

12 Q Okay. So a few years?

13 A A few years.

14 Q And what do you do there?

15 A I work in the DNA laboratory.

16 Q Do you do DNA analysis?

17 A I do a lot of DNA analysis.

18 Q Do you do serology?

19 A Yes, I do.

20 Q Okay. What kind of educational background do you
21 have?

22 A Well, I have a bachelor of science degree in
23 microbiology from Clemson University. And I
24 originally started at SLED in the serology lab just
25 doing serology before DNA, and then DNA came on

1 board about 1999, 2000, and I got into the DNA
2 analysis function at SLED.

3 And then Sheriff Lott wanted to start his own
4 DNA lab, so myself and Gray Amick, the guy who just
5 testified, came over and set up his DNA laboratory
6 for him.

7 And I have had the opportunity to testify
8 numerous times as a DNA expert in various courts of
9 South Carolina.

10 Q Do you know -- could you give us a ballpark of how
11 many times you have testified?

12 A About 70, I think.

13 Q On both DNA analysis and serology?

14 A Now, on serology I have testified too many to
15 count. I would say over 200 or 300 times, because
16 before DNA came on board, we did a lot of serology
17 in the laboratory as part of investigation as well.
18 So I was following blood identification and semen
19 identification, trying to develop polymorphic
20 enzymes and AB0 blood groupings in those body
21 fluids as well.

22 Q And did you receive training in both of these
23 fields -- well, have you received training in both
24 of these fields?

25 A Originally in serology I received training at the

1 FBI Laboratory in Quantico from their expert
2 serologist, and then as well as the organization
3 called Serological Research Institute. I got a lot
4 of serology training there. And of course at the
5 time there was serologist at SLED, and I trained
6 under him as well before being qualified.

7 Q And what about as to DNA?

8 A And DNA, I was part of a group, I think Gray Amick
9 was one of the first ones to do the initial
10 research in DNA at SLED, and myself and about 10 or
11 12 other people trained with him as well as the
12 company that supplied the instrument and the DNA
13 analysis, I guess, kit, is what you call it, but,
14 you know, the chemicals needed to determine DNA.

15 Q And have you received continuing -- have you
16 received education since that initial training --

17 A Right.

18 Q Or training on both of these?

19 A Yes.

20 Q Since then?

21 A Yes. As part of my training too, before becoming
22 an expert, I was at the University of South
23 Carolina in some additional molecular biology
24 classes and statistics as well, because in DNA
25 analysis, statistics is also a major component as

1 far as the final report.

2 Q And you have continued on with that training?

3 A Oh, yes.

4 Q Throughout the years?

5 A Yes. Every chance I get I take a statistics class,
6 and I go -- every year we go to a, some sort of DNA
7 seminar that is put on by various companies, and
8 also the FBI, what is called I think a CODIS person
9 administrator, and we do training every year as
10 well. So at least once, sometimes twice a year I
11 go to some sort of specialized seminar involving
12 DNA analysis.

13 MR. MCGLOTHIN: Your Honor, at this time the
14 State would admit John Barron as an expert in DNA
15 analysis and serology.

16 THE COURT: Any voir dire? Any objection?

17 MS. YOUNG: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, this witness will be qualified as an
20 expert in DNA analysis and serology to give expert
21 opinion testimony in that area. Once again, that
22 does not mean that you have to accept the opinion,
23 but it is evidence for you to use in any way you
24 see fit and give it the weight and credibility you
25 believe is appropriate.

1 All right, thank you.

2 MR. MCGLOTHIN: Thank you, Your Honor.

3 BY MR. MCGLOTHIN:

4 Q John, did you compare samples from unknown and
5 known standards in this case?

6 A Yes.

7 Q Okay. I'm going to show you State's 25 and 114.
8 Do you recognize those?

9 A Yes.

10 Q And did you do DNA analysis on those items?

11 A I did.

12 Q Okay.

13 MR. MCGLOTHIN: At this time the State would
14 move State's 25 and 114 into evidence.

15 MS. YOUNG: No objection, Your Honor.

16 THE COURT: Those will be entered without
17 objection.

18 (WHEREUPON, State's Exhibit No. 25 was
19 marked for identification and received
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 114 was
22 marked for identification and received
23 into evidence.)

24 Q And I am also going to show you State's 140, 141,
25 117, and 119. Actually, let's hold off on that.

1 I will show you this first. I am going to show you
2 State's 131. I apologize. State's 131. Do you
3 recognize that item?

4 A I do.

5 Q Okay. And did you perform analysis on that item?

6 A I did.

7 MR. MCGLOTHIN: At this time the State would
8 move State's 131 into evidence.

9 THE COURT: Any objection to 131?

10 MS. YOUNG: No objection.

11 THE COURT: It will be entered without
12 objection.

13 (WHEREUPON, State's Exhibit No. 131 was
14 marked for identification and received
15 into evidence.)

16 BY MR. MCGLOTHIN:

17 Q Okay. Now we go to 140, 141, 117, and 119. Did
18 you perform analysis regarding those items as well?

19 A I did comparison, but I didn't actually do the
20 analysis.

21 Q Okay.

22 A Gray Amick did that.

23 Q Okay. Can you kind of explain the difference
24 between those two things?

25 A Yes. The analysis involves hands-on working in the

1 laboratory, setting it up, putting it on the
2 instrument. But the instrument produces a picture,
3 if you will, of the DNA that is developed from an
4 item. And that picture is a permanent record. And
5 I can look at that and make comparisons from it to
6 known samples.

7 Q Okay. So as to State's 140, 141, 117, and 119,
8 Dr. Amick actually did the analysis, and then you
9 just ran comparisons as to those?

10 A Right. He did the wet chemistry of it, but I can
11 see his product of that result. And that result is
12 the permanent record that any qualified DNA analyst
13 can look at it and interpret.

14 Q And you were given access to those?

15 A Yes.

16 Q Okay. So, and did you do any serology as to these
17 items to identify what they were?

18 A Yes. Item 29, which had two swabs, A and B.

19 Q Could you read what the description on those items
20 are on 29?

21 A Right. Well, I actually did not do the serology,
22 but I saw that the serology was done and positively
23 identified as blood.

24 Q Okay. But it was identified as blood?

25 A Yes.

1 Q Okay.

2 A Blood was indicated by our preliminary test.

3 Q And then as to items, what is your Items 34 and 48,
4 what are those items? I believe that is State's
5 131 and 25.

6 MR. MCGLOTHIN: Beg the Court's indulgence.

7 (Pause.)

8 BY MR. MCGLOTHIN:

9 Q Excuse me, 131 and 114, which would be your Items
10 34 and 48. What were those items?

11 A Those are known samples from Donald Young and
12 Correy Brown.

13 Q Okay. So, and did you perform comparison and
14 analysis on 29, 34 and 48?

15 A Yes.

16 Q Okay. And then you compared all of those items to
17 the previously mentioned ones as well, is that
18 right?

19 A That's correct.

20 Q Okay. Can you give us the results of those
21 comparisons?

22 A Yes. On the items where DNA was recovered, where
23 we got a, what we call a complete DNA result, in
24 other words, everything tested came out good, which
25 isn't always the case, but in this case it was a

1 clean source person involved contributing the blood
2 on Item 16, my Item 16, I'm not sure what the items
3 are in court, but my Item 16, 17, 18, 19, and these
4 two swabs of mine, 29, they matched Correy Brown.
5 In other words, as far as DNA is concerned, this
6 is, with reasonable scientific certainty, it is the
7 blood of Correy Brown, because statistically
8 speaking the likelihood that it could belong to
9 somebody else is 430 octillion, which is 430 with
10 27 zeros after it. Well, the population of the
11 Planet Earth is approaching 8 billion, which is 8
12 with only 9 zeros after it. So this is a very,
13 very strong indication that it is Correy Brown's
14 blood. In my opinion, it is his.

15 Q And just to be clear, can you read the descriptions
16 on what is your Mark 16, 17, 18, 19, and then 29A
17 and B?

18 A Sixteen is a swab taken from the handle from the
19 rear passenger door on the interior. Seventeen is
20 swab from a stain labeled 1A, which the crime scene
21 analyst would have labeled the stain as 1A. As to
22 where it came from, I don't know.

23 Q Is that the only way you can track it?

24 A Yes. They would have to tell you where it came
25 from based upon the way they mark it.

1 Item 18 was a stain from -- well, the swab
2 from Stain 2A. 19 was swab from Stain 3A. And
3 then 29 is two swabs taken from the passenger door
4 frame from the back passenger fender.

5 Q And is there anything interesting or different
6 about 16, your Item 16, from 17, 18, and 19?

7 A As far as DNA is concerned? No.

8 Q Okay. As far as the serology is concerned?

9 A Oh. Well, not all of them had blood on them.

10 Q Was 16 found to be blood?

11 A Sixteen was a swab from the handle rear passenger
12 door side, interior. So this would be like when
13 somebody is handling a door handle, they can leave
14 their DNA on there from their skin cells that are
15 being shed from their hands, which is another way
16 that you can find DNA from a person.

17 Q Okay. But 16 wasn't blood?

18 A No.

19 Q Okay. And then as to Numbers 9 and 10, what were
20 the results there?

21 A Nine and ten was blood. And it matched Donald
22 Young, the victim.

23 Q And then as to Item 7, did you compare those two?
24 Talking about result Number 1 there at the top.

25 A Yes.

1 Q On Page 2 of your report, I guess is the easiest
2 way to handle that.

3 A Item 7 is another swab from a door, the passenger
4 side, exterior door handle. If you get in a car
5 you would handle the door. And what we run across
6 most often when we deal with door handles is that
7 multiple people have touched it. So there is DNA
8 there, but there is more than one person's DNA
9 there. So we get what we call a DNA mixture. And
10 that is what this sample indicated, that there was
11 a mixture of at least three people present. So in
12 our analysis, we did determine whether or not an
13 individual could be part of that mixture. And then
14 if they are, then we can give a likelihood if they
15 are a contributor to that mixture.

16 Q Okay. What did you find as to Item 7?

17 A Well, Item 7, like I said, was a mixture, DNA
18 mixture. And what I did was, I took all the known
19 samples that we had, compared it to see whether or
20 not their DNA result could fit into that picture of
21 a mixture of DNA. And I also ran -- also compared
22 some elimination standards from Benjamin Parker and
23 Anteyan Davis, if I am pronouncing it correctly, as
24 well as Donald Young and Correy Brown. So I was
25 able to eliminate three people, which was Benjamin

1 Parker, Anteyan Davis, and Donald Young, but Correy
2 Brown could not be excluded from that mixture.

3 And so, based on my analysis and statistics,
4 it is approximately 7.2 million times more likely
5 to be included in that mixture than to be excluded
6 from that mixture, or if you took a random person
7 and say could their DNA be in the mixture, that is
8 what I'm doing. So --

9 Q And that is as to Correy Brown?

10 A Right. So Correy Brown definitely could be
11 included in that mixture. And the weight of that
12 evidence is 7.2 million times more likely than just
13 picking anyone at random and say could they be in
14 that mixture.

15 Q So if I touch something, am I always going to leave
16 DNA?

17 A That is a really tough question. You might leave
18 some DNA that might not be enough for us to detect.
19 But I do believe that there is some people that can
20 touch something and not leave detectable DNA and
21 some people just leave a lot of DNA. It just
22 depends on the individual. I mean, like skin
23 cells, like for me, I have a lot of dandruff, skin
24 cells. Some people don't have a lot of dandruff.
25 So I would probably leave a lot of DNA in a hat

1 that I wore, where somebody else may not leave a
2 lot of DNA in a hat they wore. So the skin cells,
3 there is really no way to quantify how much skin
4 cells are present, but we do quantify how much DNA
5 is present, and then we test it to see what kind of
6 results we get.

7 Q Okay. But just because you don't find anything,
8 does that mean that -- just because you don't find
9 DNA, does that mean a person didn't touch
10 something?

11 A That's correct. That's correct. I mean, you can
12 touch something and not leave DNA. It depends on
13 how quickly you touch it, how much -- how much you
14 grasp it, or maybe you are wearing a glove. Maybe
15 you touched it, but you may not leave DNA.

16 Q Okay. All right. So just --

17 MR. MCGLOTHIN: Beg the Court's indulgence
18 just a minute.

19 (Pause.)

20 BY MR. MCGLOTHIN:

21 Q So as to Items 16, 17, 18, 19, and both 29s, both
22 29A and 29B, what were the results?

23 A The results was a complete DNA result. In other
24 words, we got a result of every location we tested
25 on the DNA molecule, and it matched Correy Brown.

1 So statistically speaking, it is 430 octillion
2 times more likely for him to be the source of DNA
3 than a random person, which is an extremely rare
4 number, you know, which makes it almost impossible
5 to be somebody else.

6 Q And what was the description on Number 16 again? I
7 apologize.

8 A Sixteen was swab from the rear passenger side door,
9 interior.

10 Q And was that indicated as blood?

11 A Before I answer that again, let me look and make
12 sure it was not blood. It was -- when we test for
13 blood, we have to -- we usually see some sort of
14 visual indication, there is a reddish stain on
15 there. So in this case there was none, so there
16 was no blood test done. So what -- we simply just
17 went ahead and extracted it for DNA to see how much
18 DNA was present. And in this case, there was
19 enough DNA to identify Correy Brown.

20 Q Can you identify what type of DNA -- where that DNA
21 came from, what type of -- whether it was skin
22 cells or anything? Can you answer that?

23 A Well, that is the most likely answer.

24 Q Is skin cells?

25 A The skin cells, or unless he drooled on it, spit on

1 it, or something like that, then you get skin cells
2 from inside your mouth. For instance, if you
3 smoked a cigarette, you would get your DNA off of
4 that because you've got a lot of skin cells in your
5 mouth and saliva, which you get a lot of those skin
6 cells as well. So it is not the actual saliva
7 itself, it is the DNA, the skin cells that are
8 inside the saliva that has a nucleated cell, which
9 is where the DNA is located.

10 Q But looking at the description on Number 16 being a
11 door handle --

12 MS. YOUNG: Objection, Your Honor. It has
13 been asked and answered.

14 THE COURT: Overruled.

15 BY MR. MCGLOTHIN:

16 Q Looking at the description on 16 being a door
17 handle inside the vehicle, is it your opinion that
18 that is most likely some form of touch DNA?

19 A Yes. I mean, based upon looking at the quantity of
20 DNA, that would be most consistent with somebody
21 touching it, yes.

22 Q Thank you. No further questions. Please answer
23 anything the Defense has.

24 MS. YOUNG: We have no questions, Your Honor.

25 THE COURT: All right, sir, thank you. You

1 may step down. Any objection to this witness being
2 excused?

3 MR. MCGLOTHIN: None from the State.

4 THE COURT: All right, you are free to leave,
5 sir.

6 (Witness steps down and is excused.)

7 THE COURT: Call your next witness.

8 MR. MCGLOTHIN: The State calls Lieutenant
9 Justin Britt.

10 THE BAILIFF: Come forward to be sworn.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, raise your right hand, and face the clerk.

14 (Witness complies.)

15 THE CLERK: State your full name, please.

16 THE WITNESS: Justin Britt.

17 THE CLERK: Spell your last name, please.

18 THE WITNESS: B-R-I-T-T.

19 THE CLERK: Do you solemnly swear the
20 testimony you are about to give in this case will
21 be the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: Yes, ma'am.

24 THE CLERK: Have a seat right there. Thank
25 you.

1 (Witness seated.)

2 THE COURT: Sir, you may take your mask down
3 while you testify.

4 JUSTIN BRITT,
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCGLOTHIN:

8 Q Good morning. Is it Lieutenant Britt? Is that
9 correct?

10 A Yes, sir.

11 Q Okay. Could you please tell the jury where you are
12 currently employed?

13 A Richland County Sheriff's Department.

14 Q And how long have you been there?

15 A Roughly 15 years.

16 Q And what do you do for the Sheriff's Department?

17 A I supervise the Fugitive Task Force and the Gang
18 Unit.

19 Q And what is the Fugitive Task Force?

20 A We are a part of the Investigations Division of the
21 Richland County Sheriff's Department. Our job is
22 to locate wanted individuals once a warrant is
23 issued for them.

24 Q Okay. And what are your duties with them as the
25 supervisor?

1 A Basically I assign cases to investigators and I
2 oversee operations.

3 Q And how does the process work as far as when your
4 unit is utilized?

5 A Once a warrant is issued for somebody, they will
6 send us the warrant. And at that point we then
7 start an investigation to locate that individual.

8 Q Okay. And did you do that in this case?

9 A We did.

10 Q And who did you receive a warrant for?

11 A Correy Brown.

12 Q Okay. And did you locate Mr. Brown?

13 A We did.

14 Q Where did you locate him?

15 A He was located at Apartment B, 423 Percival Road.

16 Q And was he taken into custody at that time?

17 A He was.

18 Q Do you know if he had any effects, any personal
19 effects on his person?

20 A I don't recall.

21 Q If he did, would those have been collected?

22 A They would have been.

23 MS. HUBBARD: Objection, Your Honor.

24 Speculation.

25 MR. MCGLOTHIN: We are talking about standard

1 procedure. And I can --

2 THE COURT: Overruled.

3 MR. MCGLOTHIN: Thank you.

4 BY MR. MCGLOTHIN:

5 Q Is it standard procedure that when an individual is
6 arrested they do what -- not take everything around
7 them, but take their clothes and things that they
8 have on them?

9 A Correct. Anything in their possession.

10 Q And what is done with those items?

11 A They are handed over to the investigators.

12 Q And so that would have been done in this case?

13 A It would have.

14 Q And who was the lead on this case?

15 A George Becker.

16 Q No, for the full investigation?

17 A For the full investigation. Oh, Investigator
18 Laurita.

19 Q Okay. So anything -- so who would you -- well, if
20 you had been the person to actually transport Mr.
21 Brown --

22 MS. HUBBARD: Objection, Your Honor. Leading.

23 THE COURT: Sustained.

24 BY MR. MCGLOTHIN:

25 Q The items found on Mr. Brown's person, how would

1 they have gotten to Investigator Laurita?

2 A So, there is a search incident to arrest.

3 MS. HUBBARD: Objection.

4 THE COURT: Hold on. What is the objection?

5 THE COURT REPORTER: I'm sorry, I can't hear
6 you.

7 MS. HUBBARD: Sorry. The questions he is
8 asking are speculative.

9 MR. MCGLOTHIN: Again, we are talking about
10 procedure and whether that would have been followed
11 here.

12 THE COURT: The objection is overruled.

13 MR. MCGLOTHIN: Thank you.

14 BY MR. MCGLOTHIN:

15 Q So how would those items have been transferred if
16 they were on Mr. Brown's person?

17 A Restate that, I'm sorry.

18 Q I apologize.

19 A It's okay.

20 Q I'll flesh that out a little bit.

21 A Okay.

22 Q When Mr. Brown was arrested, if he had any items on
23 him, as we just discussed, how would they have made
24 it to Investigator Laurita?

25 A Okay. When someone is arrested, we do a search

1 incident to arrest, so anything they have on them
2 at the time, anything they have in their possession
3 is taken for transport.

4 Q And why do you do that?

5 A It is an officer safety issue. We don't want
6 anybody to have anything in their pocket, we don't
7 want any kind of communication going on while we
8 are transporting. It is an officer safety issue.
9 That's all it is. It is done right there
10 immediately.

11 Q Okay. Sorry. Go ahead. After you do that --

12 A After that -- sorry.

13 Q After you do that initial search?

14 A Right. Their stuff is kept together, and then as
15 soon as we hand over the person that we arrested to
16 the investigator, along with that goes everything
17 that they have. It goes with them. It never
18 leaves them.

19 Q And do you know -- at some point would Mr. Brown
20 have to be -- was Mr. Brown transported from where
21 he was arrested to Richland County Sheriff's
22 Department?

23 A Yes.

24 Q Okay. And would someone from your team --

25 MS. HUBBARD: Objection, Your Honor. Leading.

1 THE COURT: Sustained.

2 BY MR. MCGLOTHIN:

3 Q How would he get there?

4 A He would be transported by a member of our team to
5 headquarters.

6 Q And do you know who did that in this case?

7 A I do not recall.

8 Q Okay. Do you remember who was there that day?

9 A I do remember -- I do remember officers' names that
10 were there.

11 Q Okay. Could all of those individuals have
12 transported Mr. Brown?

13 A They could not have.

14 Q Why is that?

15 A Because they -- a couple of them have dogs in the
16 car, they have a K-9 in the car.

17 Q And why does that matter?

18 A Well, typically we choose not to transport -- we
19 choose not to, not impossible, but we choose not
20 to, not transport people with a K-9 in the car in
21 the back seat, so.

22 Q So given that information, who would have
23 transported Mr. Brown?

24 A It would have been myself or Investigator Kilcoyne.

25 Q And you -- based on that answer, did you have a dog

1 at that time in your vehicle?

2 A I do not have, no, I don't have a K-9.

3 Q And did Investigator Kilcoyne?

4 A He did not.

5 Q Okay. And that is why?

6 A Yes.

7 Q Okay. And we've talked a bit about standard
8 procedure. Do you remember this incident
9 specifically very vividly?

10 A I do not.

11 Q Okay. And why is that?

12 A We literally arrest hundreds of people a year. And
13 this was three years ago. And so, I mean, we could
14 have made a thousand arrests since then.

15 Q Okay.

16 MR. MCGLOTHIN: Beg the Court's indulgence
17 just one moment.

18 (Pause.)

19 BY MR. MCGLOTHIN:

20 Q No further questions, Lieutenant. Please answer
21 any questions the Defense may have.

22 THE COURT: Yes, ma'am?

23 MS. HUBBARD: Just one moment.

24 (Pause.)

25 MS. HUBBARD: May it please the Court?

1 THE COURT: Yes, ma'am.

2 MS. HUBBARD: Thank you, Your Honor.

3 THE COURT: Pull your mask down so the court
4 reporter can hear you.

5 MS. HUBBARD: Sorry.

6 CROSS-EXAMINATION

7 BY MS. HUBBARD:

8 Q Officer or Investigator Britt?

9 A That's fine.

10 Q Officer Britt, you just testified that you don't
11 recall who transported Mr. Brown?

12 A That's correct.

13 Q And you don't recall who took any items off
14 Mr. Brown?

15 A That's correct.

16 Q And the arrest was incident -- without incident?

17 A That's correct.

18 Q Thank you. That is all I have.

19 THE COURT: Redirect? Any redirect?

20 MR. MCGLOTHIN: Beg the Court's indulgence,
21 please.

22 (Pause.)

23 MR. MCGLOTHIN: Very briefly, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. MCGLOTHIN:

2 Q Lieutenant Britt, to the best of your knowledge,
3 was standard procedure followed in this case?

4 A It was.

5 Q Thank you. No further questions.

6 THE COURT: All right, you may step down. Any
7 objection to this witness being excused?

8 MR. MCGLOTHIN: None from the State.

9 (Witness steps down and is excused.)

10 THE COURT: Call your next witness.

11 MS. CAVANAUGH: Your Honor, at this time I
12 believe we have a matter of law to take up.

13 THE COURT: We'll go ahead and take our
14 morning break also. This will be a good time to
15 take our morning break. We'll take about 20
16 minutes. If someone -- I don't know if we have
17 any -- if they wanted to, Mr. Bailiff, if they need
18 to go outside or -- sometimes people want to take a
19 smoke break. I don't know if we have any smokers.
20 You may do so. They will take you down to the
21 garage.

22 All right, thank you.

23 (WHEREUPON, the jury retires to the jury
24 room at 11:52 a.m.)

25 THE COURT: All right. Yes, ma'am?

1 MS. CAVANAUGH: This is the issue that they
2 brought up with regard to Jessica Guyton.

3 MS. YOUNG: Your Honor, first and foremost, I
4 intend to ask Ms. Guyton about her pending
5 attempted murder charge and that it carries -- ask
6 if she knows that it carries 30 years. Under
7 608(c), we are entitled to ask about bias. The
8 greater the sentence that she is facing, the more
9 bias or potential is found.

10 Smalls v. State, which I think we talked about
11 the other day, is that --

12 THE COURT: What is the cite?

13 MS. YOUNG: Your Honor, I believe I sent that
14 to Assatta yesterday. Smalls v. State is 415 S.C.
15 490. That gives the Defense wide latitude in going
16 into what we want to go into on cross-examination.
17 I think it goes to bias. State v. Gillian,
18 G-I-L-L-I-A-N, 360 S.C. 433, in that particular
19 case the Court found error when the Defense was
20 prevented from asking about the amount of time and
21 its varying sentence the Defendant was facing.

22 These are all in line with State v. Mizell,
23 349 S.C. 326. I believe that is perhaps one I
24 forgot to send to Your Honor. And then there is
25 also State v. Sims, 48 S.C. 16, which I do believe

1 I provided to your law clerk yesterday.

2 Preventing us from being able to question her
3 about this under Rule 608(c), you know, is a
4 violation of Mr. Brown's confrontation rights, and
5 we ask that we be allowed to address that. That is
6 Issue Number 1.

7 MS. CAVANAUGH: Your Honor, as far as the fact
8 that the attempted murder charge, or that she is
9 facing a serious charge in this office,
10 specifically attempted murder, I think, first of
11 all, I think this particular instance is very
12 distinct from Smalls v. State. In that particular
13 case, it involves the prosecutor dismissing the
14 victim, which his testimony was required to convict
15 the Defendant, dismissing that charge, carjacking
16 charge, the morning of trial. And then that
17 particular victim at that point in time was willing
18 to testify. So that particular instance in State
19 v. Smalls is much different than our case. Our
20 case, we have Ms. Guyton, who is not a victim. She
21 is an eyewitness to -- she is a witness to conduct
22 occurring by the Defendant after the actual
23 shooting, which would corroborate the eyewitness's
24 testimony.

25 However, her particular arrest was two years

1 and four months after this incident. Investigators
2 met at her house -- well, at her grandmother's
3 house -- back in December of -- excuse me,
4 December 29th, 2018. And then she also provided
5 information to our office which was disclosed to
6 Defense counsel one week prior -- specifically on
7 April 6th of 2021 -- one week prior to the incident
8 that she was arrested for and to -- I mean, the
9 actual incident date, when the shooting allegedly
10 occurred.

11 Other than the fact that it exists, there
12 is -- first of all, we would argue that there is
13 absolutely -- she is not biased and she is not --
14 her -- the reason -- she doesn't have any bias in
15 this case because her statement provided to us was
16 a week before she was arrested.

17 Now, I understand that later on down the road
18 whenever her particular charge is dealt with,
19 perhaps -- I mean, this is a stretch, and I have no
20 knowledge of this, but perhaps it will be -- and
21 that is up to the Court -- that is what the cases
22 suggest, that even though her statement to police
23 occurred before her actual charge, perhaps down the
24 road, and this would be -- I'm not saying this
25 occurred at all, but perhaps down the road, you

1 know, the fact that she testified in this case
2 might come up later. I recognize that is why it is
3 relevant under 608(c), and it is particularly
4 admissible under State v. Sims.

5 However, as far as -- so I'm not -- you know,
6 because of -- I'm not -- because of that issue, I
7 do agree that the fact that she has a pending
8 charge, a pending serious charge, should be
9 admitted during her testimony. But, as far as -- I
10 mean, I just don't think that anything outside of
11 the fact that she has an attempted murder charge --
12 I mean, I'll even concede the fact that what the
13 charge is is admissible. But anything beyond that,
14 because the situation is so far removed from the
15 circumstances in State v. Sims and -- excuse me,
16 Smalls v. State, as well as the Gillian case she
17 referred to, I just don't think that much beyond
18 the fact that it is pending and that it carries,
19 you know, significant time should be admissible in
20 front of the jury, because it is so far removed
21 from the actual incident that we are in court here
22 today.

23 MS. YOUNG: And, Your Honor, if I may briefly
24 respond?

25 THE COURT: Yes, ma'am.

1 MS. YOUNG: I don't think that Ms. Cavanaugh
2 can determine whether Ms. Guyton is biased. That
3 is a jury determination. And we get to
4 cross-examine her about any potential bias under
5 608(c).

6 Gillian is directly on point and said, the
7 trial judge prohibited questioning the witness
8 about specific possible sentence because the
9 charges against Steele and Defendants were the
10 same. So the judge was concerned that they
11 couldn't know what the Defendant was potentially
12 facing. Here we don't even have that issue.

13 THE COURT: Well, it is somewhat similar.
14 That was my concern.

15 MS. YOUNG: Well, in Gillian, the Court of
16 Appeals said --

17 THE COURT: Hold on. Hold on one second. Let
18 me back up. I think you all have a right to
19 cross-examine her regarding the pending charge.
20 Obviously I let it in with her husband or
21 boyfriend, I can't remember what his classification
22 was. So, because I do think under 608(c) that the
23 law and the rules allow them to impeach her
24 regarding that.

25 So the issue is getting into the actual charge

1 and the actual time. And I'm still reading Gillian
2 regarding the charges being similar. That is my
3 only concern about the 30 years. And I'm assuming
4 you are about to say that in Gillian that they said
5 that it doesn't matter.

6 MS. YOUNG: That's correct, Your Honor. The
7 Defense attempted to elicit what the charge was and
8 what the sentence was. The trial judge did not
9 allow that in. And then the Court of Appeals said
10 that was an error, even though that notates the
11 exact same charge. Here it is not even the same
12 charge and it is not the same sentence. And the
13 fact that there was no plea offer and no
14 negotiation and no promise of leniency, that didn't
15 matter either. It is just a possibility of getting
16 some sort of leniency later down the road. So we
17 would ask that we would be allowed to ask -- I
18 mean, I don't intend to ask -- well, subject to
19 Issue Number 2, I do not intend to ask anything
20 other than, you know, that you are facing an
21 attempted murder charge and that that carries a
22 30-year sentence, a potential 30-year sentence.

23 THE COURT: All right.

24 MS. YOUNG: Right. And that their office is
25 prosecuting.

1 THE COURT: Under 608(c) and from reading -- I
2 haven't finished reading Gillian, but I am going to
3 allow them to cross-examine her regarding the
4 pending charge only as to the charge, amount of
5 time it carries, and the question has she been
6 offered anything. I mean, you all can ask that,
7 you can ask that. Whoever wants to ask it. Any
8 plea offers, anything been made in the case.

9 As far as the details of the case, I think
10 that is taking it too far. So she can't get up
11 there and try to explain. It is a pending case.
12 And trying to explain what happened -- first of
13 all, does she have an attorney that is going to be
14 here?

15 MS. CAVANAUGH: She doesn't have an attorney
16 that is going to be here, no.

17 THE COURT: Because I still have to consider
18 her rights also. And she doesn't have an attorney
19 here. But as far as getting into the actual
20 charge, we don't need to get into the actual
21 charge.

22 MS. YOUNG: I understand Your Honor's ruling,
23 and just for the record, and because I have
24 obtained new information since we discussed this
25 issue last, I would like to put on the record that

1 I sent Ms. Cavanaugh this morning Benjamin Parker's
2 work records that we submitted yesterday that
3 indicate he left his place of employment at
4 12:11 p.m. on the day that the incident occurred.

5 THE COURT: Which incident?

6 MS. YOUNG: The attempted murder incident.
7 And hear me out, Judge. I'm just putting it on the
8 record. I think it is relevant. I think she lied
9 to their office. I think that that is -- her
10 credibility is at issue. And if she told them a
11 lie during an interview for this case -- even
12 Ms. Cavanaugh asked her about it -- during an
13 interview for this case. And she told them that
14 Benjamin Parker was at work when this happened.
15 The incident report that was provided to us has an
16 incident time of 12:45. He left work at 12:11. I
17 don't -- I mean, you know --

18 THE COURT: I thought -- I mean, that is
19 really close in time, 12:11 and 12:45. I mean, she
20 didn't know he -- I mean, she may not have known.
21 I don't know the facts of this incident, but you
22 have got to remember how you are getting this in.
23 You are getting this in under 608(c) to show bias.
24 So that is the reason why we are allowing that in,
25 because I'm allowing that in is because she has a

1 pending charge. Now, to get into the facts of the
2 charge, you are going beyond the bias in this case.
3 Now --

4 MS. YOUNG: You are right, Your Honor. And
5 this is a wholly separate issue from bias. This is
6 a -- potentially a lie that she told the prosecutor
7 during an interview for this case. And so you are
8 right, I don't think it goes to bias, I think it
9 goes to her credibility and her character for
10 truthfulness. And we have a witness that will be
11 introduced that says that Benjamin Parker was there
12 and took the garbage out that contained a dirty air
13 filter and put it in a dumpster and then later the
14 police found that gun where the dirty air filter
15 was located.

16 So here they are two and a half years later
17 working together, covering up evidence,
18 potentially, and very similar to what we are
19 dealing with in our case. And if she lied to them
20 during an interview for this particular case, I do
21 think it is relevant. I think it goes to her
22 truthfulness and her credibility. And I would like
23 to ask her about it. And I understand Your Honor's
24 ruling, but given the new information, I wanted to
25 put it on the record and --

1 THE COURT: So you want to try that case in
2 here today too? That is -- I mean, basically that
3 is what you -- then if you do that, then you have
4 got to bring in the witness that puts him there --
5 not you, they will have to bring in the witness
6 that puts them there. Somebody -- I mean, you are
7 going to have to put in the record from the job
8 saying 12:11 versus 12:45 he left work, how long it
9 takes to get to the car, how long it takes to get
10 to the house. And I'm not -- we are not going to
11 try that case -- another case within this case. So
12 I think you, under 608(c), you can impeach her. I
13 don't know -- and she is shaking her head saying,
14 No, she didn't lie to us -- but I don't know.

15 MS. CAVANAUGH: Your Honor, that is what I
16 have relayed to them. Investigator Matt McCoy in
17 our office was sitting there when we were talking
18 to Jessica Guyton when this issue came up. Once
19 they brought the charge to my attention, I
20 requested the incident report. When Jessica Guyton
21 met with us last week I asked her, Was Benjamin
22 Parker present during -- either during this
23 incident or during this shooting or when this act
24 allegedly occurred? That was the nature of my
25 question, when the incident actually occurred. Not

1 the expanse of time that the investigators were
2 present. She said no. Investigator Matt McCoy was
3 in there, and he is available to testify, if need
4 be, to that effect. I told them that.

5 I also talked to Deputy Sullivan, who was the
6 arresting officer, and he has indicated to me that
7 while he was on the scene for approximately 30 to
8 45 minutes, a person, he doesn't know the name, but
9 a person who could have been her boyfriend did take
10 out an air filter.

11 So, Number 1, she didn't lie, so it has
12 nothing to do with her truthfulness. And, Number
13 2, the fact that perhaps Benjamin Parker came to
14 the home after the incident occurred is more
15 towards propensity evidence, which is not allowed
16 under 403(a).

17 THE COURT: All right.

18 MS. YOUNG: I completely understand the
19 Court's ruling. Out of an abundance of caution, I
20 would like to mark his work record as a Court's
21 Exhibit, obviously not for anything other than
22 that, as soon as I find them.

23 THE COURT: That's fine. All right. Yes, we
24 are not going to try another case in this case. It
25 is pending. You are going to put the Solicitor on

1 the stand to say what she just said, that he -- I
2 mean, that is, in essence, what you would have to
3 do, because the Solicitor is saying -- she did not
4 say -- she said -- she did not say he was never
5 there, she is just saying he wasn't there at the
6 time. That is what she just stated. So are you
7 going to put the Solicitor, McCoy, or everybody
8 else on the stand to -- and not you all, I guess
9 they would have to. Yes, that is why the rules
10 don't allow for us to get into that unless there
11 was some way to absolutely show that she is bias,
12 so.

13 So we will mark it as Court Exhibit 2.

14 MS. YOUNG: Thank you, Your Honor.

15 (WHEREUPON, Court's Exhibit No. 2 was
16 marked for identification only.)

17 THE COURT: All right, what else do we need to
18 take up?

19 And can you explain to her that she does not
20 need to try to explain what happened?

21 MS. CAVANAUGH: Yes, I will do that. She is
22 going to be the next witness, so if I can just go
23 tell her that.

24 THE COURT: And then what about, are we
25 proffering testimony on Rast, or are we going to do

1 it in front of the jury?

2 MS. CAVANAUGH: I mean, I certainly don't have
3 a problem proffering the testimony.

4 MS. DAVIS: I mean, based on his CV that I was
5 given, I would certainly have questions and
6 potentially object to his qualification as an
7 expert.

8 THE COURT: Is he here?

9 MS. CAVANAUGH: Yes, Your Honor, he is.

10 THE COURT: Is he next? Who is after -- is
11 that after Jessica?

12 MS. CAVANAUGH: Jessica Guyton will be -- I
13 mean, based on what they -- Jessica Guyton will
14 probably be a lengthy witness, but, yes, he is
15 after --

16 THE COURT: Maybe we will do him after lunch.
17 Let's go ahead and do her. I hate having the jury
18 wait. And then we can, while they are eating their
19 lunch, we can proffer his testimony.

20 (Pause.)

21 THE COURT: Are we ready? Bring them on in.

22 (WHEREUPON, the jury came into open
23 court at 12:26 p.m..)

24 THE COURT: All right, ladies and gentlemen of
25 the jury, we are ready for our next witness.

1 MS. CAVANAUGH: May it please the Court? The
2 State calls Jessica Guyton.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand.

6 (Witness complies.)

7 THE CLERK: State your full name, please.

8 THE WITNESS: Jessica Ellen Guyton.

9 THE CLERK: Spell your last name, please.

10 THE WITNESS: G-U-Y-T-O-N.

11 THE CLERK: Do you solemnly swear the
12 testimony you are about to give in this case will
13 be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Have a seat right up there. Thank
17 you.

18 (Witness seated.)

19 JESSICA GUYTON,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CAVANAUGH:

23 Q Good afternoon, Ms. Guyton. Remember, while you
24 are testifying, please speak clearly into the
25 microphone.

- 1 A (Nods affirmatively.)
- 2 Q Where are you from?
- 3 A Columbia.
- 4 Q And how long have you lived in Columbia?
- 5 A My whole life.
- 6 Q And do you know Benjamin Parker?
- 7 A Yes.
- 8 Q Okay. And who is Benjamin Parker to you?
- 9 A He is the father of my youngest child and the man
- 10 that I have been with for the past 14 years in a
- 11 relationship.
- 12 Q And how old is your youngest child?
- 13 A Five. Five.
- 14 Q Okay. Back on December 28th, 2018, where did you
- 15 live?
- 16 A On Meeting House Road in Hopkins.
- 17 Q Okay. And what was the specific address?
- 18 A [REDACTED]
- 19 Q And whose house was that?
- 20 A Mine and Ben's.
- 21 Q And who all lived with you there?
- 22 A My three children, my stepson Madori at the time,
- 23 and my mother, myself, and Ben.
- 24 Q Now, before we go into this incident, were you --
- 25 on April 13th, 2021, were you arrested for an

1 attempted murder charge?

2 A Yes.

3 Q And are you aware that that carries anywhere from
4 zero to -- up to 30 years?

5 A Yes.

6 Q And just to be clear, does that have anything to do
7 with the case that we are here for today?

8 A Correct. Not at all. It has nothing to do with
9 it.

10 Q Okay. Now, moving on. Where -- around that time,
11 December 28, 2018, where was -- were you working?

12 A I was.

13 Q Where?

14 A At Lexington Medical -- no, I had actually just
15 quit Lexington Medical Center that November.

16 Q Okay.

17 A Yes.

18 Q And was Ben -- do you call him Ben?

19 A Yes.

20 Q Was Ben working?

21 A Yes.

22 Q And where was he working?

23 A At CMC Co Metals in Cayce.

24 Q And around that time, do you remember what shift he
25 usually worked?

1 A He worked second shift, 3:00 p.m. to 11:30,
2 12:00 o'clock at night.

3 Q And was that the situation on December 28th, 2018?

4 A Yes.

5 Q On that particular evening, when do you first
6 remember seeing Ben after he got off work?

7 A Around 1:30 -- between 1:30 and 1:45 in the
8 morning. He came home and got in the bed.

9 Q Well, prior to that, did he come after work at all?

10 A Yes, he stopped by the house, and then he said he
11 was going to see some friends for a little while
12 before he came back home.

13 Q Did he -- was he -- did he change clothes, or
14 anything like that?

15 A No.

16 Q Okay. And later on that evening, did he come back
17 to the house? I mean, so you said -- I just want
18 to -- you said he came back around what time?

19 A Around -- well, between 1:30 and 1:45, because I
20 woke up about 1:19 and realized he wasn't home and
21 called him, and he said he was on the way home,
22 which he was home a few minutes after that.

23 Q Okay. Now, so around that time when he came back,
24 what were y'all -- I mean, 1:00 something in the
25 morning. What happened?

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 BY MS. CAVANAUGH:

3 Q You said he -- you just testified that Ben had just
4 walked in your bedroom door and was shaking and
5 crying and upset?

6 A Yes.

7 Q Okay. And did he say anything about what he had
8 just witnessed?

9 A Yes. I asked him what was wrong. And at that time
10 he said --

11 MS. YOUNG: Objection. Hearsay.

12 THE COURT: All right. The objection will be
13 overruled.

14 MS. CAVANAUGH: And, Your Honor, for the
15 record, I think this falls under excited utterance
16 exception to hearsay, 803(2).

17 THE COURT: All right. Yes, ma'am.

18 BY MS. CAVANAUGH:

19 Q And at that point, what did he say to you?

20 A He said, Big C just shot Don P in the head at the
21 end of the road.

22 Q Okay. And who is Don P? Do you know Don P?

23 A Yes. It is Donald Young. We call him Don P. That
24 is what we have always called him as a nickname.

25 Q And how do you know him?

1 A I have known him way before I knew Ben, just from
2 living in that area. My sister used to date a
3 cousin of his when I was a lot younger, about
4 middle school age.

5 Q And then, you know, without getting into detail,
6 did you know of Big C? Did you know Big C?

7 A Not very well. I just knew of him from being
8 around Ben sometimes.

9 Q And did you know Big C's real name?

10 A I knew his name was Correy. I didn't know his last
11 name until this took place.

12 Q Okay. After Ben came in and said that to you, what
13 did you see or observe next?

14 A Well, I started to scream, you know, but, you know,
15 because of what he just told me, and he threw his
16 hand over my mouth and told me to shut up because
17 he had followed him home and he was on the porch.

18 And at that time I looked towards the front
19 door, because our front door was to the left of our
20 bedroom door if I were to walk out of it, probably
21 only about five feet from the front door. And the
22 door was cracked some, so I could see a shadow on
23 the front porch at that time only. And Ben was
24 searching for the keys like in a frantic, saying he
25 had to hurry up and go. And when he grabbed the

1 keys and went to walk out the door, I opened the
2 door. That's when I seen Correy standing on the
3 front porch. And when I heard him -- as soon as
4 Ben walked out to the -- on the front porch, I
5 heard Correy tell Ben, If you snake me, I'm going
6 to kill you too.

7 Q Okay. Now, just to clarify, did you actually go
8 out to the front door?

9 A Not until after they pulled off. When I heard him
10 say that, I tried to hurry back in the bedroom and
11 put some clothes on, because I was in bed when they
12 woke me up, I wasn't dressed. And by the time I
13 did that and came back out, they -- I walked out on
14 front porch -- they were gone.

15 Q Okay. Now, where did you -- did you leave your
16 house at that point?

17 A Not at that point. Maybe about 20 or 30 minutes
18 later, Ben -- I called Ben as soon as I realized
19 they were gone and spoke with him. And he just
20 said he had to take him to -- had to take Correy to
21 Country Haven and drop him off. But he wasn't
22 coming right back. He continued to call me over
23 and over. And he sat on the phone for a good while
24 at one point. And I could tell -- I could hear it
25 in his voice that he was just nervous and he wanted

1 me to stay on the phone with him. But I asked him
2 if he was coming home, and at some point he told me
3 on the phone that he wouldn't let him leave.

4 MS. YOUNG: Objection, Your Honor. Hearsay.

5 THE COURT: All right. Sustained.

6 BY MS. CAVANAUGH:

7 Q Just to clarify, you can testify what you said --

8 A Yes.

9 Q -- but not what he said at this point?

10 A Okay.

11 Q So just getting back, did you go to -- did you
12 leave your house after that?

13 A Yes.

14 Q Okay. And where did you go?

15 A I went to the home that Correy was staying at on
16 Country Haven Road.

17 Q All right. And do you happen to know like whose
18 house that is?

19 A It was a young lady by the name of Akela.

20 Q Okay. And do you know what that house looks like?

21 A It is a mobile home, a doublewide mobile home.

22 Q And I am going to show you what is marked as
23 State's Exhibits 124 and 142. Do you recognize
24 those photographs?

25 A Yes.

1 Q What does it show?

2 A That shows Akela's house at the time on Country
3 Haven Road.

4 MS. CAVANAUGH: Your Honor, I would ask that
5 State's Exhibit 124 and 142 be admitted into
6 evidence.

7 THE COURT: 124 is already in evidence.

8 MS. CAVANAUGH: Oh, sorry. 124 is already in
9 evidence, that's correct. And 142 I am asking now
10 be entered.

11 THE COURT: Any objection?

12 MS. YOUNG: No objection, Your Honor.

13 THE COURT: It will be entered without
14 objection.

15 (WHEREUPON, State's Exhibit No. 142 was
16 marked for identification and received
17 into evidence.)

18 BY MS. CAVANAUGH:

19 Q Now, given what you just learned, why did you go to
20 that house?

21 A I was worried that he was going to do something to
22 Ben as well. I didn't know the specifics at that
23 point, but I can tell from Ben's reaction that he
24 was terrified.

25 Q Okay.

1 A And I just felt like if maybe I was there, nothing
2 would happen to him as well.

3 Q Okay. At some point did Ben leave that house?

4 A Yes. As soon as I pulled up to the house, I didn't
5 even get a chance to pull in the driveway, and he
6 hit the gas and backed out of the -- backed out of
7 the driveway and took off in the opposite direction
8 on Country Haven towards Weston Road, and I went
9 behind him.

10 Q Okay. And, let's see. Where did you go? Where
11 did y'all go after -- well, before I get any
12 further, did you see the Defendant out of Ben's car
13 that night?

14 A I seen -- it was dark, and I seen a figure from the
15 road that -- it was him. It was Correy standing
16 outside of the car closer to a burn barrel that was
17 lit at the time.

18 Q Okay. And you indicated that this picture --

19 MS. YOUNG: Objection. Leading.

20 THE COURT: Sustained.

21 BY MS. CAVANAUGH:

22 Q Let me rephrase. Where -- I'm showing you State's
23 Exhibit 142. Approximately where on that picture
24 did you see the Defendant?

25 A This is the driveway here on the other side, and he

1 was standing -- the car was in the driveway. He
2 pulled up next to the house. And the burn barrel
3 was on other side of the car. So he was standing
4 next to the burn barrel. It was maybe about
5 30 feet from the side of the house.

6 Q Okay. I guess the picture was actually the
7 driveway?

8 A Okay, yes. So right up in this area here close
9 to -- right beside the house, on the side of the
10 house.

11 Q After Ben -- after you saw Ben leave -- and what
12 did -- where did you go?

13 A I went behind him. We went home at that time.

14 Q And which house was that?

15 A [REDACTED] House Road.

16 Q And upon going back to Meeting House, I mean, did
17 y'all stay there that morning?

18 A We stayed there that morning, yes, ma'am.

19 Q Did you go to any other house after that?

20 A Later. Well, when we first got back home he
21 decided to call his dad, and he spoke with his dad.
22 His dad came --

23 THE COURT REPORTER: I'm sorry, his dad did
24 what?

25 A His dad came to the house.

1 MS. YOUNG: Objection.

2 THE COURT: Sustained.

3 BY MS. CAVANAUGH:

4 Q Don't testify to anything anybody else said.

5 A Yes, we went to my grandmother's house that
6 afternoon. And then after we called the detectives
7 and met with them there.

8 Q Okay. And to your recollection, did you speak to
9 them there?

10 A Yes.

11 Q After the investigators came to Julia Street -- was
12 it Julia Street?

13 A Yes.

14 Q And where was that? Whose house was that?

15 A My grandmother's.

16 Q Did you go anywhere -- did you or Ben go anywhere
17 with the investigators at that point?

18 A Yes. We went to the office on the corner of
19 Garners Ferry and Pineview Road.

20 Q And as far as you, yourself, being interviewed at
21 Pineview, were you interviewed at Pineview?

22 A No.

23 Q Who was -- was Ben interviewed at Pineview?

24 A Yes.

25 Q When he was being interviewed, were you present at

1 the first half of that interview?

2 A No. I was talking with one of the other
3 investigators, giving them the password to get into
4 our Verizon account so they could pull our phone
5 records.

6 Q And, I mean, at some point during the interview did
7 you go to the same room as Ben?

8 A No.

9 Q So you don't remember going into the same room with
10 Ben to help get the phone log?

11 A Yes, I did. I did. I did go to the computer and
12 help them get logged in, but it wasn't while the
13 interview was taking place. They, you know, they
14 took a break and had me come in and help them log
15 into the computer.

16 Q Okay. Now, did you and Ben come meet with myself
17 and an investigator employed with our office on
18 April 6th of 2021?

19 A Yes.

20 Q At that point did you relay --

21 MS. YOUNG: Objection. Leading.

22 THE COURT: Sustained.

23 BY MS. CAVANAUGH:

24 Q At that point -- at that meeting did you -- what
25 did you relate to us?

1 A The same thing I just told you. The same thing I
2 just testified. What happened the night or early
3 morning of December 28th, 29th.

4 Q Is it fair to say there was less detail provided in
5 that meeting?

6 A Yes.

7 Q And just to be clear, this meeting occurred before
8 your arrest?

9 MS. YOUNG: Objection. Leading.

10 BY MS. CAVANAUGH:

11 Q Was this meeting before --

12 THE COURT: Sustained. Rephrase the question.

13 BY MS. CAVANAUGH:

14 Q Was this meeting before the arrest we went over at
15 the beginning of --

16 A Yes.

17 Q -- your testimony?

18 A Yes.

19 Q And then last week did you come back to our office
20 and speak with us?

21 A Yes.

22 MS. CAVANAUGH: Beg the Court's indulgence.

23 (Pause.)

24 Q Thank you, Ms. Guyton. No further questions from
25 me.

1 THE COURT: Yes, ma'am.

2 MS. YOUNG: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. YOUNG:

5 Q Okay. Good afternoon, Ms. Guyton. I just want to
6 make sure I have this straight, okay? You said you
7 were asleep when Ben came home, right?

8 A Yes.

9 Q The second time -- or I guess maybe the third time
10 that night?

11 A Yes.

12 Q And he woke you up in the middle of the night?

13 A Yes.

14 Q Terrified?

15 A Yes.

16 Q Shaking?

17 A Yes.

18 Q And he rushes in the bedroom and tells you that
19 Correy shot somebody, shot Don P, right?

20 A I came out of the bedroom. Our son was asleep. He
21 shook me and had me come outside the bedroom to the
22 living room. Yes.

23 Q Okay. And you started to scream and he covered
24 your mouth?

25 A Yes.

- 1 Q And he said, Shh, he is out on the porch?
- 2 A Yes.
- 3 Q And you look out and you see him out on the porch?
- 4 A I didn't look out. I could look through the door,
5 and the door was slightly cracked. I seen a
6 shadow.
- 7 Q Okay. And later you were out on the porch and you
8 saw Correy there?
- 9 A No. When Ben opened the door to leave, when I seen
10 Correy standing there.
- 11 Q Okay. So you saw Correy on the porch?
- 12 A Yes, I did.
- 13 Q And Ben had just told you that he had shot someone
14 in the head?
- 15 A Yes.
- 16 Q And Ben had blood on him?
- 17 A I seen some.
- 18 Q And he is rushing around looking for his keys?
- 19 A Yes.
- 20 Q And you said he is terrified, right?
- 21 A Yes.
- 22 Q And he says he is going to drive Correy home?
- 23 A Yes.
- 24 Q And he gets in the car with Correy and leaves?
- 25 A Yes.

1 Q And after being woken up in the middle of the
2 night, right -- you were woken up in the middle of
3 the night?

4 A Yes.

5 Q By your terrified husband, right?

6 A (Nods affirmatively.)

7 Q You decide to get your own gun?

8 A I didn't say that.

9 Q You never told the Solicitor's Office that you
10 followed them to Akela's house with a gun?

11 A Yes, I did get my gun, and I put it in the car and
12 I went, because what happened to Donald was not
13 going to happen to Ben.

14 Q Okay. So you did get your gun?

15 A I did.

16 Q Okay. And you followed them at some point in a
17 separate car over there?

18 A I didn't follow them. I gave him time, and Correy
19 would not let him leave, is what I was told, so I
20 went behind him. I knew where Akela lived.

21 Q You didn't call 9-1-1?

22 A No.

23 Q You didn't call the police?

24 A No. I didn't know -- I did not know --

25 Q How long have you known Akela?

1 A I did not know the specifics. That is all Ben said
2 to me. I didn't know exactly what had happened.
3 That is why I was trying to get back to Ben, to see
4 what had happened, what was really going on.
5 Q He told you Correy shot someone in the head?
6 A Yes.
7 Q And you didn't call the police?
8 A It was 3:30 in the morning. I didn't know if
9 Donald was alive. I didn't know if they had
10 already called the police. I didn't know what had
11 happened.
12 Q So you didn't call the police?
13 A No.
14 Q Okay. And how long were you at Akela's? Or how
15 long were they at Akela's? I apologize. Ben?
16 A It was around 30, 45 minutes. Had to have been.
17 Q Okay. And you said you called Ben at some point?
18 A I called him after I put my clothes on and walked
19 down and seen they were gone already.
20 Q What number did you call him from?
21 A My cell phone number.
22 Q And what is that number?
23 A I can't -- it is an old number. I don't remember.
24 I have had several numbers since then. I do not
25 remember that phone number.

1 Q So after you followed them to Akela's, did they
2 ever see you?

3 A I didn't follow them.

4 Q I'm sorry, after you went to Akela's, did they ever
5 see you? Did you pull in the driveway?

6 A I did not pull in the driveway. I pulled up at the
7 end of the driveway, and I seen Ben's reverse
8 lights come on, and he started fastly backing out
9 of the driveway.

10 Q Okay. And you said y'all left and drove towards
11 Weston?

12 A Yes.

13 Q And, in fact, you don't call the police until about
14 12 hours after all this happened, right?

15 A Yes. Ben was scared. He didn't know what to do.

16 Q So scared he didn't call the police?

17 A I mean, the man he just seen do that was right
18 around the corner from our house and our family.

19 Q Right.

20 A We had no idea what he was capable of doing. He
21 had just told him --

22 Q So you didn't call the police?

23 THE COURT: Hold on, let her finish.

24 A I did not call the police because I heard him tell
25 Ben if he snaked him, he is going to kill him too.

- 1 Q Later that day, on the 29th, do you recall Ben
2 getting a phone call from Correy and it was on
3 speaker phone?
- 4 A Several phone calls from Correy.
- 5 Q Do you remember overhearing one when it was on
6 speaker phone where Correy said, If it come down to
7 it, you know you ain't had nothing to do with it?
- 8 A I remember him saying that, yes.
- 9 Q All right, let's talk about what happened after you
10 finally called the police 12 hours later. They
11 come to you, to your grandmother's house, correct?
- 12 A Yes.
- 13 Q And who did you talk to while you were there?
- 14 A The investigators that came. I can't remember
15 their names. I only spoke with them that one time.
- 16 Q You don't see them in the courtroom?
- 17 A The one that I remember I don't see in the
18 courtroom.
- 19 Q Okay. And did you tell them all this?
- 20 A Yes, I told them everything.
- 21 Q Okay. So you told them that Ben woke you up in the
22 middle of the night?
- 23 A Yes.
- 24 Q And that he told you Correy had just shot someone?
- 25 A Yes.

- 1 Q And that you saw blood on him?
- 2 A Yes.
- 3 Q And that Correy was on your front porch?
- 4 A Yes.
- 5 Q You told them all that really important stuff about
- 6 the night, right?
- 7 A Yes.
- 8 Q What -- was anybody wearing -- was there an officer
- 9 there with a body worn camera?
- 10 A No.
- 11 Q Okay. Did anyone take down notes while they were
- 12 talking to you?
- 13 A They had a notepad, yes.
- 14 Q So they wrote down what you told them?
- 15 A They were more interested in what Ben was saying
- 16 since he was the one there in the situation. They
- 17 wanted to hear it from him, not from me.
- 18 Q Okay. So, but you had important information that
- 19 you were providing to them too, right?
- 20 A Yes.
- 21 Q Okay. And you followed them to headquarters or did
- 22 you ride in their car?
- 23 A We rode with them.
- 24 Q Okay. You rode -- you both rode with the police to
- 25 headquarters?

- 1 A Yes.
- 2 Q And when you got there, you waited in the lobby
- 3 while they talked to Ben?
- 4 A Correct.
- 5 Q And then at some point they asked you to come in
- 6 and help with the phone because it was in your
- 7 name?
- 8 A Yes.
- 9 Q And the investigators never took you to an
- 10 interview room?
- 11 A No.
- 12 Q They never asked you to write a handwritten
- 13 statement?
- 14 A No.
- 15 Q Never wrote a statement for you and asked you to
- 16 sign it?
- 17 A No.
- 18 Q They didn't ask you to look at any pictures or
- 19 identify anyone that you recognized?
- 20 A No.
- 21 Q They didn't show you any photo lineups?
- 22 A No.
- 23 Q They didn't do anything to record the conversation
- 24 or an interview with you?
- 25 A No.

1 MS. CAVANAUGH: Objection.

2 THE COURT: What is the objection?

3 MS. CAVANAUGH: Speculation, unless she knows
4 exactly what the investigators did as far as
5 investigation.

6 Q You didn't see them --

7 THE COURT: Hold on. The objection is
8 sustained. Please rephrase the question.

9 MS. YOUNG: Yes, Your Honor.

10 BY MS. YOUNG:

11 Q So you didn't see them with a camera?

12 A Correct.

13 Q You didn't see them write anything down?

14 A They were writing the whole time we were talking to
15 them, but what they wrote I don't know.

16 Q And at headquarters did anyone speak with you and
17 write stuff down?

18 A One of the investigators that spoke with me, he had
19 his notepad. What he wrote I don't know. I
20 don't --

21 Q Where was that? Where was he speaking to you?

22 A In the lobby, or the room they had me sitting in.
23 It looked like a lobby.

24 Q Okay. And they were writing stuff down?

25 A Correct. I don't know if he was just writing down

1 my passwords that I was giving him. I have no idea
2 what he was writing down. But that is what we were
3 discussing at the time.

4 Q And then Ms. Cavanaugh just asked you about meeting
5 with the Solicitor's Office in April of this year?

6 A Correct.

7 Q That was two and a half years after the incident?

8 A Yes.

9 Q And let me back up. Sorry, let me back up a
10 minute. Let me first talk about you and Ben's
11 relationship. Y'all have been together for 14
12 years?

13 A Correct.

14 Q Right? And you said that you are still together?

15 A Yes.

16 Q And you have a child together?

17 A Yes.

18 Q And you guys live together?

19 A Yes.

20 Q You consider him your husband?

21 A Correct.

22 Q And your Facebook page even says like Jessica, Mrs.
23 Parker?

24 A It does.

25 Q And you guys look out for one another?

1 A Yes.

2 Q And the first time that the State ever asked you
3 any questions about this case in April of this
4 year, you and Ben are sitting in the room together,
5 right?

6 A Yes.

7 Q And that was in April, two and a half years later?

8 A Yes.

9 Q How long were you in there?

10 A We were there for over an hour.

11 Q Okay. And in April you didn't tell Ms. Cavanaugh
12 what Ben did with the clothes he was wearing that
13 night?

14 A No one asked.

15 Q And you didn't tell them that Ben was running
16 around looking for his keys?

17 A I'm not sure if I told them that or not. I know we
18 discussed he was in a panic and he was very scared
19 at the time and that he left. I'm not sure if I
20 told them he left and came looking for the keys or
21 what I said. I answered their questions.

22 Q And then in April when they asked you these
23 questions, that was the first time that you told
24 anyone that you got a gun and got in your car and
25 went to Akela's house, right?

- 1 A Yes.
- 2 Q And when you got in your car and you went to
- 3 Akela's house, you are saying you didn't follow
- 4 them right away?
- 5 A No.
- 6 Q And that is not what you told them?
- 7 A I told them I didn't follow them right away. The
- 8 phone records should show that me and Ben were on
- 9 the phone several times for several minutes during
- 10 that time that we were -- before I left the house.
- 11 Q And also for the first time in two and a half
- 12 years, you mention the seeing a figure in the dark
- 13 by a burn barrel?
- 14 A Correct. I mean, it was light from the fire. It
- 15 was lit. I could clearly tell it was Correy.
- 16 Q Okay. And you told them that two and a half years
- 17 later for the first time?
- 18 A Yes.
- 19 Q And then you met again with the State last week and
- 20 told them for the first time that Ben had blood on
- 21 him?
- 22 A No. I told the officers when I first spoke with
- 23 them that he had blood on him.
- 24 Q Right. When you weren't interviewed?
- 25 A No.

1 Q And it looked like he had peed on himself?

2 A He had urinated on hisself.

3 Q And you told the Solicitors that for the first time
4 two and a half years ago, right?

5 A Two and a half --

6 Q I mean, two and a half years later, right?

7 A Yes, but that is when we first met with someone --

8 Q Right.

9 A -- to let them know what happened.

10 Q Right. The first time you met with someone to tell
11 them what happened was two and a half years after
12 this incident occurred, right?

13 A Yes. Not because of us, but because of Corona and
14 things were shut down. They -- that is when we
15 finally got, you know, reached out and got to talk
16 to somebody.

17 Q Okay. And then you -- I think you said you met
18 with the State again last week. And you never
19 agreed to speak to our investigator, right?

20 A No.

21 Q Yes. And you remember that we had an investigator
22 come out and you refused to talk to us?

23 A Yes.

24 Q And, in fact, when they tried to talk to Ben, you
25 started yelling and telling them that Ben wasn't

1 going to talk to them?

2 A Correct.

3 Q And that he didn't have to talk to them?

4 A Right.

5 Q But you did talk to the State?

6 A Yes.

7 Q In April?

8 A Yes.

9 Q And then again last week?

10 A Right.

11 Q And you currently have a pending charge for
12 attempted murder?

13 A Yes.

14 Q Right? That I think Ms. Cavanaugh brought up
15 carries zero to 30 years?

16 A Yes.

17 Q And it is being prosecuted by their office, right?

18 A I did not know that.

19 Q Were you arrested in Richland County?

20 A Yes. But I don't know how that works. I never
21 been in trouble before.

22 MS. YOUNG: One second, Your Honor.

23 (Pause.)

24 MS. YOUNG: I have nothing further.

25 THE COURT: Redirect?

1 MS. CAVANAUGH: Beg the Court's indulgence.

2 (Pause.)

3 MS. CAVANAUGH: Nothing further. Thank you,
4 Ms. Guyton.

5 THE COURT: All right, you may step down. Any
6 objection to this witness being excused?

7 MS. YOUNG: No, Your Honor.

8 MS. CAVANAUGH: No.

9 THE COURT: You are free to leave.

10 (Witness steps down and is excused.)

11 THE COURT: All right, let me see you all.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 THE COURT: All right, ladies and gentlemen of
16 the jury, our next witness is going to take a
17 little bit of time, so we are going to go ahead
18 and -- the food is supposed to be here at 1:00
19 o'clock, and it is -- it should be hopefully
20 pulling in -- it is about 1:05. The clerk was just
21 saying it was not here just yet. So I am going to
22 send you all back to the jury room. And what we
23 are going to do is, the lunch will be in boxes.
24 Once the boxed lunch gets here, I will send you
25 down to the jury assembly room. That way you will

1 have room enough to spread out -- there is a little
2 outdoors area there -- and eat your lunch. And
3 then we'll have you back up here probably around
4 2:00 o'clock. That just depends on how long it
5 takes you to eat. If it takes longer, then I'll
6 take all that into consideration. But we'll bring
7 you all up.

8 Mr. Foreman, we will probably check with you
9 to make sure everyone is done eating. And then
10 we'll start back shortly thereafter.

11 All right, enjoy your lunch. Thank you.

12 (WHEREUPON, the jury retires for lunch
13 at 1:06 p.m.)

14 THE COURT: All right. So I think we need to
15 put on the record, there was an objection, hearsay
16 objection under 803 by the Defense. The objection
17 was overruled pursuant to 803(2), I said (a)(2),
18 the excited utterance exception. And do we need to
19 put anything else on the record regarding that?

20 MS. YOUNG: Your Honor, just briefly, that I
21 think I addressed it a little bit at the bench,
22 but, you know, she was woken up, she doesn't have
23 any idea when in time this event had happened.
24 There is no basis or foundation for knowing that it
25 was an excited utterance. I understand the Court's

1 ruling and just wanted to put that on the record.

2 THE COURT: Yes.

3 MS. CAVANAUGH: And in response, Your Honor,
4 yesterday -- I think it was yesterday -- when
5 Benjamin Parker testified, he indicated that he
6 went straight home, running from the shooting
7 location, and went into his home at [REDACTED]
8 House Road, saw Jessica, spoke to her, which would
9 be, you know -- I mean, that was already admitted
10 into evidence. And then she just described that
11 same interaction that he testified to yesterday,
12 which would fall under -- I mean, according to her,
13 he is terrified and he was shaking, he peed on
14 himself. I think that clearly falls under 803(2),
15 the excited utterance exception.

16 THE COURT: All right. I would agree. And it
17 says, if you read it, it says, a person under the
18 stress of an excited utterance caused by an event
19 or condition. I'm not sure she has to know what
20 the event or the condition was. The issue is
21 whether or not he was under stress of the excited
22 utterance caused by the event or the condition.

23 All right. Thank you. So he will be here at
24 1:30?

25 MS. CAVANAUGH: Yes, Your Honor.

1 THE COURT: All right, so we will probably --
2 I think the food is here. I smell food. Or maybe
3 I'm just hungry. But I think I smell food.

4 THE BAILIFF: It's here.

5 THE COURT: Just so you all will know, they
6 will be in the jury assembly room, and I know your
7 office is right there, so be careful. They are
8 going to go down there and have lunch. And then we
9 are going to bring them back up as soon as they
10 finish. Well, once we get through proffering the
11 testimony of Ben Rast, Investigator Rast. We will
12 proffer the testimony, and then we'll be ready to
13 start back maybe close to 2:00 o'clock.

14 All right, thank you. Y'all have a good
15 lunch. And if there is anything else we need to
16 take up, please let me know by 1:30.

17 MS. YOUNG: I'm sorry, when are we supposed to
18 be back?

19 THE COURT: 1:30 is what time she said --
20 let's say 1:35 since we have to get lunch too.
21 Let's say about 1:40. How long do you think it
22 will take to proffer?

23 MS. CAVANAUGH: The proffer of the testimony,
24 my portion will be about 20 minutes maybe, if that.

25 THE COURT: All right, let's just say 1:40.

1 That way y'all will have time to grab something to
2 eat.

3 (WHEREUPON, a break was taken.)

4 THE COURT: All right. Are we ready?

5 MS. CAVANAUGH: Yes, Your Honor. At this time
6 we are going to be proffering Investigator Brandon
7 Rast's testimony.

8 The State would call Investigator Brandon
9 Rast.

10 (Witness approaches.)

11 THE COURT: Do you swear to tell the truth,
12 the whole truth, and nothing but the truth, so help
13 you God?

14 THE WITNESS: I do.

15 THE COURT: Thank you. You can pull your mask
16 down once you get on the witness stand.

17 (Witness seated.)

18 THE COURT: All right, yes, ma'am?

19 BRANDON RAST,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION(PROFFER)

22 BY MS. CAVANAUGH:

23 Q Investigator Rast, where are you employed? Is it
24 Investigator?

25 A It is. Senior investigator.

1 Q Senior investigator. Where are you employed?

2 A Richland County Sheriff's Department.

3 Q And what is your current role there?

4 A I am a senior investigator for digital forensics
5 and technical services.

6 Q Okay. And how long have you been in that specific
7 role?

8 A Almost four years.

9 Q So prior to working in that role, what -- did you
10 work at the Sheriff's Department?

11 A I did, for 17 -- almost 17 years now.

12 Q Okay. And prior to being in your current role,
13 what were you -- describe your rank through the
14 Sheriff's Department.

15 A I was a patrol deputy for about five and a half
16 years, and then I went into investigations, so
17 burglary investigations, major crimes, homicides,
18 special victims unit. And then -- I have been an
19 investigator for ten years. Seven of those have
20 been a case work investigator, the past four have
21 been as a technical services investigator.

22 Q Okay. As part of your role in technical services,
23 what are some of your -- what are your main duties?

24 A My main duties are to receive digital devices,
25 smart phones, flip phones, tablets, other digital

1 devices that are evidence in a crime and to process
2 those. By processing, I would achieve an
3 extraction from those using forensic devices and
4 generate reports through analytical software. We
5 also enhance video, and process that as well.

6 Q As far as it relates to extractions of the cellular
7 devices, before you actually perform an extraction,
8 what do you have to have?

9 A Well, first we have to have either a consent to
10 search the device or a search warrant. Once we
11 have that, then we have to make sure that --
12 preferably with a pass code, but that is not always
13 necessary.

14 Q Okay. And once you have that information, how --
15 can you describe the actual extraction process?

16 A Sure. The extraction process is device specific.
17 If it is -- we have two different pieces of
18 forensic hardware. One is for android based
19 operating system devices, such as Samsung, LG,
20 Kyocera phones. Then we have another device that
21 we use for Apple devices, IOS devices, such as
22 iPads and iPhones. Once we determine what kind of
23 device it is, we make sure that the device has a
24 charge. We will unlock it if we are able, you
25 know, if we have a password. We will place the

1 phone into its proper state so that the phone can
2 communicate with the forensic device and the
3 forensic device can communicate with the phone. So
4 we place it on the correct device, whichever it
5 happens to be, and we conduct the extraction
6 process.

7 Q When you are talking about the forensic device, is
8 that the two different hardware systems you
9 referred to?

10 A Correct, yes.

11 Q And go ahead. I didn't mean to interrupt you.

12 A Sure. And so once we achieve that extraction, it
13 is -- how that device stores the extraction depends
14 on which forensic device we are using. The one we
15 use for iPhone and Apple is, that data is locally
16 stored on the device itself, and then we use a
17 proxy to go to the actual website that is within
18 our internal server and we retrieve the data from
19 that and bring it over to our computer where we
20 load it into analytic software. That software is
21 called Cellebrite Physical Analyzer. If it is an
22 android device, that piece of forensic hardware
23 actually stores the extraction onto an external
24 hard drive such as this. And we unplug that
25 hardware, take it over to our computer, pull it

1 from the external hard drive, and load the
2 extraction in the same software, Cellebrite
3 Physical Analyzer, where we then will generate a
4 report.

5 Q Okay. And as far as the flip phone -- you just
6 mentioned two different hardware devices. What
7 would a flip phone -- which device would you use
8 for a flip phone?

9 A We would use the Cellebrite UFED Touch2, which is
10 the same device we would use for android based
11 devices. That particular piece of hardware best
12 supports flip phones.

13 Q And as far as -- well, in this particular case, a
14 flip phone, what did you -- excuse me, what type of
15 data would the extraction of a flip phone produce?

16 A So, data we typically see in a flip phone would be
17 more basic data than what we would see in a smart
18 phone. And the main reason is that a flip phone
19 just doesn't have the same amount of memory
20 capability and capacity as a smart phone. So we
21 would typically get a contact list, call logs, text
22 messages, photographs or videos if the phone has a
23 camera installed in it. And that is generally the
24 limit of what we would get from a flip phone.

25 Q Okay. And does the data you receive also include

1 what number is associated with that device?

2 A Yes, it does include a device identification data.

3 Q All right. Now, when you perform an extraction,
4 are you trying to get -- I mean, within the limits
5 of the search warrant or -- I mean, the consent, I
6 mean, are you trying -- how do you -- do you get
7 all the data associated with that phone from the
8 extraction?

9 A That is the goal. We try to get as much data as we
10 possibly can. Everything possible we get. We
11 start with efforts to get everything, and we will
12 take everything that we can get.

13 Q All right. And are you able to then -- do you
14 always -- so are there two types of extractions
15 that are performed?

16 A Yes. Generally.

17 Q Do you know what I mean, like logical versus
18 physical?

19 A Yes. Generally there is two types of extractions
20 that we refer to, logical extractions or physical
21 extractions. A physical extraction is an
22 extraction of the full file system of the phone,
23 and that is -- in an android phone, that is
24 becoming increasingly more difficult to achieve.
25 And in an Apple based phone, that is not as

1 difficult to achieve. But a logical extraction
2 gets a lot of what is on the phone, but it usually
3 does not obtain any of the deleted data.

4 Q Okay. So along those lines, if data is deleted
5 from a flip phone, are you always able to get --
6 are you able to get -- are you always able to get
7 that deleted data?

8 A No.

9 Q And why would that -- what factors go into that?

10 THE COURT: Excuse me one second. I just have
11 a question. I thought we were doing this for
12 purposes of 702 regarding his qualifications.

13 MS. CAVANAUGH: I can move on to that. I was
14 just trying to make sure that I established a
15 foundation that he has knowledge within this area.

16 THE COURT: Okay. I know, but I think under
17 702 --

18 MS. CAVANAUGH: I am definitely getting to
19 that, Your Honor.

20 THE COURT: Okay. Okay. All right.

21 BY MS. CAVANAUGH:

22 Q So, moving along, you obviously have a lot of
23 knowledge as it relates to cellular extractions?

24 A Yes, ma'am.

25 Q Have you had training in this field?

1 A I have had extensive training in this field.

2 Q Okay. And can you go over your training?

3 A Certainly. I started my training in November of
4 2017 with several courses through the National
5 White Collar Crime Center, also known as NWC3.
6 That training included an introduction to
7 previewing, which gave me an education of
8 fundamentals of best practices for digital forensic
9 extractions, evidence collection, and preparing
10 devices for extraction. I also had training in
11 identifying and seizing electronic evidence, which
12 includes recognizing various types of electronic
13 evidence and determining a potential to store data
14 that may have evidentiary value to investigations.
15 Also in criminal cases the best practices to
16 legally acquire devices and the data contained in
17 the devices themselves. I also had training in how
18 computers work and store data, how they -- how
19 computers and chips executed by phones right store
20 eliminated data. I have had training in Apple
21 devices overview, encryption techniques, and how
22 encryption works. I have also had training in
23 advanced digital forensics analysis for IOS and
24 android. That particular course was a five-day
25 course. I am also professionally certified as a

1 Cellebrite certified operator. Cellebrite is the
2 company that manufactures the device that we use to
3 do extractions for android devices, as well as the
4 software which I learned when I was professionally
5 certified as a Cellebrite certified physical
6 analyst using the Cellebrite Physical Analyzer to
7 analyze the extraction data.

8 Q Okay. And when did you become certified in that
9 particular -- as a Cellebrite certified operator?

10 A In April of 2019.

11 Q Okay. And prior to that you had training as a --
12 I mean, prior to that, when was the training that
13 you described right before that?

14 A I took courses through November of 2017 and in
15 January of 2019.

16 Q Okay. And, I mean, do you have on-the-job training
17 as well?

18 A Of course, yes, ma'am.

19 Q And are you -- do you keep up to date on whether or
20 not any of the hardware or software that you are
21 using that you need to be aware of any changes?

22 A Yes.

23 Q Or updated?

24 A Absolutely.

25 Q And, just briefly, as part of your preparation for

1 this trial, did you have an opportunity to review
2 the extractions you performed?

3 A I did.

4 MS. CAVANAUGH: Beg the Court's indulgence.
5 (Pause.)

6 BY MS. CAVANAUGH:

7 Q When you perform -- these software programs that
8 you refer to, are you able to add to the device?

9 A No. These devices -- the hardware, the forensic
10 hardware we use is right protected. The only thing
11 that it places on the phone is when we plug the
12 phone into it, it installs a small client that just
13 allows the phone itself to communicate with the
14 hardware device and for the hardware device to
15 communicate with the phone. That way the phone
16 is -- the phone gives permission to the hardware
17 device for the hardware device to draw out and
18 extract the data from the phone and store it on a
19 hard drive. And then once that procedure is
20 finished, it automatically removes that entire
21 client from the phone.

22 Q Okay. And is the integrity of the phone data
23 maintained during that process you just described?

24 A Yes.

25 MS. CAVANAUGH: Beg the Court's indulgence.

1 (Pause.)

2 BY MS. CAVANAUGH:

3 Q And approximately how many times did you perform
4 extractions over the course -- in your role in the
5 forensic technology department of the Sheriff's
6 Department?

7 A Over the course of four years, I have processed
8 probably over 800 android and IOS devices, flip
9 phones.

10 MS. DAVIS: Your Honor, if I could ask, what
11 area she is trying to qualify him in?

12 MS. CAVANAUGH: Cellular device extraction.

13 MS. DAVIS: Your Honor, if she is only
14 qualifying him in extractions, and nothing else,
15 and I actually do not have any questions. Prior to
16 the break she had indicated it was a different
17 area.

18 THE COURT: So he is going to testify as to
19 what he pulled off the phone?

20 MS. CAVANAUGH: Yes. And his knowledge
21 related to how things are stored and what the items
22 are. I mean, I'm not getting into anything outside
23 of what the particular hardware or software,
24 whatever, that he uses to pull from the phone. I
25 mean, how -- and he is able to interpret that data

1 based on his knowledge in the field. I can ask
2 more questions if you would like clarification
3 regarding that issue.

4 MS. DAVIS: Well, no. If it is extraction --
5 I'm trying -- if it is only extraction, and he is
6 testifying that he did an extraction, and this is
7 how an extraction works, and this is the type of
8 data we would get, then I don't have any questions.
9 If it is going beyond that in terms of him trying
10 to say he can analyze information is what I'm --
11 that is where I would be objecting.

12 THE COURT: When you mean analyze, you mean
13 him testifying as to what he got off the phone?

14 MS. DAVIS: In terms of interpretation. I
15 mean, I have no idea what he is going to testify to
16 in terms of substance, so I was just kind of asking
17 at this point.

18 MS. CAVANAUGH: I am happy to follow up with
19 additional questions related to that.

20 THE COURT: Okay. Go ahead.

21 BY MS. CAVANAUGH:

22 Q Investigator Rast, as far as -- with videos
23 specific to either android or Apple devices -- can
24 you go over what exactly is meant by an android
25 device?

1 A Sure. So an android device is any -- it is any
2 digital communication device that runs the android
3 operating system. Android operating system is
4 maintained by Google and is an open source
5 operating system that developers have access to
6 that they can modify as it suits their particular
7 devices that they manufacture.

8 Q Let me -- I'll clarify my question.

9 A Sure.

10 Q Does an android device encompass a flip phone?

11 A Yes, almost all the phones they are android based.

12 Q And what about anything -- anything that is
13 classified as a smart phone other than an Apple
14 phone, would that --

15 A It would be an android device, yes, ma'am.

16 Q Okay. Now, as far as android devices and how the
17 software program UFED, right, or is it Cellebrite?

18 A Cellebrite UFED is the hardware we use to do
19 extractions for an android device, yes.

20 Q Are you educated in how videos are stored?

21 A Yes.

22 Q Okay. Do you have -- in your training and your
23 experience in this area, do you have knowledge that
24 relates to what is meant by created date, modified
25 dates, and what is the other -- it is created --

1 A It is date, modified, and then you have got viewed.

2 Q Viewed, yes. Are you kind of up to date and do you
3 have knowledge about what those particular -- how
4 that -- how that -- let's see -- what that means
5 about the video?

6 A Yes.

7 Q Okay. And how -- where on the actual device it is
8 stored?

9 A Yes.

10 Q All right. And how -- does the program that you
11 use, does it store videos in a certain folder?

12 A The program that we use doesn't store videos at
13 all. It just parses that data.

14 Q Okay.

15 A And shows us where it is stored in the phone.

16 Q Okay. That is exactly what I was trying to get to.
17 And if -- I'll just cut to the chase. If a video
18 has a created date, modified date, or created date,
19 does that necessarily mean that it was created by
20 that phone?

21 A Not necessarily, no.

22 Q Okay. And does that necessarily mean that it was
23 created -- well, explain that. Explain that.

24 A Okay. So created can mean that it was created by
25 the phone, but typically what it means is that that

1 is when that particular piece of data, which we see
2 as a video, was created in the file system of the
3 phone. So whether that is a video that is taken by
4 the phone itself, whether that is a video that is
5 taken through an app on the phone itself, or a
6 video that is received from someone else contained
7 in the body of a message either through the native
8 messaging app or another app.

9 Q Okay. So how are you able to tell if the device
10 actually created the video?

11 A If the device created the video, usually if it is
12 taken on the device with the native camera
13 function, the video will appear in multiple places.
14 And, you know, and that is how we cross-check that.
15 If you see a created date and then can find the
16 actual file in the phone and then corroborate that.
17 But if it is not a -- if it is a photo or a video
18 that is taken through an app, then it may,
19 depending on the device, and it depends on make and
20 model. It may appear elsewhere in the video, or in
21 the phone, but often times it is only contained
22 within an app's database. So if a video is taken
23 through a third party app using the permissions
24 given to that app to use that phone's video or
25 photographic capability, then it is placed in that

1 app's particular folder, not necessarily in the
2 phone's native gallery.

3 Q And you know all that from your training?

4 A Yes.

5 Q From your education in the field?

6 A Yes.

7 Q And through job experience?

8 A Yes.

9 Q And through being kept up to date on -- as a
10 certified Cellebrite operator?

11 A Operator and physical analyst.

12 Q And physical analyst.

13 MS. CAVANAUGH: I think that covers what
14 Ms. Davis might be suggesting.

15 THE COURT: All right. Any voir dire from the
16 Defense?

17 MS. DAVIS: Just briefly, Your Honor.

18 CROSS-EXAMINATION(PROFFER)

19 BY MS. DAVIS:

20 Q Can you tell us the difference between being a
21 Cellebrite certified operator and a physical
22 analyst?

23 A Yes. A Cellebrite certified operator is where you
24 receive training and you demonstrate proficiency in
25 being able to conduct the actual process of an

1 extraction. It includes placing the phone in its
2 correct configuration that will allow it to
3 communicate to the device, performing the
4 extraction, identifying the phone, and choosing
5 which available extractions that you would like,
6 performing the extractions. That is the operator
7 portion.

8 The physical analyst portion is what happens
9 afterwards, taking that data, placing it, or
10 loading it in the Cellebrite Physical Analyzer for
11 it to be parsed, and then knowing how to navigate
12 the physical analyzer software and recognizing what
13 the various parts of the software do and how data
14 is stored in that software, how to cross-check
15 information found throughout the phone with other
16 parts as they show up within the parsed data,
17 interpret that as well.

18 Q I'm sorry?

19 A And interpret that.

20 Q Okay. And so that is the class you had that was a
21 week long in April of 2019?

22 A Yes.

23 Q And the rest of the stuff on your training list, it
24 looks like the focus was on the actual collection
25 and storage of information?

1 A Yes, most of the -- so up until January of 2019
2 when I attended a week long -- a separate week long
3 class in advanced digital forensic analysis for IOS
4 and android, it was preparatory training to further
5 familiarize myself with how these phones operate
6 individually.

7 Q And have you been qualified as an expert in
8 cellular device extractions before?

9 A No.

10 MS. DAVIS: No further questions, Your Honor.
11 I do have an objection.

12 THE COURT: All right, yes, ma'am. I will be
13 glad to hear from you.

14 MS. DAVIS: Your Honor, under 702 I do not
15 believe he has met the requirement of a qualified
16 expert based on his knowledge, skill, experience,
17 training, or education. All of his training is
18 regarding actual storage of information -- not all
19 of it, most of it is regarding storage and
20 extracting the data itself, which would be
21 consistent with the Cellebrite certified operator,
22 that he is a certified Cellebrite -- certified
23 operator.

24 The only classes that he lists on here and
25 that he discussed today in the actual analysis,

1 which is taking the next step beyond saying, I was
2 able to extract the data and I know how it is
3 stored, was a five day class that he started in
4 January 2019, which he said was a prep training,
5 and then he took a week long class for the
6 Cellebrite certified physical analyst.

7 Your Honor, under State v. Hamrick, I believe
8 it was, the Court found that, you know, a week long
9 class in and of itself is not sufficient. In that
10 case it was a CSI investigator that they found
11 that, The trial court failed to make the necessary
12 finding that they established foundation as
13 required by 702. After the objection of the person
14 being qualified as an expert based on their
15 knowledge, skill, training, and education, he was
16 limited to a few courses over a period of several
17 years. He had no other training or education that
18 would otherwise demonstrate a qualified expert to
19 give an opinion. And it just went on to say that a
20 law enforcement officer attended several classes on
21 the subject and did not possess the necessary
22 qualifications to satisfy the qualification expert
23 element under 702.

24 So I would say just based on his one class or
25 the week long class in terms of the analyst part is

1 what I'm saying that he does not meet the standard
2 under 702 to do analysis.

3 THE COURT: Let me ask you this. Are you
4 objecting to him testifying as an expert regarding
5 extraction? I assume that is what he did.

6 MS. DAVIS: Right. If he is just going to
7 testify that he extracted data and not go into
8 detail or analysis, then that is outside my
9 objection. I mean, my objection is just about the
10 analysis. It sounds like from her questions that
11 there is a video they want to talk about a date
12 created, and how that was created, and how he then
13 would compare that with some other evidence in the
14 phone to decide what the date was, which I think
15 that goes into the analysis, and that is what I
16 have an objection to in terms of his
17 qualifications.

18 MR. CAVANAUGH: Well, Your Honor, that is from
19 a totally separate phone. So, you know, I was
20 just -- I mean, my main concern with Investigator
21 Rast is regarding the Sprint cell phone, flip
22 phone, that was collected from Mr. Brown's person
23 that we have call detail records on that has
24 already been admitted into evidence. That is a
25 flip phone. He performed an extraction that

1 contained a summary, contacts, call log, and data
2 files, to include images. So, you know, that is
3 what I plan on asking from him. I only went into
4 the actual -- first of all, I think that if -- I
5 mean, I think he has the knowledge required. I
6 think that particular case -- I don't know what the
7 crime scene investigator actually -- was it a
8 specific area in crime scene investigation that you
9 are referring to?

10 MS. DAVIS: Crime scene investigation.

11 MS. CAVANAUGH: But, I mean, regardless of
12 whether he went to one five week long class
13 about --

14 MS. DAVIS: I'm sorry, accident
15 reconstruction.

16 MS. CAVANAUGH: Accident reconstruction. That
17 is a very specific field. And this particular
18 crime scene investigator only had a five day class,
19 then I can certainly understand why he wouldn't be
20 702, qualifications under 702. Then under State v.
21 White, which, you know, allows that under 702, as
22 long as the expert has knowledge acquired through
23 knowledge, skill, experience, training, or
24 education, which he just described he has been in
25 the field for four years, he has done over 800

1 extractions, he went through all the training that
2 is associated with being able to perform these
3 extractions and the education that he received
4 through being certified as a Cellebrite operator
5 and a Cellebrite physical analyst, and that he
6 testified that he has kept up to date on any
7 necessary changes or updates that he needs to know
8 about under the certifications. I mean, I think he
9 clearly qualifies to provide expert testimony as it
10 relates to his job functions and how to -- and
11 knowledge related to interpreting the data that he
12 has been trained in and that he keeps up to date
13 with through the actual company that has rights to
14 the software that he uses.

15 So I think he passes -- under Rule 702 he is
16 qualified as an expert in cellular device
17 extractions. And State v. White allows this type
18 of testimony once it is shown to be reliable and
19 they have knowledge that will assist the jury in
20 understanding that evidence.

21 THE COURT: Can you show her what it is that
22 you are trying to -- what you are going to try to
23 get in with him?

24 MS. CAVANAUGH: Your Honor, I am merely trying
25 to get in through him from the Sprint flip phone

1 device, the summary that identifies the phone
2 number of the device, the contact list, the call
3 log, and one image from that particular flip phone.

4 THE COURT: And that is what he extracted from
5 the phone?

6 MS. CAVANAUGH: Correct, Your Honor.

7 THE COURT: All right. So as to cellular
8 device extraction, he is not required to analyze
9 anything?

10 MS. DAVIS: If that is the extent of it, then,
11 yes. Now, I don't know what the image is, which I
12 need to see if it is actually admissible.

13 MS. CAVANAUGH: And the only reason I was even
14 getting into the additional information related to
15 videos and folders that it was stored in is in case
16 it was asked of him in cross. I don't plan on
17 introducing anything related to that particular
18 cellular device, the other cellular device, through
19 Investigator Rast.

20 THE COURT: So this is what -- so the
21 objection is the same as to analysis? Because I
22 don't believe there has been testimony, especially
23 under State v. White, that satisfies reliability,
24 but publication, peer review, quality control to
25 determine reliability, all those things that have

1 to be determined under White, State v. White. If
2 she is not objecting to the cellular device
3 extractions and those -- and if that is exactly
4 what you are going to ask, then I can qualify him
5 under 702 for that. Is that my understanding?

6 MS. DAVIS: Yes. I do have two other issues
7 as it relates to this witness, though, whenever you
8 are ready.

9 THE COURT: Just so we are clear, so under 702
10 he is qualified as an expert in cellular device
11 extraction. Because I think he does qualify, even
12 though you didn't get into the peer review
13 technique and quality control procedures and
14 reliability of the machine that he was using, and
15 all that. I think scientifically you have to, but
16 she is not objecting to it, so. But under 702 he
17 will be -- he can testify as to cellular device
18 extraction. He has been certified as a Cellebrite
19 physical extractionist, or something like that, I
20 think he said. And so he can testify to that. But
21 in terms of analyzing times and dates, or anything
22 like that, from looking at -- I think he would need
23 to testify -- he would need to present more
24 evidence of his qualifications to be able to do
25 that. I have not heard any of that.

1 All right.

2 MS. DAVIS: The other thing -- or, before we
3 get to this witness, Your Honor, I would also
4 object that they have not laid any chain for these
5 phones. The only witness they have called is
6 Justin Britt, who said he did not remember if there
7 was anything on the Defendant at the time of his
8 arrest, but then generally said if something was on
9 him, he would have followed standard procedure and
10 turned it over.

11 So no one testified to phones being located,
12 phones being turned over, anything having to do
13 with chain. I do believe a cell phone would be
14 considered fungible. They have to have a complete
15 chain. You can certainly manipulate phones. You
16 can go in and change data, delete things, and add
17 things. I do think they have to establish chain as
18 well.

19 MS. CAVANAUGH: Thank you, Your Honor. Under
20 State v. Hatcher, the phone is already --

21 THE COURT: I need a cite.

22 MS. CAVANAUGH: Yes, Your Honor. State v.
23 Hatcher, 392 S.C. 86. Under State v. Hatcher, it
24 is unnecessary that the police account for every
25 hand-to-hand transfer of the fungible evidence in

1 order to establish chain of custody. It is
2 sufficient if the evidence demonstrates a
3 reasonable assurance the condition of the item
4 remains the same from the time it was obtained
5 until its introduction at trial.

6 Investigator -- Lieutenant Britt testified
7 that pursuant to standard procedure a search
8 incident to arrest was performed. This arrest --
9 he was the lieutenant at Richland County Sheriff's
10 Department -- excuse me, he was in charge of the
11 Fugitive Task Force at the time. He was present.
12 He indicated that he or Investigator Kilcoyne would
13 have done the transfer to the Sheriff's Department.
14 Standard procedure was followed in this particular
15 case. As soon as Mr. Brown arrived -- and that
16 these phones were found in a search incident to
17 arrest pursuant to standard procedure. As soon as
18 he arrived, Lieutenant Britt said as soon as,
19 according to standard procedure, as soon as the
20 Defendant would have arrived at headquarters, they
21 would have been automatically either put -- handed
22 over to the investigators. Also in this particular
23 case, Investigator Laurita, who is identified on
24 that package, says that is the first time he came
25 into contact with him at the Sheriff's Department.

1 And Investigator Britt -- Lieutenant Britt
2 identified that during his testimony. Investigator
3 Melody Galinski has previously testified that she
4 handled this item. And from Melody Galinski -- and
5 this is the chain of custody that I'll be happy to
6 hand to Investigator Rast -- Galinski is the one
7 who turned them over to Rast. So all of the
8 necessary people have been identified as far as
9 practical in this chain. And Investigator Rast
10 himself just testified himself that nothing he
11 would have conducted in the download process,
12 nothing he did would have interrupted the integrity
13 of the phone.

14 MS. DAVIS: And, Your Honor, I would just
15 respond that under State v. Hatcher, they are
16 talking about drugs, saying, they said, We have
17 never held a chain of custody required every person
18 be available to testify or identified personally.
19 In this case, they cannot establish the initial
20 step of chain. They have no one to testify that
21 someone found the phone, where the phones were
22 found, who they were given -- who had them, where
23 they went in between, and when they ended up in
24 Laurita, Investigator Laurita's hands. So this
25 isn't like Step 10 in the midst of a long line of

1 chain. They have no testimony with anyone with a
2 memory. Investigator Britt has said he has no
3 memory if anything was on Mr. Brown at the time of
4 arrest. And then he vaguely said, But if there
5 was, I'm sure we followed procedure.

6 So I object that they have established a chain
7 in this situation.

8 MS. CAVANAUGH: State v. Hatcher concerns
9 fungible evidence, which is what, I mean, what she
10 just said a phone was. So it is not just drugs
11 that is classified under fungible evidence. And
12 the case says, As far as practicable. Lieutenant
13 Britt, who was present at the scene of the arrest,
14 he was the supervisor of the Fugitive Task Force at
15 the time, standard procedure was complied with
16 during this arrest. The report indicates that
17 there was nothing to indicate otherwise. And I
18 just feel like under State v. Hatcher that we have
19 established chain of custody as far as practical,
20 as that case requires, and that there has been no
21 testimony whatsoever that the phone was tampered
22 with at this time.

23 MS. DAVIS: And just briefly, Your Honor, we
24 don't have to allege that something has been
25 tampered with or have evidence of something being

1 tampered with. That would be burden shifting.
2 They have to establish the proper chain to get
3 something in and/or to get an extraction off of the
4 phone. And, again, I'm not talking about down the
5 line. They cannot establish the first part of the
6 chain of who took the phone, where the phones were,
7 or anything to do with that. They just suddenly
8 get to headquarters, and there is no testimony
9 because no one has any memory of them. So I do not
10 think that this follows State v. Hatcher.

11 THE COURT: All right. I agree. I mean, he
12 said he didn't have any memory or recall of taking
13 the phones off of him that day. I think he said he
14 didn't take anything. Is that -- I think that is
15 what he testified to. I can have Debbie pull it
16 back up. But he testified that he didn't take
17 anything off of him. So, I mean, he -- him just
18 saying that he followed all procedures, I'm
19 assuming part of the procedure, if he took the
20 phone off of him, that would probably be in the
21 report also, or in some report. So I'm not going
22 to -- I do find that the chain was not followed.
23 Actually, this is probably one of the most
24 important parts of the chain because of the initial
25 taking of the evidence. So I will exclude it for

1 that reason.

2 All right. Anything else as to Investigator
3 Rast?

4 MS. CAVANAUGH: No, Your Honor.

5 THE COURT: All right. Do you have another
6 witness? I'm assuming he is not going to testify?
7 That is the only thing he can testify to is the
8 phones.

9 MS. CAVANAUGH: Right, Your Honor.

10 THE COURT: Okay. You can step down, sir.

11 (Witness steps down.)

12 MR. MCGLOTHIN: Your Honor, I believe our next
13 witness is going to be Dr. Durso regarding the
14 autopsy.

15 THE COURT: Is she here?

16 MR. MCGLOTHIN: Yes, I believe so. I just
17 wanted to step out and make sure. And I believe
18 myself and Ms. Young will have a discussion
19 regarding the photographs, although I think that
20 should be fairly short.

21 THE COURT: It seems like you can agree on the
22 photographs. How many photographs do y'all have?
23 I mean, some of the photographs come in.

24 MS. YOUNG: Your Honor, let me make it very
25 briefly. We have no objection to the photographs

1 that Mr. McGlothlin showed me. I want to again make
2 sure they are the ones he showed me earlier.

3 MR. MCGLOTHIN: I believe in total there is
4 six, and then a diagram -- eight, including -- and
5 then a diagram that isn't a photograph, an anatomic
6 drawing. But I did show these to Ms. Young over
7 lunch as well. But obviously the State's argument
8 is that it is more probative than prejudicial in
9 this instance.

10 MS. YOUNG: And, Your Honor, again, there is
11 no objection.

12 THE COURT: All right. Are you ready to bring
13 the jury in?

14 MR. MCGLOTHIN: Can I just step out and confer
15 with her for two minutes just to make sure she is
16 ready?

17 Thank you, Your Honor.

18 (Pause.)

19 THE COURT: Bring the jury in.

20 (WHEREUPON, the jury came into open
21 court at 2:40 p.m.)

22 THE BAILIFF: The jury is present, Your Honor.

23 THE COURT: All right, ladies and gentlemen of
24 the jury, I hope you had a good lunch. We are
25 ready to proceed with our next witness.

1 Please call your next witness.

2 MR. MCGLOTHIN: The State calls Dr. Amy Durso.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right.

6 (Witness complies.)

7 THE CLERK: State your full name, please.

8 THE WITNESS: Amy Durso.

9 THE CLERK: Could you spell your first name,
10 please?

11 THE WITNESS: A-M-Y.

12 THE CLERK: And your last name?

13 THE WITNESS: D-U-R-S-O.

14 THE CLERK: Do you solemnly swear the
15 testimony you are about to give in this case will
16 be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you very much. Please have
20 a seat.

21 (Witness seated.)

22 THE COURT: And, Dr. Durso, you may take your
23 mask down while you are on the witness stand.

24 THE WITNESS: Okay.

25 THE COURT: That way the court reporter can

1 hear you.

2 DR. AMY DURSO,
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCGLOTHIN:

6 Q Good afternoon, Dr. Durso.

7 A Good afternoon.

8 Q Could you please start by telling us where you are
9 employed?

10 A I'm employed by Professional Pathology Services,
11 which is a group of private practice pathologists.

12 Q Okay. And what is a pathologist?

13 A A pathologist is a medical doctor. We kind of work
14 behind the scenes.

15 THE COURT REPORTER: I'm sorry, don't turn
16 against me, I can't hear you.

17 A Sorry. The main thing I do as a forensic
18 pathologist is I perform autopsies, determine cause
19 of death, and document injuries.

20 Q Okay. And can you tell us little bit about your
21 education?

22 A Sure. So I got my bachelor's degree in psychology
23 at Emory University. Then I did -- got my four
24 year medical degree, my M.D., from the University
25 of North Carolina in Chapel Hill. I then did my

1 four year residency training in anatomic and
2 clinical pathology at Wake Forest. And then I did
3 a one year fellowship at Wake Forest specifically
4 in the field of forensic pathology.

5 Q Okay. And do you receive ongoing training in
6 pathology as part of your job duties?

7 A Right. So I have to do continuing medical
8 education. And I also have to -- I just had to
9 renew my pathology board certification about a year
10 ago.

11 Q And have you testified as an expert in the past?

12 A Yes.

13 Q Okay. Do you know how many times?

14 A I would say somewhere around 50.

15 MR. MCGLOTHIN: At this time the State would
16 submit Dr. Durso as an expert in forensic
17 psychology.

18 THE COURT: Any voir dire?

19 MS. YOUNG: None, Your Honor. No objection.

20 THE COURT: All right, ladies and gentlemen of
21 the jury, Dr. Durso will be qualified as an expert
22 in the area of forensic pathology to give opinion
23 testimony in that area. That does not mean that
24 you must accept the opinion, but it is evidence for
25 you to use in any way you see fit and give it the

1 weight and credibility you believe is appropriate.

2 Thank you.

3 BY MR. MCGLOTHIN:

4 Q Dr. Durso, did you perform an autopsy of Donald
5 Young back in December of 2018?

6 A Yes, I did.

7 Q Okay. Could you tell us a little bit about Mr.
8 Young and your observations of him generally: Age,
9 height, weight, that sort of thing?

10 A Well, I was given a lot of information by the
11 Coroner's Office. They are the ones that kind of
12 direct me to do the autopsy, and I am going to do a
13 forensic autopsy. So I was told he was a
14 37-year-old African-American man who had been in a
15 car accident and was pronounced at the scene.

16 What I noticed during my initial external
17 exam, the first thing we do is we weigh them and
18 measure them. So he was 202 pounds, and I have him
19 down as 79 inches.

20 Q And I'm not great with math. How tall is
21 79 inches?

22 A Like 6 feet, 7 inches. Tall. So after -- during
23 the external exam, I noticed that there was a
24 gunshot wound to his neck. He had a few little
25 scrapes here and there I think on his head and his

1 knee, but the real injury was to the back of the
2 head. He had a gunshot wound. And the entrance
3 was in the right kind of back side of the neck.
4 And then the exit was on kind of the left more
5 towards the front of the neck.

6 Q When was his autopsy performed? I'm sorry, I will
7 go back a little bit.

8 A When? It was done on December 29th, 2018, at 8:30
9 in the morning.

10 Q So can you tell us a little bit about the process
11 that you go through during an autopsy?

12 A Sure. So first we, you know, identify the body.
13 The Coroner's Office has a representative there to
14 help with that. And then we weigh the body, we
15 measure the length, we notice any identifying
16 features, scars, tattoos.

17 THE COURT REPORTER: I'm sorry, I can't hear
18 you.

19 A Sorry. Scars and tattoos. We then look for any
20 signs of external injuries, identify those. As he
21 had a gunshot wound, it is standard that we do
22 X-rays to look for a bullet to see if there are any
23 projectile fragments remaining in the body, which
24 we did do in this case. And there were no
25 remaining projectiles or projectile fragments. So

1 after we do all that, we start with the autopsy.
2 So we start by making a Y shaped incision over the
3 chest, so it kind of comes down from both
4 shoulders, meets the lower chest and comes down.
5 At that point we can reflect on all the skin,
6 remove the front of rib cage, and now we can see
7 all of the major organs and remove all the contents
8 of the body from the neck downward. We weigh and
9 dissect each organ, again identifying any
10 abnormalities, weighing each organ. And then for
11 the brain, we are able to make an incision in the
12 back of the head, remove the top of the skull and
13 examine the brain as well.

14 Q And did you follow that procedure in this case?

15 A Yes.

16 Q Okay. Did -- other than the gunshot wound in this
17 case that you mentioned prior, did you find
18 anything damaged or out of the ordinary with
19 Mr. Young's body?

20 A He had some emphysema in his lungs, but that was
21 it.

22 Q Okay. And what is emphysema?

23 A It is kind of a breakdown of the alveolar spaces in
24 the lungs, usually related to smoking, that sort of
25 thing.

1 Q So were you able to determine a cause of death?

2 A Yes.

3 Q And what was that?

4 A As a gunshot wound to the neck.

5 Q And what trajectory did that follow?

6 A So it is going from right to left. So, again, kind
7 of back to front and very slightly upwards. So
8 here to here. And during that part, so it goes
9 through the skin, the musculature of the upper
10 neck, it goes to the third cervical vertebrae, it
11 goes through the spinal cord at that level, which
12 would cause immediate paralysis from that level
13 downward, and also hit some of the vertebral
14 vessels. You have two arteries that come up the
15 back of your neck that go up and join to form the
16 basilar artery, which is the artery that helps
17 supply blood to your brain. Those were also hit.
18 And then it exits through the skin to the left side
19 of it.

20 Q So I want to go back. You mentioned immediate
21 paralysis with a severed spinal cord. Would he --
22 do you mean he would be with full blow to that
23 section on the spine unable to move his body
24 voluntarily?

25 A Right. So everything from that level below, to

1 include some muscles that you use to breathe, he
2 would have been immediately paralyzed and been
3 unable to move his arms, legs, kind of gone limp.

4 Q Couldn't drive a car?

5 A No.

6 Q Effectively, I guess?

7 A I mean, he couldn't have steered or hit the brake
8 or the gas like intentionally.

9 Q Okay. And would this be -- would -- how would that
10 paralyzed section of the body react to that? And
11 when I say that, I mean, would it go stiff, would
12 it go limp?

13 MS. YOUNG: Objection. Leading.

14 THE COURT: Sustained.

15 BY MR. MCGLOTHIN:

16 Q How would the body react to that severance of the
17 spinal cord in the paralyzed section?

18 A It would immediately go limp.

19 Q You mentioned there is an exiting wound, so there
20 weren't projectiles found inside of him?

21 A No. We confirmed that with the X-ray.

22 Q And this came in as -- did you say prior that this
23 came in as a car accident was the detail you
24 received?

25 A Yes, that was that the call I received.

1 Q Based on what you saw, was the car accident the
2 cause of his death?

3 MS. YOUNG: Objection. Leading.

4 THE COURT: Overruled.

5 A No, the car wreck did not cause his death. So the
6 only thing I can even see from the car wreck, the
7 car wreck injuries are going to be blunt force
8 injuries, bruises, lacerations, abrasions. So
9 there was a little bit of abrasion to the forehead,
10 but there was no bleeding inside of the head that
11 would have gotten. So far that to cause death,
12 needed for that you would have skull fractures,
13 subdural hemorrhages, bleeding around the brain.
14 There was none of that in this case. And then
15 there was an abrasion on his knee, but really he
16 had very minimal injuries from the car accident.

17 The cause of death is, in this case, is
18 clearly from the gunshot wound to his neck.

19 Q And you mentioned a facial laceration. Is that
20 consistent with a car wreck?

21 A An abrasion, yes.

22 Q Abrasion. Excuse me, abrasion. And are you able
23 to say whether the gunshot wound came before the
24 wreck or the wreck came before the gunshot wound?

25 A Just from my experience, usually a person that is

1 shot, the car is going to keep its momentum if it
2 is the driver. And then -- but the abrasions
3 looked kind of dry to me, that dried yellowy
4 appearance, which means that he didn't have full
5 blood flow at that time. So based on that, I
6 believe that he was shot before the car wreck. So
7 once you are not bleeding, the abrasions have more
8 of a dried yellow color.

9 Q I am going to show you what has been marked as
10 State's 144 -- excuse me, 143 through 151.

11 A So these are pictures taken for the autopsy
12 photographs. And the other one was a diagram. The
13 large proportions I made during my external part of
14 my exam.

15 MR. MCGLOTHIN: At this time the State would
16 move State's 143 through 151 into evidence.

17 MS. YOUNG: No objection, Your Honor.

18 THE COURT: All right, State's 143 to 151 will
19 be entered into evidence.

20 (WHEREUPON, State's Exhibit No. 143 was
21 marked for identification and received
22 into evidence.)

23 (WHEREUPON, State's Exhibit Nos. 144-151
24 were marked for identification and
25 received into evidence.)

1 BY MR. MCGLOTHIN:

2 Q I am going to start here with 143 and put this up
3 here.

4 THE COURT: She can step down.

5 BY MR. MCGLOTHIN:

6 Q If you want to step down, you can, but if you just
7 want to use the pointer for that section.

8 A I think if I try to speak really loud, is that
9 okay?

10 THE COURT: Okay.

11 A So this -- so every autopsy I do, I start out with
12 this blank diagram, in this case a generic male
13 diagram. And for my gunshot wound cases, I always
14 make one that has all the identifying marks and I
15 also have -- I also make a more simplified looking
16 one that just has the gunshot wounds. And I just
17 kind of add the labels, because I'm always asked to
18 label things at trials. So as you can see, I just
19 kind of labeled where the gunshot wound entrance is
20 here on the back right side of the neck and the
21 exit is here on the left side of the neck.

22 Q Okay. Great. Is there anything else to note on
23 the diagram itself?

24 A No.

25 MR. MCGLOTHIN: Beg the Court's indulgence for

1 just a moment.

2 (Pause.)

3 BY MR. MCGLOTHIN:

4 Q I am going to show you what has been entered as
5 State's 144 to 151. I'm showing you what is marked
6 as State's 144. What does that show?

7 A So this is showing the right side of his neck. And
8 that little hole where the blood is kind of
9 trickling out on the right side is the entrance
10 wound.

11 Q And that is 144 -- or, excuse me, 145, is that the
12 same entrance wound?

13 A Yes. And this is a closer up version of that same
14 area on the right neck. And I think when you are
15 at this level zoomed in, you can kind of see around
16 the edges, that is what we call an abrasion collar.
17 So this is how I know that this was the entrance
18 wound. So the little miniscule fraction of the
19 fragment as the bullet presses against the skin to
20 go in, it kind of abrades the skin. So that is how
21 I know that is the entrance wound as opposed to the
22 exit wound. We will see a picture of that to show
23 you the difference.

24 Q So that is State's 149?

25 A Right. So this is on the left side of the neck.

1 This is the exit wound. You can see it looks quite
2 different from the entrance wound. It is not
3 rounded. And as well, there is no abrasion collar
4 at all. So you can see the edges have no abrasion.
5 So when it comes out it doesn't leave that on the
6 way out.

7 Q But State's 149 does not show an abrasion collar?

8 A Correct.

9 Q And that indicates what to you?

10 A That is the exit wound.

11 Q And based on that information, when you see it in
12 these photographs, are you able to give a
13 determination of how far away the shooter or the
14 gun was from this individual, from Mr. Young?

15 A So the things we look for to determine distance are
16 two things: Soot and stippling. So soot means
17 within six inches. So you would actually see dark
18 black soot in or around the entrance wound. And if
19 you -- so that is up to six inches. And then
20 stippling would be abrasion of the skin around this
21 based off the gun powder actual abrading the skin.
22 Soot is usually within 18 inches from the gun, some
23 guns go up to 24 inches. It kind of depends on the
24 gun, but also the kind of powder in the gun as far
25 as how far that would travel, but definitely within

1 18 to 24 inches you would see stippling, but
2 anything further you wouldn't see anything.

3 The other thing that kind of makes it hard for
4 us to determine is that if you are wearing very
5 thick clothing or if it goes through a portion of a
6 car or something else, well, that is going to block
7 the soot and the stippling, which is why I put this
8 down an indeterminate range, because I did not see
9 soot or stippling when I did the autopsy around the
10 entrance wound.

11 Q So looking at State's 147 -- or, I'm sorry, 148, is
12 there evidence of soot or stippling in the entrance
13 wound?

14 A No. Obviously we wipe the blood away. It was just
15 a very bloody wound. Stippling is really dark red,
16 fine powdery abrasions. And I do not see that.
17 And there is no soot.

18 Q And in your expertise, in your opinion, do you
19 believe that this gunshot wound is consistent with
20 Mr. Young, if he had been in the driver's seat of a
21 vehicle, being shot by the back passenger in
22 that --

23 MS. YOUNG: Objection. Leading.

24 THE COURT: Sustained. Please rephrase.

25

1 BY MR. MCGLOTHIN:

2 Q If Mr. Young were the driver of the vehicle, where
3 would you expect the person who shot him and that
4 created this gunshot wound to be seated inside that
5 vehicle?

6 A If he is facing straight ahead, it would have to
7 come from behind him. But if he is turned, then
8 that would change.

9 Q Would it be the -- to kind of expand on that --

10 A So I can never tell exactly where the person is in
11 relation to that. I can tell you the direction to
12 the body, but it depends. We can all move.

13 Q But it is consistent -- is it consistent with if an
14 individual was seated in that seat?

15 MS. YOUNG: Objection. Can we approach?

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: All right, let's rephrase the
20 question. Thank you.

21 MR. MCGLOTHIN: Thank you.

22 BY MR. MCGLOTHIN:

23 Q Based on the lack of soot and stippling, if he
24 were -- if Mr. Young were seated in the driver's
25 seat and facing forward, where would that bullet

1 have come from?

2 A It would have come from behind him and to the
3 right.

4 MR. MCGLOTHIN: Beg the Court's indulgence for
5 just one moment.

6 (Pause.)

7 MR. MCGLOTHIN: I apologize.

8 BY MR. MCGLOTHIN:

9 Q I show you State's 150. What does that show?

10 A So this is his forehead, upper face, obviously.
11 And you can see the abrasions I was describing that
12 he had on the forehead. You can see one kind of in
13 the left eyebrow how kind of yellowy it is. That
14 is kind of something I see more either post-mortem
15 or peri-mortem where you are not getting full blood
16 flow to that area. So if you are looking at blood
17 flow, full blood flow, that tends to be what we
18 expect when we take our lives, but if it happens
19 after someone is bleeding profusely, it would show
20 up more with that dried yellow color.

21 Q And can you see that a little more closely here?

22 A Yes.

23 Q Thank you no further questions. Please answer any
24 questions the Defense has for you.

25 A Of course.

1 THE COURT: All right, yes, ma'am?

2 MS. YOUNG: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 Q Good afternoon, Dr. Durso.

5 A Good afternoon.

6 Q I believe you told Mr. McGlothin earlier that when
7 the projectile severed Mr. Young's spine, he would
8 have been instantly paralyzed from that point down,
9 right?

10 A Yes.

11 Q And so that means his body would just go completely
12 limp?

13 A Yes.

14 Q And he wouldn't be able to move at all?

15 A Right. He could like move his eyes and stuff, the
16 cranial nerve would still work, but, yes, from the
17 neck down, no.

18 Q Okay. And death would have occurred fairly
19 quickly?

20 A Within a few minutes, yes.

21 Q And then I think Mr. McGlothin spoke to you too a
22 little bit about the gunshot range and how you
23 determined that to be indeterminate in this case,
24 right?

25 A Yes.

1 Q Which means you just really don't know how far away
2 the gun was other than to say it was more than 18
3 to 24 inches away?

4 A As long as it didn't go through something else
5 first.

6 Q Right.

7 A I'm not at the crime scene, so I don't know if it
8 went through other parts of the car.

9 Q Right.

10 A That sort of thing.

11 Q Right. But generally speaking, if a gun is fired
12 and a projectile exits the barrel, the wound would
13 have to be, you know, within 18 to 24 inches to
14 find stippling?

15 A Yes.

16 Q And you didn't find that here?

17 A Correct.

18 Q Which indicates that it would have happened from
19 further away than from 18 to 24 inches?

20 A Right.

21 Q Mr. McGlothin also talked to you a little bit about
22 where the gunshot would have come from, or where
23 the projectile would have come from. In order to
24 really know where a gunshot would have come from,
25 you would have to know the position of the victim

1 at the time the shot was fired, right?

2 A Correct.

3 Q And you don't know that in this case?

4 A I do not.

5 Q And you issued -- in addition to your autopsy
6 report, you also supplemented that report, right?

7 A Yes.

8 Q And can you tell me about your supplemental report?

9 A So on all of our forensic autopsies, we always
10 collect blood and often vitreous fluid, the fluid
11 from --

12 MR. MCGLOTHIN: Objection, Your Honor. May we
13 approach?

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: Ladies and gentlemen, let me send
18 you all out for a brief moment.

19 Thank you.

20 (WHEREUPON, the jury retires to the jury
21 room at 3:08 p.m.)

22 MR. MCGLOTHIN: Your Honor, I believe that
23 Ms. Young is trying to elicit testimony as to the
24 toxicology report. That evidence has not been
25 entered. A chain of custody would need to be

1 proved on that in order to enter that evidence. I
2 know that Ms. -- excuse me, Dr. Durso relied on
3 that in order to make her testimony known, but how
4 is that -- that isn't in any way different than us
5 proving the chain up to DNA for Dr. Amick or
6 Mr. Barron to talk about what they -- their
7 findings on that.

8 THE COURT: Where was -- I'm assuming -- you
9 are saying establishing a chain. She is a doctor.

10 MS. YOUNG: Your Honor, can I briefly respond?

11 THE COURT: Yes.

12 MS. YOUNG: Okay. So I'm not entering
13 anything in evidence. I'm not asking her about the
14 blood that was tested and how it was tested, or any
15 of that. And I'm not going to ask her to give any
16 sort of opinion about what the, you know, alcohol
17 level or cocaine levels indicate. I just want to
18 get out that she reviewed a report that was
19 provided to her from her colleague at SLED. She
20 relied on it in making her findings. It is part of
21 her report. She looked at it. She reviewed it.
22 She said it had nothing to do with the cause of
23 death. It is in her report, she reviewed it. I
24 think I can ask her about it.

25 THE COURT: Is it in her report?

1 MR. MCGLOTHIN: It is a supplement to her
2 report, I believe from the Richland County
3 Coroner's Office.

4 MS. YOUNG: I'm sorry, I did say SLED. That
5 may not be right.

6 MR. MCGLOTHIN: My argument is that she
7 doesn't know where those reports came from, and the
8 purpose of the chain of custody is to prove that it
9 wasn't tampered with in the meantime.

10 Generally when toxicology is introduced, the
11 chain of evidence is proven, it has to be proven in
12 order to discuss it. And although she is not
13 talking about any sort of analysis of it and merely
14 talking about her -- those other findings of
15 someone else, I would say that is outside of her
16 personal knowledge and it would just be reading --
17 or hearsay from someone else's report.

18 MS. YOUNG: That she relied on, Your Honor, in
19 coming to her conclusion.

20 THE COURT: So was the coroner -- the coroner
21 testified. Did anybody ask the coroner about the
22 toxicology?

23 MR. MCGLOTHIN: Not that I'm aware of, Your
24 Honor.

25 MS. YOUNG: No. And, Your Honor, the coroner

1 didn't perform the toxicology.

2 THE COURT: I mean, did anyone ask. Who
3 performed the toxicology?

4 MS. YOUNG: Quintus Young at SLED, was at
5 SLED.

6 THE COURT: Well, I mean, what did he have --

7 MS. YOUNG: Your Honor, experts rely on
8 hearsay all the time. That is what they do. She
9 relied on it in making her conclusions about his
10 cause of death. I don't -- I mean, that is what --
11 you know, experts are allowed to do that and
12 testify about it.

13 MR. MCGLOTHIN: But --

14 THE COURT: Well, what is it that you want to
15 ask her, did he have any drugs in his system?

16 MS. YOUNG: Yes, was it positive for alcohol,
17 was it positive for cocaine.

18 MR. MCGLOTHIN: And we also believe that that
19 is prejudicial against Mr. Young. It doesn't add
20 anything to his cause of death.

21 THE COURT: Everybody has already testified
22 that they were sitting around drinking and smoking
23 all night.

24 MR. MCGLOTHIN: But as to whether or not the
25 wreck was the fault of the alcohol rather than Mr.

1 Young's paralysis, I think --

2 MS. YOUNG: Your Honor, it just corroborates
3 what happened that night. Everybody was out
4 partying together for a birthday party. Everybody
5 has already testified that they were drinking,
6 using drugs. It is not anything new. It is
7 just -- it is scientific corroboration, and she
8 relied on it in making her determination of what
9 caused his death.

10 MR. MCGLOTHIN: But we don't have -- and I
11 apologize -- and I'll end on this. She did rely on
12 it, but we don't have any testimony as to where
13 that analysis of it, of the toxicology came from.

14 THE COURT: But did she use it in making
15 her -- because you asked her what did she look
16 at -- you asked her about the car accident, did
17 that cause the death. I mean, I think because of
18 that it makes it relevant to ask, not -- I think
19 her getting into what levels he had in his system,
20 or anything like that, is probably beyond what she
21 can testify to, but if the question is to be asked,
22 if you are asking the question, and we are clear on
23 the question, is would that have -- did that have
24 anything to do with the accident, because you have
25 already asked her did the accident occur first or

1 did the shooting, the gunshot occur first. I think
2 that is what you asked her. So I think that they
3 can ask that on cross, but only just as to what is
4 in the system, not how much, and if he was, you
5 know, beyond -- anything like that would be
6 inappropriate.

7 MS. YOUNG: I am happy to limit it to that,
8 Your Honor.

9 THE COURT: All right. Let's bring them in.
10 (WHEREUPON, the jury came into open
11 court at 3:14 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: Yes, ma'am. The objection is
14 overruled. Yes, ma'am?

15 MS. YOUNG: Thank you, Your Honor.

16 BY MS. YOUNG:

17 Q Dr. Durso, did you supplement your report?

18 A I did.

19 Q And what did you supplement it with?

20 A With the toxicology results to the blood and fluid
21 that I submitted to the Coroner's Office to SLED
22 based on that toxicology report, and I always add
23 those results to my autopsy report.

24 Q And was it positive for alcohol?

25 A Yes.

1 Q And cocaine?

2 A Yes.

3 Q Thank you. I have no further questions.

4 THE COURT: All right. Yes, sir?

5 MR. MCGLOTHIN: No further questions.

6 THE COURT: All right, you may step down,
7 Dr. Durso. Any objection to this witness being
8 excused?

9 MR. MCGLOTHIN: None from the State, Your
10 Honor.

11 MS. YOUNG: No, Your Honor.

12 THE COURT: All right, you are free to leave.

13 THE WITNESS: Thank you.

14 (Witness steps down and is excused.)

15 THE COURT: All right, let's call your next
16 witness.

17 MS. CAVANAUGH: Thank you, Your Honor. At
18 this time the State calls Sergeant Michael Laurita.

19 (Witness approaches.)

20 THE CLERK: Would you state your full name,
21 please?

22 THE WITNESS: Michael Laurita.

23 THE CLERK: Spell your last name, please.

24 THE WITNESS: L-A-U-R-I-T-A.

25 THE CLERK: Do you solemnly swear the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 (Witness seated.)

6 MICHAEL LAURITA,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. CAVANAUGH:

10 Q Sergeant Laurita, where do you work?

11 A Richland County Sheriff's Department.

12 Q And how long have you worked there?

13 A A little over 13 years.

14 Q What is your current role at the Sheriff's
15 Department?

16 A Currently I am the sergeant over the burglary unit.

17 Q And back in -- describe your 13 years at the
18 Sheriff's Department as far as where you started
19 and what different positions you have been in.

20 A Sure. I started back in 2007. I was on the road.
21 I worked on the road for approximately five years.
22 I became a master deputy on the road. It is kind
23 of like an assistant supervisor on the road.

24 I believe it was in 2013 I got promoted to
25 investigations. While there, I worked in the

1 burglary unit, narcotics unit, the assault unit,
2 and eventually major crimes unit before I was
3 promoted to sergeant.

4 Q And back in December of 2018, what role were you in
5 at that point?

6 A I was working for the major crimes unit, and I was
7 also a homicide primary investigator.

8 Q And were you assigned to the case we are here for
9 this week?

10 A I was.

11 Q And how -- when were you notified about the case?
12 When were you first assigned?

13 A On December 29th, 2018.

14 Q And do you have your report and notes up with you?

15 A I have my follow-up, yes.

16 Q Okay. And you are welcome to -- would that help
17 refresh your memory with anything we go over?

18 A Yes, ma'am.

19 Q Okay. December 29th, 2018, who were you -- how
20 were you notified?

21 A I was notified by Sergeant Caldwell, who was the
22 on-call sergeant at the time.

23 Q And at that point, what type of information did the
24 Sheriff's Department have?

25 A At that time, we had been notified that Highway

1 Patrol had worked an accident at Meeting House Road
2 and Clarkson Road the night prior and that the
3 driver was deceased.

4 We learned that -- at autopsy it was
5 discovered that the driver had a bullet wound to
6 the neck that had severed his spinal cord.

7 We had also learned that the victim's name was
8 Donald Young.

9 Q And so what type of case was it at this point?

10 A It was considered a homicide at that time.

11 Q Okay. Did you have information as far as how old
12 the victim was at that point?

13 A I believe he was 37 years old.

14 Q As far as when the Highway Patrol responded, did
15 Richland County, were they able to respond at that
16 time?

17 A No, we didn't respond at that time because we
18 didn't find out until the following morning -- or I
19 guess this happened early morning -- until later on
20 that morning after the car had been towed off and
21 they had finished their investigation that it was a
22 homicide.

23 Q And during your investigation, did you learn who
24 had called 9-1-1?

25 A We did. We learned that it was a Mr. Theodore

1 Green who was actually the one who called 9-1-1.

2 Q Okay. And other than calling to report the car
3 accident, did his name come up in any way during
4 your investigation?

5 A No.

6 Q Once you became aware of the victim's name, what
7 did you attempt to do?

8 A At that time we attempted to try to find out some
9 information as far as what he may have been doing
10 the night prior or where he may have been, kind of
11 backtrack and see where that could lead us.

12 Q And in your attempt at doing that, who did you
13 speak with as far as the first person?

14 A I believe we spoke with -- either me or
15 Investigator Caldwell spoke with one of the family
16 members we had learned that he had maybe been
17 hanging out with, a gentleman named Anteyan Davis,
18 that night.

19 Q And were you able prior -- were you able to speak
20 to the victim's mother?

21 A Yes.

22 Q After speaking with the victim's mother, what did
23 you do next?

24 A After that, we went to [REDACTED] Road,
25 which is the address we found for Mr. Davis. We

1 attempted to make contact with him there, but he
2 wasn't at home. We made contact with his mother.
3 And I left my card there to have her give to
4 Mr. Davis so he could contact me.

5 Q Okay. And did he call you shortly after that?

6 A Not too long after that, yes.

7 Q And did you speak to him over the phone?

8 A I did.

9 Q And did he come in for an interview later that
10 afternoon?

11 A He did.

12 Q And was that particular interview recorded?

13 A It was.

14 Q All right. When he was there, did you look to see
15 if he had any injuries?

16 A I did.

17 Q And did he?

18 A No.

19 Q Did Mr. Davis also provide you with a buccal swab?

20 A He did.

21 Q And why was that important to obtain at that time?

22 A Because at that time we had -- I had some pictures
23 that were sent to me that showed blood on the
24 vehicle, on the outside of the vehicle, so we knew
25 that there was a potential suspect who may have

1 left blood at the scene, so it was important to
2 have so that we could compare it to the blood to
3 see if we could either rule out or rule in
4 Mr. Davis.

5 Q Okay. And that was -- those photos you are
6 referring to, was that -- were those from the
7 Highway Patrol?

8 A Yes.

9 Q And then, by that time also, had that car been
10 transferred to the Sheriff's Department, at some
11 point during that day?

12 A It was around that time, yes.

13 Q While Mr. Davis was there, did he allow you to look
14 at his phone?

15 A I believe he did.

16 Q And did he know the victim?

17 A He did.

18 Q And did he know the Defendant?

19 A He did.

20 Q Along with the -- going back to what the Highway
21 Patrol had provided to y'all, did they also provide
22 you with buccal swabs? Well, I guess that was the
23 Coroner's Office. Did the Coroner's Office provide
24 you with --

25 MS. DAVIS: Objection. Leading.

1 MS. CAVANAUGH: I'm sorry.

2 BY MS. CAVANAUGH:

3 Q Which agency provided y'all with buccal swabs from
4 that scene?

5 A I believe we got them from the Coroner's Office.

6 Q Actually, would looking at your notes help refresh
7 your memory?

8 A Yes. Let me look here.

9 Q Here you go. Here is a package.

10 Which agency is listed at the bottom of the
11 package right there?

12 A Received from the Highway Patrol.

13 Q Okay. Now, did you go to the location where the
14 car was located by the Highway Patrol?

15 A I did.

16 Q And when did you do that?

17 A It was in between leaving Mr. Davis's house and
18 right before we had met him at our office to get a
19 statement from him.

20 Q All right. And at that point, were you able to
21 collect a few additional items?

22 A I did.

23 Q And what were those?

24 A I collected a flip-style cell phone, an EBT card
25 with Mr. Young's name on it, and a Wal-Mart gift

1 card.

2 Q And was Investigator Oates with y'all at that time?

3 A He was.

4 Q And then prior to going to the scene -- right after
5 that, did y'all receive a call from anyone else
6 that had information about this case?

7 A Yes. Actually, I believe it was while we were
8 still interviewing Mr. Davis, we received some
9 information that there was a individual by the name
10 of Larry Wilson who was trying to contact through
11 our front desk the investigators involved in the
12 case.

13 Q And whose name did Mr. Wilson provide to y'all?

14 A He was providing us with Benjamin Parker's name.

15 Q And did anyone else on behalf of Benjamin Parker
16 contact you that afternoon?

17 A Yes, I believe Ms. Guyton also contacted us, and
18 Sergeant Caldwell spoke with her.

19 Q And what did y'all do after receiving the call from
20 Ms. Guyton and Larry Wilson?

21 A We went to 7012 Julia Street, which is where they
22 were located, to go speak with them.

23 Q And at that point in time, did you meet with
24 Jessica Guyton and Benjamin Parker?

25 A Yes.

- 1 Q And did you make notes about that conversation?
- 2 A I did not.
- 3 Q Did you document that, We went to the house,
- 4 though?
- 5 A I did.
- 6 Q And met with them?
- 7 A Yes.
- 8 Q In hindsight, do you wish that you would have
- 9 documented further?
- 10 A Absolutely.
- 11 Q However, after meeting with them, did they go with
- 12 you to the Pineview headquarters?
- 13 A Yes.
- 14 Q Okay. And did you interview -- you and Sergeant
- 15 Caldwell, did y'all interview Ben Parker at that
- 16 time?
- 17 A Yes.
- 18 Q Was it recorded?
- 19 A It was.
- 20 Q And can you describe his demeanor during that
- 21 interview?
- 22 A He was very, I guess it would be afraid during it.
- 23 Q Okay. And did he tell you about what had occurred
- 24 that night?
- 25 A He did.

1 Q Did he indicate to you that he knew who the --

2 MS. DAVIS: Objection. Leading.

3 THE COURT: Sustained.

4 MS. CAVANAUGH: I'll rephrase.

5 BY MS. CAVANAUGH:

6 Q Did he know the Defendant?

7 A Yes.

8 Q Did he know the victim?

9 A Yes.

10 Q Did you show Mr. Parker a photo lineup at that
11 point in time?

12 A I did.

13 MS. CAVANAUGH: Beg the Court's indulgence.

14 (Pause.)

15 BY MS. CAVANAUGH:

16 Q Was he able to identify anyone in the lineup that
17 you showed him?

18 A He was.

19 Q When you showed it to him, did you tell him whether
20 Correy Brown was even in there?

21 A No.

22 Q I show you what is marked as State's Exhibit 3. Is
23 this the -- do you recognize that document?

24 A Yes.

25 Q Is that what -- is that the photo lineup from your

1 interview with Benjamin Parker?

2 A Yes, it is.

3 Q And who did he identify?

4 A Number 2.

5 Q Okay. And who is that a picture of?

6 A Mr. Correy Brown.

7 Q All right. And did he memorialize that in any way?

8 A He did. He circled it. And we had him put his
9 initials next to it as well.

10 Q And as far as the reason he picked out -- or,
11 excuse me. What did he indicate Correy Brown did?

12 A So he indicated that he picked out the person who
13 committed the crime.

14 Q Did Mr. Parker also show you --

15 MS. DAVIS: Objection. Leading.

16 BY MS. CAVANAUGH:

17 Q Did Mr. Parker show you anything?

18 A He showed us his cell phone and his records.

19 Q Okay. And what did you notice about his cell
20 phone?

21 A There were several phone calls, I believe, as well
22 as some text messages between him and a number that
23 he had actually identified as Mr. Brown's number.

24 Q Okay. And what number was that that he provided
25 y'all?

- 1 A It was 803-546-0627.
- 2 Q Did you subsequently get a search warrant for that
3 phone number?
- 4 A I did.
- 5 Q And did you receive records from that search
6 warrant?
- 7 A I did.
- 8 Q After speaking with the individuals you just
9 mentioned -- and at that point had you had the
10 opportunity to look at the car in the garage, or at
11 least the photographs of the car?
- 12 A I believe it was actually the next day the vehicle
13 was processed. I can't remember if I actually went
14 in and looked at it. I don't believe I went in and
15 actually looked at it. I did see the photographs,
16 though.
- 17 Q You did see the photographs?
- 18 A Yes.
- 19 Q At that point, did you obtain -- did you have
20 probable cause to obtain a warrant?
- 21 A Yes.
- 22 Q And who was the warrant for?
- 23 A Correy Brown.
- 24 Q And for the charge of?
- 25 A Murder.

1 Q At the time the warrant was obtained, where was
2 it -- was it -- what was done with the warrant?

3 A At that time, I then took it to our desk sergeant,
4 because at that time the warrant division wasn't
5 open, and had our desk sergeant place it into the
6 NCIC system, which is a national database for
7 wanted people, missing people, vehicles that are
8 stolen. And then I would have turned it over to
9 our Fugitive Task Force.

10 Q While that -- right after the warrant was placed in
11 the NCIC, did you get more information from
12 Investigator Humphries?

13 A I did. I learned that when she had processed the
14 vehicle, that she found a 9-millimeter shell casing
15 inside.

16 Q And did she collect any swabs from the vehicle?

17 A She did. She collected swabs of the blood that was
18 found inside the vehicle. I believe she also
19 collected a cell phone she found in a back pocket.

20 Q Did you have information about -- well, did you
21 give an address later on that day on December 30th?

22 A Yes. I went to an address at [REDACTED]
23 Road.

24 Q Okay. And who were you looking for or -- to speak
25 to at that time?

1 A We were trying to get in contact with an Akela
2 Goodwin, who we had learned may be living at that
3 address.
4 Q And what specifically -- you said it was [REDACTED]
5 [REDACTED] Road?
6 A Correct.
7 Q And was Ms. Goodwin home at the time?
8 A She was not home at that time.
9 Q Did you leave a card?
10 A I did.
11 Q Did you leave it with someone at the house?
12 A I did. I left it with a Ms. Lidas Cunningham.
13 Q Was Mr. Brown -- when was Mr. Brown actually
14 arrested?
15 A On the 31st of December.
16 Q Where was he located?
17 A At 415 Percival Road.
18 Q What apartment?
19 A I believe it was Apartment C.
20 Q All right. And do you know who else was there when
21 he was arrested?
22 A There was a female by the name of Tammy Ervin --
23 Ervins that was there.
24 Q And where was he -- after he was arrested, where --
25 do you know -- did you have any information about

1 who Tammy Ervins is?

2 A I think I later learned that it was the either
3 girlfriend or wife of Mr. Brown.

4 Q Was he taken to headquarters after his arrest?

5 A He was.

6 Q And at that point who did he speak to?

7 A He spoke to myself and Sergeant Caldwell.

8 Q Upon him entering the -- where did he go to meet
9 with you?

10 A We took him to one of our interview rooms.

11 Q All right. And can you describe the size of the
12 interview room?

13 A It is about the size of a small office, and it has
14 a chair in the corner, usually where we have the
15 person being interviewed. We will have a desk and
16 then usually another chair on the back wall for a
17 second investigator to sit in.

18 Q All right. And when he entered the room, was he
19 advised of his rights?

20 A He was.

21 Q Okay. And do you recognize this document?

22 A I do.

23 Q And what is that?

24 A This is the Advice of Rights form that I would read
25 to him and have him sign.

1 Q And did he in fact do that?

2 A He did.

3 Q And what is at the bottom of that form?

4 A It is a waiver of the rights, which he also then
5 signs.

6 Q And did he acknowledge by signing that waiver that
7 he understood his rights?

8 A He did.

9 Q And that he wished to speak with you?

10 A Yes.

11 Q And Sergeant Caldwell?

12 A Yes.

13 MS. CAVANAUGH: Your Honor, at this time I
14 would ask for State's Exhibit 1 to be entered into
15 evidence.

16 THE COURT: Any objection?

17 MS. DAVIS: No objection.

18 THE COURT: All right. It will be entered
19 without objection.

20 (WHEREUPON, State's Exhibit No. 1 was
21 marked for identification and received
22 into evidence.)

23 BY MS. CAVANAUGH:

24 Q Now, was that interview recorded?

25 A It is.

1 Q And speaking of recording, you mentioned earlier
2 that Ben Parker's statement was recorded?

3 A Yes.

4 Q Did you happen to notice -- did you have an
5 opportunity review his interview?

6 A I did.

7 Q And did you happen to notice whether he was --
8 which hand he used when he was writing?

9 A His left.

10 MS. DAVIS: Your Honor, may we approach?
11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: Objection overruled.

15 BY MS. CAVANAUGH:

16 Q All right. When Mr. Brown came into the interview
17 room and indicated he wished to speak to y'all, did
18 he provide you with a timeline of that night?

19 A He did.

20 Q And was that recorded?

21 A It was.

22 Q Okay. First of all, immediately upon entering the
23 room, what did you notice about his person?

24 A I noticed that he had a laceration on his lip.

25 Q Did you photograph the laceration?

1 A I did.

2 Q And is this the photograph that you took?

3 A It is.

4 Q What exhibit number is that?

5 A It is 133.

6 Q And how many days after the incident occurred was

7 this?

8 A This would have been two days.

9 Q Okay.

10 (Portions of interview played in open court.)

11 Q And can you tell what hand he signs with there?

12 A His right hand.

13 (Interview continued.)

14 Q All right. So was what he just said consistent

15 with what -- the information you had at that time?

16 A At that time, yes.

17 Q About when -- about how his lip --

18 A Well, leading up -- no -- oh, you are talking about

19 his lip. No.

20 Q Okay.

21 A Yes.

22 Q So he mentioned -- what did he mention as far as --

23 did he mention anything about where he went after

24 he said he busted his lip?

25 A He said he went to the gas station at Lower

1 Richland.

2 Q Okay. So, after -- well, before we get there, now,
3 about how long was this interview, total interview?

4 A I believe it was 45-ish minutes.

5 Q Okay. Going towards later on in the interview.
6 (Interview continued.)

7 Q So, once again, he describes the Shell gas station?

8 MS. DAVIS: Objection. Leading.

9 BY MS. CAVANAUGH:

10 Q Is that the same thing he had told y'all earlier
11 about the lip and when it occurred?

12 A Yes.

13 MS. DAVIS: Objection. Leading.

14 THE COURT: Sustained. Please rephrase the
15 question.

16 BY MS. CAVANAUGH:

17 Q Was what we just watched that he told y'all the
18 same thing --

19 MS. DAVIS: Objection. Leading.

20 THE COURT: Rephrase the question.

21 MS. CAVANAUGH: I'll just move on, Your Honor.

22 Thank you.

23 BY MS. CAVANAUGH:

24 Q After your interview, what did you do?

25 A I then went to -- this was on the 2nd -- I went out

1 to the Shell gas station, which is at 9001 Garners
2 Ferry Road, and I actually went back and looked at
3 the video from that night, and I actually obtained
4 the video from that server as well.

5 Q Okay. Now, what -- can you see the time on there?

6 A I can. It says 2:35 a.m.

7 Q Okay. You indicate what time -- in your report you
8 indicate what time you note the car actually pulled
9 in?

10 A I believe it was at 2:40 a.m.

11 (Portions of video played in open court.)

12 Q Okay. Is that -- whose car is that?

13 A That is the victim's car, Donald Young.

14 Q Okay. And how do you actually know that that is
15 his car?

16 A It is -- he had a, I believe it was a 2008
17 Infinity, it was white. And I have seen the
18 pictures of it. It has the same rims. It has the
19 sun roof on it.

20 Q All right. I'll fast-forward just a little bit
21 later.

22 A He also gets out of it.

23 Q Right. So you are not just going on what the car
24 looks like? Do you see Don P get out of the car?

25 A Yes.

1 (Video continues.)

2 Q Okay. Right there, what do you notice about that
3 front door?

4 A The passenger, front passenger door appeared to be
5 open and someone was in the vehicle.

6 Q And he indicated that in his interview, that he was
7 in the front passenger seat at that time?

8 A Yes.

9 Q Did you also have an opportunity to review still
10 shots from that same clip?

11 A Yes.

12 Q All right. And is that the victim's car?

13 A Yes.

14 Q That we just saw?

15 A Yes.

16 Q All right. And do you see any red there?

17 A No.

18 Q And, again, what area of the car?

19 A It is the passenger side rear fender.

20 Q So the same area of the car?

21 MS. DAVIS: Objection. Leading.

22 MS. CAVANAUGH: Okay.

23 THE COURT: Sustained. Please rephrase.

24 BY MS. CAVANAUGH:

25 Q So the same areas of the car --

1 MS. DAVIS: Objection. Leading.

2 BY MS. CAVANAUGH:

3 Q What do these photos show?

4 A It shows red stains on the rear passenger fender of
5 the victim's vehicle.

6 Q Did you collect -- at some point did you collect a
7 buccal swab from Mr. Brown?

8 A I did.

9 Q Did you also collect a buccal swab from any other
10 individuals involved in this case?

11 A I also collected --

12 Q Not involved, but referenced in this case?

13 A Yes. I also collected one from Anteyan Davis and
14 Benjamin Parker.

15 Q Okay. And which of those -- what are those
16 packages of?

17 A These are the packages, seven packages of the
18 buccal swabs that I collected.

19 Q All right. And how do you know that those are
20 those items?

21 A It has my very distinct handwriting on it, as well
22 as my name at the bottom.

23 Q And this buccal swab is State's Exhibit 131?

24 A The buccal swab of Correy Brown.

25 Q And State's Exhibit 140?

- 1 A This would be the buccal swab for Anteyan Davis.
- 2 Q And the buccal -- State's Exhibit 141?
- 3 A The buccal swab of Benjamin Parker.
- 4 Q Was there anything collected in the way of firearm
5 evidence in this case?
- 6 A We did not collect any firearms other than the
7 shell casing that was collected.
- 8 Q Right. And was there a search warrant performed
9 for the address that Mr. Brown was arrested at?
- 10 A There was.
- 11 Q And was there anything recovered from that search
12 warrant?
- 13 A No.
- 14 Q What was your purpose in getting that search
15 warrant?
- 16 A We were looking for a firearm or any paperwork or
17 any shell casings or unfired bullets, or anything
18 like that, that would be there.
- 19 Q And when was that search warrant actually executed?
- 20 A I believe it was on the 31st, not too long after
21 his arrest.
- 22 Q And how many days after the incident?
- 23 A Two.
- 24 Q And what is NIBIN?
- 25 A NIBIN is a national database for firearms

1 comparison. So we have a whole unit that does
2 that, that all they do is enter shell casings and
3 bullets due to their distinct marks that are made
4 and enter it into a system that is national and can
5 be compared across the country.

6 Q And did you request that be done in this case?

7 A I did.

8 Q Was any information able to be obtained from that?

9 A I don't believe so.

10 Q Okay. Later on, on January 2nd, did you -- where
11 did you go later on January 2nd?

12 A I went back to the house on Country Haven again to
13 try to make contact with Akela.

14 Q Did you knock on the door?

15 A I did.

16 Q And did you hear anyone?

17 A I could hear voices inside, but nobody ever came to
18 the door.

19 Q Later on were you able to speak to Akela?

20 A I was.

21 Q And did anything she relay change the nature of
22 your investigation?

23 A No.

24 Q Did you also -- did you make certain requests as
25 far as to the DNA lab?

1 A Yes. I would have sent any swabs that were
2 collected by CSI and myself to be processed in the
3 DNA lab.

4 Q Okay. And did you -- what about anything related
5 to the GSR kits? Would that have been at your
6 direction? Regarding processing?

7 A Yes. I guess it usually gets sent right to SLED,
8 especially in a case like homicides.

9 Q Right. That's what I mean.

10 A Yes.

11 Q Were those kits taken to SLED?

12 A Yes.

13 Q Did you also --

14 MS. CAVANAUGH: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 BY MS. CAVANAUGH:

18 Q Did you collect -- did you have an opportunity to
19 collect gunshot residue from the Defendant in this
20 case?

21 A No.

22 Q And why weren't you -- why didn't you do that?

23 A He was arrested two days after the incident, and it
24 is very unlikely that gunshot residue would be
25 found after a couple of hours, let alone two days.

1 Q Thank you, Sergeant Laurita. If you would please
2 answer any questions from the Defense.

3 MS. DAVIS: May we approach briefly?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held
6 in the presence of the jury but out of
7 the hearing of the jury.)

8 THE COURT: All right, ladies and gentlemen of
9 the jury, I think this would be a good time for us
10 to take our afternoon break. We will take about 15
11 minutes.

12 Thank you.

13 (WHEREUPON, the jury retires to the jury
14 room at 4:11 p.m.)

15 THE COURT: All right, we will take about 15
16 minutes.

17 (Break.)

18 THE COURT: Are you ready? Bring them on in.

19 (WHEREUPON, the jury came into open
20 court at 4:36 p.m.)

21 THE BAILIFF: The jury is present, Your Honor.

22 THE COURT: All right. Ladies and gentlemen
23 of the jury, we will continue with the
24 cross-examination of the witness by Ms. Davis.

25 MS. DAVIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. DAVIS:

Q Investigator Laurita, y'all just watched the video from the gas station a few minutes ago, right?

A Yes.

Q And there are some other aspects of that video that were not played?

A I'm not a hundred percent. I believe there may have been another camera angle from inside looking out.

Q The video itself is almost 15 minutes long, right?

A Right.

Q And there are four angles?

A I believe so. I'm not a hundred percent sure how many angles it covered.

Q Did you watch the video as the lead investigator?

A I did.

Q Okay. So there -- give me one second. We are going to pull it up.

(Portions of video played.)

Q All right. So the first time we see Don, I think at the angle y'all just watched, is around 2:40 something when the car pulled up?

A Yes. I believe it was a little bit after 2:40.

2:40 is when it actually pulls into the parking

1 lot. It is a little bit after that.

2 Q And then this camera angle is actually showing up
3 front where the people come to the clerk, right?

4 A Correct.

5 Q The window?

6 A Yes.

7 Q And I think if we go to 2:42. Have you watched
8 that? So this is Don walking up to the window,
9 right?

10 A Correct.

11 Q Okay. And then it looks like he is saying, Hey,
12 talking to some people?

13 A Yes, it looks like he is talking to some people off
14 camera. Or, I mean they are on camera, it is just
15 I can't see the -- because of tint or whatever,
16 because the mirror is there.

17 Q But it looks like he just kind of hit someone's
18 hand and says hello?

19 A Yes. Yes.

20 Q And if we go to 2:43:59. He still appears to be
21 outside. It looks like he is pointing to the back
22 kind of going like that?

23 A Yes.

24 Q That's him?

25 A Yes.

- 1 Q Okay. And then -- and there is -- once he gets
2 there -- I mean, you have seen this angle, right?
- 3 A Yes.
- 4 Q And so we'll see Don come up. And he is over at a
5 pump, and it looks like he is talking to some -- a
6 woman?
- 7 A I believe that is correct, yes.
- 8 Q We are just going to move on. The angles we looked
9 at today, though, that you talked about were
10 Channel 10, Channel 12, and Channel 14, I believe,
11 right?
- 12 A Sounds right.
- 13 Q There is another channel, correct, Channel 13 that
14 y'all got as part of this investigation?
- 15 A I believe so. It has been a while since I have
16 actually looked at how many angles I pulled, but
17 that sounds right. It sounds like there may have
18 been three or four.
- 19 Q Four. And do you remember watching that and seeing
20 Don walk up and he was smiling?
- 21 A I vaguely remember something like that, yes.
- 22 Q And then I think we watched -- you watched --
23 Ms. Cavanaugh showed the part where the -- the
24 angle where it showed the front passenger door open
25 a couple of times?

- 1 A Yes.
- 2 Q No one got out, right?
- 3 A Correct, no one got out.
- 4 Q The door just kind of oddly opened?
- 5 A Yes, it just opened and closed maybe once or twice,
- 6 yes.
- 7 Q And I want to kind of move on to the night at
- 8 Tony's. Tony's Lounge, you are familiar with that
- 9 place, right?
- 10 A I am.
- 11 Q And that is a place where there have been several
- 12 shootings?
- 13 A Yes.
- 14 Q And some violent incidents there in the past?
- 15 A Yes.
- 16 Q And in the course of your investigation, you
- 17 learned that this night was Correy's birthday?
- 18 A Yes.
- 19 Q And that Anteyan, Don P, Correy had all been
- 20 hanging out and drinking earlier that evening,
- 21 right?
- 22 A Yes.
- 23 Q At Tony's?
- 24 A Yes.
- 25 Q And then at some point they ended up at Anteyan's

- 1 house?
- 2 A Yes.
- 3 Q And Ben Parker then joins them there, right?
- 4 A Yes.
- 5 Q And they continue to all hang out?
- 6 A Yes.
- 7 Q Right? And Anteyan is the first person y'all
- 8 talked to to give you a little information about
- 9 that night, right?
- 10 A Yes.
- 11 Q And he was pretty adamant he wanted to clear his
- 12 name?
- 13 A Yes.
- 14 Q Right? And he told you at least three times that
- 15 that is why he was there?
- 16 A Yes.
- 17 Q And I think he said his name had kind of gotten
- 18 thrown out. And he was just there to clear his
- 19 name, right?
- 20 A I believe so, yes.
- 21 Q And then we have heard a little bit where he has
- 22 testified that -- he said there was a little
- 23 tension when they were at his house?
- 24 A Yes.
- 25 Q And do you remember he went on to explain to you

1 guys when he was interviewed --

2 MS. CAVANAUGH: Objection. Hearsay statement.

3 MS. DAVIS: If it is impeachment, Your Honor,
4 it is allowed under 801.

5 MS. CAVANAUGH: How is that impeachment?

6 THE COURT: Let me see y'all one second.

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

10 THE COURT: The objection is overruled.

11 BY MS. DAVIS:

12 Q So back in 2018, Anteyan described the tension and
13 told you: They had a little tension, but everybody
14 was drinking, you know what I'm saying. People
15 talk shit when they drink. But they were following
16 each other. Right?

17 A I don't have it in front of me, which I believe
18 that is what was said.

19 Q I'm sorry, I'll hand it up to you. Line 6 through
20 11.

21 A Yes.

22 Q And then Anteyan also told you at that point that
23 he didn't really know -- he didn't have Don's phone
24 number?

25 A I believe that is right.

1 Q I think he said he really didn't know him like
2 that, they just kind of meet up when it happens,
3 right?

4 A That sounds right.

5 Q And I want to talk to you a little bit -- but how
6 long have you been at Richland County Sheriff's
7 Department?

8 A A little over 13 years.

9 Q And you have been an investigator for how long?

10 A Probably 8 of those 13, I would say, 7 or 8 years
11 now.

12 Q And even prior to being an investigator, you are
13 trained on how to write reports, right?

14 A Yes.

15 Q So you've been -- I guess did you say you started
16 out as a patrol deputy?

17 A Yes.

18 Q So even then you would respond to scenes, right?

19 A Yes.

20 Q And you would have to write reports about what
21 happened when you got there?

22 A Yes.

23 Q And so then when you move up the chain you continue
24 to get training on how important it is to document
25 evidence in a case?

- 1 A Yes.
- 2 Q And you trained on how to -- obviously how to
- 3 conduct investigations as well, right?
- 4 A Yes.
- 5 Q And, but it is important to accurately write down
- 6 what witnesses tell you?
- 7 A Yes.
- 8 Q And that you have to write reports so that you can
- 9 keep track of what witnesses tell you, right?
- 10 A And remember what was said.
- 11 Q And remember what was said?
- 12 A Yes.
- 13 Q And sometimes you take handwritten notes?
- 14 A Yes.
- 15 Q And you took handwritten notes in this case, right?
- 16 A Yes.
- 17 Q And you are trained to memorialize anything that
- 18 you consider to be important for the investigation?
- 19 A Yes.
- 20 Q And you are trained to be thorough?
- 21 A Yes.
- 22 Q And you are trained to pay attention to any details
- 23 that you are given?
- 24 A Yes.
- 25 Q And in this case you wrote a summary, a two page

1 summary right? A case summary?

2 A Yes. I believe that is just on the front of the
3 case jacket summarizing what the case is about,
4 yes.

5 Q Right.

6 A Yes.

7 Q And then you also wrote a seven page investigative
8 report?

9 A Yes.

10 Q And you also have some handwritten notes?

11 A Yes.

12 Q That you also took as well, right?

13 A Yes.

14 Q So that is where any time you are interviewing
15 someone, you are trying to keep track of important
16 things they are telling you?

17 A Yes.

18 Q Because, one, it is important to know what you may
19 need to investigate based on that, right?

20 A Yes.

21 Q And it is also important for days like today when
22 you have to come and testify to how your
23 investigation was conducted?

24 A Yes.

25 Q Now, Ben Parker in 2018 never told you that he took

1 Correy home that night?

2 A No.

3 Q And he never told you that Correy was on his porch
4 that night?

5 A No, I don't believe so.

6 Q And he never told you that Correy pointed a gun at
7 him that night?

8 A No.

9 Q And he never told you that Correy said, If y'all
10 are doing all the talking, why am I here?

11 A I don't remember that.

12 THE COURT REPORTER: I'm sorry?

13 A I'm sorry. I don't remember that conversation, no.

14 Q And his statement was audio recorded, right?

15 A It was.

16 Q And he never told you that he went in and was
17 looking for his own gun?

18 A No.

19 Q He did tell you that when we got home he packed up
20 his wife and kids and went to her grandmother's
21 house, right?

22 A Yes.

23 Q And you testified at a prior hearing this week on
24 Monday, right?

25 A Yes.

1 Q And indicated, you know, if someone gives you
2 information that is important, you are going to
3 follow up and investigate further, right?

4 A Yes.

5 Q So if he had given you additional information, you
6 would follow up on his information, right?

7 A Yes.

8 Q But he didn't tell you those things?

9 A No.

10 Q And he did get a call from Correy, though, and told
11 you that he had it on speaker phone and that Correy
12 called and said, I swear, if it come down to it,
13 you know, you ain't had nothing to do with it?
14 Right?

15 A I believe so, yes.

16 Q And on the 29th, at some point you went out to 1341
17 Saint Marks Street, and that was with Ms. Young?

18 A Yes.

19 Q And did you know -- do you know Mr. Parker's dad
20 that lived right there? Or did you know that
21 Mr. Parker's dad lived near?

22 A I did not.

23 Q And I want to talk a little bit, we just went over
24 how important reports are, right? In terms of
25 Jessica Guyton, in your report, you don't know any

1 content of her giving you specific information
2 about what she said she witnessed that night,
3 right?

4 A Correct.

5 Q You don't have anything in your notes about her
6 seeing Correy on the porch?

7 A No.

8 Q You don't have anything about her saying that she
9 got her own gun and at some point followed them
10 over there?

11 A No.

12 Q Nothing about her seeing Correy by a burn barrel?

13 A No.

14 Q If she had told you those things, you would have
15 followed up on those things?

16 A Yes.

17 Q And y'all did request Ben Parker's phone records in
18 January of this year, right?

19 A I believe so.

20 Q January 29th of '21? Does that sound right?

21 A It sounds right.

22 Q But y'all were not able to get cell tower
23 information, right?

24 A No, I think too much time had passed.

25 Q It had been too long?

- 1 A Yes.
- 2 Q And then back in 2018, though, you guys did get his
3 phone?
- 4 A Correct.
- 5 Q And you were able to have an investigator do what
6 is called an extraction?
- 7 A Yes.
- 8 Q And that is where they try to get any information
9 they can off the phone?
- 10 A Yes.
- 11 Q Right? Did you look through that information?
- 12 A Yes.
- 13 Q Were you familiar with that information?
- 14 A Not right this second, not super familiar with the
15 information. I know I looked at it back in 2018.
- 16 Q Did you look at the GPS locations?
- 17 A I may have. I'm not a hundred percent sure.
- 18 Q Do you have any specific memory of the information?
- 19 A No, I don't have any specific information of GPS.
- 20 Q Okay. And in this case you never served a search
21 warrant at Ben Parker or Jessica Guyton's house?
- 22 A No.
- 23 Q Never served a search warrant for their vehicle?
- 24 A No.
- 25 Q Never collected Ben Parker's clothing?

1 A No.

2 Q Never asked anybody to do like GSR in Mr. Parker's
3 car?

4 A No.

5 Q Anteyan had mentioned that his brother's girlfriend
6 was at his house that night. Y'all never tried to
7 talk to that person, right?

8 A No. Actually we had a name for her, but we only
9 had a first name.

10 THE COURT REPORTER: I'm sorry, can you speak
11 up, please?

12 A I'm sorry. I believe we had a first name for her,
13 but I don't know if we had a full name for her.

14 Q And I think at some point Anteyan also said there
15 was some other dude I think briefly with Correy.
16 Y'all didn't get a name for that?

17 A No.

18 Q And generally the conversation at headquarters with
19 Anteyan was under 20 minutes, right?

20 A I believe so, yes.

21 Q And with Ben, y'all spoke about 48 minutes? 46
22 minutes?

23 A That sounds right.

24 Q Do you remember that around 32 minutes is when you
25 were like, I'm going to go get the warrant drawn

1 up?

2 A I can take your word on that one. I'm not -- sure,
3 yes.

4 Q And at some point you said you spoke with Correy?

5 A Yes.

6 Q And at some point he said, Can I get a lawyer some
7 information, right?

8 A Yes.

9 Q And you said, No, I mean this is your chance,
10 right?

11 A Yes.

12 Q So he just continues?

13 A Yes. And what I was meaning at that time was, If
14 you have it, then we need to see it, because we
15 wanted to be able to follow up on it. You know, if
16 it can clear his name, we would love to see it.

17 Q Well, he said, Can I get that to a lawyer, and you
18 say no, though, right?

19 A Well, I meant like right then, right that very
20 second.

21 Q But you wanted him to tell you first?

22 A Preferably, yes.

23 Q But you had just read him his rights, right?

24 A Yes.

25 Q We watched you read him like all his rights to have

1 an attorney present, right?

2 A Yes.

3 Q Now, in this case you testified at a prior hearing
4 May 2nd, 2019?

5 A Sounds right.

6 Q And you indicated that there is no indication of a
7 motive?

8 A What do you mean by no indication of a motive?

9 Q You were asked, So there is no indication of what
10 the motive may have been or why? And your response
11 was, No?

12 A Okay. Yes.

13 Q And then you also testified at a hearing in October
14 of 2019, October 2nd?

15 A Okay.

16 Q And you were asked if you knew any sort of motive.
17 And again you said, No, we don't have much of a
18 motive, right?

19 A Yes.

20 Q And when you spoke with Ben Parker, after talking
21 with him, he made it abundantly clear that there
22 was no tension in the car, right?

23 A Correct.

24 Q He said he thought everything was cool?

25 A Yes.

1 Q But it happened right -- basically right when he
2 pulled out of the yard?

3 A A little -- yes, a little bit after he pulled out
4 of the yard.

5 Q And really wasn't no tension, no nothing?

6 A I believe that was what he said, yes.

7 MS. DAVIS: I don't have anything further.

8 REDIRECT EXAMINATION

9 BY MS. CAVANAUGH:

10 Q Investigator Laurita, let's talk about what you did
11 follow up with. Sergeant Laurita, I'm sorry.

12 A It's all right.

13 Q At the beginning of that interview, did his story
14 change from the beginning to the end of that
15 interview as far as the general timeline of when
16 and how he busted his lip?

17 A Yes. No, it has been -- it was the same from
18 beginning to end as far as how he said he busted
19 his lip.

20 Q Did you go -- after that interview, did you go to
21 the gas station --

22 MS. DAVIS: Objection. Leading.

23 THE COURT: Overruled.

24 BY MS. CAVANAUGH:

25 Q Did you go to the gas station that he said he went

- 1 to?
- 2 A Yes.
- 3 Q Did you observe blood on that car?
- 4 A No.
- 5 Q At that time when they were at the gas station?
- 6 A No.
- 7 Q And when did he indicate that he busted his lip?
- 8 A Before he -- while he was getting in the car to go
- 9 to the gas station.
- 10 Q Right. Did you request swabs be run, at least
- 11 swabs that were collected, did you ask that those
- 12 be submitted to the DNA lab?
- 13 A Yes.
- 14 Q Did you get buccal swabs from Anteyan?
- 15 A Yes.
- 16 Q Did you get buccal swabs from Benjamin Parker?
- 17 A Yes.
- 18 Q Did you get buccal swabs of the Defendant?
- 19 A Yes.
- 20 Q Did you get buccal swabs from -- obviously from the
- 21 victim?
- 22 A Yes.
- 23 Q Did you collect gunshot residue from the car? Or
- 24 not you, but --
- 25 A I didn't personally, but, yes, our Crime Scene.

1 Q Was there?

2 A Yes.

3 Q Did you request that those be analyzed at SLED?

4 A Yes.

5 Q Did you get a search warrant -- or, excuse me, did
6 you get consent to search Ben's phone?

7 A Yes.

8 Q You just indicated that you had an opportunity to
9 review it?

10 A Yes.

11 Q Did anything you reviewed change your decision?

12 A No.

13 Q Did you try to speak to Akela?

14 A Yes.

15 Q Did you actually speak to her?

16 A I did.

17 Q Did she have any information that she gave you that
18 would change your decision?

19 A No.

20 Q Was she able to provide you any information?

21 A No.

22 Q Thank you.

23 MS. DAVIS: Nothing further, Your Honor.

24 THE COURT: All right, you may step down.

25 (Witness steps down.)

1 THE COURT: All right, call your next witness.

2 MS. CAVANAUGH: Your Honor, we have no further
3 witnesses. At this time the State rests.

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, there is a matter of law that I need
6 to take up outside your presence. I am going to
7 send you out for a short moment, and then we will
8 have you back in the courtroom shortly.

9 All right, thank you.

10 (WHEREUPON, the jury retires to the jury
11 room at 5:05 p.m.)

12 THE COURT: I'll be glad to hear any motions.

13 MS. HUBBARD: Thank you, Your Honor. At this
14 time the Defense makes a motion for directed
15 verdict. Based on the State's case, the evidence
16 they put up, they have not proven all elements of
17 murder. Murder requires malice afterthought. In
18 this case, the State has not presented any
19 evidence, any testimony regarding malice. The
20 witness to this incident testified that he didn't
21 really remember what happened that night. In
22 addition, he testified that there was no tension
23 and no argument between the parties. He -- and
24 they don't -- there is no intent or specific
25 intent. There has not been any introduction or any

1 evidence introduced to indicate specific intent.
2 Investigator Laurita just testified as to there
3 being no motive. And in two prior hearings he has
4 testified that there is no motive that they have.
5 They have not presented any evidence for motive.

6 And for these reasons, Your Honor, we move for
7 a directed verdict because they have not proven
8 beyond a reasonable doubt that there was any
9 malice.

10 Your Honor, I also renew our previous motions.
11 One, the Denno motion we renew. We also renew our
12 motion to introduce or to cross-examine Jessica
13 Guyton regarding her attempted murder.

14 THE COURT: Y'all did.

15 MS. HUBBARD: Well, the additional information
16 from his time sheet, the time card, going into
17 further details.

18 THE COURT: Regarding the Court Exhibit Number
19 2?

20 MS. HUBBARD: Yes, Your Honor.

21 Your Honor, additionally, the Defendant asks
22 the Court to revisit the previous rulings, reverse
23 those rulings, and grant a directed verdict or
24 grant the Defendant a new trial.

25 And taking the evidence in the light most

1 favorable to the State, the State has failed to
2 prove evidence beyond a reasonable doubt sufficient
3 to convince a reasonable juror that the Defendant
4 is guilty of murder.

5 As I said, specifically they have failed to
6 prove or introduce any evidence of malice
7 aforethought, which is required for the elements of
8 murder, which is one of the required elements.

9 THE COURT: All right. Thank you.

10 MS. CAVANAUGH: Thank you, Your Honor. We
11 believe that we satisfied the directed verdict
12 motion. Viewing the evidence most favorable to the
13 State, whether there is any evidence -- beg the
14 Court's indulgence -- any evidence presented --
15 first of all, malice afterthought is not -- excuse
16 me -- is different from motive. Malice
17 aforethought can be at any moment in time. It
18 doesn't have to be some sort of premeditated,
19 elaborate plan.

20 In addition to that, Ben Parker did testify,
21 the eyewitness in the case, he did testify about
22 significant words that were exchanged prior to
23 Correy Brown shooting the victim. And obviously
24 Dr. Durso -- and he also identified the Defendant
25 in the courtroom. In addition to that, Dr. Durso

1 testified that the victim did die as a result of
2 the gunshot wound, not the wreck. And we believe
3 when viewing the evidence in the light most
4 favorable to the State, that we have met our burden
5 in this particular case to overcome the directed
6 verdict motion.

7 THE COURT: All right. Well, the standard is
8 a scintilla of the evidence, if there is a
9 scintilla of evidence. I do think the State has
10 met the burden for directed verdict purposes of
11 showing -- there is no testimony of Mr. Parker.
12 Mr. Davis, Anteyan Davis, testified that there was
13 some tension, previously some tension, which would
14 amount to I guess a scintilla of evidence in terms
15 of the issue, on the issue of malice. Mr. Parker
16 testified to words being exchanged in the car prior
17 immediately before the shooting.

18 So considering everything in the light most
19 favorable to the non-moving party, the Court will
20 respectfully deny the Defendant's motion for
21 directed verdict. And your motion -- the other
22 motions will stand, the motion for a new trial --
23 and what else was it? New trial and?

24 MS. HUBBARD: Your Honor, motions regarding
25 Denno and Jessica Guyton.

1 THE COURT: All right. And those are denied,
2 but they are preserved for the record.

3 MS. HUBBARD: Thank you.

4 THE COURT: All right. Let's see. Let me
5 have the Defendant stand. And if you can swear him
6 in, Madam Clerk.

7 (Defendant stands.)

8 THE CLERK: State your full name, please.

9 THE DEFENDANT: Correy Tremayne Brown.

10 THE CLERK: Do you solemnly swear that the
11 answers you give to the questions propounded by the
12 Court will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE DEFENDANT: Yes.

15 THE COURT: All right, thank you. Mr. Brown,
16 at this time I am going to explain to you certain
17 of your rights. If you do not understand anything
18 that I say, please let me know. If you want me to
19 explain anything in more detail, please let me
20 know. Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: We have now reached the stage of
23 the trial where you may present your defense. You
24 have the right to claim the protections given to
25 you by the Fifth Amendment to the Constitution of

1 the United States. This amendment states in part:
2 No person shall be compelled in any criminal case
3 to be a witness against himself. This means that
4 you cannot be required to testify in this case.
5 You have the right to testify on your own behalf;
6 however, no one can make you testify. This is a
7 personal right, and no one can waive this right
8 except you. If you decide to testify, you will be
9 subject to the same rules that govern other
10 witnesses, and you may be examined and
11 cross-examined on any relevant issue in this case.
12 In addition, if you have any convictions involving
13 dishonesty or false statements or for crimes
14 punishable by imprisonment for more than one year
15 and this Court determines that the probative value
16 of admitting this evidence outweighs the
17 prejudicial effect, the Solicitor will be able to
18 introduce your records to attack your credibility.
19 If you decide to testify, the decision is on your
20 part and must be freely, voluntarily, and
21 intelligently made, with the knowledge of the
22 protections given to you by the Fifth Amendment and
23 the consequences of your decision to testify.

24 If you decide not to testify, I will instruct
25 the jurors that they cannot give the fact that you

1 did not testify any consideration whatsoever, that
2 there is to be absolutely no prejudice to you
3 because you did not testify. It is left entirely
4 up to you whether or not you testify. You may talk
5 with your attorney, your family, and your friends,
6 or anyone else, but the final decision will be
7 entirely left up to you.

8 Do you understand what I have explained to
9 you, sir?

10 THE DEFENDANT: Yes, ma'am, I understand.

11 THE COURT: Do you have any questions about
12 what I have explained to you?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: And have you discussed with your
15 lawyers -- have you and your lawyers discussed
16 whether or not you should testify?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And do you need to
19 talk to your lawyer anymore at this time?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. And I'll be glad --
22 have you all spoken with him?

23 MS. DAVIS: If we can have just have a brief
24 minute, Your Honor.

25 THE COURT: Okay. All right.

1 (Pause.)

2 THE COURT: And I guess I should have asked,
3 what is his record? Have y'all settled his record?

4 MS. YOUNG: Your Honor, we have not.

5 THE COURT: Y'all can continue to talk.

6 (Pause.)

7 THE COURT: Yes, ma'am.

8 MS. DAVIS: He does wish to testify.

9 THE COURT: You said he does?

10 MS. DAVIS: Yes.

11 THE COURT: All right. Let's talk about his
12 prior record.

13 MS. CAVANAUGH: Your Honor, he has a 1993
14 escape and grand larceny; 1997, failure to stop for
15 a blue light; 1998, trespassing; 2000, failure to
16 stop for a blue light; 2000, strong arm robbery;
17 2006, possession with intent to distribute crack;
18 2001, treason; 2005, a federal weapons conviction
19 where he was only recently released from
20 confinement in 2015. And other than the 2011 --
21 2012, he had a parole violation, and in 2014 he had
22 probation violation from that weapons offense. And
23 he was released from the Bureau of Prisons in 2015.

24 So, the 2005 weapons offense we believe falls
25 within the ten year, 609(a) evidence, that is, if

1 he has been convicted of such a crime shall be
2 committed, if the Court determines that the
3 probative value of admitting the evidence outweighs
4 its prejudicial effect, that particular conviction,
5 because of the release of confinement pending less
6 than ten years ago falls under that section. And
7 the remaining convictions would be subject to
8 609(a)(b), Evidence of a conviction under this rule
9 is not admissible if a period of more than ten
10 years has elapsed since the date of conviction or
11 of the release of the witness under confinement
12 imposed for that conviction. Unless the Court
13 determines in the interest of justice that the
14 probative value of the conviction is supported by
15 specific facts and circumstances substantially
16 outweighs its prejudicial effect and written notice
17 is required.

18 Monday morning I emailed Defense counsel that
19 if he did intend on taking the stand, that I
20 intended on impeaching him on the following
21 convictions: The 2000 failure to stop for a blue
22 light, the 2000 conviction for strong arm robbery,
23 the 2006 possession with intent to distribute crack
24 cocaine, and also the 2005 weapons offense. So
25 that would be what we would seek to impeach him

1 with if he were to take the stand.

2 As far as the factors under State v. Black
3 that the trial court should consider --

4 THE COURT: Give me a cite.

5 MS. CAVANAUGH: I'm sorry, State v. Black, 400
6 S.C. 10 and 732 S.E.2d 880. The factors that a
7 trial court should consider in determining the
8 interests of justice, whether the probative value
9 of a prior conviction substantially outweighs its
10 prejudicial effect necessary for a prior conviction
11 to be admitted to impeach a defendant. The
12 impeachment value of the crime, Your Honor, we
13 would submit that failure to stop for a blue
14 light -- well, excuse me, the other factors are:
15 The point in time of the conviction, the witness's
16 subsequent history, similarity between the past
17 crime and the charged crime, the importance of the
18 Defendant's testimony, and the centrality of the
19 credibility issue.

20 In this particular case, Your Honor, we
21 believe that his conviction for failure to stop for
22 a blue light, strong arm robbery, and possession
23 with intent to distribute crack cocaine, as far as
24 the point in time of conviction and the witness's
25 subsequent history, he has been in and out of

1 incarceration since those convictions. The 2005
2 weapons offense, he continually -- which he
3 received a 110-month sentence followed by five
4 years of supervised release. During that release
5 period, he continually violated probation. The
6 similarity between the past crime and charged
7 crime, murder is significantly different than a
8 failure to stop for a blue light, strong arm
9 robbery, and possession with intent to distribute
10 crack cocaine. The importance of the Defendant's
11 testimony, I mean, he has already put his
12 statements in through Jackson v. Denno. Anything
13 that he would have additional to say would
14 certainly be important for the jury to consider.
15 And so, therefore, that would make these prior
16 convictions more probative as to credibility of his
17 testimony.

18 And then the centrality of the credibility
19 issue, clearly they have put each and every single
20 eyewitness or witness to a certain -- or Benjamin
21 Parker, the eyewitness, Jessica Guyton, someone who
22 witnessed something afterwards, and then Anteyan
23 Davis's credibility through impeaching
24 Investigator -- well, impeaching him through
25 Investigator Laurita, they clearly put the

1 credibility of every single person at issue in this
2 case, including the investigators. So we believe
3 it would be more to the ends of justice that the
4 probative value of these prior convictions
5 outweighs its prejudicial effect.

6 And then as far as the weapons offense is
7 concerned, that is a less -- we don't have to show
8 that the probative value substantially outweighs
9 the prejudicial value, that is only whether the
10 Court determines if the probative value of
11 admitting this evidence outweighs its prejudicial
12 effect.

13 I mean, in this particular case, self-defense
14 is not an issue, so a weapons offense is not so
15 similar to this particular case that we are on
16 trial for that would render it more prejudicial
17 than probative. And -- beg the Court's indulgence.
18 Once again, Anteyan Davis testified that he saw
19 Correy Brown with a gun that night, not Ben Parker.
20 They impeached Anteyan Davis's statement through
21 Investigator Laurita.

22 And as far as Benjamin Parker states
23 throughout the cross-examination of the witnesses,
24 testified that he is lying about every single
25 thing. So we certainly think that if Mr. Brown is

1 going to add additional information beyond what has
2 already been entered into evidence, that the
3 weapons offense from 2005, the probative value
4 substantially outweighs the prejudicial value and
5 should be admitted as impeachment evidence.

6 THE COURT: All right. Yes, ma'am?

7 MS. YOUNG: Thank you, Your Honor. First of
8 all, I'm not contesting the admissibility or the
9 ability of her to question about the 2005 weapons
10 charge. It falls within ten years, and we have no
11 issue with that.

12 As for the others, you know, I think that we
13 are not really looking at a 403 analysis since it
14 is the accused who is going to be testifying, we
15 have to look at State v. Colt, which is at 337 S.C.
16 622. And it is a balancing test. And there is
17 five factors for Your Honor to consider and
18 balance. It is the impeachment value of a prior
19 crime; the point and time of the conviction; and
20 the witness's subsequent history; the similarity
21 between the past crime and the charged crime; the
22 importance of the Defendant's testimony; and the
23 centrality of the credibility issue.

24 Now, I acknowledge that I think credibility is
25 always important, you know, for witnesses, but I

1 don't think that our attacking the credibility of
2 the State's witnesses is what they are talking
3 about.

4 You know, 2000, that is 21 years ago, a
5 failure to stop for blue light. Not a crime of
6 dishonesty. It was 21 years ago. Strong arm
7 robbery, same thing, 21 years ago. That is not in
8 and of itself a crime of dishonesty. They have
9 provided no information that any of these really
10 old prior cases involve any sort of active
11 dishonesty, deceit, nothing like that. So, you
12 know, and then in 2006, PWID crack cocaine. And,
13 again, selling drugs in and of itself is not a
14 crime of dishonesty. You know, and that was what,
15 15 years ago. So it is clear in this case that is
16 just going to make him look like a bad guy. They
17 want to make him look like a bad guy. It doesn't
18 have anything to do with credibility. In this case
19 there is no allegations that any of those prior
20 really old cases have anything to do with
21 dishonesty, and we think it would absolutely
22 prejudice his right to a fair trial if you allow
23 those really old prior convictions in. And, again,
24 we have no objection to the 2005 since he was
25 released within the ten years.

1 Your Honor, sorry, I also should have added
2 609(b) creates a presumption that anything over ten
3 years is inadmissible, and the State has to
4 overcome that presumption, which is when we enter
5 into the balancing test outlined in Colt.

6 Your Honor, Ms. Cavanaugh, you know, cited
7 State v. Black. And in that case, they said the
8 State had not met its heavy burden of demonstrating
9 that the prejudicial effect of the remote
10 conviction was substantially outweighed by the
11 probative value, and that the trial court erred in
12 allowing them to talk or ask questions about his
13 remote convictions.

14 MS. CAVANAUGH: Well, I just said those were
15 the factors. But in this particular case, you
16 know, we have a completely different crime that we
17 would intend to impeach him with versus what he is
18 on trial for.

19 THE COURT: You are saying a failure to stop
20 for a blue light and a strong arm robbery and a
21 PWID crack? How are they probative as to
22 credibility? I mean, she is not contesting the
23 weapons charge, and I was going to let that in
24 anyway because the issue about the guy saying he
25 saw him with a gun. So, I mean, and I think -- and

1 that is within the ten years. But these are old
2 cases, 21 and 15 years ago. And I am just trying
3 to figure out how it goes to credibility, because
4 that is the only purpose of putting it in is to
5 impeach him. So how are they probative to
6 credibility?

7 There is a case, and I can't think of the name
8 of it, it starts with a B, I want to say. It came
9 out a couple of years ago. It talked about
10 credibility. It was a robbery, I think, armed
11 robbery?

12 MS. YOUNG: Broadnax?

13 THE COURT: Broadnax. Thank you. I told you
14 there is a case that started with a B. It started
15 with a B.

16 MS. CAVANAUGH: Right. That was the case that
17 decided that armed robbery was no longer considered
18 a crime of dishonesty because it involved taking
19 property or, excuse me, taken from the person -- I
20 can't remember exactly off the top of my head why
21 it was decided. But then they -- it no longer
22 involved a crime of dishonesty, so now you have to
23 actually conduct the probative versus prejudicial
24 analysis under 403.

25 THE COURT: Yes, and I would think -- I mean,

1 it is just the same thing here. I mean, you have
2 to ask what are they being offered for. It has to
3 be offered to impeach. And to impeach means to
4 question the credibility and then question the
5 credibility --

6 MS. CAVANAUGH: And, Your Honor, if they --
7 and I honestly -- if we can agree that just the
8 2005 weapons offense, that he wasn't released from
9 confinement until three years ago, if we can just
10 agree to that one, it will avoid having to prolong
11 the argument on these remote convictions. I meant
12 three years prior to the incident. Confinement
13 three years prior to the incident. So that is what
14 I was referring to.

15 THE COURT: All right.

16 MS. YOUNG: I mean, I don't think they can ask
17 if he was released from confinement three years
18 prior to this, I think they can ask if he was
19 convicted of a weapons charge. Oh, I'm sorry, I
20 misunderstood.

21 THE COURT: She is going to just ask if him he
22 was convicted in 2015 on a gun charge.

23 MS. CAVANAUGH: 2005.

24 THE COURT: 2005. Okay. All right. We're
25 going to put him on the stand, but the deputies do

1 have to stand up there.

2 MS. YOUNG: Okay. Your Honor, if we are going
3 to power through for the evening, I have a few
4 things that I'd like to address, the first of which
5 would be the admissibility of the jail calls, his
6 jail phone calls, which I reached out to
7 Ms. Cavanaugh. I thought she may be putting them
8 in in her case in chief. Assuming that she is not
9 since they have rested, I still have made the
10 motion to exclude those on constitutional grounds,
11 on Rule 5 violations. I'm assuming that once he
12 takes the stand she may try to impeach him with
13 those jail calls, so we would need to address their
14 admissibility prior to him taking the stand.

15 MS. CAVANAUGH: Your Honor, that is correct.
16 And, you know, because we have been powering
17 through, I have not been able to -- I mean, of
18 course, I wasn't able to make a decision on the
19 admissibility developed dependent on how our trial
20 unfolded. And so I had every intention on using
21 them for impeachment value, but I haven't had an
22 opportunity yet to redact them, and so that is
23 going to take a few minutes.

24 MS. YOUNG: And along those lines, Your Honor,
25 I would also ask if we start Mr. Brown's testimony

1 tonight, that we complete it, and I expect that
2 would be lengthy.

3 THE COURT: How long is it going to take you?

4 MS. CAVANAUGH: Well, I just need to -- I need
5 to actually review the calls real quickly again.
6 They are not that long.

7 THE COURT: So you are going to try to impeach
8 him with the calls, or you are going to bring
9 somebody in on reply from the jail, a custodian I
10 guess? My guess is it can be done one of two ways.
11 But it is up to you, it is your case.

12 MS. CAVANAUGH: I would intend on impeaching
13 them directly through him.

14 THE COURT: Okay. And not to hold you to it,
15 but are you going to have other witnesses other
16 than him?

17 MS. YOUNG: I'll let Ms. Davis address that.

18 MS. DAVIS: I believe so, Your Honor, but I do
19 not think they would be long. They won't be very
20 long.

21 THE COURT: And then you may have reply?

22 MS. CAVANAUGH: Right. I mean, yes, Your
23 Honor.

24 THE COURT: Okay. Well, if you have got to
25 get the recordings -- you have an argument -- you

1 said you are objecting to the jail phone calls?

2 MS. YOUNG: Yes, I am objecting to their
3 admissibility at all. I believe Your Honor has
4 heard this argument before. I do not think that
5 would be long if you would like to go ahead and
6 address that this evening.

7 THE COURT: I will, but I am going to let the
8 jury go home.

9 MS. YOUNG: Absolutely.

10 THE COURT: And we can address the issue, he
11 is going to have to sit on the stand, but the
12 deputies are going to have to stand over there for
13 security reasons.

14 MS. YOUNG: We would like to address that
15 after the jury leaves as well.

16 THE COURT: All right, you can bring them in.
17 (WHEREUPON, the jury came into open
18 court at 5:39 p.m.)

19 THE BAILIFF: The jury is present, Your Honor.

20 THE COURT: All right, thank you.

21 Mr. Foreman, and ladies and gentlemen of the
22 jury, we are in here working on some matters of
23 law, and so it is going to take longer than I
24 thought, and so I am going to go ahead and release
25 you all for the evening. You do not have to be in

1 the jury room any longer.

2 So have a wonderful evening. Please do not
3 discuss the case. And we will see you all back
4 tomorrow. Do not do any independent research or
5 anything regarding the case. We will see you back
6 in the morning around 9:30. We will order lunch
7 again tomorrow. We don't have a whole lot of
8 options, so we will let you all -- you can let
9 them -- I guess we will order from another place,
10 but we will start back at -- we will have you back
11 at 9:30. She will get your orders in the morning
12 when we get here.

13 All right, thank you.

14 (WHEREUPON, the jury is excused for the
15 evening at 5:41 p.m.)

16 THE COURT: All right. I would like to
17 resolve as many issues as we can this evening. I
18 know everyone is tired, but I would like to resolve
19 as many issues as we can so in the morning we can
20 have the Defense put up their case, I know you all
21 have reply, so at some point tomorrow we can argue
22 and charge, and hopefully that is not 4:00 or
23 5:00 o'clock, because as you all are aware, we are
24 working under different circumstances, and on
25 Monday morning there will be another jury in here.

1 The jury will be in here for qualifications on
2 Monday morning. Mr. Truitt has asked me -- they
3 are trying to figure out how they are going to
4 handle that. So my goal is to try to finish
5 tomorrow. I don't intend on being here on
6 Saturday, but if we have to go into next week,
7 we'll have to. We will probably start later.
8 We'll figure that out tomorrow. But I'll be glad
9 to hear from you, anyone regarding, you said the
10 9-1-1 tape? The deputy, I know you have the motion
11 y'all don't want the deputies to stand up there,
12 but he is detained and he has been sitting over
13 there with him the whole time. But I will let you
14 put it on the record. I will let you put it on the
15 record regarding the deputies. We will put them
16 somewhere where they are not like standing over
17 him, but they need to -- they have to be in close
18 proximity to him, just as they are right now.

19 MS. YOUNG: Okay. So, Your Honor, officially
20 on the record, I would move that he be unshackled
21 prior to anything happening, that he be called to
22 the stand and allowed to walk up to the stand and
23 take the oath like any other witness. Him being
24 shackled and made to sit down and be there when the
25 jury comes in and get sworn in under, you know,

1 different circumstances than every single other
2 witness that comes in here and testifies calls
3 attention to the fact that he is being treated
4 differently. It prejudices him. He cannot get a
5 fair trial, you know, when we treat him differently
6 and call attention to the fact that he is a
7 Defendant. And it may call their attention to the
8 fact that he is incarcerated. So we would ask that
9 you unshackle him and allow him to stand and take
10 the oath like everybody else and sit down at the
11 witness stand. We would also completely object to
12 any deputy moving from, you know, being that close
13 to him. It makes him look dangerous, it makes him
14 look like he is a threat, it makes him look like
15 y'all might be scared of him or the Solicitors
16 might be scared of him or that the jurors should
17 have a reason to be scared of him. It is
18 completely prejudicial, and we would object to that
19 on all kinds of constitutional grounds: His right
20 to a fair trial under the Sixth Amendment, due
21 process under the Fourteenth Amendment. And I'll
22 be glad to address it further. It would be helpful
23 to know what exactly the plan is for where they
24 will go, but I can't imagine, they have been
25 sitting over here next to him already all week, and

1 then I think then they move. Do you know what Your
2 Honor would intend to do?

3 THE COURT: I would probably have one of the
4 deputies sit where the bailiff is at the door and
5 one of them sit over here. They don't have to
6 stand over him. But for security reasons -- and,
7 sir, I'm not implying that you would do any of
8 this, but I have to be concerned about security
9 reasons in every single case. We will not
10 unshackle him. They -- he has the ones on that
11 don't make any noise. We'll push him up. He can
12 sit under -- he can move his feet where they cannot
13 be seen. And we will seat him in the jury box
14 before the jury comes in. There have been cases in
15 here where judges have allowed the Defendant to be
16 unshackled and the Defendant ended up down on
17 Assembly Street from running out of the courthouse.
18 And as I always say, I don't have to run after
19 anyone, and the deputies set the policy, and I
20 believe that is the policy is that they have to
21 wear the shackles for purposes of -- because he is
22 still technically in their custody.

23 MS. YOUNG: Certainly. And, Your Honor, for
24 the record I would like to put some case law on the
25 record about that. I would also like to address,

1 we have entered the 21st century, and there is
2 technology that would allow him to wear a stun belt
3 under his clothes so they wouldn't be able to see,
4 that if he got up and moved away from the deputy or
5 tried to leave the courtroom, it would immediately
6 incapacitate him and he wouldn't have to have his
7 legs shackled. The shackled legs, that is just
8 where the Sheriff's Department hasn't joined the
9 21st Century yet. But there are absolutely ways to
10 address security concerns while also treating him
11 like every other witness and allow him to get a
12 fair trial, Your Honor. And, you know, just
13 because they have chosen to go the shackle route
14 doesn't mean that it should subjugate his right to
15 a fair trial.

16 As far as, you know, shackles remaining --
17 shackled and having a deputy close to him, and all
18 that, there has been no allegations that he has in
19 any way done anything, at the jail during the two
20 and a half years that he has been incarcerated,
21 never in the courtroom has he done anything.

22 THE COURT: He has a conviction for escape.
23 He has several --

24 MS. YOUNG: In the 90s, Your Honor.

25 THE COURT: I know, but he does. He has a

1 conviction for escape. He has a conviction for
2 failure to stop, two for failure to stop for a blue
3 light, two for parole violation, probation
4 violation.

5 Your arguments are noted for the record, but I
6 am not going to allow him to take the shackles off.
7 And the deputies, I am not going to have them -- in
8 the past I know they have stood over, like right
9 next to him. I am not going to have them do that,
10 but they will be able to position themselves one by
11 the door by the jurors, so they will be sitting by
12 the jurors, and one can sit in that chair right
13 there by that exit, and if the rest of them want to
14 sit by this exit where they can sit.

15 MS. YOUNG: Okay, Your Honor. Just for the
16 record, the cases are Holbrook v. Flynn, at 106
17 S.Ct. 1340. Illinois v. Allen, at 90 S.Ct. 1057.
18 And Deck v. Missouri -- I'm sorry, I am giving you
19 the wrong cites. Deck v. Missouri at 544 U.S. 622.
20 That Illinois v. Allen was 397 U.S. 337. And then
21 Holbrook v. Flynn is 475 U.S. 560.

22 THE COURT: And I don't know anything about
23 the Deck, but I am actually surprised that you are
24 suggesting that because I would expect an argument
25 that if he had that on that it would be --

1 MS. YOUNG: Well, Your Honor, I do enjoy
2 arguing about much of like anything, but --

3 THE COURT: Inhumane to shock.

4 MS. YOUNG: Well, if you don't do anything
5 wrong, you don't get shocked, Your Honor. And, you
6 know, in the capital realm, that is -- I mean, you
7 know, I did a lot of capital defense work prior to
8 joining the office, and that is always what
9 happened. Nobody was shackled, and they were
10 facing the death penalty. So, you know, I
11 understand your ruling, and I'll sit down and be
12 quiet.

13 THE COURT: All right. And your next
14 argument? Your next argument?

15 MS. YOUNG: Oh, I'm sorry, Your Honor. Very,
16 very briefly. We are all like crazy now. Very,
17 very briefly. You have heard this argument before.
18 Ms. Eigenbrot from my office argued this in front
19 of you, and you denied it, so I anticipate that
20 this will be a very quick argument. But for the
21 record, I would like to say that we believe that
22 the jail phone calls that the State has obtained
23 and turned over to us in discovery should be
24 excluded from being used at all in this case
25 because, you know, Correy has been detained since

1 his arrest December 31st of 2018. He has no
2 ability to have unmonitored communications with
3 people outside of the jail. Emails, letters, phone
4 calls, they are all subject to some sort of
5 monitoring because he is a pretrial detainer, and
6 there is not even in-person visitation at the jail.
7 So literally all of their communication is
8 monitored.

9 Presumably this monitoring serves the purpose
10 of security. You know, keeping people at the jail
11 safe, keeping the staff safe. And that is great,
12 but now it has turned into this, you know, tool of
13 surveillance, essentially.

14 The Solicitor's Office has the ability to just
15 listen to whatever phone call at whatever time that
16 they want to, as does law enforcement. And there
17 is no standard, there is no search warrant
18 requirement, there is no standard at all required
19 to obtain that information.

20 You know, as you know, an individual awaits
21 trial in jail for one of two reasons. They are
22 either denied bond, which is Mr. Brown's situation,
23 or they are too poor to be able to afford their
24 bond. And, you know, either way, they can't get
25 out and they can't prepare their case on the

1 outside of the jail. People in jail are isolated,
2 they are scared, they are bored, and the only real
3 outlet they have is communicating with people on
4 the outside. And, you know, it is not really
5 consent. I know the recording says, You are being
6 recorded, and by talking on the phone you are
7 consenting to the recording, but it is not really
8 consent if you don't have any other option. And
9 the idea is the State gets to just listen to
10 whatever phone call they want to flies in the face
11 of any sense of fairness or completeness. Because,
12 you know, we've gotten, I guess, I don't know,
13 five, six calls. And how many -- he has been there
14 for two and a half years -- how many hundreds of
15 calls are there. And so it is just -- it is used
16 in this way of cherrypicking information to use
17 against a person without any sort of search
18 warrant, without having to comply with the rules --
19 the court rule, Rule 5 of the Rules of Criminal
20 Procedure.

21 The monitoring of jail calls started in a way
22 to ensure the safety of jails and the people inside
23 them, but we have let it be turned into an
24 investigative tool for the Solicitor's Office and
25 law enforcement. And we believe this practice

1 violates Rule 5 (b)(2) of the South Carolina Rules
2 of Criminal Procedure, the Equal Protection Clause
3 of the U.S. Constitution, Correy's due process
4 rights, and his rights under the First, Fourth, and
5 Sixth Amendments to the Constitution.

6 For these reasons, Your Honor, we would ask
7 that you would exclude them from coming in as
8 evidence at this trial, for impeachment or
9 otherwise.

10 THE COURT: There is some case law that says
11 it can be used by law enforcement for investigative
12 purposes. I can't -- now, the Solicitor's Office,
13 that is a different story.

14 MS. YOUNG: Right.

15 THE COURT: But law enforcement, I think there
16 is some case law that says that it can be used by
17 law enforcement for investigative purposes.

18 MS. CAVANAUGH: And that is -- I don't have
19 the specific case in front of me, but that is the
20 case in this particular situation. Investigator
21 Laurita, as soon as Mr. Brown was booked, he did
22 download I think it was five calls that Mr. Brown
23 made. And so this was not done for the Solicitor's
24 Office. As far as the hundreds and hundreds of
25 other calls, that is not --

1 THE COURT: So these are calls that came not
2 long after his arrest?

3 MS. CAVANAUGH: It was immediately upon his
4 arrest. And Investigator Laurita is the one who
5 actually listened to them and downloaded them.
6 And, once again, you know, when he was in custody,
7 their privacy rights are curtailed. Every single
8 time that he makes a phone call he is warned it is
9 being recorded. And while I understand what their
10 position is, I mean, he still made the statements
11 that were inconsistent with what he related to
12 Investigator Laurita, which makes it probative.

13 THE COURT: So the calls are days after?

14 MS. CAVANAUGH: I believe they are within a
15 couple of days of his arrest.

16 MS. YOUNG: Your Honor, we were never provided
17 the date of these phone calls, so we have no idea
18 when. No, no, we absolutely have the calls, I'm
19 not saying that. I never saw the date of the
20 calls.

21 THE COURT: It usually says it on there.

22 MS. CAVANAUGH: Yes, and it says it in his
23 report, but --

24 THE COURT: No, usually on the phone calls it
25 says --

1 MS. YOUNG: Your Honor, every other time that
2 I have gotten phone calls, it had a date and a time
3 and you could see it like part of the file name.
4 For whatever reason, in this case we didn't get it.
5 I'm not making -- I think she is right that Laurita
6 says it in his report when he pulled the calls.

7 THE COURT: Do you know if it was in -- was it
8 in his report immediately --

9 MS. CAVANAUGH: It was January 3rd, 2019, when
10 he actually listened to the jail calls, and so they
11 were either on January 3rd or prior to that.

12 THE COURT: All right. That is what is
13 documented in his report?

14 MS. CAVANAUGH: Yes, Your Honor.

15 THE COURT: All right. I think that -- and I
16 don't have the case in front of me, but there is a
17 case -- and it is late and I can't even give you a
18 letter this time -- there is a case that is on
19 point that says that law enforcement can use the
20 jail phone calls for investigative purposes, and
21 because it is close in time when they are, I
22 assume, still investigating and probative, I will
23 allow the jail phone calls. And I do find under
24 403 that the probative value outweighs any
25 prejudicial effect. He is notified that the calls

1 were being recorded. And so -- I am trying to
2 remember what case that is. It talks about for
3 security purposes and investigative purposes law
4 enforcement being able to use the jail phone calls.
5 So I will let it in for that reason under
6 investigative purposes.

7 How it gets in under the -- and I said that in
8 that case probably with Ms. Eigenbrot -- how it
9 comes in through the Solicitor's listening to it,
10 that is a whole different story, because I don't
11 think it is their job, it is the investigators,
12 so -- but we will have to deal with that at another
13 time. I think I said that at that time.

14 MS. YOUNG: Your Honor, I have the transcript.
15 I didn't like the ruling, but I have the
16 transcript.

17 THE COURT: Yes. But in that case I don't
18 think the Solicitor would have won that one. I
19 think that was Ms. Sampson's case and Ms.
20 Eigenbrot. I don't think the Solicitor -- it is
21 similar to this case.

22 MR. MCGLOTHIN: Your Honor, it was. I was on
23 that case. That was Brian White, I believe.

24 THE COURT: And I was shocked to learn that
25 they can just dial in to some number and listen.

1 Yes. That will be for another day. But I think
2 they have already got the point.

3 All right. Anything else we need to take up?
4 Assatta has started working on the jury charge. It
5 is pretty straightforward. And she said she can
6 email it to you. She had asked me about the alibi
7 charge, and so she'll put it in. That doesn't mean
8 that it is going to -- it is just a draft. So
9 y'all take a look at it and see. Anything else out
10 of the ordinary that we need to add in there?

11 MS. CAVANAUGH: I mean, perhaps, I mean,
12 voluntary intoxication. Certainly something
13 about -- I mean, I don't know necessarily that
14 that -- I just can't anticipate what I will have to
15 say, but --

16 THE COURT: I didn't put alibi in.

17 MS. CAVANAUGH: Motive is not a -- the State
18 is not required to prove motive in a murder
19 prosecution.

20 THE COURT: You will have to get me some case
21 law.

22 MS. CAVANAUGH: Yes, I will.

23 THE COURT: Objection to voluntary
24 intoxication? I don't know -- you don't have to
25 answer today. But we'll just leave it in there.

1 Alibi, I guess we will have to wait. We have to
2 wait and see. I think that was it. So if you can
3 think of anything. And I put the -- look at the
4 circumstantial evidence charge, but I put the one
5 in that I have been charging since State v.
6 Herndon. I do remember that one.

7 All right. Well, I guess we will start at
8 9:30 in the morning. Yes, 9:30 in the morning.
9 She is going to order lunch for them. We will let
10 you all put up your case. If you think you are
11 going to need reply or rebuttal witnesses, please
12 have them ready.

13 Oh, regarding the -- you have got to do some
14 redactions to the jail phone calls?

15 MS. CAVANAUGH: Yes, Your Honor, I do, but
16 maybe we can agree on those tonight, you know,
17 before midnight, but once we are able to agree on
18 them, our IT -- Justin Martin, with IT, he can
19 shorten the calls. But, I mean, I hope that we can
20 agree on redactions.

21 MS. YOUNG: Your Honor, surely we can attempt
22 to agree on redactions.

23 THE COURT: All right. And I'm trying to
24 think, for security, Mr. Bowen, I think when he
25 takes the stand, I am just going to let the deputy

1 sit where you are sitting.

2 THE BAILIFF: Right.

3 THE COURT: Well, and I was trying to think,
4 or if I should just put the deputy by the doors.
5 But we don't need extra deputies. So I was
6 thinking of putting the deputy where you are
7 sitting, and then I guess you could sit right here,
8 Mr. Bowen?

9 THE BAILIFF: Right.

10 THE COURT: And then one of the deputies sit
11 right here, and then if somebody wants to stand
12 back there by the door where y'all always are, that
13 is fine. And then over here.

14 All right, see y'all at 9:30.

15 MS. CAVANAUGH: Thank you, Your Honor.

16 (WHEREUPON, the proceedings adjourned
17 for the evening at 6:02 p.m.)

18 JUNE 11, 2021

19 (WHEREUPON, the proceedings commenced at
20 10:55 a.m.)

21 THE COURT: Are we ready?

22 MS. DAVIS: We are, Your Honor.

23 THE COURT: Is the Defendant testifying?

24 MS. DAVIS: He is not.

25 THE COURT: All right. Is that correct?

1 Stand up, sir.

2 (Defendant stands.)

3 THE COURT: All right, let me get you to raise
4 your right hand again.

5 (Defendant complies.)

6 THE CLERK: Do you solemnly swear that the
7 answers you give to the questions propounded by the
8 Court will be the truth, the whole truth, and nothing
9 but the truth, so help you God?

10 THE DEFENDANT: Yes.

11 THE CLERK: Thank you.

12 THE COURT: And, sir, Mr. Brown, on yesterday
13 afternoon we were told that you were testifying.
14 And you remember I went over the rights with you.
15 Do you need me to go back over those with you
16 again?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: All right. And so you understand
19 that the decision is up to you if you testify or if
20 you don't testify. And so you are telling me this
21 morning that you do not wish to testify, is that
22 correct?

23 THE DEFENDANT: That's correct.

24 THE COURT: All right, thank you. And that
25 decision is being made freely and voluntarily?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. And knowing all that
3 we have discussed, including -- you have heard --
4 we made some rulings about the record, and any
5 other things, and so you have taken all of that in
6 totality in making your decision not to testify, is
7 that correct?

8 THE DEFENDANT: That's correct.

9 THE COURT: All right, thank you.

10 All right, my understanding is you have two
11 other witnesses. Are they here?

12 MS. DAVIS: Your Honor, we have released them,
13 so we will not be putting up a case.

14 THE COURT: Okay. All right, let's talk about
15 the jury charges. Did you all have a chance to
16 review them? I am going to let you rest. I
17 actually might need to bring the jury in. They
18 have been sitting in there since 9:30.

19 MS. CAVANAUGH: And just for scheduling
20 purposes, Your Honor, we just became aware that
21 they weren't going to put up a case, and so they
22 provided us with the expert's report last night.
23 And of course we discussed redacting jail calls,
24 and I was under the impression last night that he
25 was going to take the stand this morning. So we

1 would just need a few -- I mean, just a little bit
2 of time to get organized for closing, since as of
3 last night at 7:00 o'clock we were under the
4 impression that they were going to put up a case.

5 THE COURT: All right. Let's talk about
6 the -- let's see if I can do that quickly, the jury
7 charges.

8 MS. CAVANAUGH: As far as the ones that we
9 have submitted, Your Honor, we have -- regarding
10 the State in that regard to prove motive in a
11 homicide prosecution, we just want that language,
12 just not the following paragraph that we submitted.
13 So as far as the request for motive charge that we
14 provided, we just want State v. Neeley, the State
15 is not required to prove motive in a homicide
16 prosecution.

17 And then as far as requesting a malice charge,
18 we requested State v. Mouzon, which we still would
19 like charged to the jury. And -- beg the Court's
20 indulgence -- and State v. Wilds that follows.

21 THE COURT: Mouzon is the one that is already
22 in there, in the jury charge.

23 MS. CAVANAUGH: Okay.

24 THE COURT: I mean, it is similar.

25 MR. MCGLOTHIN: I don't believe it is -- I

1 apologize, Your Honor. In looking at it, I think
2 it is a similar one, but I don't think it quite
3 gets to the point of the section that we need. And
4 the item there is regarding, not necessarily
5 according to ill will, I believe the standard
6 charge kind of covers, it kind of hits, Malice is
7 hatred, ill will, or hostility towards another, and
8 I think this section kind of clarifies that a
9 little better.

10 MS. HUBBARD: Your Honor, we would ask for the
11 standard charge on malice, I don't think what the
12 State is requesting additionally. I think that is
13 covered in your standard charge.

14 THE COURT: Let me read the standard charge.
15 It says, Malice is hatred, ill will, or hostility.
16 So it doesn't just say ill will. It is the
17 intentional doing of a wrongful act without just
18 cause or excuse and with the intent to inflict the
19 injury. Malice aforethought does not require that
20 malice exist for any particular time before the act
21 is committed, but malice must exist in the mind of
22 the Defendant just before and at the time of the
23 act. Therefore, there must be a combination of the
24 previous evil intent and the act.

25 I mean, the case you cite is a 1957 case.

1 MR. MCGLOTHIN: And as to that, in response to
2 the Defense looking at our malice charge, the
3 express or implied section, I mean, that is a 2003
4 case. I mean, that is not --

5 THE COURT: Is that in here?

6 MR. MCGLOTHIN: I don't believe the express
7 and implied description of it is in there, in the
8 standard charge.

9 THE COURT: Yes. Why is that -- that should
10 be in there. Yes, but it should -- there is
11 another charge that should be --

12 What about their motive request to charge?

13 MS. HUBBARD: Your Honor, we would object to
14 that because it is -- well, citing State v.
15 Hartley, which is cite 307 S.C. 239, the Court
16 found that the instruction on motive was an
17 impermissible charge on the facts, so we would
18 object as to that. That is something that the jury
19 can consider, but it shouldn't be instructed by the
20 judge since it is law.

21 THE COURT: I don't know if that is a comment
22 on the facts. I mean --

23 MR. MCGLOTHIN: Your Honor --

24 THE COURT: It is the law, so --

25 MR. MCGLOTHIN: And that is the position we

1 take. That is --

2 THE COURT: I'll have to read that case.

3 MR. MCGLOTHIN: And I'll have to look at it as
4 well. But as far as in my research of Needs, that
5 is still good law as to -- that the State does not
6 have to prove motive. And a request of a correct
7 statement of law on an issue raised, you know, in
8 the trial should not be refused. That is State v.
9 Austin, 299 S.C. 456. It is a 1989 case.

10 THE COURT: The only thing is, I think -- you
11 are saying you are not asking for the paragraph,
12 but I think the paragraph would be better because
13 it does say that motive is something that is
14 circumstantial evidence that the jury needs to
15 consider. So I'm not sure if I want to just say,
16 The State is not required to prove motive in a
17 homicide prosecution. I think the next paragraph
18 actually is probably a more accurate statement of
19 the law.

20 MR. MCGLOTHIN: And, Your Honor, that is kind
21 of why I included that second one in the charge
22 just in case you were worried about that being --
23 the first sentence being short, so we would ask
24 that both be put together, because I think the
25 second standing alone doesn't really say the same

1 thing that the first does on its own. It says --
2 it kind of comments as to that it can be used as
3 circumstantial evidence, but it still does not get
4 the point across that we don't have to prove
5 motive.

6 THE COURT: It does. It says, Motive is not
7 an element of a crime.

8 MR. MCGLOTHIN: Well, it says generally it is
9 not. And I know that is a very small difference,
10 Your Honor, but I think it does change how resolute
11 that sentence is.

12 THE COURT: That is an accurate statement of
13 the law. I mean, that is what the case says, so.
14 I mean, if I'm inclined to charge anything, I'll
15 charge the law straight from the case law. I don't
16 think you can take pieces out and -- I mean, if you
17 are going to charge them, you are going to charge
18 it the way it is stated in the case. And that is
19 the way it is stated in the case, that -- but
20 frequently motive is circumstantial evidence.

21 MR. MCGLOTHIN: And I guess the Needs quote is
22 how it is written, that is not reworded. That is
23 from State v. Needs.

24 THE COURT: Yes, ma'am?

25 MS. HUBBARD: Your Honor, I would just -- Your

1 Honor, as you stated earlier, I think the law here,
2 the second paragraph that they are referring to
3 that you are including, I think that is sufficient.
4 I don't think it needs to include the first
5 statement. I think all of that is covered in that
6 second paragraph.

7 THE COURT: All right. I'm going to -- we'll
8 add the second paragraph in there. And that is
9 from the State v. Sweat case, which is a more
10 recent case from 2004. So she'll add that.

11 MS. HUBBARD: And, Your Honor, additionally,
12 just in general the instructions that we submitted,
13 we would just ask that the Defendant's name be
14 changed to Correy Brown instead of the Defendant.

15 THE COURT: Instead of who?

16 MS. HUBBARD: The Defendant. Insert his name,
17 Correy Brown, instead of referring to him as the
18 Defendant.

19 MR. MCGLOTHIN: Your Honor, I believe that is
20 proper.

21 MS. HUBBARD: Right. But, instead of the word
22 *Defendant*, referring to him as Correy Brown.

23 THE COURT: No, I am going to leave it,
24 because he is the Defendant. I mean, I will read
25 it. And I have referred to him as Mr. Brown

1 throughout the trial, but I'm not going to change a
2 word out of it, no. He is the Defendant. I mean,
3 he is the Defendant in this case. So your
4 objection to that is noted for the record, but
5 overruled. We are going to add this. Let me see
6 what you have.

7 Yes. For some reason, I don't know why, it is
8 not in the -- it wasn't in the original charge, but
9 there is a charge -- let me read it to you, and
10 then we will print a copy off.

11 The Defendant is charged with murder. The
12 State must prove beyond a reasonable doubt that the
13 Defendant killed another person with malice
14 aforethought. Malice is a legal term implying
15 wickedness and excluding any just cause or excuse.
16 The term malice indicates a formed purpose and
17 design to do a wrongful act under the circumstances
18 that exclude any legal right to do it. It is
19 something which springs from wickedness, from
20 depravity from a heart devoid of social duty and
21 fatally bent on mischief. Malice may be express or
22 implied. Malice is hatred, ill will, or hostility
23 towards another person. It is the intentional
24 wrongdoing of an act without just cause or excuse
25 and with the intent to inflict injury or under

1 circumstances that the law will infer an evil
2 intent.

3 And then I think the rest of it is in there,
4 but that is the malice charge. That is the portion
5 that was left off the normal malice charge.

6 All right. So that is what we will charge on
7 those two. And I believe -- so that is the one
8 from the desk book. We'll add the charge, Motive
9 is not an element of a crime. I guess put that
10 after all that. All right. And you have the
11 verdict form? Here is a copy of the verdict form.

12 MS. DAVIS: Your Honor, just a couple of
13 things. On Page 7 of the form, of the charge you
14 sent out, Prior record of the Defendant. I
15 understand that was initially --

16 THE COURT: Yes, she is going to take that
17 out. She did those last night when you said --

18 MS. DAVIS: Right.

19 THE COURT: And I think she also needs to
20 add -- you added failure to testify?

21 MS. DAVIS: Okay. That was the next thing.
22 And then the only other one is, I don't know if
23 specific intent is included. I'm trying to read
24 through them.

25 THE COURT: Yes. I haven't read -- I thought

1 we were -- you mean a specific intent charge?

2 MS. DAVIS: Yes.

3 THE COURT: Is it not covered in the intent
4 portion on Page 11? Do you have -- you want the
5 charge that says that, Murder is a specific intent
6 of the crime?

7 MS. DAVIS: Yes, Your Honor.

8 THE COURT: There is a charge that says murder
9 is a specific intent. And here is a copy of the
10 verdict form for y'all to look at.

11 So I'll read it. Specific intent is an
12 element of murder. Specific intent means intending
13 a certain result. The action didn't occur, not
14 accidentally or involuntarily. Intent may be shown
15 by the acts and conduct of the Defendant and other
16 circumstances from which you may naturally and
17 reasonably infer intent. Evidence of the character
18 of the act, character of the instrument used, the
19 manner in which it was used, the purpose to be
20 accomplished, and the resulting wounds or injuries
21 may be considered in determining intent with which
22 the act was committed. Intent may also be inferred
23 when it is demonstrated that the Defendant
24 voluntarily and willfully committed an act, the
25 natural tendency of which is to destroy another's

1 life.

2 Is there any objection to that? From the
3 State? That is the specific intent. That is the
4 specific intent charge that I have. If y'all have
5 anything else, I'll be glad to look at it.

6 MR. MCGLOTHIN: I think for us that would be
7 fine, Your Honor.

8 MS. DAVIS: I think so, Your Honor.

9 THE COURT: All right. Take a look at the
10 verdict form. Let me do this. Let me bring the
11 jury in, let them rest, let you all rest in front
12 of them, and then I will send them back out, let
13 them take like a 20-minute break so they can get
14 out of the jury room and pull their masks down.
15 Bailiffs, if y'all want to take them back
16 downstairs or something where they can get some
17 fresh air, to the jury assembly room.

18 MR. MCGLOTHIN: Your Honor, I hate to hold up
19 this, and I can take this up at a later time. I
20 did just want to briefly put on the record some of
21 our response to Ms. Young's motion regarding --
22 well, actually, I guess at this point it doesn't
23 matter, the jail phone call argument. I guess we
24 don't need to argue that since we aren't going --
25 excuse me, I apologize. I jumped ahead of myself.

1 THE COURT: Well, they are going to make
2 motions again after -- before we argue and charge.
3 We'll do that at that time.

4 All right, let's bring them in.
5 (WHEREUPON, the jury came into open
6 court at 11:17 a.m.)

7 THE BAILIFF: The jury is all present, Your
8 Honor.

9 THE COURT: All right, ladies and gentlemen of
10 the jury, I apologize for the delay. I assure you
11 that we were out here working hard. And so we did
12 not ask you to come in earlier to sit in the jury
13 room. I assure you we were out here working hard.
14 And so at this time -- as you heard yesterday, the
15 State rested. And although he does not have to,
16 Mr. Brown does not have to present anything, as I
17 told you on Monday or Tuesday, the burden is upon
18 the State to prove the Defendant guilty beyond a
19 reasonable doubt. If he does intend on putting up
20 anything, now is his time for him to do so. And so
21 I will turn to his attorneys to see if he is going
22 to present a case.

23 MS. DAVIS: Your Honor, the Defense rests.

24 THE COURT: All right, thank you.

25 All right, ladies and gentlemen of the jury,

1 the State has rested, and the Defendant is not
2 putting -- decided not to put anything up, which he
3 does not have to. And so at this time we are ready
4 for our closing arguments and the charge on the
5 law.

6 There are some things we need to get set up,
7 so what I am going to do is let you all take about
8 a 20-minute break because it is going to take some
9 time. If you need to go outside and pull your mask
10 down, get some fresh air. We will have closing
11 arguments, and then we'll have the charge on the
12 law. That is going to take a little bit of time in
13 here. Make sure you use the restroom before you
14 come back in. And we will see you all back in 20
15 minutes.

16 If they need -- if you have smokers that need
17 to go outside and take a smoke break, a mask break,
18 please do so right now, and then we will receive
19 you back. I believe the lunch will be here this
20 afternoon, a little later this afternoon, and so
21 once we finish closing arguments and the charge on
22 the law, you all will be able to hopefully start
23 deliberating this afternoon.

24 All right, thank you.

25 (WHEREUPON, the jury retires to the jury

1 room at 11:19 a.m.)

2 THE COURT: All right, anything else?

3 Anything else before we take our break?

4 I'm sorry, any motions? Renew any motions?

5 MS. YOUNG: Yes, Your Honor. If you will bear
6 with me.

7 Your Honor, at this time the Defendant moves
8 the Court for a directed verdict. Taking the
9 evidence in the light most favorable to the State,
10 the State has failed to present evidence beyond a
11 reasonable doubt sufficient to convince a
12 reasonable juror that the Defendant is guilty of
13 murder. Specifically, the State has failed to
14 prove the element of malice aforethought and
15 intentionally killing Donald Young.

16 I also renew all motions and objections made
17 prior to the trial and throughout the trial. This
18 includes the denial of Jackson v. Denno to suppress
19 the statement. It includes the motions to include
20 information about the possibility Ms. Guyton was
21 dishonest with the Solicitor's Office during the
22 interview with them prior to her testimony.

23 As well as, you know, we would renew all of
24 our objections that were made during the trial, and
25 additionally the Defendant asks this Court to

1 revisit previous rulings, reverse those rulings,
2 and grant a directed verdict, or grant the
3 Defendant a new trial.

4 In doing so, the Defendant asks the Court to
5 now consider the cumulative impact of all of the
6 Court's rulings.

7 THE COURT: Thank you. Any response from the
8 State?

9 MS. CAVANAUGH: As far as the directed verdict
10 motion, Your Honor, the standard pursuant to State
11 v. Bannon is that in ruling on the motion for a
12 directed verdict in State v. Bannon, 379 S.C. 487,
13 when ruling on a motion for a directed verdict, the
14 trial court is concerned with the existence or
15 non-existence of evidence, not its weight. Under
16 State v. Kelsey, 331 S.C. 50, a 1998 South Carolina
17 Supreme Court case, says any direct evidence or any
18 substantial circumstantial evidence reasonably
19 tending to prove the guilt of the accused. Then
20 the case would properly was submitted to the jury.

21 And, of course, the Defendant's motion,
22 viewing the evidence in the light most favorable to
23 the State, Your Honor, as stated yesterday, we
24 believe we have met that burden. We have an
25 eyewitness that was in the car who testified that

1 Mr. Brown, who he identified in the courtroom, is
2 the one who shot the victim in the neck. And
3 Dr. Durso testified that the victim died as a
4 result of a gunshot wound. We established that it
5 happened in Richland County. And also we do not
6 have to prove motive. Malice aforethought does not
7 have to be for any specific length of time. It can
8 be determined either through express or implied
9 evidence. So we believe that we have presented
10 enough evidence in our case in chief to surpass a
11 directed verdict motion.

12 And the previous rulings of the Court were
13 sufficiently argued, and we ask that you maintain
14 those previous rulings.

15 THE COURT: All right. In considering the
16 motion in the light most favorable to the
17 non-moving party, the Court does find that there is
18 sufficient evidence to go to the jury, issue of
19 fact to go to the jury based on the testimony that
20 has been presented here before the Court. So your
21 motion is respectfully denied.

22 Your motions to renew all objections are
23 preserved for the record, but they are denied, as
24 previously ruled on.

25 MS. YOUNG: Thank you.

1 THE COURT: All right, thank you.

2 So how much time do you all need? Because
3 they will bring them back up, but I don't want them
4 to bring them back up and have to sit in there
5 another 30 minutes.

6 MS. CAVANAUGH: Your Honor, I would request
7 that we have 30 minutes.

8 THE COURT: Can we do like 10 till 12:00?

9 MS. CAVANAUGH: Yes, Your Honor.

10 MS. YOUNG: Your Honor, are we going to get a
11 copy of the --

12 THE COURT: Yes. We will go work on that.
13 We'll give you a final copy, because I send a copy
14 back into the jury room, and so I want to make sure
15 everybody looks through it. I'm going to look
16 through it, read through it, look through it again
17 just to make sure everything is correct in there.

18 All right. So we'll see you back at ten till.

19 So, Mr. Bowen, y'all bring the jurors up about
20 ten till, okay?

21 THE BAILIFF: Yes, ma'am.

22 (WHEREUPON, a break was taken.)

23 THE COURT: 130 was never entered, so of
24 course it is not going back. That is the cell
25 phones?

1 MS. CAVANAUGH: Yes, Your Honor.

2 MS. DAVIS: Correct.

3 THE COURT: I just wanted to make sure we are
4 all on the same page. All right.

5 For purposes of closing statements, open in
6 full and then the Defense -- I mean, close in full
7 and then Defense has last closing.

8 Let's bring them in.

9 (WHEREUPON, the jury came into open
10 court at 12:04 p.m.)

11 THE BAILIFF: The jurors are all present, Your
12 Honor.

13 THE COURT: Ladies and gentlemen of the jury,
14 as I stated to you earlier, we are ready for
15 closing arguments. First you will hear from the
16 State, and then you will hear from the Defense.
17 Please pay close attention to the attorneys, and
18 then following that I will charge you as to the
19 law.

20 Thank you.

21 Yes, ma'am?

22 MS. CAVANAUGH: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, ma'am.

25 CLOSING ARGUMENT

1 MS. CAVANAUGH: Good morning.

2 No tension. No argument. No motive.

3 That is what Defense counsel said at the
4 beginning of this trial.

5 No tension.

6 For two hours before the Defendant shot the
7 victim in the back of the neck while he was driving
8 the car, there was tension at Anteyan Davis's
9 house. Anteyan Davis told us that.

10 Anteyan Davis told us under sworn testimony
11 from this witness stand, Correy Brown, the
12 Defendant, had a gun that night at his house two
13 hours prior to when he shot the victim.

14 Benjamin Parker, also at the house that night
15 with them, tension between the Defendant, who had
16 the only injury besides the victim from the wreck
17 that ensued after the Defendant shot him, the
18 injury that the Defendant received when he banged
19 against the front passenger's seat, which we have
20 seen multiple photos of. That same back seat that
21 in his own statement to law enforcement he said he
22 had never been in. That same back seat that has
23 his DNA on the interior of the passenger rear
24 interior door handle.

25 No argument.

1 Benjamin Parker, Donald Young's cousin, the
2 victim's cousin, the eyewitness to the event, took
3 the witness stand and testified under oath.

4 Keep in mind, he had not been with the only
5 two people who received injuries from the wreck
6 after the shooting. He has not been with them for
7 the previous two hours. He has no idea what has
8 gone on between them during that time.

9 What he does know is that when he got into
10 that car, within seconds there were some words
11 exchanged.

12 What he does know is that when Correy --
13 excuse me, the Defendant -- came up to his house
14 that evening at 3:30 in the morning and told him,
15 Hey, you go ahead and get in the front. You get in
16 the front.

17 And as soon as he gets in the front and they
18 drive down the street, when he is talking with his
19 cousin, he hears the Defendant, who is, by his own
20 admission, drunk, high, loaded, saying, Why am I
21 even back here, y'all ain't listening to me?

22 The victim, Bro, I'm listening, I'm listening,
23 as he is driving the car.

24 The next thing he knows, the Defendant says,
25 As a matter of fact, Shut the fuck up. Pow.

1 So while he might not -- Benjamin Parker may
2 not have known that there was tension when he got
3 in the car, there was certainly some words
4 exchanged shortly thereafter.

5 No motive.

6 The State is not required to prove motive to
7 convince you beyond a reasonable doubt that the
8 Defendant shot and killed the victim that night.

9 Now, on behalf of Mr. Young's family, on
10 behalf of the State, myself and my co-counsel,
11 Mr. McGlothin, we would like to thank you for your
12 attention throughout the trial this week. I know
13 it has been long nights -- long days, and a lot of
14 evidence has been introduced. And I certainly
15 appreciate your attention. And I would like to ask
16 for your attention for just a few -- 30, 45 more
17 minutes.

18 Now, we, as we do in every single case, the
19 State has the burden of proof. We have to prove to
20 you that the Defendant shot the victim beyond a
21 reasonable doubt. We have to prove each element of
22 murder to you beyond a reasonable doubt.

23 Murder in this state is defined as killing the
24 victim with malice aforethought, either express or
25 implied, and the victim died as a result thereof.

1 Malice aforethought -- first of all,
2 reasonable doubt. The judge, the Honorable
3 DeAndrea Benjamin, will instruct you on the law at
4 the end of closing argument, so I'm going to
5 briefly go over the law as it applies in this case.

6 Reasonable doubt. Proof that leaves you
7 firmly convinced of the Defendant's guilt. There
8 are very few things in this world that we know with
9 absolute certainty. And in criminal cases, the law
10 does not require proof that overcomes every
11 possible doubt. If, based on your consideration of
12 the evidence, you are firmly convinced that the
13 Defendant is guilty of the crime charged, you must
14 find him guilty.

15 If, on the other hand, you think there is a
16 real possibility that he is not guilty, you must
17 give him the benefit of the doubt and find him not
18 guilty.

19 And how do you -- well, malice aforethought.
20 Malice is defined as hatred, ill will, or hostility
21 towards another person. It is the intentional
22 doing of a wrongful act without just cause or
23 excuse and with an intent to inflict an injury or
24 under circumstances that the law will infer an evil
25 intent.

1 For instance, shooting the victim in the neck
2 while he is operating a vehicle is malice.

3 Malice aforethought does not require that
4 malice exist for any particular time before the act
5 is committed, but malice must exist in the mind of
6 the Defendant just before and at the time that the
7 act is committed. Therefore, there must be a
8 combination of the previous evil intent and the
9 act. The combination of the tension. The
10 combination of the words exchanged in the vehicle
11 right before he shot him.

12 Now, how do you determine the Defendant's
13 guilt? We have to present evidence. There are two
14 types of evidence. There is direct evidence: What
15 the witness sees, touches, smells, hears. And then
16 there is circumstantial evidence: That you infer
17 something from the circumstances. Both are equal
18 under the law.

19 In this particular case, direct evidence.
20 Someone has personal knowledge of the events that
21 occurred. An eyewitness, such as Ben Parker, who
22 is in the car at the time. Records from the
23 Defendant's phone showing he was moving all over
24 Hopkins while he says he was at Akela's house in
25 bed with his wife. The gas station video of the

1 victim's car with the Defendant in it -- by his own
2 admission -- with the Defendant in it. Right after
3 he has described two times during his interview
4 that he had just previously busted his lip.

5 Direct evidence. For example, his cell
6 records that show he was at the same tower from
7 2:40 to 2:53. Same exact timeframe that he is in
8 the car at that gas station.

9 And we'll look at all this a little bit closer
10 in just a second.

11 Circumstantial evidence. For example, the
12 almost hour break, with the exception of one phone
13 call that was a missed call in between 2:54 to
14 3:54, the time that we see the victim and the
15 Defendant leaving the gas station together. And
16 then the time that he starts blowing up the
17 eyewitness's phone.

18 Circumstantial evidence.

19 Now, part of what your role is is to determine
20 the credibility of the witnesses. When you
21 consider the credibility of the witnesses, you
22 consider their demeanor on the witness stand, was
23 the witness forthright or hesitant at all, was the
24 testimony of the witness consistent, was the
25 testimony of the witness corroborated.

1 Now, in this particular case, Ben Parker, the
2 cousin of the victim, the person who was in the car
3 right next to his cousin who had just got shot and
4 was chased to his home thinking he was going to get
5 killed that night, he remembers telling law
6 enforcement as much as he could. Let's get that
7 straight. He also tells us -- and part of the
8 conversation was at Julia Street, Jessica Guyton's
9 grandma's house. It is documented in the
10 investigator's report that they went there.
11 Sergeant Caldwell testified there is about a 30- to
12 40-minute conversation there. It is extremely
13 unfortunate that that conversation was not properly
14 documented. And we'll get to that later.

15 Benjamin Parker then went to headquarters
16 voluntarily and gave a recorded interview. We are
17 not permitted under the Rules of Evidence to just
18 show recorded interviews of witnesses. They have
19 to take the witness stand and testify.

20 He had not slept for over 24 hours. He had
21 just witnessed his cousin get shot in the head. He
22 thought he was going to die that night as well. Is
23 that unreasonable to assume that perhaps there is
24 some details that were given at one point and
25 details that were given a little bit later when he

1 had a clear head? That is not that unreasonable to
2 assume under these circumstances.

3 And let's be clear about this. Jessica
4 Guyton's attempted murder charge that is pending,
5 they spoke to investigators. This incident
6 occurred two and a half years prior to that. Okay?
7 Her pending charge from two months ago has
8 absolutely nothing to do with this case. They
9 spoke to investigators both at Julia Street and at
10 Pineview at the time this occurred. They spoke
11 with our office some -- a week before she -- her
12 new charge occurred. They spoke with us one more
13 time after that. So all of their information came
14 prior to whatever she is dealing with right now
15 related to that.

16 Now, the Defendant chose to speak to law
17 enforcement that night, and I know that -- or when
18 he was arrested two days after the incident. We
19 have watched it in full -- well, not in full, but
20 we have watched it once. We are going to watch it
21 again today. It is very important when you
22 consider the steps that Sergeant Laurita took after
23 the Defendant in his interview indicated to him
24 that he had evidence that was going to blow it out
25 of the water.

1 Keep in mind, other than changing the story in
2 the middle of it about why he was blowing up Ben
3 Parker's phone -- you will see this, but if you
4 remember, originally he is giving a timeline and
5 then he is like, Oh, by the way, my lip, that's
6 right, I busted my lip right before I went to the
7 gas station. That is just a little side comment.
8 And then he says that he -- the reason he was
9 blowing up Ben's phone that night is because he was
10 just calling to make sure he was okay.

11 Well, just think about that for a second,
12 okay? According to Mr. Brown, Ben dropped him
13 off -- excuse me, the victim dropped him off at
14 2:53, 3:00 o'clock in the morning, right after we
15 see them leaving the gas station. That is
16 according to the Defendant's own statement. He
17 says that Ben went home to his wife around 1:30
18 that same morning.

19 So why in the world would he be calling Ben
20 Parker at 3:00 -- excuse me, starting at 4:14 a.m.,
21 because those texts that I referred to at 3:57,
22 those were actually later, and that is in the call
23 detail records, his texts come an hour after
24 because of the time stamp. So why, as he
25 originally stated in his interview before he

1 changed his story to this effect, if Ben Parker
2 went home at 2:00, why would he just start blowing
3 up Ben's phone at 4:14 in the morning, some two
4 hours and 15 minutes after he says Ben left? That
5 makes no sense, right?

6 And so during the interview, he realizes that.
7 Oh, gosh, hum, that doesn't make any sense, does
8 it? So he has to change that story a little bit.
9 And that is when he conveniently decides to talk
10 about how Ben sells weed.

11 Oh, right, right, right, right, so I was
12 just -- everybody knows that man sells reefer. I
13 was just getting some reefer. Or I was trying to.

14 Okay. Well, what he doesn't say is that Ben
15 sold it to him that night. So how in the world is
16 Ben -- I mean, according to the Defendant's own
17 statement, Ben left between 1:30 and 2:00. He
18 never actually sold the marijuana to him that
19 night, according to the Defendant. He just was
20 calling him about it. So how would Ben Parker even
21 know about Correy's busted lip?

22 Again, credibility of the witnesses.

23 Now, let's watch -- let's just watch it again.

24 (Video played in open court.)

25 MS. CAVANAUGH: And, once again, you are also

1 allowed to use your common sense. Two days later,
2 after he busted his lip on a fairly blunt edge of a
3 car, it is still extremely visible.

4 (Video plays.)

5 MS. CAVANAUGH: All right. So notice that he
6 tries to describe some sort of altercation at
7 Tony's to sort of create some sort of I guess story
8 that whatever happened at Tony's has to do with
9 this incident.

10 But then he also says blah, blah, blah, blah
11 blah, and then he just sort of glosses over, Oh,
12 yeah, and then I busted my lip before the gas
13 station, and that that is just sort of a side
14 issue. He has this elaborate story about what
15 happens at Tony's, what he did, you know, after
16 Tony's, and then we get to his lip, which he knows
17 is a huge issue, and then he says, Oh, yeah, you
18 know, but that is what -- I did that earlier, no
19 big deal, and then I went to the gas station. No,
20 no big deal. You know, I busted my lip right
21 before because I was drunk, loaded, and high and
22 just kept going to the gas station.

23 And, oh, yeah, by the way, there is none of
24 his blood in the front seat where he says he sat
25 because he had tissue and his shirt was covering

1 it.

2 Okay. What really happened, and he knows
3 it...that. He went into that back seat after he
4 shot the victim, opened the door handle where his
5 DNA is -- not blood, but DNA -- excuse me, skin
6 cells -- looked in to see if the victim was moving,
7 and bled all over the door jamb, the seat, and
8 tripped all over on the back of that car while he
9 tried to gather himself to figure out, What in the
10 world am I supposed to do now?

11 And, you know, I'm sure that something will
12 come up about the Jaws of Life and how that could
13 have caused the glass breaking, which is likely
14 what caused that busted lip, is what caused that
15 busted lip, along with that indentation in the back
16 seat.

17 But let me show you something. Ben Parker,
18 who didn't sustain any sort of major injury, There
19 is just me in that front seat, consistent with him
20 not actually really getting any serious injury.

21 All right, I want to show you -- well, let's
22 get to the next part of his interview.

23 (Video plays.)

24 MS. CAVANAUGH: Ben dropped him off at Akela's
25 house after he takes him down -- earlier that

1 night, yes, but after he takes him down after he
2 shot the victim.

3 (Video plays.)

4 MS. CAVANAUGH: Okay. There it is. The phone
5 records show that he starts blowing up Ben Parker's
6 phone at 4:14. He is saying -- and if we get to
7 this later -- that Ben went home earlier that
8 night. So why would he wait two hours later to
9 start checking on him? That makes no sense.

10 (Video plays.)

11 MS. CAVANAUGH: All right. So then when he
12 describes once again -- because, you know, he just
13 says -- so he starts to explain all those phone
14 records, and then he goes back to the lip.

15 (Video plays.)

16 MS. CAVANAUGH: Did you speak to Akela? Yes.
17 Was she able to tell you anything? No.

18 (Video plays.)

19 MS. CAVANAUGH: Investigator Laurita testified
20 he went to Akela's house later that day, knocked on
21 the doors, heard people talking, no one came.

22 (Video plays.)

23 MS. CAVANAUGH: All right. So, once again,
24 let's look at that surveillance and then compare it
25 to the phone records. The surveillance that

1 Investigator Laurita, as soon as he finished this
2 interview, went to go get, followed up with the
3 investigation even after this Defendant was already
4 arrested to see if that -- whatever he was
5 describing is accurate.

6 (Video plays.)

7 MS. CAVANAUGH: All right. There we go.
8 There is the car. Zoom in. Absolutely no blood.

9 Now, we know -- and you'll be able to see this
10 when you get back there -- they are here from 2:40
11 to 2:53. Let's look at those phone records
12 closely.

13 (Video plays.)

14 MS. CAVANAUGH: Okay, so let's look at this.
15 And so, 2:42, a time we know he was at the gas
16 station because we see him, because he says that in
17 his statement, and we see the victim get out of the
18 car, so we know that is the car. 2:42. Same
19 throughout the time that they are at the gas
20 station, the exact same cell tower consistent with
21 what we can actually see on the video. Same cell
22 tower. Direct evidence.

23 Now, 2:53, as they are moving as they are
24 leaving, cell towers change.

25 Then for the time that the Defendant and the

1 victim are in the car by themselves, except for
2 that one missed call, from 2:54 -- except for that
3 one missed call right there, from 2:54 to 4:14, no
4 activity as far as transactions. But that phone is
5 hitting off of different cell towers.

6 Remember, that is when he is supposed to be at
7 Akela's house.

8 And then, all of a sudden, which he originally
9 said, when he checks on Ben at 4:15 to make sure he
10 got home, even though Ben got home two hours and 15
11 minutes earlier, all of a sudden, lots of phone
12 calls to Ben's number, 413-8039. Eleven times
13 there is transactions between those two numbers.

14 So when he is confronted with that, that is
15 when he decides to talk about the reefer.

16 And Investigator Houck indicated that the most
17 telling transaction to indicate that he is in fact
18 moving is at 4:58 to 4:59 when the calls start at
19 3011 for his cell phone and end at a different cell
20 site. This is after Ben Parker is finally able to
21 leave. And I submit that is when Mr. Brown tries
22 to get rid of -- gets rid of his evidence.
23 Whatever wasn't dealt with at the burn barrel was
24 dealt with when he was moving at 4:57.

25 I'll move on. Let's talk about what else

1 corroborates Ben versus the Defendant.

2 Dr. Durso, the pathologist. How do you know
3 that the gunshot wound is what killed the victim
4 and not the car crash?

5 Well, because the victim didn't actually have
6 any major injury other than that laceration because
7 of the crash, which would be consistent with what
8 Ben was saying about how he really -- when
9 confronted with, Well, why would the Defendant
10 shoot the victim as he is driving the car, Well, I
11 mean, he really wasn't going that fast. If you
12 think about it, he had just left Ben's house. Ben
13 thought they were going down the road. They really
14 weren't going that fast. So it is not like Mr.
15 Brown thought he was going to lose his life when he
16 shot Mr. Young. He was driving slowly.

17 Also, there is no stippling, which would mean
18 that the gunshot occurred further than 18 inches,
19 18 to 24 inches. Ben is left-handed. If he is
20 sitting in the front and the victim is driving, how
21 does that make any sense, right? How does that
22 make any sense?

23 Back to left is the trajectory. Gunshot wound
24 entrance: Back of the neck. Exit: Front of the
25 neck.

1 How do we also know that what Ben says about
2 whether the victim was driving at the time is
3 right? Well, Deputy White, Deputy -- former Deputy
4 Coroner, Katrina White, testified that she observed
5 no skid marks. We have pictures of it. You can
6 see it for yourself. No skid marks. Once again,
7 consistent with Dr. Durso's testimony that as soon
8 as that gunshot wound entered the victim's neck his
9 spine was severed. He would not have been able to
10 operate a car. Therefore, he would not have been
11 able to apply breaks.

12 Dr. Durso also told us that the victim is
13 6'7". I won't doublecheck the math, but 79 inches.
14 I am not going to try to do the math myself right
15 now, but that is very close to 6'7". He is a tall
16 gentleman. He drives a car with it being a little
17 leaned back. We see that. So to imply that he
18 must have been doing something different since it
19 was leaned back and not actually driving the car --
20 he is a tall gentleman. It is not that
21 unreasonable to assume that he might drive with his
22 seat a little further back than the average person.

23 All right. Now, there is a ton of focus on
24 what Sergeant Laurita did not do. Mainly the focus
25 was in regard to not properly documenting the

1 conversation at Julia Street. And he owned that.
2 But what was documented is that there was a meeting
3 at Julia Street.

4 Jessica Guyton. I spoke mainly with Sergeant
5 Caldwell. Unfortunately, Sergeant Caldwell,
6 because he didn't -- once again, he documented the
7 meeting, but not the notes -- said, Jessica Guyton,
8 he doesn't remember.

9 Now, she also says that their focus was on Ben
10 Parker because Ben Parker was in the car. But what
11 did Sergeant Laurita do? As indicated, he didn't
12 stop the investigation just because Mr. Brown was
13 arrested. He continued to request items. He
14 continued up to try to follow up on the information
15 that Mr. Brown gave him as far as the video from
16 the gas station, search warrant for his cell
17 records, see whether it would be consistent with
18 him staying at home or at Akela's house in the same
19 spot, trying to speak to Akela, who when she did
20 call him wasn't able to say anything.

21 So despite what the Defense would have you
22 believe, the investigation was still going on.
23 What did he do? He tracked down the last movements
24 of the victim. Anteyan Davis, interviewed him.
25 Did Anteyan Davis have any injuries? No. Was a

1 buccal swab collected? Yes. Is there anything to
2 indicate that Anteyan -- what Anteyan Davis told
3 him was anything different than what the evidence
4 showed? No.

5 Benjamin Parker. Brought -- interviewed on
6 Julia Street, brought him in to headquarters. Got
7 a buccal swab. Observed no injuries. Looked at
8 his phone. Search warrant for his phone -- excuse
9 me, consent for his phone. Requested GSR be
10 performed -- well, Investigator Humphries performed
11 GSR on the car. That was analyzed at SLED. And
12 gunshot definitely occurred in that vehicle.
13 Gunshot residue is consistent with a shot being
14 fired in that vehicle. Unable to get GSR from
15 anyone else because SLED won't accept it after six
16 hours on a living person because GSR is very easily
17 washed off and removed. Nicole Hardin testified to
18 that. Requested that the DNA analysis be
19 performed.

20 All those swabs taken from the back of that
21 car, the inside of that door jamb, the interior
22 handle all match the Defendant. That blood is not
23 where he says it should be at the gas station.

24 Anteyan Davis is excluded. And this is all
25 information coming from John Barron and Dr. Gray

1 Amick, who actually started the lab at the
2 Sheriff's Department. Anteyan Davis is excluded
3 from that car from the front seat. So, yes, the
4 victim's blood is on the air bag, the passenger
5 side air bag, which would be consistent with Ben
6 Parker saying that as soon as the gunshot went off
7 blood went everywhere, he had to grab the wheel to
8 take control of the car because the victim was
9 unable to. Not that of a far stretch to understand
10 how the victim's blood would be on the passenger's
11 side air bag and a little bit on that interior door
12 handle on the driver's side.

13 Despite what the Defense would have you
14 believe, law enforcement did not just take Ben's
15 word for it and be done with it. Nothing
16 contradicted what the eyewitness told them.

17 DNA, which is the most telling evidence that
18 we know based on the entire population, that DNA
19 matches Correy Brown. Correy Brown's DNA is inside
20 that interior handle where he says he never was.
21 His blood is not on the car when he says it would
22 be.

23 The evidence that we presented corroborates
24 what the eyewitness described, whether he told him
25 at Julia Street, at Pineview, from this witness

1 stand, the evidence corroborates Ben Parker's
2 testimony. The evidence does not corroborate the
3 Defendant's statement to law enforcement that
4 night.

5 I thank you for your attention. I know it has
6 been a long week. After you hear from Defense
7 counsel and the judge's instruction on the law, I
8 would ask you to find the Defendant guilty.

9 Thank you.

10 THE COURT: Thank you.

11 I am going to give them a second to move their
12 boards.

13 Yes, ma'am?

14 MS. DAVIS: Thank you, Your Honor.

15 CLOSING ARGUMENT

16 MS. DAVIS: If you have any questions right
17 now about what happened that night on the evening
18 of the 28th, the morning of the 29th, if you have
19 any questions right now about what in the world
20 happened that night, that is reasonable doubt.

21 And I assume that you do have questions
22 because what the Solicitor and what the
23 investigators are trying to say happened that night
24 makes no sense. And their own witnesses told them
25 what happened about no tension. And I know you

1 have heard this multiple times, but it is so
2 important. No tension, no argument, no motive.
3 Because that is not what happened. Correy Brown
4 did not murder Don P.

5 It was his birthday. They were all hanging
6 out. You heard from everybody, they are hanging
7 out. They are at Tony's, then they went to
8 Anteyan's. They were drinking. He had just met
9 Don that night. He had no animosity towards him
10 whatsoever.

11 Anteyan admitted when they left his house,
12 that there was a moment where he was like, Maybe I
13 better go with them, keep the party going. And
14 then he quickly kind of said, Well, I got to work
15 in the morning, I got a girl that might come over.
16 So he doesn't go. But why would he have even
17 thought about going with them if there was some
18 sort of like tension brewing or something happening
19 between Correy and Don?

20 And why would Don have followed Correy and Ben
21 over to Akela's house if there was some issue
22 happening with the two of them? He wouldn't. It
23 doesn't make sense because it is not what happened.

24 And Anteyan even told you that his description
25 of tension back in 2018, after he said, There is a

1 little tension, he described what he meant then.
2 And he says, Everyone was drinking. They were
3 drunk. They were shit talking. But then they
4 followed each other.

5 So if you listen to the context of what he was
6 telling them, there was no like big beef going on.
7 There was no anger and animosity. There was
8 nothing that would make anyone think that Correy
9 wanted to kill this person. It is just not what
10 happened.

11 And also keep in mind that Anteyan told you
12 before he went to headquarters on the 29th, who did
13 he talk to? Ben. He talked to Ben before he went
14 to headquarters.

15 Now, we have heard a little bit about the gas
16 station, and Don P and Correy being at the gas
17 station. Watch that video. The problem is there
18 are four channels that the gas station had that
19 night, and the State introduced --

20 MS. CAVANAUGH: Objection. It is not in
21 evidence.

22 MS. DAVIS: The State -- they introduced three
23 angles.

24 THE COURT: Let me see you all.
25

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: All right. Objection overruled.

5 MS. DAVIS: Investigator Laurita told you
6 there are four channels. The State showed you
7 three.

8 Now, I asked Investigator Laurita, On that
9 other channel, that is where we saw Don P, right?

10 And he said, Yes.

11 I said, He was smiling, wasn't he?

12 Yes.

13 He seemed to be having a good time, high
14 fiving people?

15 Yes.

16 Why did they not show you that? That is the
17 man that got shot minutes later who they are trying
18 to convince you very hard that there was tension
19 and that there was something going on between him
20 and Correy. But, meanwhile, you have video
21 evidence of Don smiling, pointing at people. I
22 think it looks like he is probably hitting on a
23 lady over by the gas tank at one point. That guy
24 is in a great mood. There is no tension.

25 And ask yourselves, Why is that the only angle

1 they don't put in evidence? Because it doesn't fit
2 with what they are trying to tell you.

3 Now, the other thing is Correy and Don were
4 together for at least an hour that night, just the
5 two of them. What the State wants you to believe,
6 then, is that as soon as they pick up Ben, within
7 seconds he shoots him for no reason. Driving down
8 the road within a matter of seconds, just shoots
9 him. The man is driving the vehicle that they are
10 all in. That makes no sense, because it didn't
11 happen.

12 And Ben told them there was no tension that
13 night. I don't know how much more clear Ben could
14 have been in 2018 about that. He told them six
15 times. Investigator Laurita and Caldwell were
16 definitely trying to get him to say something was
17 going on, why would this happen. He told them
18 there was no tension, there was no argument,
19 everything was cool.

20 No sort of tension, sir. No tension in the
21 car. No tension, nothing. That is his description
22 of the vehicle that night when he is saying right
23 before the shooting happened. I don't know how
24 else you can interpret all of those phrases that he
25 is clearly telling them.

1 The only witness that they have brought you to
2 say what happened that night is Ben Parker. And
3 the Solicitor mentioned credibility of witnesses.
4 And please take that seriously and consider that,
5 because Ben Parker sat here and lied. He said
6 things on Tuesday when he testified he had never
7 told anybody before. The first time we are ever
8 hearing things, two and a half years later after he
9 had been interviewed by law enforcement, he had
10 been interviewed by the Solicitor's Office two
11 different times, but yet still we are getting new
12 things coming out.

13 Even within his interview in 2018, it doesn't
14 make sense. He was saying, He was chasing me. But
15 then he says, I ain't look back, sir. He says,
16 Correy threatened me that night. But then Correy
17 called him later to say, Hey, man, if it comes down
18 to it, it is on me.

19 If you were going to say, I did it, I'll take
20 responsibility, why are you also calling and
21 threatening somebody? It doesn't make any sense,
22 because it didn't happen.

23 He also told law enforcement, After this
24 happened, I got home, I packed up my wife and kids,
25 and I got out of there because I was scared.

1 Jessica testified, no, they didn't, they
2 stayed home for hours. They didn't go anywhere.
3 And according to him, he took Correy half a mile
4 down the road and that he was still there. Is that
5 consistent with being scared? No. And is that
6 consistent with his own words of what he told law
7 enforcement?

8 He also talked about on the 29th that he
9 got -- well, one, he did admit that he sells drugs.
10 He told you that. That is not just coming from
11 Correy's statement. He says, Yeah, I sold weed
12 back in 2018. He also did a drug deal that day.
13 How scared are you if you are still selling weed?

14 I asked him about that text he had, someone
15 saying, You got tree?

16 He said, Yes. That means marijuana. And he
17 goes on to tell them, It is on the way.

18 But he is testifying that he is so scared that
19 day that he doesn't know what is going to happen to
20 him, but he still is going to do his drug deal?
21 No. That makes no sense. It didn't happen.

22 We also hear that he took Correy home that
23 night. Doesn't tell anybody that in 2018.
24 Apparently that was a minor detail. I'm quite
25 certain it would not have been considered a minor

1 detail to the investigators on the case. I'm sure
2 they would have loved to have known that fact. But
3 he doesn't tell anybody that for two and a half
4 years.

5 And it was also strange that when he was
6 testifying -- and I don't know if y'all noticed
7 this or heard this, but he kept saying, How else
8 would Correy get home? How else would he get home?
9 But I don't know, but if he just killed your
10 cousin, why do you care? That makes no sense. He
11 doesn't call 9-1-1. This is his cousin. Doesn't
12 call 9-1-1.

13 Now, Jessica, Jessica describes her husband
14 coming home, having blood on him, and then
15 overhearing someone who she says is Correy, someone
16 say, If you snake me, I'll kill you. So she is
17 abruptly woken up, husband has got blood on him,
18 hears someone threatening his life, and she does
19 not call 9-1-1. Doesn't call and say, Oh, my God,
20 my husband just came in the door. He has got blood
21 on his face. There is someone out there saying
22 they are going to kill him. No. She goes and
23 changes. They leave. She hangs out for a while
24 apparently, and then tries to go follow them. That
25 makes no sense, because it is not what happened.

1 Also, keep in mind, Jessica didn't tell
2 anybody in 2018 all of these details. I assure you
3 that Investigator Caldwell -- I guess he is not
4 here right now -- who has 30 years of experience in
5 law enforcement, and Investigator Laurita who I
6 think was almost at 15 years, they know how to
7 document important evidence. They told you they
8 have been trained in it. They told you how
9 important it is. They told you if they got
10 relevant information they will follow up on it and
11 investigate it. Neither of them document one thing
12 that Jessica Guyton tells them that we heard today,
13 or that we heard this week. That is unbelievable.
14 And to suggest it is because they both happened to
15 forget or they just didn't write it down is
16 unbelievable. She didn't tell them that stuff is
17 why it is not in their report. Between the two of
18 them, they have a seven page report, a five page
19 report, a two page summary, handwritten notes,
20 video and audio recorded statements if they want.
21 Nothing in any of them, because she never told them
22 that.

23 Jessica is Ben's wife. They have been
24 together a very long time. They have children.
25 And she will protect him. She will help him. And

1 she came here to help tell his -- share his story.
2 She wanted to help support him. I am going to go
3 down the road that he went down.

4 The only time she was interviewed was in April
5 of 2021, and they interviewed her sitting next to
6 Ben. Why would you interview her sitting next to
7 Ben? So that they have their story straight? So
8 they are not contradicting each other?

9 She also has an attempted murder charge
10 pending, which the Solicitor thinks, That doesn't
11 mean anything. It means something when it is their
12 office prosecuting her, and it means something when
13 it is the Richland County Sheriff's Department that
14 arrested her. And she is facing 30 years, zero to
15 30 years in prison. I think that means something.

16 None of what the State has said makes sense,
17 because it did not happen. Correy did not murder
18 Don P.

19 Let's talk about law enforcement a little bit.
20 We heard that they got Ben's phone. We heard that
21 they got extractions from Ben's phone, which means
22 all the information that was on his cell phone they
23 got, including GPS information. But no one looks
24 at it. No one bothered to check it out. Why?
25 That is your only witness and you have his entire

1 life basically on that phone. And you don't want
2 to look at the data you got to see if it is
3 consistent with what he is telling you? You don't
4 want to look and say, Oh, we can actually pinpoint
5 where Ben Parker was that night, he had GPS on.
6 Just never looked at it. Or they looked at it and
7 they didn't like what they saw. I don't know, but
8 we didn't hear about any of it. Nothing got
9 admitted about that phone.

10 No search warrant at Ben's house. This
11 incident happened not even half a mile from there.
12 Ben's own story is he goes home right afterwards.
13 No search warrant at Ben's house to see what might
14 be there. No search warrant in Ben's car to see
15 what might be in there.

16 They never try to get the names of the other
17 people that were hanging out there that night.
18 Anteyan says that his brother's girlfriend was on
19 the porch. No one asked her name. Anteyan also
20 says that there is a girl -- or a dude with Correy
21 when they first got there, he couldn't remember his
22 name. No one bothered to ask that guy's name, go
23 talk to him to see what he remembers happening.

24 We already heard about the Channel 13 from the
25 gas station they just didn't put in, the one

1 showing Don smiling and waving, saying hey to
2 everybody. Why is that not put in evidence? Why
3 did you guys not get to see that?

4 Ben's clothes? He is saying what happened,
5 the GSR person testified GSR is going to land on
6 people, whoever is in the vicinity. They don't go
7 collect Ben's clothes? Like, hey, bring them into
8 it. Never even asked. Don't go try to get GSR in
9 Ben's car to see if there is anything in there.
10 You are saying -- try to get anything from him at
11 all. Why? He is their only witness. They don't
12 want to undermine the credibility of their only
13 witness and get something that is inconsistent,
14 something that doesn't match. I suggest they
15 didn't have to go that far because his own
16 statement in 2018 doesn't make sense.

17 We went through a little bit of that. He was
18 chasing me. I didn't look back. He threatened me,
19 but then he called me and said, Hey, man, it is on
20 me. All those little details are how we know that
21 his story makes no sense and is not what happened.

22 And Jessica Guyton comes in and for the first
23 time since December of 2018 saying she saw a burn
24 barrel? You are telling me if she told the police
25 that in 2018 that they weren't going directly to

1 Akela's house and looking in the burn barrel? They
2 absolutely would have. They absolutely would have.

3 And the Solicitor just told you, they were
4 doing a great investigation. They were following
5 up on stuff. They followed up on what Correy told
6 them. Went and got the gas station video. But you
7 are telling me they are not going to go to Akela's
8 house and see what is in the burn barrel that she
9 is suggesting he was lighting up all sorts of
10 evidence? It is unbelievable. It did not happen.

11 They are trying real hard to say that there is
12 this tension, I guess, and that is what caused this
13 to happen. Ben told you repeatedly there wasn't.
14 Investigator Laurita testified at three different
15 hearings where he said, No motive. We have no
16 motive. But today it is, Correy said, Y'all aren't
17 listening to me.

18 Each and every one of you took an oath when
19 you became a juror. And I'm going to ask you to
20 remember that oath and hold on to that oath when
21 you go back and start deliberating. That oath is
22 important, and it applies to each and every one of
23 you.

24 And the State has a heavy burden. They have
25 to prove to you beyond a reasonable doubt. They

1 have to prove -- and that is the highest standard
2 of proof in the judicial system. That means they
3 are providing you with so much evidence that
4 thoroughly convinces each and every one of you to
5 such a degree that it erases every reasonable doubt
6 you might have. And they failed.

7 They gave you Ben Parker, who lied repeatedly.
8 He is inconsistent when he was talking in 2018, but
9 he couldn't tell the same story twice when he was
10 testifying. Because it didn't happen that way. He
11 is not being truthful. And that is their witness.

12 And they gave you Jessica, who came in and
13 said she told all sorts of stuff back in 2018, but
14 miraculously two extremely dedicated and have been
15 in law enforcement for -- one of them decades and
16 the other for a second and a half, didn't write any
17 of it down. Unbelievable. Did not happen. She
18 never told anybody those things. She is here to
19 follow along and corroborate her husband.

20 And they gave you law enforcement. They even
21 told you they swore out a murder warrant after 30
22 minutes of talking to Ben. That is all it took.
23 And you saw Ben Parker and his testimony.
24 Unbelievable.

25 And they failed to prove this because it is

1 not what happened. Correy did not murder Don P.
2 He is not guilty. And we implore you to find him
3 not guilty.

4 Thank you.

5 JURY CHARGE

6 THE COURT: Ladies and gentlemen of the jury,
7 you have heard all of the arguments -- well, you
8 have received all the evidence, you have heard all
9 of the arguments, and now it is my time to charge
10 you as to the law.

11 I remind you that during this trial you and I
12 have certain duties to perform. As the trial judge
13 it is my responsibility to preside over the trial
14 of this case, and I also have the duty to rule on
15 the admissibility of the evidence offered during
16 this trial. You are to consider only the competent
17 evidence before you. If there was any testimony
18 ordered stricken from the record in this case
19 during this trial, you must disregard that
20 testimony. You are to consider only the testimony
21 which has been presented from this witness stand,
22 any exhibits which have been made a part of the
23 record in this case, and any stipulations of
24 counsel.

25 I have the additional duty to charge you the

1 law applicable to this case. As the presiding
2 judge, I am the sole judge of the law of this case,
3 and it is your duty as jurors to accept the law and
4 apply the law as I now state it to you.

5 If you already have any idea as to what the
6 law is or what the law ought to be and it does not
7 agree with what I now tell you the law is, you must
8 abandon this idea because you were sworn to accept
9 the law and apply the law exactly as I state it to
10 you.

11 In every case tried in this court before a
12 jury, the jury becomes the sole and exclusive judge
13 of the facts in a case. A trial judge cannot
14 state, comment on, or make any statements to a
15 trial jury about the facts in a case. Since you,
16 the jury, are the sole judges of the facts in this
17 case, you are not to infer from what I have said
18 during the process of this trial in ruling upon the
19 admissibility of evidence, or otherwise, or
20 anything that I say now during the course of these
21 instructions to you that I have any opinion about
22 the facts in this case. The law does not allow me
23 to have an opinion about the facts in this case.

24 This is a matter solely for you, the jury, to
25 determine. As jurors, it is your duty to determine

1 the effect, value, weight, and truth of the
2 evidence presented during this trial.

3 You must not consider as evidence any
4 statement of counsel made during the trial.
5 Statements of counsel do not constitute evidence,
6 rather counsel is articulating the position and
7 contention of their client. The rule applies to
8 the opening statement of counsel and the closing
9 arguments.

10 Ladies and gentlemen of the jury, there are
11 two types of evidence which are generally presented
12 during a trial: Direct evidence and circumstantial
13 evidence.

14 Direct evidence directly proves the existence
15 of a fact and does not require deduction.
16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of
18 a fact. Crimes may be proven by circumstantial
19 evidence. The law makes no distinction between the
20 weight or value to be given to either direct or
21 circumstantial evidence.

22 However, to the extent the State relies on
23 circumstantial evidence, the circumstantial
24 evidence must be consistent with each other and
25 when taken together point conclusively to the guilt

1 of the accused beyond a reasonable doubt.

2 If these circumstances merely portray the
3 Defendant's behavior as suspicious, the proof has
4 failed. The State has the burden of proving the
5 Defendant guilty beyond a reasonable doubt. This
6 burden rests with the State, regardless of whether
7 the State relies on direct evidence, circumstantial
8 evidence, or some combination of the two.

9 Necessarily, you must determine the
10 credibility of witnesses who have testified in this
11 case. Credibility simply means believability. It
12 becomes your duty as jurors to analyze and to
13 evaluate the evidence and determine which evidence
14 convinces you of its truth.

15 In determining the believability of witnesses
16 who have testified in this case, you may believe
17 one witness over several witnesses, or several
18 witnesses over one witness. You may believe a part
19 of the testimony of a witness and reject the
20 remaining part of the testimony of that same
21 witness. You may believe the testimony of a
22 witness in its entirety or reject the testimony of
23 a witness in its entirety. You may consider
24 whether a witness has exhibited to you any
25 interest, bias, prejudice, or other motive in this

1 case.

2 You may also consider the appearance and
3 manner of a witness while on the witness stand and
4 whether the testimony of the witness was
5 corroborated and made stronger by other testimony
6 and evidence or was it made weaker and impeached by
7 other testimony and evidence presented.

8 Ladies and gentlemen of the jury, a person who
9 has a past criminal record is competent to testify
10 during a trial. A past record does not affect the
11 ability of that witness to testify. The past
12 record may be only considered by you, if at all, in
13 determining the witness's believability. Remember,
14 you are the sole judges of the facts in this case
15 and of the believability of any and all of the
16 witnesses.

17 We have had several, maybe three or four
18 witnesses testify as expert witnesses. And as I
19 told you previously, the Rules of Evidence
20 ordinarily do not permit witnesses to testify to
21 opinions or conclusions. An exception to this rule
22 exists for witnesses we call expert witnesses. A
23 witness who, by education and experience, has
24 become an expert in some art, science, profession,
25 or calling may state an opinion as to relevant and

1 material matter in which the witness claims to be
2 an expert, and may also state the reason for that
3 opinion.

4 You should consider any expert opinion
5 received in evidence in this case and like any
6 other evidence give it the weight you think it
7 deserves. If you decide that the opinion of the
8 expert witness is not based on sufficient education
9 and experience, or if you conclude that the reasons
10 given in support of the opinion are not sound or
11 that the opinion is outweighed by other evidence,
12 you may disregard the opinion entirely.

13 An expert witness's testimony is to be given
14 no greater weight than that of other witnesses
15 simply because the witness is an expert. Further,
16 you are not required to accept an expert's opinion
17 even though it is not contradicted.

18 Ladies and gentlemen of the jury, the
19 Defendant in this case did not testify. I instruct
20 you and emphasize that the fact that the Defendant
21 did not testify is not a factor to be considered by
22 you in any way in your deliberations and in your
23 consideration on the question of the guilt or
24 innocence of the Defendant. It must not be
25 considered by you in any manner whatsoever. A

1 Defendant has a constitutional right to remain
2 silent, and the assertion of this right must not be
3 considered by you in your deliberation.

4 I repeat, under your oath, you are to draw no
5 conclusions whatsoever from the fact that the
6 Defendant in this case did not testify. The fact
7 that this Defendant did not testify should not even
8 be discussed in the jury room. The burden of
9 proof, as I have stated to you, is on the State.
10 The Defendant is not required to prove his
11 innocence. The burden of proof remains on the
12 State to prove guilt beyond a reasonable doubt.

13 Ladies and gentlemen of the jury, the
14 indictment in this case charges the Defendant with
15 murder. I remind you that the fact that the
16 Defendant was arrested, charged, and indicted in
17 this case is not evidence in this case and cannot
18 be considered by you as evidence of guilt in this
19 case, nor does it create any presumption or
20 inference of guilt. The document is simply the
21 formal written instrument which contains the charge
22 made against the Defendant. It is the formal
23 document by which the case is brought into this
24 court.

25 Ladies and gentlemen of the jury, the

1 Defendant in this case has pled not guilty to this
2 indictment, and that puts the burden on the State
3 to prove the Defendant guilty. A person charged
4 with committing a criminal offense in South
5 Carolina is never required to prove himself
6 innocent.

7 I charge you that it is an important rule of
8 the law that the Defendant in a criminal trial, no
9 matter what the seriousness of the charge may be,
10 will always be presumed to be innocent of the crime
11 for which the indictment was issued unless guilt
12 has been proven by evidence satisfying you of that
13 guilt beyond a reasonable doubt.

14 This presumption of innocence does not end
15 when you begin your deliberation, but it
16 accompanies the Defendant throughout the trial
17 until you reach a verdict of guilt based on
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the
22 Defendant which remains with the Defendant until it
23 has been stripped by evidence satisfying you of the
24 Defendant's guilt beyond a reasonable doubt.

25 The presumption of innocence is not a mere

1 legal theory. It is not just a legal phrase. It
2 is a substantial right to which every Defendant is
3 entitled unless you, the jury, are satisfied from
4 the evidence of the Defendant's guilt beyond a
5 reasonable doubt.

6 What is a reasonable doubt in the law? A
7 reasonable doubt is the kind of doubt that will
8 cause a reasonable person to hesitate to act. The
9 State has the burden of proving the Defendant
10 guilty beyond a reasonable doubt.

11 Some of you may have served as jurors in civil
12 cases where you were told that it is only necessary
13 to prove that a fact is more likely true than not
14 true, such as by the greater weight or the
15 preponderance of the evidence. In criminal cases,
16 the State's proof must be more powerful than that.
17 It must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the Defendant's
20 guilt. There are very few things in this world
21 that we know with absolute certainty, and in
22 criminal cases, the law does not require proof that
23 overcomes every possible doubt.

24 If convinced that the Defendant is guilty of
25 the crime charged, you must find the Defendant

1 guilty. If, on the other hand, you think there is
2 a real possibility that the Defendant is not
3 guilty, you must give the Defendant the benefit of
4 the doubt and find him not guilty.

5 Ladies and gentlemen of the jury, next we will
6 talk about intent. In order to establish criminal
7 liability, criminal intent is required. For
8 example, the mental state required to be proven by
9 the State for a particular crime might be purpose,
10 intent, knowledge, recklessness, or criminal
11 negligence. Criminal intent must be proven by the
12 State beyond a reasonable doubt. Criminal intent
13 is always a matter that must be determined by the
14 jury from the circumstances surrounding the
15 situation.

16 There is no way to prove intent to a
17 mathematical certainty. There is no way medical
18 science can dissect a person's brain and determine
19 what the person had in mind. So the law says that
20 criminal intent may be inferred from the
21 circumstances shown to have existed.

22 This is how you make a determination of
23 whether or not the element requiring intent was
24 present. It is not necessary to establish intent
25 by direct and positive evidence, but intent may be

1 established by inference in the same way as any
2 other fact by taking into consideration the acts of
3 the parties and all of the facts and circumstances
4 of this case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based on these
8 circumstances shown to have existed.

9 Criminal intent can arise from action or a
10 failure to act. It may arise from negligence,
11 recklessness, or an indifference to duty or the
12 consequences that is considered by the law to be
13 equivalent of criminal intent.

14 Ladies and gentlemen of the jury, specific
15 intent. A specific intent to kill is an element of
16 murder. Specific intent means intending a certain
17 result to actually occur, not accidentally or
18 involuntary. Intent may be shown by acts and
19 conduct of the Defendant and other circumstances
20 from which you may naturally and reasonably infer
21 intent, evidence of the character of the act, the
22 character of the instrument used, the manner in
23 which it was used, the purpose to be accomplished,
24 and the resulting wound or injuries may be
25 considered in determining the intent which the act

1 was committed. Intent may also be inferred when it
2 is demonstrated that the Defendant voluntarily and
3 willfully commits an act, the natural tendency of
4 which is to destroy another's life.

5 Ladies and gentlemen of the jury, the
6 Defendant in this case is charged with murder. The
7 State must prove beyond a reasonable doubt that the
8 Defendant killed another person with malice
9 aforethought.

10 Malice is a legal term implying wickedness and
11 excluding a just cause or excuse. The term malice
12 indicates a formed purpose and design to do a
13 wrongful act under the circumstances that include
14 any legal right to do it. It is something which
15 springs from wickedness, from depravity, from a
16 heart devoid of social duty, and fatally bent on
17 mischief. Malice may be express or implied.
18 Malice is hatred, ill will, or hostility towards
19 another person. It is the intentional doing of a
20 wrongful act without just cause or excuse and with
21 an intent to inflict an injury or under
22 circumstances that the law would infer an evil
23 intent.

24 Malice aforethought does not require that
25 malice exist for any particular time before the act

1 is committed, but malice must exist in the mind of
2 the Defendant just before and at the time the act
3 is committed. Therefore, there must be a
4 combination of the previous ill intent and the act.

5 Malice is shown when a person speaks words
6 which express hatred or ill will to another person
7 or when the person prepared beforehand to do the
8 act which was later accomplished. For example,
9 lying in wait for a person or any other act of
10 preparation going to show that the deed was within
11 the Defendant's mind would be malice.

12 Generally, motive is not an element of a crime
13 that the prosecution must prove to establish the
14 crime charged. Frequently motive is circumstantial
15 evidence of the intent to commit the crime when
16 intent or state of mind is an issue. State of mind
17 is an issue any time malice or willfulness is an
18 element of the crime.

19 Voluntary intoxication. Insanity caused by
20 the use of drugs or alcohol may be a defense if the
21 insanity is permanent and destroys the Defendant's
22 ability to know right from wrong. However, when
23 voluntary intoxication has not produced permanent
24 insanity, it is not a defense to a crime. A person
25 who voluntarily becomes intoxicated is just as

1 responsible for the act committed while intoxicated
2 as when the person is not intoxicated.

3 Ladies and gentlemen of the jury, the State
4 and the Defendant are entitled to the individual
5 opinion of each juror on the issues of fact in this
6 case. It is the duty of each of you to consider
7 and weigh all the evidence in the case and from
8 such evidence to determine, if you can, the
9 question of the guilt or innocence of the
10 Defendant.

11 There is nothing peculiarly different in the
12 way a jury should consider the evidence in a
13 criminal case from that in which all reasonable
14 persons treat any question depending upon evidence
15 presented to them. You are expected to use your
16 good sense, consider the evidence in this case for
17 only the purpose for which it has been admitted,
18 and give it a reasonable and fair construction in
19 the light of your common knowledge of the natural
20 tendencies and inclinations of human beings.

21 Your verdict in this case will be one of two
22 forms. If, from the evidence and the law, you find
23 that the Defendant is not guilty of the crime
24 charged, you will circle *not guilty* on the verdict
25 form, Mr. Foreman, that I will give you. And then

1 you will sign your name.

2 If, on the other hand, you find the Defendant
3 is guilty based upon the evidence and the law which
4 you have heard, you will circle *guilty* on the
5 verdict form, and the foreman will sign his name.
6 Your verdict must be unanimous, and it must be
7 guilty or not guilty.

8 The law requires that a jury verdict be
9 unanimous, which means that all jurors must agree.
10 The only two forms of the verdict are guilty or not
11 guilty.

12 Mr. Foreman, once the jury reaches a verdict
13 of not guilty or guilty, you will circle the
14 verdict on the face of the verdict form, and under
15 the verdict form sign your name indicating that the
16 jurors have reached a verdict. Once again, your
17 verdict must be unanimous. Then you will knock on
18 the door and let the bailiff know that you have
19 reached a verdict.

20 I will give you a copy of these instructions
21 in written form. During your deliberations you may
22 refer to the instructions to guide your decision
23 making. You must consider the instructions as a
24 whole and not follow some and ignore others.
25 Please return the instructions to the bailiff at

1 the time your verdict is rendered.

2 Ladies and gentlemen of the jury, and Mr.
3 Foreman, I have in my hand a verdict form. It
4 says, The State of South Carolina, County of
5 Richland, In the Court of General Sessions of the
6 Fifth Judicial Circuit, Indictment Number
7 2019-GS-40-5634, State of South Carolina v. Correy
8 Tremayne Brown.

9 Please circle the appropriate verdict below
10 and follow the accompanying instructions carefully.
11 Number 1, as to the indictment alleging murder, we,
12 the jury, unanimously find the Defendant -- and you
13 have guilty or not guilty. Mr. Foreman, you will
14 circle one or the other, stop, and end your
15 deliberations. Then you will sign your name and
16 date it. And you will knock on the door and let
17 the bailiff know that you have reached a verdict.
18 All right?

19 We are going to send you back to your
20 individual jury rooms and then we are going to move
21 you -- normally, by way of explanation, normally
22 you all would always be in the same jury room
23 together, but because of COVID protocols, we have
24 you in three different jury rooms. So we are going
25 to have to move you to one jury room. Your lunch

1 should be here. There is a room -- I think we are
2 going to put you in the -- in our Grand Jury
3 Assembly Room, which is bigger than a normal jury
4 room, but if anyone has any concerns about
5 proximity to others, just let us know and we can
6 move you to another room for deliberations, one of
7 our larger assembly rooms for deliberations. But
8 we will send you back to your individual rooms
9 right now. There are some matters that I need to
10 take up with the lawyers. Do not begin
11 deliberating until you all have received the
12 verdict form. We have got to pull together all of
13 the exhibits to send back there with you. There is
14 a laptop that has nothing on it for you to play the
15 videos. If you need assistance operating that, Mr.
16 Foreman, just let the bailiffs know and we will
17 bring someone in here to show you how to use it.
18 But there will be a laptop. You will get the
19 exhibits, you will get the verdict form, and you
20 will get the charge on the law. Once you have
21 received all of that, and the instructions from the
22 bailiff to begin your deliberations, you may begin
23 your deliberations.

24 Your lunch is probably back there. It is
25 almost 2:00 o'clock, so I'm sure you all are

1 looking for that. Your lunch is probably back
2 there. And we will receive you back in court once
3 you all come to a verdict. All right?

4 (WHEREUPON, the jury retires to the jury
5 room at 1:53 p.m.)

6 THE COURT: All right. Any objections or
7 exceptions?

8 MS. CAVANAUGH: No, Your Honor.

9 MS. YOUNG: Your Honor, just very briefly. We
10 would renew our objection to the use of the word
11 *Defendant* in place of Correy Brown's name. The
12 word *Defendant* in and of itself is used to be
13 derogatory or to show some sort of, you know,
14 implication that he is guilty. And we know that
15 because Ms. Cavanaugh in her closing corrected
16 herself at some point when she started to say
17 Correy, she said, excuse me, the Defendant. The
18 reason that the Solicitor does that, and it is
19 common practice, and it in no way is implying
20 Ms. Cavanaugh did anything wrong, it is common
21 practice to use that term because it implies guilt.
22 And so we think that is a violation of his due
23 process rights and his right to a fair trial. So I
24 just wanted to renew that objection on the record.

25 Additionally, and I may have already said

1 this, but Ms. Davis and I were just looking, on
2 Page 9 at the top it says, It accompanies the
3 Defendant throughout the trial until you reach a
4 verdict of guilt based on evidence satisfying you
5 of that guilt beyond a reasonable doubt. I thought
6 it was supposed to say *unless*. I could be
7 completely wrong, but I did want to raise that.

8 THE COURT: I think it is an accurate
9 statement. The presumption of innocence is with
10 him until you reach a verdict of guilt based on
11 evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 MS. YOUNG: Certainly. But it also -- *until*
14 implies it is going to happen, as opposed to
15 *unless*, which means you have the option to not.

16 THE COURT: Well, I think I was very clear in
17 there that they have the option over and over
18 again, if you look at the jury charge. And *until*
19 means -- it says the presumption of innocence does
20 not end when you begin your deliberations. *Until*
21 means it happens. And if that doesn't happen, then
22 he is not to be -- he is presumed to be innocent.
23 I think that is way it reads. But I will go back
24 and look in the desk book, but that is the way it
25 is written.

1 And as to referring to him as the Defendant,
2 in civil trials we refer to the Defendant as the
3 Defendant. In criminal trials, he is the
4 Defendant, but we have a -- there is an extensive
5 amount of discussion in here regarding him being
6 innocent, and so he is the Defendant in this case.
7 And so your objection to that is overruled. Let me
8 doublecheck and make sure that that is what it
9 says, *until* and not *unless*. Give me one second.

10 (Pause.)

11 THE COURT: On here it says *until*. And, I
12 mean, I think it is clear it says *until you*.

13 MS. YOUNG: I understand your ruling, Your
14 Honor.

15 THE COURT: I mean, I can bring them back out
16 and read it to them again, but I don't know --

17 MS. YOUNG: Your Honor, I'm not sure that
18 would be necessary. If anything, we would just
19 request that it be changed before it would be
20 provided to them.

21 THE COURT: If you read up in here, further
22 up, it says, For which the indictment unless --
23 unless. So it says *unless* earlier in the
24 paragraph. Guilt has to be proven by evidence
25 satisfying you of that guilt beyond a reasonable

1 doubt. But I don't have a problem changing it in
2 the verdict in here. With the Defendant *until or*
3 -- you want it to say *or unless*.

4 The presumption of innocence is like a robe of
5 righteousness placed about the shoulder of the
6 Defendant, which remains with the Defendant until
7 or unless it has been stripped from the Defendant
8 by evidence satisfying you of the Defendant's guilt
9 beyond a reasonable doubt. Is that the change?

10 MS. YOUNG: Are you looking at the bottom of
11 Page 8, Your Honor? Oh, sorry, it is actually the
12 next paragraph. Wait a minute.

13 THE COURT: Page 8, right?

14 MS. YOUNG: No, Page 9, at the top of Page 9.
15 It is like right before the end of that paragraph.
16 It accompanies the Defendant throughout the trial
17 until you reach of verdict of guilt based on
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 THE COURT: Yes, but if you see the next
21 paragraph too, it says the same thing. That is
22 what I guess -- if you read it, it says, The
23 presumption of innocence -- I think that one
24 might -- until it has been stripped by the evidence
25 satisfying you -- it is using until again there,

1 right?

2 MS. YOUNG: Yes.

3 THE COURT: But I changed it where you said --
4 the paragraph that you had a concern about. It
5 says, This presumption of innocence does not end
6 when you begin your deliberations, but it
7 accompanies the Defendant throughout the trial
8 until or unless you reach a verdict of guilt based
9 on evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 MS. YOUNG: Thank you, Your Honor.

12 THE COURT: All right. And there was one
13 other change I had in here on Page 3. It says, You
14 must not consider as evidence any statement of
15 counsel made during the trial. Statements of
16 counsel do not constitute evidence, rather counsel
17 is articulating the position and contention of his
18 client. And I am just going to change that to
19 *their* so it won't seem like it is only as to one
20 person.

21 Anything else that y'all saw that needs to be
22 changed? Anything else?

23 MR. MCGLOTHIN: No, Your Honor.

24 MS. YOUNG: No, Your Honor.

25 THE COURT: All right. I am going to save

1 this and email it to Jerrell. And you all need to
2 check the exhibits.

3 Any motions or anything we need to put on the
4 record? Just renewing that --

5 MS. YOUNG: I think we have covered that, Your
6 Honor.

7 THE COURT: All right. Just making sure. So
8 no need for any motions. All right.

9 MS. YOUNG: Your Honor, are you planning to
10 release the alternates?

11 THE COURT: Yes, I am. I have a little sticky
12 right here. Are the alternates in the room?

13 THE BAILIFF: Yes.

14 THE COURT: You can bring the alternates in.
15 Hold one second. I'll release them, and then you
16 all can check your exhibits.

17 THE BAILIFF: Do you want them now, Your
18 Honor?

19 THE COURT: Yes, just the alternates.

20 You have had a chance to look at the verdict
21 form?

22 (WHEREUPON, the alternates enter the
23 courtroom at 2:04 p.m.)

24 THE COURT: All right. And it is Ms. Holder
25 and Mr. Bellinger, is that correct?

1 ALTERNATES: That's correct.

2 THE COURT: You all were selected as our
3 alternates. And as you can see, all 12 jurors have
4 returned, and so therefore we will not need your
5 services any longer.

6 In the words of my old boss, being an
7 alternate is like being invited to the dance but
8 not being asked to dance. So I do want you to know
9 that we are thankful that you were here all week,
10 you were paying attention, but at this point we
11 will not need your services any further. And so I
12 am going to excuse you. You can speak to whoever
13 you wish to speak to at this time. You can talk to
14 your family members, you can talk to anybody in the
15 courtroom about it because you are excused from
16 service of this trial. If you don't want to talk
17 to anyone, you don't have to. Sometimes the
18 attorneys may call you later to get tips from you
19 as to how the trial went and get your thoughts on
20 the trial. It is up to you if you speak to them.
21 If you don't want to speak to them, you don't have
22 to.

23 You should be able to get your lunch. If you
24 want to hang around, you can let the bailiffs know
25 and they will sit you in the back of the courtroom.

1 You can eat your lunch while the jurors are
2 deliberating. You can take it with you and leave
3 if you want to leave. If you need a work excuse,
4 she has work excuses, and I believe you said
5 checks?

6 THE CLERK: Yes, ma'am.

7 THE COURT: Yes, and she has checks. And what
8 I will tell you about the checks is don't spend it
9 all in one place.

10 All right, thank you again for your service on
11 behalf of everyone here, on behalf of the Court,
12 and I hope you have a wonderful weekend.

13 ALTERNATES: You too, Your Honor. Thank you.

14 (WHEREUPON, the alternates were excused
15 at 2:06 p.m.)

16 THE COURT: Y'all take a look at the exhibits,
17 get those together. And the verdict form, here is
18 the verdict form.

19 Yes, ma'am?

20 MS. YOUNG: I'm sorry, Your Honor. I actually
21 do have one thing, and if I don't mention it I'll
22 get in trouble later with Jen -- Ms. Davis. We
23 would actually like to take a look at the laptop
24 that is going to go back to the jury room, just out
25 of an abundance of caution to make sure nothing is

1 on it.

2 THE COURT: That's fine.

3 MS. YOUNG: Thank you.

4 MR. MCGLOTHIN: I think they went to get it.

5 (WHEREUPON, the jury was instructed to

6 begin deliberations at 2:22 p.m.)

7 (WHEREUPON, the following occurs at 3:29

8 p.m.)

9 THE COURT: You may be seated. All right, it
10 is my understanding that they have a verdict. If
11 you cannot control your emotions, now is the time
12 to go ahead and leave out of the courtroom. If you
13 do not think you can control your emotions when the
14 verdict comes out, you probably need to leave the
15 courtroom. We will not have any outbursts from
16 anyone. You are subject to the contempt powers of
17 the court. That is for people in the audience.
18 Please no outbursts whatsoever.

19 Anything before I bring the jury in?

20 MS. DAVIS: No, Your Honor.

21 MS. CAVANAUGH: No, Your Honor.

22 THE COURT: All right, you can bring them in.

23 (WHEREUPON, the jury came into open

24 court at 3:30 p.m.)

25 THE BAILIFF: The jury is all present, Your

1 Honor.

2 THE COURT: All right. Mr. Foreman, it is my
3 understanding that the jury has reached a verdict?

4 THE FOREMAN: Yes, Your Honor, the jury has
5 reached a unanimous verdict.

6 THE COURT: All right. And if you can hand
7 that verdict form to the bailiff. Thank you.

8 (Court views verdict form.)

9 VERDICT

10 THE COURT: All right, I am going to ask the
11 clerk to publish the verdict.

12 THE CLERK: May it please the Court? The
13 State of South Carolina, County of Richland, In the
14 Court of General Sessions of the Fifth Judicial
15 Circuit. The State of South Carolina v. Correy
16 Tremayne Brown, Defendant, Indictment Number
17 2019-GS-40-05634, Verdict Form. Please circle the
18 appropriate verdict below and follow the
19 accompanying instructions carefully.

20 One, as to the indictment alleging murder, we,
21 the jury, unanimously find the Defendant guilty.
22 Stop and end your deliberations. Please sign and
23 date. Juror Number 229, Foreperson. June 11th,
24 2021.

25 Mr. Foreperson, is this your verdict, and the

1 verdict of the entire jury panel?

2 MR. FOREMAN: Yes.

3 THE CLERK: Thank you.

4 THE COURT: All right, thank you.

5 Anything else from the jurors before I release
6 them?

7 MS. YOUNG: Yes, Your Honor, we ask that you
8 poll the jury.

9 THE COURT: All right, thank you.

10 Madam Clerk, can you poll the jurors by
11 number?

12 THE CLERK: Yes, ma'am.

13 Ladies and gentlemen of the jury, I am going
14 to ask you two questions relating to your verdict.
15 As I call your number, please answer yes or no to
16 both questions.

17 Juror Number 229, was this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 11, is this your
22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Was it still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Thank you. Juror Number 140.
2 THE JUROR: Yes.
3 THE CLERK: Was this your verdict?
4 THE JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 THE JUROR: Yes.
7 THE CLERK: Thank you. Juror Number 108?
8 THE JUROR: Yes.
9 THE CLERK: Is this your verdict?
10 THE JUROR: Yes.
11 THE CLERK: Is it still your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Thank you. Juror Number 165.
14 THE JUROR: Yes.
15 THE CLERK: Is this your verdict?
16 THE JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Thank you. Juror Number 111?
20 THE JUROR: Yes.
21 THE CLERK: Is this your verdict?
22 THE JUROR: Yes.
23 THE CLERK: Is it still your verdict?
24 THE JUROR: Yes.
25 THE CLERK: Thank you. Juror Number 123?

1 THE JUROR: Yes.

2 THE CLERK: Is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Thank you. Juror Number 118. Was
7 this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Thank you. Juror Number 112.

12 THE JUROR: Yes.

13 THE CLERK: Is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Thank you. Juror Number 68, is
18 this your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Thank you. Is it still your
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you. Juror Number 75?

24 THE JUROR: Yes.

25 THE CLERK: Is this your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Juror Number 87?

5 THE JUROR: Yes.

6 THE CLERK: Was this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Thank you.

11 Your Honor, the jury has been polled.

12 THE COURT: All right, thank you.

13 Ladies and gentlemen of the jury, I do want to
14 thank you on behalf of everyone here for your
15 service here this week. I know it has been a long
16 week. And you all have been attentive and patient
17 with us, and so I do want to thank you for being
18 here and exercising your civic duty.

19 As you can see, there are matters that arise
20 in this courtroom in this county all over the
21 state, actually all over the country, that cannot
22 be resolved without the help of 12 citizens like
23 you, and that is when we turn to, based on our
24 constitution, to jurors all over the country to
25 resolve matters that are disputed. And so I do

1 want to thank you on behalf of everyone here for
2 your service here this week.

3 I'm not sure if you were told, but you do not
4 have to serve for another three years in this
5 court. However, we do have federal court,
6 municipal court, and magistrate court. You may
7 have to serve there, but as far as this court,
8 circuit court, you do not have to serve for three
9 years in circuit court.

10 Thank you again. She has your checks. I will
11 tell you when you get it and look at it, don't
12 spend it all in one place. She has your checks,
13 your jury duty checks. And anyone that needs an
14 excuse for work, she has excuses for work also.

15 All right, thank you. And have a wonderful
16 weekend and wonderful afternoon.

17 Thank you.

18 (WHEREUPON, the jury is excused at 3:37
19 p.m.)

20 THE COURT: All right. Any objections or
21 exceptions?

22 MS. DAVIS: No, Your Honor.

23 MR. MCGLOTHIN: No, Your Honor.

24 THE COURT: All right. And you are renewing
25 your motions?

1 MS. DAVIS: Yes, Your Honor. We would renew
2 all our motions prior, all objections.

3 THE COURT: All right.

4 MS. DAVIS: Oh, I mean, just to be clear, I
5 mean, I request -- we will follow up within the ten
6 days for our motion for a new trial. Sorry.

7 THE COURT: All right. And sentencing? Is
8 the State prepared to go forward?

9 MS. CAVANAUGH: Yes, Your Honor. Certainly,
10 Your Honor.

11 MS. DAVIS: And, Your Honor, we would ask to
12 delay that considering the length of the week and
13 how long we have been in here, and just give us
14 additional time to prepare for sentencing.

15 THE COURT: Well, I mean, the Court has heard
16 the case. I will be glad to hear from you, but in
17 addition to you all being here all week, the
18 victim's family has been here all week. And taking
19 that into consideration, I am going to go ahead and
20 go forward with sentencing.

21 MS. DAVIS: May we have just a few minutes
22 then, Your Honor?

23 THE COURT: Yes. She has to get a sentencing
24 sheet anyway. Let's take ten minutes.

25 (WHEREUPON, a break was taken at 3:39

1 p.m.)

2 (WHEREUPON, the following occurs at 3:49

3 p.m.)

4 SENTENCING

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right.

7 (Defendant complies.)

8 THE CLERK: State your full name, please.

9 THE DEFENDANT: Correy Tremayne Brown.

10 THE CLERK: Do you solemnly swear to tell the
11 truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE DEFENDANT: Yes.

14 THE COURT: Yes, ma'am?

15 MS. CAVANAUGH: Thank you, Your Honor. As far
16 as the Defendant's prior record, he has a 1993,
17 escape and grand larceny conviction; 1997, failure
18 to stop for a blue light; 1998, trespassing; 2000,
19 failure to stop for a blue light; 2000, strong arm
20 robbery; 2006, possession with intent to distribute
21 crack cocaine; 2000 -- backing up to 2001, treason.
22 In 2005 he was convicted of a federal weapons
23 offense where he received 110 months followed by
24 five years supervised release. He violated that
25 supervised release twice, both in -- well, in 2012

1 and in 2014, and he was released from the Bureau of
2 Prisons in 2015.

3 Your Honor, obviously I won't get into the
4 circumstances of this case. I do have a statement
5 I would like to read from the victim's mother. I
6 am not going to get into the facts. Obviously Your
7 Honor is very well aware of those at this point.

8 This is from Ms. Young, Donald's mother. She
9 wants me to read a statement on her behalf.

10 Your Honor, I am Donald's mother. This has
11 really impacted our family. We miss him every day.
12 I cannot put into words what this Defendant took
13 from us. We will never get him back. We
14 respectfully ask you to give him the max.

15 Your Honor, Ms. Young has been nothing but
16 patient with our office in prosecuting this case.
17 Every single time I had a conversation with her,
18 which was, you know, I had about three lengthy
19 conversations about offers and, you know, why I
20 felt certain offers should be made. And we did
21 originally make the offer of 25 to 30 of voluntary
22 manslaughter. And then last week, a 20-year offer
23 was relayed, which was rejected. Well, I assume it
24 was rejected, I never actually heard back, Your
25 Honor, but I am sure it was relayed to him. And,

1 you know, I think the evidence speaks for itself.
2 What really impacted -- what stuck out to me in
3 prosecuting this case is actually seeing Donald,
4 you know, 35 minutes prior to being shot in the
5 neck while he is driving the car and he is walking
6 in the parking lot having a good time. And little
7 did he know, you know, 35 minutes later he was
8 going to be shot in the back of the neck. You
9 know, we don't know what occurred before they got
10 to Ben Parker's house, but it is very clear that
11 something did. And it was -- I mean, it is just a
12 very, very sad situation, and I know the family
13 will never be the same for the loss of their son.

14 So that is really all I have to say, Your
15 Honor.

16 The family requests the max given his history.
17 He has basically been incarcerated most of his
18 adult life. We would also ask for the max.

19 THE COURT: All right, thank you, ma'am.

20 All right, and to the family of the deceased,
21 I do want you to know on behalf of the Court that
22 you are in our thoughts and we are sorry for your
23 loss. And I know that this has not been an easy
24 process to sit through a trial for a week, so I do
25 want to thank you for being here and thank you for

1 your comments here today.

2 All right, thank you.

3 Yes, ma'am, who is going to speak?

4 MS. YOUNG: I am, Your Honor.

5 THE COURT: All right.

6 MS. YOUNG: Your Honor, Mr. Brown respects the
7 verdict, but he does maintain his innocence. And
8 while we recognize the tragedy that occurred in the
9 loss of Mr. Young's life, we do maintain
10 Mr. Brown's innocence while respecting the verdict.

11 Correy is 43 years old. He has four children,
12 ranging from 25 down to 9 years old. The
13 9-year-old is not actually his, his name is also
14 Correy Brown, and he had helped raise him and take
15 care of him even though he is not Correy's
16 biological father. He has support of family. They
17 are here in the courtroom. His mom is here, I
18 believe. Some other family was here earlier, and
19 they left since the verdict was read. His mother
20 does wish -- Stephanie Jones is her name, and she
21 does wish to address the Court when appropriate.

22 Correy is from Columbia. He went to CA
23 Johnson High School. He was raised by his mom and
24 grandfather. I know Ms. Cavanaugh referenced his
25 record, but he hasn't had a conviction since 2005,

1 though he was incarcerated until 2015 due to some
2 parole violations. He's been at the jail for two
3 and a half years incident free. In fact, every
4 time I go down there all I see is him joking with
5 correctional officers, and they all like him and
6 appear to treat him well. He treats them well. He
7 is always respectful. He is always polite. The
8 first thing he asked about is, My son is playing
9 football and how was the game.

10 Honestly, Correy has been a pleasure to
11 represent, and I think we all agree on that. I'd
12 like to remind Your Honor that he will be doing
13 day-for-day time, and he is not parole eligible
14 with the charge. And he is 43 years old.

15 So for that reason and other factors we sort
16 of talked about, I would ask that Your Honor
17 sentence him to a minimum of 30 years. He has 894
18 days credit. And he has been incarcerated since
19 December 31st of 2018.

20 And if the Court would like to hear or allow
21 his mother to speak, I know she does want to
22 address the Court.

23 THE COURT: If she wishes to speak.

24 Just one thing, here I have on the sentencing
25 sheet that he is 45.

1 MS. YOUNG: I'm sorry, Your Honor, he is 45.
2 He was 43 at the time of the incident.

3 THE COURT: He was born in 1975?

4 MS. YOUNG: Yes, Your Honor.

5 THE COURT: If you can pull that microphone
6 over for her.

7 Yes, ma'am, if you can state your full name
8 for the record. And you can pull your mask down
9 while you speak.

10 Yes, ma'am?

11 MS. JONES: Yes. My name is Stephanie Jones,
12 Correy's mother.

13 THE COURT: Yes, ma'am.

14 MS. JONES: And he have two brothers and a
15 sister. And I just wanted -- I'm here to represent
16 my son. You know, the Bible tells you to train up
17 a child the way he should go and he will not
18 depart.

19 I had Correy at the age of 17, and I wasn't
20 into the Lord, into church and the word. And I
21 didn't have time to teach him. I didn't train
22 Correy -- didn't take him back and forth as I did
23 my children now that grew up in church. And I
24 regret that because I was young. But I'm standing
25 here for my son. You know, we live in a time of

1 grace now. We are not living in a time of eye for
2 an eye and tooth for a tooth. And I just ask you
3 just to -- I'm 63 years old now. And I am just
4 asking you just to show grace. I'm sorry for the
5 loss -- for the family for their loss, but I'm
6 standing here because he is still my child, and I
7 love my child. And I just ask you to just have --
8 give him -- consider in your sentence, just give
9 him grace and mercy.

10 THE COURT: Okay. Thank you, ma'am. And
11 thank you for being here. Thank you for your
12 comments.

13 Yes, ma'am? Anything else?

14 MS. YOUNG: Nothing further, Your Honor.

15 THE COURT: All right. On Indictment Number
16 2019-GS-40-5634, sir, you will be sentenced to the
17 State Department of Corrections for 42 years. You
18 will be given credit for the 894 days that you have
19 served.

20 Thank you.

21 All right, court will adjourn.

22 MS. CAVANAUGH: Thank you.

23 (WHEREUPON, the proceedings adjourned at
24 4:00 p.m.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Certified Court Reporter for 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, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 7th, 8th, 9th, 10th, and 11th days of June, 2021.

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

February 14, 2022

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

2 GENERAL SESSIONS

3 COUNTY OF RICHLAND

4 -----x

5 STATE OF SOUTH CAROLINA,)

6 Plaintiff,)

7 vs.)

8 CORREY TREMAYNE BROWN,)

9 Defendant.)

Transcript of Record
2019-GS-40-05634

10 -----x

11 October 12, 2021

12 DEFENDANT'S MOTION FOR NEW TRIAL

13 B E F O R E:

14 The Honorable DeAndrea G. Benjamin, Presiding Judge

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

16 Kathryn Cavanaugh, Esq.
Attorney for the Plaintiff

17 Jennifer Davis, Esq.
Attorney for the Defendant

24 Transcribed by Bobbi Fisher, RPR, for DCRP,

25 Digital Courtroom Project

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
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Argument by Ms. Davis	21
Argument by Ms. Cavanaugh	22

E X H I B I T S

(Exhibits on file in the clerk's office.)

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MKD/RCD</u>
D-1	Transcript: Cross-Examination	6
D-2	Transcript: Redirect Examination	6
D-3	Transcript: Cavanaugh/Court Colloquy	6
D-4	Transcript: Cross and Direct	6
D-5	Cavanaugh Closing Arguments	6

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 11:00 a.m.)

MS. CAVANAUGH: And, Your Honor, we filed a response on July 6th. Did you receive that as well? Response in opposition to their motion?

THE COURT: Do you have an extra copy? Wait a minute. It might be in here. Yes, I have it.

MS. CAVANAUGH: Okay. Great.

THE COURT: All right. This is the defendant's motion.

MS. DAVIS: Thank you, Your Honor. May it please the Court.

THE COURT: Yes. Well, this is Case 2019-GS-40-05634. And this is pursuant to Defendant's motion for a new trial.

MS. DAVIS: Thank you, Your Honor. May it please the Court. And just because it's been some time since the trial, I just want to go ahead and make sure I renew all motions denied and all (inaudible) that were overruled during the trial.

Specifically today, in terms of the motion for new trial, the main focus that we brought up was the motion to suppress Mr. Brown's statement that was given and admitted at trial, and then the second being the motion to continue that was denied based on Riddle violations and late discovery disclosures.

In terms of the statement, Your Honor, I think our brief,

1 as well as the trial, pretty well flesh out our arguments of
2 what that is. Just to highlight, Mr. Brown, during his
3 recorded interview, asked, "Can I get that to a lawyer?"
4 Investigator Laurita responded saying, "No. This is your
5 chance if you want to clear your name." And Investigator
6 Caldwell responded saying, "Your lawyer can't drop charges; we
7 can."

8 Our argument and our position remains that that was an
9 indication of his right to counsel and that every question
10 thereafter -- all interrogation should have ceased at that
11 moment. And regardless if he kept talking, that was not a
12 waiver because of the indication being unambiguous.

13 I know there's the case law that talks about it has to be
14 an unambiguous invocation, and, Your Honor, in those cases, it
15 was situations where the defendant was saying "maybe I need
16 one, let me think if I need one," and kind of hesitating. Our
17 point would be that that's distinguished from this situation
18 where Mr. Brown unequivocally said, "Can I get that to a
19 lawyer?" It was an outright question regarding legal
20 assistance in which the investigator responded with the answer
21 being no. And so our argument would be that that's
22 distinguished from the cases that rely on it being ambiguous
23 and, therefore, not suppressed during trials.

24 Additionally, Your Honor, the responses by investigators,
25 our position is that that -- their answers further indicate

1 that they knew he was requesting for a lawyer, the response
2 being no, and then the follow-up being, "Your lawyer can't
3 address -- can't drop charges; we can."

4 So although the Court is bound by an objective inquiry of
5 whether the invocation occurred, I think, looking at the
6 record and what they responded to, it's clear they knew he was
7 responding -- or requesting legal assistance based on their
8 answers.

9 Additionally, at trial, Investigator Laurita testified,
10 when I was asking him about Mr. Brown asking for a lawyer,
11 and, at that point, he responded saying -- during cross --
12 and, Your Honor, that's on page 42 of Defense Exhibit -- it
13 will be -- Defense Exhibit 4, if we can get those marked.
14 I'll walk those up now. And that's a copy of -- a copy of the
15 transcript of Investigator Laurita's testimony.

16 And, Your Honor, I'm going to go ahead and mark the
17 exhibits for everything I sent Your Honor in terms of the
18 transcript portions that we received as Defense Exhibit 1 --
19 Defense Exhibit 1 being the email from Court Reporter Deborah
20 McCurdy on June 10th regarding portion of the
21 cross-examination from the Denno; Defense Exhibit 2, which is
22 a portion of the trial transcript of the redirect by Solicitor
23 Cavanaugh; Defense Exhibit 3 would be Ms. Cavanaugh's colloquy
24 to the Court on the morning of June 9th; Defense Exhibit 4
25 would be the cross-examination -- direct and cross-examination

1 of Investigator Laurita; and the fifth being the closing
2 argument of Ms. Cavanaugh.

3 (Defendant's Exhibits 1 through 5 was marked for
4 identification and received into evidence.)

5 MS. DAVIS: Your Honor, but in that transcript, during
6 the cross-examination, Investigator Laurita agrees, obviously,
7 with the audio recording that Mr. Brown did say, "Can I get
8 that to a lawyer?" And in response, he said -- I said, "Well,
9 he said, 'Can I get that to a lawyer?' and you said, 'No';
10 right?"

11 And Investigator Laurita responded saying, "Well, I
12 meant, like, right then. Right that second."

13 And then I said, "So you want to -- but you wanted him to
14 tell you first"?

15 And his answer is, "Preferably, yes."

16 And so, again, I feel like that gives context to the
17 response that Investigator Laurita gave Mr. Brown during
18 interrogation when he said "no" to the question of "Can I get
19 that to a lawyer?"

20 For all those reasons, Your Honor, we believe it was an
21 invocation and that the interrogation should have ceased.
22 Additionally, Investigator Caldwell's response, we think,
23 leans into the category of a promise for leniency. They have
24 said -- courts have held that officers or investigators who
25 say "we'll relay your cooperation," that that does not rise to

1 the level of a promise of leniency. But, here, Investigator
2 Caldwell and our position would be that they took it a step
3 farther when he said that, "Your lawyer can't drop charges; we
4 can." Our position would be he was clearly wanting to entice
5 the defendant to continue to talk and incriminate himself and
6 was dangling the hope of exoneration or of not being arrested
7 in front of him by making that comment.

8 So for those reasons, Your Honor, again, we would ask
9 that that statement should have been suppressed and request a
10 new trial on that ground as well.

11 THE COURT: All right. Thank you.

12 MS. CAVANAUGH: Your Honor, we had very thorough *Jackson*
13 *v. Denno* hearings regarding this matter, and the State submits
14 that the -- Your Honor ruled appropriately. Ms. Davis, I
15 believe is taking certain statements out of context when
16 Mr. Brown -- Mr. Brown starts off the interview by giving his
17 timeline of what he did that night, including how he busted
18 his lip. When the investigators state to him that they have
19 evidence that contradicts what Mr. Brown was telling them, his
20 response is, "I have got some evidence that's going to shoot
21 that out of the water."

22 Investigator Laurita asked to hear it. And Mr. Brown
23 says, "Can I get that to a lawyer?" Immediately followed by
24 "I mean, I don't mean to be..." almost as if, like, he's
25 apologizing for even mentioning the word "lawyer."

1 So, clearly, we believe that, under *Davis v. U.S.*, that
2 this would be an ambiguous reference to a lawyer and that a
3 reasonable officer, in light of the circumstances, would have
4 understood only the stuff that might be invoking the right to
5 counsel, and therefore, he's not required to cease
6 questioning.

7 Under *Michigan v. Mosley*, which is also in my response,
8 the rationale underlying *Edwards* is that the police must
9 respect the suspect's wishes regarding his right to an
10 attorney present during interrogation. But when the officer's
11 conduct in questioning reasonably do not know whether or not
12 the suspect wants a lawyer, a rule or (inaudible) mediates the
13 session of questioning the transcript of the Miranda's
14 safeguards in that wholly irrational obstacles and legitimate
15 police investigative activity because it would meaninglessly
16 prevent the police from questioning a suspect and act as a
17 counsel, even if the suspect did not wish to have a lawyer
18 present.

19 He did not say, "I want a lawyer," period. He was
20 responding to a statement by investigators, and he says, "Can
21 I get that to a lawyer?" And then immediately followed by, "I
22 don't mean to be..."

23 Sergeant Caldwell's response as far as "your lawyer can't
24 drop the charges; we can," that was not saying we will. That
25 was not a promise of leniency. That was a response to

1 Mr. Brown's statement that he had evidence to blow it out of
2 the water. If he, in fact, had evidence to blow it out of the
3 water, they needed to do further investigation.

4 And so then Mr. Brown immediately starts talking about,
5 "Well, go get my phone." So we believe that Ms. Davis is
6 taking certain statements out of context. This is clearly an
7 ambiguous reference to an attorney. He's not indicating that
8 he doesn't want to speak to them anymore. He's not indicating
9 that he wants a lawyer present at that moment. He's asking
10 whether the evidence that he just referred to, as far as
11 evidence that would shoot their investigation out of the
12 water, can he get that to a lawyer, and immediately follows
13 that statement by "I mean, I don't mean to be," as if he's
14 apologizing for even referencing a lawyer.

15 So I don't believe that that would qualify under
16 precedent as a clear indication of a right to counsel. And
17 that, again, was thoroughly addressed in the *Jackson v. Denno*
18 hearing, and we think that Your Honor ruled appropriately.

19 MS. DAVIS: And, Your Honor, just because I mentioned it
20 in my argument, in my written motion, I just want to add
21 additionally that, as the interview continues, Investigator or
22 Mr. Brown makes further inquiries about the need for an
23 attorney, which is clearly reflected in the audio and the
24 transcript. He makes comments like, "Do I need to do this in
25 front of a lawyer?", " I might need to do it in front of a

1 lawyer," "Do I need to do this in the presence of a lawyer,"
2 "I might need to wait and do it in front of a lawyer."

3 And my -- the additional argument would be that the
4 cumulative effect from the start of him saying, "Can I get
5 that information to a lawyer," their response is -- and then
6 later in the interview when he's making all those statements,
7 that that is a reasonable -- that did give the investigators a
8 reasonable belief that he was requesting legal assistance.

9 And, again, Your Honor, for those reasons, we would ask
10 that it should have been suppressed and that we be granted a
11 new trial.

12 THE COURT: All right. Yes, ma'am?

13 MS. CAVANAUGH: And, Your Honor, those contexts are in
14 reference to the buccal swabs, so not in reference of -- not,
15 you know, in the context of wanting a lawyer at that moment to
16 speak to the investigator or not wanting to talk anymore. All
17 of those references were made when the defendant was asked
18 whether or not he would consent to a buccal swab.

19 Notably, he decided not to give a buccal swab, and he
20 also didn't change his original timeline of how his blood got
21 on the car and that he wasn't in the car when the shooting
22 occurred. So we believe that under *State v. Rochester* and
23 *State v. Bollington* (ph), the hold, once a voluntary,
24 intelligently Miranda is made, the waiver continues until the
25 accused indicates he wants to revoke the waiver and remain

1 silent or circumstances exist that establishes his will has
2 been overborne and his capacity for self-determination
3 critically impaired.

4 Again, he makes the conscious decision not to give a
5 buccal scab. So clearly, his will is not overborne, and he
6 maintains his original timeline and denies being present at
7 the time of the shooting. So we think Your Honor ruled
8 appropriately in reference to admitting the statement properly
9 redacted.

10 THE COURT: All right. Anything else?

11 MS. DAVIS: No, Your Honor, not regarding that issue.

12 THE COURT: All right. Let me hear your other issue.

13 MS. DAVIS: Your Honor, the second one we outlined in
14 terms of the motion was the belated discovery disclosures as a
15 whole, and that argument was laid out in our motion that,
16 basically, the cumulative effect of getting all the
17 information that we did after Friday, June 4th, I believe --
18 June 2nd, I'm sorry, that everything we received after that,
19 because of the cumulative nature of it in general, that that
20 negated his right to a fair trial.

21 Your Honor, under *Riddle v. Ozmint*, the question is not
22 whether a post-conviction Petitioner would be more likely to
23 have been acquitted had the material *Brady* impeachment
24 evidence been disclosed but whether the impeachment evidence
25 he received a fair trial resulting in a verdict worthy of

1 confidence.

2 Your Honor, some of this information would be
3 impeachment. Some of it was just the general information
4 which, at some point -- I guess, for me, at some point, it's
5 more of just a frustration that that is allowed to continue
6 the weekend before trial but also in the days of trial
7 starting and information still being pouring into the defense
8 that is new.

9 So, Your Honor, I think in terms of the motion, we did
10 outline page 1. We did an Exhibit A, page 1 through 3, which
11 outlined all the disclosures we received as of Friday, June
12 2nd, thereafter, through June 9th of trial, which would have
13 been Wednesday of trial.

14 And so the general argument of that, Your Honor, would
15 just be the cumulative effect of all that prejudiced him and
16 did not allow him a fair trial.

17 More specifically, Your Honor, is the issue related to
18 Investigator Laurita and his testimony during the pretrial
19 hearing of the *Jackson v. Denno*. At that point, Your Honor,
20 he's made a comment -- or not a comment. He stated that,
21 unequivocally, that Jessica Guyton told him that she saw
22 Mr. Brown on the porch the evening of this incident, which
23 would corroborate their only other eyewitness, Benjamin
24 Parker's statement.

25 Up until that moment, we had no reason to believe that

1 Ms. Guyton had been interviewed or given relevant information
2 to police in December of 2018. Based on the discovery, it was
3 our interpretation that she had not known and that, in fact,
4 the information she did relay was to the solicitor's office in
5 April of 2021.

6 In terms of making a decision from the defendant's point
7 of view of whether to go to trial or whether to plead guilty,
8 he's entitled to have all the information -- all the material
9 information in order to make a decision of whether to plead
10 guilty or not. And Your Honor, that's *State v. Gibson*, which
11 states -- *State v. Gibson*, 334 S.C. 515, which states, "The
12 Government's obligation to make disclosure to *Brady* material
13 is pertinent not only to the accused's preparation for trial
14 but also his determination of whether or not to plead guilty."

15 And so part of the argument, Your Honor, is, up until
16 April of 2021, the defense was -- and defendant was with the
17 impression that there was one eyewitness and no other
18 witnesses that would be testifying at trial in terms of the
19 eyewitnesses of what occurred that night in the vehicle or
20 shortly before and after.

21 April of 2021 is when we get disclosures about Jessica
22 Guyton giving fairly detailed information about that night and
23 varying material in that, one, it corroborated the other
24 single witness's testimony and also added additional
25 information that Mr. Parker had never relayed about that

1 evening.

2 I agree and understand what Ms. Cavanaugh's position,
3 that she gave us that in April of 2021, which was
4 approximately two months before trial. My issue is that that
5 is then further compounded -- and I think this is the issue
6 that's not addressed necessarily in her -- in the State's
7 response -- is that that issue is further compounded when
8 Investigator Laurita testifies during the *Denno* that he did,
9 in fact, recall a statement or testified as though he recalled
10 the statement that Jessica Guyton gave him in December of 2018
11 saying she saw him on the porch and further stated that he
12 told Ms. Cavanaugh that.

13 At that point, Your Honor, Ms. Cavanaugh, which is in
14 Defense Exhibit 2, in her redirect, at the end of that -- it's
15 on page 2, she says, "Or something to that effect. Isn't it
16 true you told me you don't remember anything else that she
17 could have told you?" And he says, "Correct."

18 "Anything else," one, implies that he did tell her that
19 Ms. Guyton made that statement on December 28 of 2018 about
20 seeing -- Ms. Guyton seeing Correy on the porch. That's
21 corroborated the only other witness's statement, which we were
22 never made aware of.

23 Beg the Court's indulgence.

24 So, yes, Your Honor, she says, "Do you remember" -- or
25 "You told me you don't remember anything else," which, again,

1 would suggest that he did tell her that he remembered that
2 statement. And I know Ms. Cavanaugh did say that, at some
3 point in the preparation of the trial, she brought out a
4 statement in the audio recording interview of Correy Brown
5 with Investigator Laurita and Investigator Caldwell where he
6 says, "Even his wife saw you." And that argument being that
7 that put us on notice that she had interviewed -- or been
8 interviewed and told them that information.

9 Your Honor, that interview is, I think, about just out --
10 under an hour. Maybe 48 minutes long. It also has a host of
11 other information they say in there that, at that time, is
12 either not true or not accurate, and that does not negate
13 their ability of their obligations under *Brady*, *Riddle*, or
14 Rule 5 to turn over that information.

15 The main point of this being, by the time we get midway
16 through the second day at trial -- or, I'm sorry, after the
17 *Denno*, we did move for a motion to continue Tuesday morning,
18 which was denied.

19 And then, during trial, Ms. Cavanaugh then got out on
20 direct from Mr. -- I'm sorry, Investigator Laurita again about
21 these notes, saying, "At what point in time did you meet with
22 Jessica Guyton and Ben Parker? At what point in time did
23 you?"

24 "Yes."

25 "And did you make notes about that conversation?"

1 "I did not."

2 "Did you document that we went to the house, though?"

3 "I did."

4 "And you met with them?"

5 "Yes."

6 And she says, "In hindsight, do you wish you would have
7 documented further?"

8 "Absolutely."

9 Similar -- I don't have the transcript for Investigator
10 Caldwell, but that -- similarly, that information came out
11 from Investigator Caldwell in which I also crossed him about
12 his notes and that there's no information about Jessica Guyton
13 making any comments.

14 And, Your Honor, my point to all this is, we went from a
15 trial where it was Benjamin Parker saying what happened to,
16 two months before trial saying that his wife now corroborates
17 everything he says, which, of course, changes things to some
18 degree, but it was two months in advance, to then, Monday of
19 trial, finding out that now we have two investigators, that
20 they're going to corroborate that Jessica Guyton made those
21 statements not in April of 2021, which would be a credibility
22 issue in terms of waiting two and a half years to say these
23 things, but that she made them or certainly the implication is
24 that she made them back in 2018, and these two investigators,
25 neither one of them happened to write anything down.

1 The solicitor even argued that in closing, saying -- and
2 that's Defense Exhibit 5. In closing, she even argues it and
3 says it's documented in the investigator report that they went
4 to -- went there. Sergeant Caldwell testified it was about 30
5 or 40 minutes. It is extremely unfortunate that that
6 conversation was not properly documented.

7 And then, later, it addresses it again saying the
8 focus -- I'm sorry -- saying, "There's a ton of focus on what
9 Sergeant Laurita did not do, mainly the focus is in regard to
10 not properly documenting the conversation with (indiscernible)
11 and he owned that. But what was documented is that there was
12 a meeting. Unfortunately, Sergeant Caldwell, because he
13 didn't -- once again, he documented the meeting but not the
14 notes -- said Jessica Guyton, he doesn't remember." And I
15 think what that was is that he was saying he did testify; I
16 believe that he did not remember specific statements that
17 Ms. Guyton may have said in 2018.

18 But my point again, Your Honor, is that that compounds
19 the case against Mr. Brown that didn't give us all the
20 information to be able to properly advise him about the case
21 against him, having one witness, two witnesses, and now two
22 investigators coming in to corroborate that she is -- did make
23 those comments at the time of the incident is very different
24 than her making them two and a half years later for the first
25 time ever in the solicitor's office. And that information was

1 not disclosed to us.

2 So either it wasn't disclosed that he made the
3 statement -- or, I'm sorry, it wasn't disclosed if Laurita was
4 being honest. It was not disclosed that, in December of 2018,
5 Jessica Guyton told him that Mr. Brown was on the porch with
6 Ben Parker that morning. If that was related to
7 Ms. Cavanaugh, she has a duty under *Brady*, *Riddle*, and Rule 5
8 to turn that over to us.

9 If he did not, in fact, remember that and, you know, was
10 not being honest that that was a clear recollection and that
11 he was just, you know, guessing that that's what happened
12 based on the recording of -- you know, the recording and the
13 comment that he made, what we do know, according to
14 Ms. Cavanaugh, is that both investigators, she said, told her,
15 prior to trial, throughout the investigation, that neither of
16 them had any specific memory of any statements Jessica Guyton
17 made to them. That was also never relayed to us.

18 And so the combination of all of those things, Your
19 Honor, and the violations under *Gibson* and his ability to
20 fully evaluate whether to plead or go to trial, I think,
21 warrants a new trial so that he can evaluate what the
22 actual information is. Based on the evidence in the case and
23 it being an eyewitness, that information being compounded by
24 Guyton and then corroborated by two lead investigators change
25 the weight of that testimony, and it would change the way you

1 evaluate a case, and we did not have the opportunity because
2 we didn't know about it until, one, after Monday when he first
3 made the comment, but it wasn't until Wednesday morning when
4 Ms. Cavanaugh came in and further clarified what they had told
5 her prior to that about not actually having any memory of the
6 statements.

7 And I know, again, in part of her colloquy that Wednesday
8 morning, Your Honor, which is Defense Exhibit 3, you know, she
9 does allude to saying "I talked to them" -- she talked to them
10 about some questions that were in the video and pulled it up
11 and basically asked them, you know, "Is it possible she told
12 you these things?" And they said, "It's possible." Again,
13 even that was not relayed to us.

14 So having two lead investigators corroborate testimony
15 that we never knew about before was material, it did change
16 the nature of him having a fair trial, but it also goes to
17 under *State v. Gibson*, his ability to make a decision of
18 whether to plead guilty or not in having all that information
19 available and making that assessment. And so also, for that
20 reason, Your Honor, we would ask for a new trial.

21 THE COURT: Thank you.

22 Yes, ma'am.

23 MS. CAVANAUGH: The bulk -- the significant bulk of what
24 Jessica Guyton testified to was provided two -- almost two
25 months prior to the trial. I mean, just as I said throughout

1 the case on June 7th, when I met with investigators about
2 that -- her statements, they said that they remember meeting
3 with her, they don't have a specific memory of what was said.

4 As we were preparing for trial, when I went over the
5 *Denno* hearing -- excuse me, his interview, I said, "Well, you
6 reference her in the interview. Is it possible that she said
7 that?"

8 "Yes."

9 That came out during trial. They were subject to
10 cross-examination. I did not withhold any information that
11 would be material to his guilt or punishment. I don't -- I'm
12 just -- I'm confused about their lack of memory of what
13 Jessica Guyton said, how that is a *Brady* or *Riddle* violation,
14 Your Honor. The bulk of what she testified to was disclosed
15 two months before, and it was testified to both in pretrial
16 and in -- during the trial that they did meet with her. That
17 was documented in their notes. They didn't write down
18 specifically what she said. It is possible that she told them
19 what she testified to, which was relayed to them two months
20 prior to the trial.

21 I don't think that that warrant -- that is a violation of
22 *Brady* or *Riddle* that would warrant a new trial, Your Honor.
23 They both were subject to extensive cross-examination on the
24 subject, and I just -- I don't think that was -- any of what
25 she alleges is a *Brady* or a *Riddle* violation. Both *Brady* --

1 excuse me, both *Riddle* and *Gibson* discussed the non-disclosure
2 of evidence. That is not the situation in this case.

3 So I would respectfully ask that you deny the defense's
4 motion for a new trial.

5 MS. DAVIS: And just briefly, Your Honor, and just to be
6 clear, Investigator Laurita did tell Ms. Cavanaugh, along with
7 Investigator Caldwell, that he had no memory specific --
8 statements that Ms. Guyton made in 2018. One, he testified
9 inconsistent with that during the *Denno* hearing before this
10 Court and expressly said she did tell him and expressly said
11 that he had relayed that to Ms. Cavanaugh. If that's not
12 accurate, that's a separate issue involving Investigator
13 Laurita and his testimony before the Court.

14 In terms of them saying they don't remember specific
15 statements she made, the reason that's important is, one, it
16 implies there was, in fact, an interview and that they did, in
17 fact, get information from her. They just didn't write it
18 down, which should have been turned over to us. There's
19 nothing in discovery to indicate that they got information
20 from this woman, which left us, up until midway through trial,
21 with the impression that all her statements happened for the
22 first time to anybody two and a half years later in April of
23 2021.

24 If that was the end of the information, Your Honor, I
25 don't think I'd be making this motion, because we did get it

1 two months early. My issue is with Investigator Laurita and
2 Caldwell's telling her they don't remember what she told them
3 but implying she did, in fact, tell them some things. And
4 that was used by the solicitor in direct and both
5 investigators and in her closing to further corroborate that
6 Jessica just didn't come up with this stuff two and a half
7 years later. So it compounds the issue when it's used as a
8 thread throughout the trial to add against Mr. Brown that we
9 were not aware of.

10 And in terms of it being a non-disclosure, I do agree
11 it's a little strange when they say it's something you never
12 knew about, but my argument would be, at some point, when
13 trial has started, that equates to it being a non-disclosure.
14 When we're midway through trial and Investigator Caldwell had
15 already testified and by the time we knew about the statements
16 and he couldn't remember any specifics statements, that wasn't
17 until Wednesday morning, so we had a full day of testimony,
18 including Investigator Caldwell.

19 So, Your Honor, I do think it meets *Brady*. *Brady* is
20 extended to impeachment, and *Gibson* makes it clear that that
21 information is relevant when evaluating whether to go to trial
22 or whether to plead guilty.

23 So those are the bases for the motion, Your Honor.

24 RULING

25 THE COURT: All right. I guess as to the first issue,

1 the Court -- as to the first issue, the Court found that the
2 defendant was advised of his rights. After being advised of
3 his rights, he waived his right to remain silent and spoke
4 with the investigators. The Court found that the detention --
5 length of detention was about 40 minutes, 45 minutes. There
6 was no repeated or prolonged nature of the questioning. There
7 was no deprivation of food or sleep.

8 The comments made, I think, to the investigators are
9 ambiguous. He never requested an attorney. He merely
10 suggested that he had some evidence that he needed to get to
11 an attorney and -- but never, at any point -- and I believe
12 the case law is pretty clear that once you waive your right
13 and you start speaking to the investigator, it has to be -- he
14 has to be clear on his assertion of an attorney. And here,
15 based on the testimony before the Court, the Court does not
16 find that he, at any point, asserted his right to speak to an
17 attorney. He merely skirted around and actually he discussed
18 some exculpatory evidence that he needed to get to an
19 attorney, and the officer, in terms of coercion, said to him,
20 if you have some exculpatory -- basically, if you have some
21 exculpatory evidence, you need to tell us because we are the
22 ones that will be charging you or not charging you.

23 And so I don't -- I don't find that that is a promise of
24 leniency. I think it was a request that, if there was
25 something that they needed to have, that should get it to

1 them.

2 I find that the statement was voluntarily given, that
3 there were -- there was no coercive conduct; that there was no
4 promise of leniency. And the Court upholds its original
5 ruling that the statement is a voluntary statement based on
6 the totality of the circumstances.

7 As to the *Brady* and *riddle* violation, the witness -- the
8 defendant was placed on notice that the witness would be
9 testifying against him two months prior to -- actually
10 probably, I would assume, but definitely two months prior to
11 the trial. This witness is not a new witness. This witness
12 is a witness that was mentioned in the investigative reports.
13 Obviously, the investigators cannot write down details, and
14 they're not necessarily required to do so. But there is
15 evidence that this witness was -- that the defendant was long
16 on notice that this witness was out there. The defendant was
17 noticed that the witness would be testifying.

18 The solicitor in this case, it's my understanding, if I
19 remember correctly, after -- during her preparation and
20 interviewing the witness, the witness testified -- stated
21 something to her. She immediately turned that information
22 over to the defense, and there was a motion heard on a motion
23 hearing at which point that information was given to the
24 defense prior to swearing the jury during -- I think we did
25 motions -- a full day of motions on that Monday.

1 So I do not find that there -- the defendant was
2 prejudiced in any way by receiving that information as it was
3 received by the State, and I do not find that there is any
4 violation of *Brady* or *Riddle* on the part of the State.

5 All right. I am going to respectfully deny the motion
6 for a new trial based on those rulings.

7 MS. CAVANAUGH: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. DAVIS: Thank you, Your Honor.

10 (At 11:35 a.m., the above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: State of SC vs. Correy Brown

3 2019-GS-40-05634

4 DATE OF PROCEEDING: October 12, 2021

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 16
17 Bobbi J. Fisher, RPR

18 NCRA Registered Professional Reporter (RPR)

19 Prepared: December 8, 2021

20 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
21 SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY
22 OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES
23 OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2019-GS-40-05634

2019A4010205519

The State of South Carolina,)

vs.)

Correy T. Brown,)
Defendant.)

MOTION FOR NEW TRIAL

JANETTE W. McBRIDE
CLERK, C.J.

2021 JUN 21 AM 11:52

RICHLAND COUNTY
FILED

Correy Brown was convicted of one count of Murder and sentenced to forty-two years on June 11, 2021. He now moves for a new trial and renews all previous motions and objections to specifically include: 1) Motion to Suppress Correy Brown's statement to law enforcement and 2) Motion for Continuance based on Riddle violations and late discovery disclosures.

LEGAL ANALYSIS

1) The defendant's statement should have been suppressed.

The State presented testimony via Investigator Laurita during a pre-trial *Jackson v Denno* hearing. Mr. Brown's statement was also audio and video recorded and a transcript of the statement was completed by Compuscripts. Prior to trial the State supplied both the recording and transcript to the Judge for review.

Correy Brown (Brown) contends that the following exchange between him and Investigator Laurita (Laurita) and Investigator Caldwell (Caldwell) was an invocation of his right to counsel and request for the assistance of an attorney and that the interrogation should have ceased at that moment.

Mr. Brown: Man, I got--- I got some evidence that's going to shoot that out

the water.

Investigator Laurita: Well, let's hear it.

Sergeant Caldwell: What's that?

Mr. Brown: I, I — can I get that to a lawyer? I mean, I don't mean to be—

Investigator Laurita: No, I mean, this is your chance. If you want to clear your name—

Investigator Caldwell: Your lawyer can't drop charges. We can.

Brown's question "...can I get that to a lawyer?" was an unambiguous request for the assistance of an attorney. In *Davis*, the Court "requires, at a minimum some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis v United States*, 512 U.S. 452. Brown unambiguously asked if he could get information to a lawyer and was told "No." Indeed, Investigator Caldwell, when he said "your lawyer can't drop charges," clearly understood that Brown was requesting a lawyer. Allowing the statement to be admitted as evidence against him at trial and heard by the jury violated Brown's rights under the 5th, 6th, and 14th amendments of the Constitution.

Under *Miranda*,

"when at any point during an interrogation the accused seeks affirmatively or impliedly to invoke his right to silence or counsel, interrogation must be forgone or postponed...failure to follow the new procedure requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof." *Miranda v Arizona*, 384 US 436.

Additionally, Caldwell's statement that "Your lawyer can't drop charges. We can,"

constituted a promise of leniency. Although in South Carolina, the Court has held that an officer stating he/she will relay a defendant's cooperation does not constitute a promise of leniency, Caldwell's declaration went well beyond a mere statement regarding cooperation. *State v Arrowood*, 375 S.C. 359, *State v Rochester*, 301 S.C. 196. Caldwell made this assertion directly on the heels of Laurita telling Brown he could not get his information to an attorney. The comment implied that if Brown continued to speak his charges would be dismissed. The combination of these statements by law enforcement warranted suppression of Brown's statement. He invoked his right to counsel and was immediately given a promise of leniency after being denied that right.

Even after this exchange, Brown made further inquiries about the need for an attorney. It is also clearly reflected in the audio/video recording and transcript. Brown makes the following statements in response to Laurita requesting a buccal swab:

"Do I need to do this in front of a lawyer?"

"I might need to do it in front of a lawyer ..."

"Do I need to do this in the presence of a lawyer?"

"Well, I might need to wait and do it in front of a lawyer then?"

Brown argues that the combination of all these statements is again him requesting the assistance of counsel. In *State v Kennedy*, "Well, I think I need a lawyer?" was found to be unambiguous. 333 SC 426. After the last comment listed above, Laurita and Caldwell move on with the interview. However, a short time later, they again start asking Brown for a buccal swab. Brown again makes comments about a lawyer and says the following:

"I asked—I asked you did I need a lawyer..."

“Should I have a lawyer present then?”

“I think—should I ask a lawyer, or should I go on your word?”

Laurita and Caldwell should have ceased the interview. The cumulative effect of all Brown’s comments, starting from the initial exchange “Can I get that to a lawyer?” accompanied by the comments he made thereafter, should reveal, upon an objective inquiry, that Brown’s requests rose to a “statement that can reasonably be construed to be an expression of a desire for an attorney’s assistance.” *Davis v United States*, 512 U.S. 452.

The statement should have been suppressed during the *Jackson v Denno*, and Brown is asking the Court to grant a new trial based on this error.

2) The belated discovery disclosures and the inconsistency within some disclosures violated Brown’s right to a fair trial.

Brown was arrested on December 31, 2018. The trial was originally scheduled for February 15, 2021 but was continued for COVID-related reasons. Nevertheless, the prosecution waited until June 2, 2021 or after—including the third day of trial—to provide important discovery. See Exhibit A, Outline of Late Disclosures. The trial began June 7, 2021; however, because of the late disclosures, Brown was forced to request a continuance on the second day of trial. In addition to disclosures made on the first day of trial, and after the Motion to Continue was heard and denied, the solicitor continued to disclose new information as late as the third day into trial.

The cumulative effect of these late disclosures prejudiced Brown’s right to a fair trial. *Riddle v Ozmint*, 369 SC 39. Additionally, under *Gibson*, the government’s failure to make

timely disclosures of *Brady* and *Riddle* information also violated Brown's rights when determining whether or not to plead guilty. Under *Gibson*,

"The government's obligation to make disclosures of *Brady* material is pertinent not only to an accused's preparation for trial but also to his determination of whether or not to plead guilty. The defendant is entitled to make that decision with full awareness of favorable material evidence known to the government. 334 S.C. 515.

Up until April 16, 2021, defense counsel had no information as it related to the potential testimony of Jessica Guyton (Guyton)—the girlfriend/wife of the only witness to the shooting, Benjamin Parker (Parker). Despite the hundreds of pages of discovery, including Laurita and Caldwell's reports, summaries, and notes, the state did not document any information about statements or information Guyton provided to law enforcement in December 2018. This absence left the impression that Guyton was not interviewed and/or did not have any relevant information to share with law enforcement aside from noting she was present with Parker when they went to headquarters and she and Parker appeared scared or frightened.

The State argued that Laurita's statement to Brown, during his interrogation, that "his wife even saw you there," was sufficient to put the defense on notice that the investigators received information from Guyton. However, throughout the interview, Laurita and Caldwell misrepresented evidence to Brown, i.e. that they had found his DNA in the car. This interrogation tactic made it impossible for the defense to know what statements made by law enforcement are true and which are false or misleading. This isolated, vague statement made in a recording does not satisfy the State's obligations under *Brady*, *Riddle*,

Kyles v Whitley and all other progeny cases.

The additional disclosures after June 7, 2021 that are the most prejudicial. On June 7, 2021, Laurita testified under oath during the *Denno* hearing that Guyton saw Correy Brown at their (Guyton/Parker's) house after the shooting. Laurita acknowledged on cross examination that the statement is not in his follow up reports or notes. Laurita also relayed that he told the solicitor this information:

Counsel: Did you tell Ms. Cavanaugh you got information from Ms. Guyton that Correy was at Ben Parker's house?

Laurita: I believe so, yes.

Counsel: Do you remember when that was?

Laurita: Not specifically, no.

Counsel: Okay. So it was before today?

Laurita: Yes.

Defense had never received any information to this effect prior to hearing it at the *Denno* hearing, the first day of trial.

On redirect the solicitor attempted to clarify with Laurita by saying:

Solicitor: "...Isn't it true that you told me that you don't remember anything else that she said to you?"

Laurita: Correct.

Laurita's testimony during the *Denno* is clear that he portrayed to defense and to the Court that he recalled Guyton making a statement that Correy Brown was seen on Parker's porch after the shooting.

On Wednesday, June 9, 2021 the solicitor relayed to the Court the following:

"Now, while the specific statements that she may have made at that point are not documented in their reports, in the interview with the Defendant there are questions asked of the Defendant which we have discussed in our preparation of the case because those particular statements made by Jessica Guyton were not documented -- and, you know, were not documented in -- the specific statements were not documented in their actual report. The meeting was. Sergeant Caldwell and Investigator Laurita have indicated to me throughout our investigation that they did not have a specific memory of exactly what was said at that point. I have told them that.

However, during our investigation -- during our preparation for this case, I have pointed out to them in the interview that there are questions asked -- and I have it pulled up -- there are questions asked -- beg the Court's indulgence. During the interview of the Defendant, Page 15. Investigator Laurita: Okay. And then you went back to Ben's house. His wife even saw you there.

I have pointed out to my investigators that -- did you -- you made that comment to them. Is it possible that she told you that back when you met with them at Julia Street. They have said, it is possible. They don't have a specific memory of exactly what she said, but because I pointed out that, Page 15, their specific question, it is possible. I don't necessarily know how that exchange with my investigators -- I mean, my position is that does not violate Riddle. First of all, Jessica Guyton has not testified. Second of all, they have told me they don't remember specific statements made. But when I pointed out to them that that question was asked, they have told me, it is possible that she said that. I mean." [emphasis added]

While it is accurate that Guyton had not testified yet, Caldwell had and the solicitor had not disclosed that Laurita nor Caldwell had any specific memory of exactly what was said by Guyton. The fact that the solicitor during the redirect of the Denno hearing stated, "...Isn't it true that you told me that you don't remember anything else that she said to you?" implies again, that Laurita had some actual memory of Guyton relaying that she saw Correy Brown on the porch that night, which is in direct conflict with what the solicitor relayed to the Court Wednesday June 9 - that both Caldwell and Laurita did not have a specific memory of what was said by Guyton in December 2018.

Again, not only is this a *Riddle* violation, it's also a violation under *Gibson*, regarding

the defendant's right to full disclosures that are relevant to his decision of whether to plead guilty or not. Having a lead investigator corroborate Guyton's statement, or statements in 2018 gives Guyton additional credibility and strengthens her testimony. Defense was not made aware of Laurita's corroborating statement that Guyton told him in 2018 that she saw Brown on Parker's porch.

In the alternative, Laurita misrepresented his memory during his *Denno* testimony when he stated that "she [Guyton] saw him at the house that night," as the solicitor maintained Laurita and Caldwell told her they did not have any specific memory of what Guyton told them.

Even after all of these disclosures, the solicitor disclosed additional information related to Guyton on June 9th, 2021 at 12:03 a.m. indicating that back in April 2021 Guyton made two additional statements, which were:

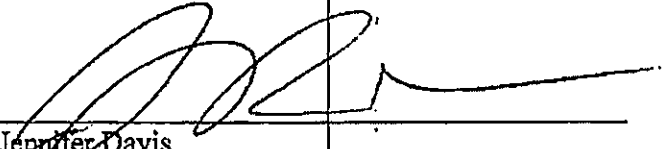
"When Benjamin came home that night around 3:30 it looked like he had blood on him," and

"It also looked like he had peed on himself."

Again, the cumulative effect of all the late disclosures outlined in exhibit A, with focus on Guyton, denied Brown the right to a fair trial and also his right to make a fully-informed decision about pleading guilty or going to trial.

CONCLUSION

WHEREFORE, counsel respectfully requests that a new trial be granted for Mr. Brown.



Jennifer Davis
Laura Young
Haley Hubbard
Attorneys for Defendant
1701 Main Street
Columbia, SC 29201

Columbia, South Carolina

This ____ day of June, 2021.

RICHLAND COUNTY
FILED
2021 JUN 21 AM 11:52
SANNETTE W. McBRIDE
CLERK OF COURT

1

		• Learned that he had dashcam video • Dropped off disc at our office
June 3, 2021; 11:34 am	Email from Assistant Solicitor regarding meeting with Trooper Maxwell	• Dispatched to collision with fatality • First LEO on scene—gathered info on Fire/EMS on scene • Took photos of scene; noticed blood on car and took swabs • Checked area for other passengers • Didn't do IR because he found out about GSW. "Intentional" rather than accident.
June 3, 2021; 2:41 pm	Information Related to Arrest	• Report from Justin Britt from Fugitive Task Force indicating how they found Correy's location • Previously told no report
June 4, 2021; 12:01 pm	Additional SW/Arrest Info	• Inv. Becker says he remembers being outside Tammy's apartment while the search warrant was being secured
June 4, 2021; 2:53 pm	Additional Arrest Info re Cell Phones	• Britt and Laurita maintain that phones were found on Correy's person • Britt does not know if he located phones on Correy or if he was the one who transported Correy
June 7, 2021; 2:23 pm	Disclosures by Assistant Solicitor from Anteyan Davis	• Anteyan saw Correy with gun at his house • Never saw Ben with a gun

		• Tension? Anteyan says he remembers Correy asking Don P. if he was a snitch
June 7, 2021	Inv. Laurita's Testimony regarding Interviewing Jessica Guyton	• During <i>Denno</i> hearing, Laurita testified that he interviewed/talked to Jessica Guyton in 2018 and she said that she saw Correy at Ben's house that night
June 9 th , 2021	Assistant Solicitor comments to the Court in reference to investigator's memory of possible statements made by Jessica Guyton.	• "Sergeant Caldwell and Investigator Laurita have indicated to me throughout our investigation that they did not have a specific memory of exactly what was said at that point." • "They don't have a specific memory of what was said." • "They have told me they don't remember specific statements made."
June 9 th , 2021 at 12:03 am	Additional disclosures by Assistant Solicitor from Jessica Guyton from interview April 16, 2021	• When Benjamin came home that night around 3:30 it looked like he had blood on him. • It also looked like he had peed on himself.

WITNESSES

(S) Inv. Michael V. Laurita
- RCSD

ARREST WARRANT NUMBER

2018A4010205519

ACTION OF GRAND JURY

TRUE BILL

Kenneth R. Jones

Foreperson of Grand Jury
Date:

SEP 10 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019-GS-40-05634

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2019

116

**THE STATE
vs.**

Correy Tremayne Brown

**Indictment for
MURDER**

**SC Code: 16-03-0010
CDR Code: 0116**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 10, 2019,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Correy Tremayne Brown did in Richland County, on or about
December 29, 2018, kill the victim, Donald Young, with malice
aforethought, either express or implied, by means of a gunshot wound, and
the victim did die as a proximate result thereof, in violation of Section 16-
03-0010, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Correy Tremayne Brown

AKA:

Race: BLACK Sex: M Age: 45DOB: [REDACTED] SS# [REDACTED]Address: Windsor Point Rd Apt CCity, State, Zip: Columbia, SC 29223-1852DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder / MurderINDICTMENT/CASE#: 2019GS4005634A/W#: 2018A4010205519Date of Offense: 12/29/2018S.C. Code § 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Kathryn Cavanaugh 77690 SC Bar# Defendant Jennifer Cathryn Davis SCB75392 SC Bar#
 Cavanaugh, Kathryn SC Bar# Defendant Davis, Jennifer Cathryn Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 42 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment
 of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED]
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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. 894☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. days

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75Clerk of Court/ Deputy Clerk Jeanette McBrideCourt Reporter: McCurdy

SCCA/217 (04/2018)

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.
Presiding Judge HPBJudge Code: 2101Sentence Date: 6-11-21

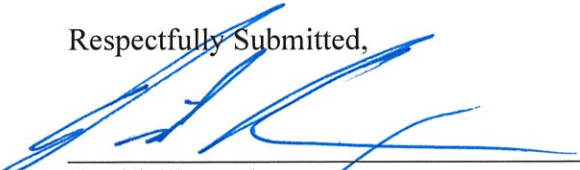
Oct 28 2022

SC Court of Appeals

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,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of October, 2022.