VOL. I of II

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SETH HASSAN SMITH,

APPELLANT

APPELLATE CASE NO 2019-001418

RECORD ON APPEAL

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State's Exhibit #23 (surveillance video footage); State's Exhibits #104-114 (photographs); State's Exhibit #115 (CD of call records); State's Exhibit #116 (Simmons' power point presentation); State's Exhibit #119 (video clips, Dollar General store); State's Exhibit #120 (photograph of car); State's Exhibit #123 (photograph); State's Exhibit #124 (CD of video footage); State's Exhibits #125-

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STATE OF SOUTH CAROLINA.	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2018-GS-10-05300
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	COPY
	)	
Seth Smith,	)	
	)	
DEFENDANT.	)	
	)	

January 7 to 9, 2019

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, and a Jury.

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

David Osborne, Esquire
For the Plaintiff

Shannon Elliott, Esquire
For the Plaintiff

Michael Loignon, Esquire
For the Defense

Stephen M. Bowden, Esquire
For the Defense

Certified Transcript Provided For: SCCID

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(DW) - DENOTES DEFENSE WITNESS

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(WHEREUPON, 1/7/19, 11:22 a.m.)

THE COURT: Seth Smith.

DEFENDANT SMITH: Yes, sir.

THE COURT: Good morning, sir.

DEFENDANT SMITH: Good morning.

THE COURT: We are here to start the trial very shortly. The jury has been qualified downstairs. They will be coming up shortly. But your lawyer has filed several motions on your behalf and we are going to hear those motions now.

Mr. Loignon, are you ready to go forward with your motions?

MR. LOIGNON: Yes, sir, and actually ---

THE COURT: I will be happy to hear from you, sir.

MR. LOIGNON: Okay. Thank you, Your Honor. Mr. Bowden is going to actually argue this matter.

THE COURT: Okay. Mr. Bowden, I will be delighted to hear from you, sir. Good morning to you.

MR. BOWDEN: Good morning, Judge. This is a motion to quash the indictment ----

THE COURT: Right.

MR. BOWDEN: --- in this case.

THE COURT: Excuse me a second. Thank you for -- let me interrupt you by also incorporating the briefs that you filed.

Mr. Osborne, if you want to send that -- file that with the clerk that is sufficient with me. The form doesn't bother me in the slightest.

MR. OSBORNE: Okay.

THE COURT: It sets forth your position, and that is stated.

But I have had an opportunity to review your brief as well in depth and as well as do some independent research on my behalf -- on my part. So please feel free to rely on it, but you state it as fully as you want to, sir.

MR. BOWDEN: Okay. Perfect. So as you know then the elements that are to be considered in a motion to quash the indictment are whether the indictment enabled the defendant to know what he was called upon to answer and then, two, to apprise the defendant of the elements of the offense that is charged.

The indictment in this case does neither, so I think it should be quashed on either ground really.

THE COURT: Well, let me ask you a question at this point. As I understand -- and of course I don't know a tenth of what you all know from your preparation. But as I understand the basic allegations are that first there was a thought that he was going to be indicted for the crime itself and that the State elected not to do that but rather indict him on accessory.

As I further understand it - I am not asking you to concede any of this - but what as I understand the State is prepared to present is that there was a vehicle identified leaving the scene after the shooting, correct?

MR. BOWDEN: That is right.

THE COURT: And that vehicle was a black Cadillac I think. And which further follow-up led it to being owned by this defendant, correct?

MR. BOWDEN: Correct.

THE COURT: No problem -- that doesn't infer or imply a thing, but that -- but that in and of itself if the State can prove, just for the sake of argument, that that is his vehicle and he is driving it and there is further evidence that the purported shooter was in that car when it left, correct?

MR. BOWDEN: I don't think the State intends to prove that he was driving it.

THE COURT: I don't know -- I don't know what the State intends to prove. I am just simply stating that part at least what there is. Whether or not that -- whether that is inferred, whether it is not. If it is not then maybe we have some issues here. But the question is -- because if they are not intending to prove that -- is it the State's position just because using the car makes him an accessory after the fact?

MR. OSBORNE: No, Your Honor.
THE COURT: Then ---
MR. OSBORNE: And I think if I heard you correctly we are presenting evidence that the shooter fled in the black Cadillac. We are definitely doing that.
THE COURT: All right. But you ---
MR. OSBORNE: Oh, I understand that.
MR. OSBORNE: Okay.
THE COURT: So you are saying the shooter was using the car?
MR. OSBORNE: That is correct. Yes, Your Honor.
THE COURT: So that is the essence of your being an accessory?
MR. OSBORNE: No, sir.
THE COURT: Okay.
MR. OSBORNE: So then that that gets into the knowing element of it.
THE COURT: All right, well ---
MR. OSBORNE: That is all the other evidence.
THE COURT: That is fine. No question about that part. I guess the damage -- and I assume he is going to testify. I don't know what he is going to testify to.
Obviously, Mr. Bowden, let me say this to you. One thing I have learned after 25 years of this, don't jump to conclusions because things change as the trial unfolds.

But at first blush it sounds like a pretty good case for your client thus far. Just because somebody's car is involved doesn't mean you are involved at all. Nothing. Zero.

MR. BOWDEN: I certainly agree.

THE COURT: And I think that is called -- I think there is a hurdle. At the end of the State's case it is called motion for directed verdict if the State has failed to prove beyond a reasonable doubt.

And I will tell you now if that is all it is, ah, I am not predetermining but I am probably going to grant that motion. Okay.

Now let's start -- let's start muddying the water just a little bit. Because that's what trials are all about. We also have -- I assume there's going to be some testimony about Mr. Smith's participation in trying to get rid of the car and in doing so creating a fraudulent document, allegedly.

Now we are getting into some -- I don't know what that implies and how it connects. But now we start getting into those little bits and pieces of evidence. No question -- and I will be the first to concede -- and I haven't done it many times (comment from law clerk to court).

But the -- there's no question is not just as we do in the civil side - thank God - because nobody can define this

term, scintilla of evidence. In this forum it is called substantial circumstantial evidence.

What does that mean? I don't know yet. Right now whether or not that is substantial, I don't know. It would have to be taken into consideration with everything else.

But all of that to get to the point. I don't -- I appreciate your position and I appreciate your candor of saying this state hasn't addressed specifically whether you have to identify the principal. I don't think that is necessary because -- well, let me put it this way, because that is going to have something to do with my ruling. Are y'all -- the person died?

MR. OSBORNE: Yes, Your Honor.

THE COURT: Obviously from what I saw -- I mean there was autopsy obviously. I saw pictures of that. And that was the attempted murder or that is the murder -- there was another person?

MR. OSBORNE: There was another person ---

THE COURT: Okay.

MR. OSBORNE: --- with a shot wound.

THE COURT: All right. I assume you are not trying to challenge that the person was dead?

MR. BOWDEN: Absolutely not.

THE COURT: And because there is no question that that -- well, that may have been a justified shooting; but

that would have to come out at a trial. But in and of itself -- and there is a probable cause standard. That would say a crime was committed, correct?

MR. OSBORNE: Right.

THE COURT: And I don't -- he is not being -- if we were talking about the hand of one is hand of all, I don't argue with you at all. I would be -- I can make that leap without any hesitation because you have got to prove not only being present but you have got to prove some involvement. And knowledge with a principal probably is going to be more compelling in that setting than it is for me in this accessory after the fact.

Now I don't know how much having a car -- again, that in and of itself doesn't make him an accessory. So I don't know what sort of involvement we have.

If getting rid of it, now we are starting to get close to that area of we are trying to cover up. And we -- not charged with obstruction of justice -- and I have to keep that in my head too. Because obviously if we had any of that, that is -- talking about -- I have tried one. And I understand why you don't try many of them, because that is a slam dunk. It really is. But that is not what we have.

I appreciate your position. I think I understand your argument. But I am inclined at this stage -- I think you are on notice of what he is being charged with. And thus

far he has already - have agreed. They are not charging him with being the person driving away. So that takes that off the table. If they try to prove that, aha, that is --

I understand you are not trying to prove and don't intend to prove that he was driving the vehicle?

MR. OSBORNE: No, if we were there it would be a murder trial.

THE COURT: Oh, I understand that. But the bottom line is so your accessory is things he allegedly did after the commission of the crime?

MR. OSBORNE: That is correct, Your Honor.

THE COURT: And ---

MR. OSBORNE: So it gets to the knowing element I think ---

THE COURT: And that is what I think -- I mean y'all are privy -- they have given you everything about all of this -- how do you pronounce it, Acevedo. Acevedo?

MR. OSBORNE: Acevedo.

THE COURT: Acevedo. Y'all have that information about Acevedo?

MR. BOWDEN: Right.

THE COURT: So I mean given -- our state doesn't require -- and I -- that is a great term, bill of particulars. I like it. I mean I've heard of it before. It would be great to go there. Because I think it would be

helpful in all of this because it requires the State to pinpoint it. It requires and puts us on notice. But I don't think we have gotten with that great specificity yet. However, you frame it. So that's the important part.

So I appreciate your position. But really it was an interesting one -- and it is an interesting one. Because I will assure you, you will have as always will but you are going to especially have my undivided attention here, because I have issues right off the bat with this case. So just to let you know as the trial comes up.

And, Solicitor, please don't take that as I have decided one thing whatsoever. I just read a little bit. I have no independent knowledge of anything else. And I hasten to add that.

But obviously -- and you understand that. Because as you said if you had enough you would have charged him with what you wanted to charge him -- intended to charge him with to start with I believe.

MR. OSBORNE: Yes, sir.

THE COURT: And that wasn't just being a bad person. You have some strong feelings about this, and I understand that.

MR. OSBORNE: Yes, sir.

THE COURT: And that is the beauty of what this process is. We have -- it is an adversarial process with

advocates, great advocates on both sides. And I look forward to hearing from you. But I am going to respectfully deny the motion at this point.

Now if you think you need anything to supplement the record in addition to what we have just talked about, Mr. Bowden, or what you have filed, please feel free to do so. Because I want you to have full opportunity to do that, sir.

MR. BOWDEN: Okay. Just briefly, Your Honor.

THE COURT: Sure. Absolutely.

MR. BOWDEN: I think -- I think that South Carolina law is clear that the -- that the State has to prove the guilt of the principal in this trial. And I think it almost goes without saying that there is no point in using the term guilt unless what the Massey court was contemplating was trying to prove the guilt of a specific human being.

THE COURT: Okay. And that is something. Because my law clerk and I were discussing this and he was doing what I want my law clerks to do. He was arguing your position on this.

And there are some pictures in there that give me grave concern about the admissibility and just an excess after the fact.

But if you are going to challenge that this wasn't a

crime, that this wasn't a felony, now it becomes very -- and I am hearing you say -- he has got to prove that the principal -- he doesn't have to prove -- I don't think he has to prove the identity. I don't quarrel with you that he's got to prove a crime.

Now if you are trying to say that this wasn't a murder then that -- that autopsy with all of those bullet holes in his back that kind of goes to the -- I assume that is what they were.

MR. OSBORNE: When I was going over everything -- I am going to pull that.

THE COURT: Well, I understand that. But, you know, I don't know what you want to do but ---

MR. OSBORNE: But I think -- but I am tracking with you.

THE COURT: Okay.

MR. OSBORNE: He would have to prove that there is a murder that occurred.

THE COURT: No question. Now if you are not raising that big of an issue of that, if you are saying, well, you can't prove murder, well, okay that ---

MR. OSBORNE: And you know how that goes. My concern is it is not an issue until closing. So that is why I am presenting it.

THE COURT: Precisely. Absolutely correct. So if you

are arguing that, that is going to help me with what I do to make my rulings on evidentiary matters so.

MR. BOWDEN: My argument is solely that they have to prove the identity.

THE COURT: I agree. How much they have to prove that is another story.

MR. BOWDEN: Well, I -- just the -- I think they have to prove the identity of the principal.

THE COURT: Oh, I don't agree with you whole -- that is stated in that. And you also hasten to add that there is no case that says that, correct, in South Carolina?

MR. BOWDEN: That they don't have to prove the principal?

THE COURT: They don't have to prove -- they don't have to prove the identity -- they have to prove that somebody did something, the principal committed a crime.

I don't think they have to prove that the principal was Joe Smith. They have to prove that the principal committed a crime. That is precisely what I'm talking about.

A person being shot that many times, killed, I think is evidence of a crime, okay. That means whoever did that who is the principal committed a crime. And if he -- if he assisted whoever did that and whoever did that is in his car, correct ---

MR. BOWDEN: Right.

THE COURT: Therein lies the beginning of the link. Now does that prove he had knowledge of it. Don't want to know what we've got now. Get into it.

But that connection so far is -- that principal and this defendant have some connection. It might be very -- considered minimal at this point in our discussion but there is a connection.

MR. BOWDEN: Okay.

THE COURT: Okay.

MR. BOWDEN: So I will just -- I will just move on to really our second argument.

THE COURT: All right.

MR. BOWDEN: Which is that the -- the indictment itself does not apprise the defendant of the elements of the crime. Basically -- well, the indictment is really not a complete sentence.

And I think the fairest reading is that they have accused some suspect of committing some crime and that this defendant knows maybe that attempted murder and murder are felonies. But those are not -- that is -- it is a big logical leap to say that it ---

THE COURT: I disagree with you. Again -- again, our state has made it perfectly clear are you on notice of what you are being charged with. You are being charged with

accessory after the fact of a felony. The specificity of it I don't think the State requires it. I don't think there is any case that says it does. If you have got a case that says it has to be specific, give it to me. Because I don't know it.

It says it must give you enough to understand what. And you take it -- as I understand the rulings you take into consideration all of the information that you have in conjunction with that indictment.

MR. BOWDEN: Certainly.

THE COURT: And I don't think you can take out and say, well, you didn't put all that in there. They don't have to. That is what the case law says.

MR. BOWDEN: Well, the Gentry case specifically says that the elements of the offense have to be included in the elements ---

THE COURT: And the elements of the offense are that you -- that a crime was committed and you assisted the principal in some fashion to avoid detection. That is what they have alleged.

MR. BOWDEN: And that knew that the principal committed the crime.

THE COURT: Again, what -- that -- I agree that they have to know that there is a crime, that the person did something. I agree with that. Don't quarrel with that.

But, again, that is something -- I don't know what, because there are all kinds of inferences that can be drawn from evidence.

Again, why would -- and this -- the date of this is April the 18th. And I think the date I saw was April 25th on the bill of sale?

MR. OSBORNE: So Acevedo went into the DMV on the 20th, but he predated ---

THE COURT: To the date ---

MR. OSBORNE: --- to go back ---

THE COURT: Back for a year ---

MR. OSBORNE: --- 19 days.

THE COURT: Yeah, the 20th. So the 20th ---

MR. OSBORNE: I think it was 19 days earlier.

THE COURT: So but two days after those alleged incidents?

MR. OSBORNE: The first opportunity to go into the DMV.

THE COURT: Okay. So again I don't know what this Acevedo is going to testify to. Because Acevedo is probably the linker, my guess. That is just reading. And I think -- I was looking to see witness lists and see if Acevedo was a witness. And I think, ah, that may be the connector. I don't know.

But I have a quarrel with you. I mean if he comes

back with his car, nothing in the car suggests anything, I mean he doesn't have any conversations assuming -- I mean he doesn't have to say anything obviously.

So and we don't have the person, the principal, as I understand it. He is still on the lam. So tough road to hoe, the State.

But right now you have nailed -- by telling me you have already nailed full well what your -- what you are going to defend. I mean I don't quarrel with anything you said. But you are on notice of what you have got to defend and what the State has got to do. And you are absolutely correct. But you are on notice of the crime so -- of the charge. So thank you.

MR. BOWDEN: Thank you.

THE COURT: Okay. All right. Anything -- any other motions?

MR. BOWDEN: Judge, do you think -- I am just thinking. The language -- when we read this indictment to the jury I believe it is ---

THE COURT: I don't read the indictment to the jury.

MR. BOWDEN: Okay.

THE COURT: I just -- I sort of generalize it.

MR. BOWDEN: And that is what I was going to check with you about. Because it does seem like the actual language in here is quite confusing and doesn't really lay

out the elements the way that the case law does. So ---

THE COURT: Well, to be honest -- excuse me. You -- I am not going to talk about Class A, B, C felony because I think that -- I don't that that was even necessary, to be honest with you. I think that is just verbiage.

I am going to say that knowing -- that while knowing that a felony of a murder or attempted murder was committed -- I mean that is really the essence of it.

MR. BOWDEN: Right. And I think maybe that was just a typo on the State's part. But they didn't actually say that the felony of murder was committed or was completed. I think they may have just left that out by accident in the actual indictment. So that was ---

THE COURT: Well, again, is this puts you on notice. They are not trying -- whether -- they don't have to prove -- basically they have to prove a felony, correct?

MR. BOWDEN: Yes, sir. And I am not rearguing the motion.

THE COURT: No, I am just asking you for my edification. I agree with you they -- but they are not required to prove -- I agree with you they have to produce some felony. They could have just said knowing that a felony was committed, period.

MR. BOWDEN: I think I would argue that in order to convict him of accessory after the fact to murder they

would have to prove that a murder ---

THE COURT: All right, a murder was committed.

MR. BOWDEN: Yes, sir.

THE COURT: But wait a minute. The statute talks about an A, B, C, doesn't it? The accessory?

MR. OSBORNE: It is common law.

THE COURT: Oh, you -- is this a common law or the new one? Because Class A and B aren't common law.

MR. OSBORNE: Right. I think the verbiage is in case law for the statutes -- at the statute that I listed there is the penalty section.

THE COURT: Well, what is the State's position?

MR. OSBORNE: Well, I mean I think that although, you know, that this motion was written by the defense and it is cherry picked to some degree we would say as to the evidence. But even in here they are on notice.

I mean they have pretty much laid out our case in here. With a few exceptions. There's a couple of little things that they've already known about.

But if you read this, as I was reading it, I said, well, they have already laid it out right there; I mean that is the entire case. So they are certainly on notice. And that's the only purpose to the indictment.

THE COURT: I would agree. I mean I understand what you're saying that there is -- we will see how -- what

specificity they require.

But if you are saying knowing that the felony of murder or attempted murder, what else would it be was committed?

MR. BOWDEN: I think when it is followed up by such being a Class A, B, C felony or murder it is kind of leaving off the fact that -- leaving off the part of that sentence which I think should have read knowing that the felony of murder and attempted murder occurred or were completed. I think it is saying that -- if you read it just -- and we know what they meant. But if you read it just based on the plain language it is saying that Seth Smith knew that the felony of murder and attempted murder were a Class A, B, C felony for murder.

THE COURT: Well, I agree; but you and I both know that that is -- you are not prepared for that and you are not -- they are not saying that and ---

MR. BOWDEN: No, no, I am just ---

THE COURT: Precise -- and it is precisely my point. And thank you. You stated it much more articulately than I could. This indictment clearly puts you on notice of what your client was facing.

MR. BOWDEN: It does, it is ---

THE COURT: Because you are not -- you are not going to defend that he didn't know whether or not that it was a

Class A, B, or C felony; that is not your defense?

MR. LOIGNON: No, sir.

THE COURT: Thank you, sir.

MR. LOIGNON: No, sir. My only concern in bringing it is confusion to the jury if we send this back with them.

THE COURT: This indictment they are not going to ever see this indictment, okay. And I am going to talk to them generally that an alleged crime of murder occurred and you are going to hear testimony that a murder -- alleged murder occurred on April the 18th and they are accusing Mr. Smith of committing -- being an accessory, which I define for them, assisting in some fashion. That is all they are going to know.

MR. BOWDEN: Thank you, sir.

THE COURT: Okay?

MR. BOWDEN: Yes, sir.

THE COURT: Thank you. All right. Anything else?

MR. BOWDEN: Not from the defense, Your Honor.

THE COURT: All right.

(WHEREUPON, break for the court to handle unrelated court matter.)

(WHEREUPON, resume, 1/7/19, 12:01 a.m., awaiting jury panel.)

THE COURT: Those are all -- we have dealt with all of the motions I assume; there is ---

MR. LOIGNON: Yes, sir.

THE COURT: --- nothing else? Okay. My plan would be -- and I have got your voir dire. My plan would be to pick them, excuse them for lunch, and probably start back depending on how long maybe 2:00, 2:00-ish. Does that help y'all?

MR. LOIGNON: Yes, Your Honor.

THE COURT: Okay.

MR. LOIGNON: Just we would also request to sequester the witnesses of course.

THE COURT: All witnesses -- do you have any -- anticipate any witnesses?

MR. LOIGNON: It depends on the State's case.

THE COURT: And I know you had a list.

MR. LOIGNON: Yes, sir.

THE COURT: That would apply both ways obviously.

MR. LOIGNON: Yes, sir.

THE COURT: Okay. Thank you.

(WHEREUPON, break awaiting jury panel.)

THE BAILIFF: One in the restroom.

THE COURT: While he is -- thank you, ladies and gentlemen. I am sure you have had a good time moving up and down stairs and getting to know one another.

I call Mondays for jury trials a hurry up and wait day. So I am sorry for the inconvenience. The one thing

be the administration of your oath. So if you will give attention please to Mr. Malone as he administers your oath.

THE WITNESS: Please rise. Raise your right hand.

THE COURT: Defendant rise, please.

(WHEREUPON, defendant complied.)

THE COURT: Thank you.

(WHEREUPON, jury was duly sworn.)

THE COURT: Thank you very much. Thank you, Mr. Smith. You may be seated, sir.

Thank you, ladies and gentlemen. Thank you very much. And now you and I will work together to resolve this dispute. You and you alone have become the sole judges of the facts of this dispute, and you will make that determination at the conclusion when you are instructed to consider the evidence and decide what you find to be credible and believable.

I would submit to you that you brought with you when you walked in that door everything you are going to need to accomplish that. Because all anybody expects you to do is to use your common sense, your sense of logic and reason, and that you have relied on throughout your entire life, to apply that to the facts that you are -- to the evidence.

And evidence is a term. When we hear that term we suddenly build a block, I think. But folks we consider what you are going to do every day of our lives. You hear

something. You read something. And God knows we are bombarded with that today. And we have to decide whether we believe it or not and if so how strongly we believe that. And that is exactly what you will do when you are instructed to decide this case.

You also brought something else that is equally important. And we haven't really talked about it directly. But kind of indirectly through all the questions that we ask. You saw me excuse some persons because they said, ah, it might affect me in some way or I might not be able to be objective.

What they were saying in not so many words was I don't really have a complete open mind here. You brought with you an open mind, meaning that you haven't decided anything about this case. That is I think a critical ingredient and a necessary asset of a person who is undertaking the task of being a judge on a jury to decide any case, be it civil or be it criminal.

Because that open mind is what both sides expect -- how they expect to start. The important thing about a criminal case though it is really very critical because of that principal of law that we have talked about that every person, Mr. Smith included, who are accused of committing criminal offenses in this state and in this country are to be presumed - and that is an active presumption. We will

talk about it more in the charge portion which is the last phase of this process - but you are actively to presume that Mr. Smith is innocent of this charge until and unless the State brings in sufficient evidence that convinces you beyond a reasonable doubt that he is the person that committed the offense.

And in order to do that the State has to present evidence as to each element of the crime charged. And I will define that for you when I give you the charge. We will go through the various elements. And basically you will go through the process and in that deliberative process and decide for yourself whether or not you are convinced of that standard.

I will define reasonable doubt for you. But I will tell you this: Maybe some of you have served in a civil case. And in the civil case the burden of proof typically is called the preponderance or greater weight of the evidence. And that is just a legal term for probably, it is most probably so.

In a criminal case the evidence has to be more than just most probable. It has to be -- it has to persuade you beyond a reasonable doubt. And that is more than maybe being guilty, might be guilty, probably guilty; it is proof that leaves you reasonably convinced of the defendant's guilt.

And it is basically a definition it's -- would be -- it is that doubt that would cause an honest, sincere, conscientious juror who is searching for the truth in a case to hesitate to act or take some action. And that is what you will be applying.

Now what will you -- what will you be considering? The testimony and exhibits. That is physical documents that you may have that you will have a chance to review. If they are admitted they will accompany you to your jury room.

Sometimes they will show them to you on the screen or hand them to you. Please feel free to look at it, but just know that those exhibits will accompany you and you can study them in greater detail when you -- as you begin your deliberations.

And that is what we are talking about. We are talking about what somebody said and what you are able to visualize. And you are to keep that open mind throughout the process and only change it when you are instructed to begin your deliberations.

And, folks, the last portion of this process -- there are four parts. The last one is a charge portion. And that will be the last instruction that I give to you before you undertake that task. So until you receive that do everything in your power -- and I will -- we all are human,

and we have to acknowledge our humanity in this process. And there is a temptation, more so with some than others; and I am probably -- and sometimes criticized by certain persons and probably rightly so that I rush and I want to get to the bottom line. And I don't know where you are. And then some people are detailed people. I happen to live with one. And she is a person that when you want to get a question you have got to give more and more information or she wants to tell you everything.

And when she -- when I am asking her, she wants to hear it all and then she will ponder it and then give me an answer. Me I kind of say, oh, I know where you are going and I will jump to the bottom line.

If you are in that latter category, don't be that. Because that is the last thing you need to be. You need to be that detailed person, that person that waits.

Now understand something. That means you don't make any decisions. However, we all -- you know, as we go through the day we are listening to somebody or we are talking to somebody and they say something; and maybe it is their body language, maybe it is that expression on their face, maybe it is something else, that triggers that thought, wait a minute, that -- I am suspect of that. Or they may say, God, that person is really passionate, I believe -- I believe that strongly.

Make that mental note. Just don't reach the conclusion until you begin your deliberations. It may ultimately lead you to that determination that has served you in your life. But your fellow jurors may be able to tell you something that might allay that problem and allay that concern and change your mind. And that is why it is so critical that you not make any judgments beforehand.

Now in just a moment -- there are four parts, as I mentioned. The last one being the charge. But in just a moment the attorneys will have their opportunity to give you their opening statement.

They speak to you twice, once before you hear the evidence and once after you hear the evidence. And both are very important to this process. They are officers of this court. They have a very important responsibility. And you should give them your undivided attention. And I know that you will.

But just remember something. While their remarks will be extremely helpful to you during the trial and after when you begin your deliberations their remarks just as my remarks should never be considered evidence in this case.

Because the evidence will come to you through the testimony of the witnesses. And it is that that you will be -- examined. But in their opening statement they will tell you a little bit about the case and they will tell you

about what they expect you will hear. It is kind of an overview of this dispute. And it will help you as you move through it to kind of program and process things as you hear it. So it is very beneficial.

After you have heard the evidence then you will hear from them again in what we call closing arguments. The obvious difference is you have now heard all the evidence or seen it and it is proper for them to discuss that evidence with you and suggest reasonable inferences that you may draw from that evidence.

Again, I am confident those remarks you will find to be extremely helpful when you are instructed to begin your analysis and deliberations in this case.

Now obviously somebody goes first. And in a civil case or in a criminal case it doesn't make any difference. The party that has the burden of proof goes first, and that would be the State.

An obvious reason, a very logical reason, while the defendant has no responsibility - and I repeat, no responsibility - to prove anything at all because the burden rests solely on the State.

That is one of the differences. That and the burden of proof. In civil cases there are occasions when the defendant has a burden of proof in some situations. In this case not so. This defendant has nothing to prove at

all.

However, he still has the right if he chooses to call any witnesses that he wants to for you to hear. So a very logical reason you can't decide any of it until you have heard all of it. So you don't want to prematurely decide anything until you have at least completed the evidentiary portion.

But then while the temptation as human beings would be, well, I have heard all of the evidence, it is okay to decide it, that would be a mistake.

Two reasons. Number one, there is a very important part where the attorneys give their closing arguments. And, as I said, they will be extremely helpful to you. And the other, quite frankly, is you have promised to decide this case based on the evidence and the law and if you started deciding prematurely you have just violated my instruction. So you can't do that either. So keep that open mind. Do whatever you have to do to accomplish that.

When you go through -- the State goes through because they have the burden of proof. And they will present that evidence they believe should persuade you that their case that it is worthy of a guilty verdict.

And as I mentioned to you, that is what -- in a criminal trial some people say, well, guilty or innocent. That is not what a jury verdict means.

Guilty means the State convinced the jury beyond a reasonable doubt as to each of the elements of that particular crime and that jury - as you are instructed - returned a verdict of guilty. Not guilty means simply this, in considering the evidence the State failed to present enough evidence to convince you of each element. And if they fail on one element you must return a verdict of not guilty. Why? Because the State is -- has the task of proving each element beyond a reasonable doubt.

So we will go through. We will hear from the State. And then at the conclusion of that if Mr. Smith wishes to call any witnesses he may do so. If not, then we will hear closing arguments. And then I will give you the instruction.

To which we'll talk about the elements of the crime of -- that he -- with which he has been charged. And we will talk about some other legal principles. And then I will tell you to retire to your jury room and begin your deliberations.

I look forward to trying this case with you. It is a privilege and an honor to serve with each one of you. And I thank you for your attention to my remarks and ask you to please give that same attention now to the attorneys as they give their opening statement.

Solicitor, you may proceed.

MR. OSBORNE: Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir.

OPENING BY MR. OSBORNE:

On April the 18th of 2015 someone wanted George Bennett dead. They wanted him dead so bad that they got out of a black Cadillac and approached George while George was sitting in a vehicle with his friend Rayshawn Rivers. They wanted him dead so bad that they shot him so many times. They fired and hit him at least 12 times. And were firing so recklessly they actually even hit Rayshawn.

That shooter then ran and fled in that black Cadillac and made good his escape. Now Rayshawn would be okay. He would be treated for a gunshot wound and he would be released. Rayshawn was holding a child. That child was traumatized, but he would be okay. George Bennett would not. George Bennett would succumb to his injuries and would die. George Bennett was murdered.

This however is not a murder trial. We are not here trying to find out who killed George Bennett. We are here because of what this man (pointing) did, Seth Smith the defendant in this case, what he did on the days following that murder. Namely trying to conceal, cover up, and destroy evidence. That black Cadillac belonged to him. And he made extraordinary efforts to get rid of that and

try to help whoever killed George get away with it. This is a trial about accessory after the fact to murder.

Now you are going to hear that George was murdered on the East Side around the area of 2 Reid Street. A lot of good people live on the East Side. But there's also a lot of crime on the East Side.

A lot of people come to the East Side and bring that crime. And for that reason the police department has put up surveillance videos to try to curb it and maybe try to prevent it, catch criminals.

There is a camera on Reid Street right where the murder occurred. Unfortunately the cameras rotate on a timer. So what you will see is when that camera rotates the murder had just occurred. But what you do see is the black Cadillac is then backing up wildly, aggressively. That passenger door is swinging. The shooter had just jumped in the passenger side door. The driver was backing up so quickly he hadn't even gotten a chance to close the door. He then backed up to East Bay Street and then took off toward the Ravenel Bridge.

So while the cameras won't help us catch the murder itself -- if it did capture the murder this could very well be a different trial. But it didn't.

But it does help you see the getaway vehicle. So what the police did was they went back and looked at

surveillance video prior to the murder to see if they saw that black Cadillac. And just minutes before the murder they saw the black Cadillac. But it wasn't alone. It was circling the East Side with a silver Infinity. That silver Infinity is registered to his brother. The black Cadillac is registered to him. His brother is Bryant Smith.

Okay. Now detectives ran the plates of the Cadillac and they did a title check. And what they found out was that two days after the murder an individual by the name of Jibral Acevedo went into the DMV and transferred ownership from the Cadillac from him to himself making it appear as now Acevedo owned the Cadillac.

When the detectives looked at the bill of sale the bill of sale reflected that that car had been sold well over two weeks earlier. And more interestingly enough is despite the fact that the bill of sale reflected that the car was purchased two weeks earlier Acevedo paid an expedited fee to insure that by the end of that day when he walked out of the DMV that vehicle would be registered in his name, not the defendant's name.

You will hear from Acevedo. He is a witness in this case. And you will hear that detectives interviewed him and he lied. His story was that I bought the car, the Cadillac, several weeks ago and then about two weeks earlier, two weeks before the murder, the car broke down,

broke down on the side of the road. That is all he knew.

Now detectives knew he was lying because they could see the car on the video. They saw the car on the day of the murder. So they ended up charging him. They charge him with obstruction of justice. Basically he lied.

They brought him back in and interviewed him again. And this time Acevedo told them what really happened. That man right there (pointing) is Acevedo's cousin. And he played Acevedo for a fool. He convinced Acevedo to put that Cadillac in his name just two days after the murder occurred. He even convinced Acevedo to predate or at least have the bill of sale predated to where the car would have been in his name during the timeframe of the murder.

Now I am going to tell you this about Acevedo -- and you are going to hear him testify. The judge is going to talk to you later about credibility. I would submit to you this, Acevedo is a liar. I would not believe a word that comes out of that man's mouth unless you could corroborate what he is saying by the other evidence in the case.

So when you are listening to this case look at the things that you can corroborate from the evidence based on what Acevedo says.

All right. You will hear that on Monday morning, two days after the murder, the defendant contacts Acevedo and says, you know, do you want my Cadillac. He knew that

Acevedo was interested in the Cadillac and he took advantage of that.

So Acevedo who had already expressed interest before in the car said sure. They agreed to meet at the West Ashley behind the Home Depot. The defendant shows up in a white truck. It is being driven by a guy that Acevedo only knows as Bubba.

When Acevedo gets into the truck they go to the Dollar General which is around the corner. Acevedo stays in the truck. Doesn't know what is going on. The defendant goes inside the Dollar General and purchases two cans of brown spray paint. He then comes back to the truck, drives Acevedo to the Cadillac in Mt. Pleasant where it is parked at a guy named Jeremy Wright's house.

Acevedo I am sure is thinking at this point that he is getting the car. Well, he doesn't get the car. What happens instead is that Acevedo and the defendant eventually end up at the DMV. Once they get there the defendant tells Acevedo I want you to go inside, transfer the car into your name, but I want you to expedite it, I want that transfer to occur today so when you leave you have the title in your hand.

Now I would imagine that Acevedo suspected that something was amiss at this point. Because he never paid a dime for that car. But he is an opportunist. An

opportunist. And for him this was a deal that was just too good to pass up, so he agreed.

But he didn't get the car. He ended up getting a lot more than he bargained for. Because the next day when they went back to the car -- the defendant took Acevedo back to the car. He didn't give it to him like he said he would. Instead he began to destroy the car. With those two cans of spray paint he began to alter its appearance; spray paint the wheels, make them look brown instead of black like they were.

And then he told Acevedo, he said we need to get rid of this car. And Acevedo agreed. At that point even if Acevedo thought that there was something going on he couldn't back out. He had too much skin in the game. The car was in his name. So he agreed.

The defendant told him we are going to contract a wrecker, you can sell the car and you can keep whatever you get from it. Acevedo agreed. This defendant then contacted a tow truck driver. The tow truck driver came. Acevedo sold the car to him. Got about two, three hundred dollars. Then the car ended up being delivered to a wrecker -- or to a salvage company.

By the time the detectives were able to put the pieces of the puzzle back together and locate that car it had already been torn apart, picked apart.

Now at the end of this trial, again, I am not going to ask you to convict him of murder. I am going to ask you to convict him of the crime that we can prove that he committed. And that is accessory after the fact to murder. Thank you.

THE COURT: Thank you, Mr. Osborne.

Mr. Loignon.

MR. LOIGNON: Thank you, Your Honor. May it please the court.

THE COURT: Sure.

MR. LOIGNON: Good afternoon.

OPENING BY MR. LOIGNON:

That was an interesting story you just heard from the State. But that is all it was, was a story. Because they don't know what happened to George Bennett. They don't know who killed him. And there is certainly no way for them to ever prove that Seth Smith knew who killed George Bennett.

The State wants you to convict a man on suspicion and assumptions. But looks can be deceiving. Seth Smith never knew that anyone killed George Bennett. And that is why he's not guilty.

Now why else is he not guilty? Number one, there is absolutely zero forensic evidence that links Seth Smith to this crime scene or to the victim in this case.

Number two, not one witness will testify for the State, not Jibral Acevedo, not Jeremy Wright, not one witness will testify that Seth Smith had any knowledge that this murder occurred and was trying to conceal something.

Number three, the main witness for the State, Jibral Acevedo, as you heard, has already pled guilty to obstruction of justice in this case for lying to the police. So now he is out to save his own skin.

And remember, the State doesn't know who killed George Bennett. No one is currently a suspect in his murder. But they have come in here today and asked you to convict someone for accessory after the fact to a murder when they don't even know who committed the murder.

Accessory after the fact to murder requires the State to prove the three things: That the murder actually occurred, was completed. Number two, the most important one, is that Seth Smith knew that the principal, the murderer, actually committed the murder.

And number three, that Seth harbored or assisted that principal, the murderer, to escape detection. Seth must have known that the person that he aided was the guilty party with the intent of shielding him from of the law.

This is a case of the State throwing a bunch of stuff at the wall to see what will stick. They want you to look at some things that they find suspicious and try to

persuade you to convict Seth of being an accessory after the fact to murder.

Witnesses say the shooter got out of a black Cadillac; so the State is going to try to say that because Seth Smith also owned a black Cadillac it must be the same car, they think it was Seth's car that was used to drive the shooter to Reid Street where this incident happened.

And if in fact it was Seth's car that was used they are going to say that Seth must have then known the person that was using it. They are not saying Seth used it. They are saying an unknown suspect used it. And so if it was in fact Seth's car, Seth must have known who was using the car. And if in fact he did know the identity of that person he had to have known that that person was going to commit a murder and they did commit a murder.

That is a lot of if's, folks. A lot of if's. Simply put, the State is saying look at all of this suspicious behavior afterwards, what other explanation could there be for all of this suspicious behavior, this phone call or being at this location at a particular time or getting rid of a junked up car, what other explanation could there be.

Suspicion and assumptions. So why does the State think that Seth Smith would try and help someone get away with murder? As you heard, they think this whole thing involves Seth's brother, Bryant Smith, and the victim

George Bennett. They think the motive was revenge for a drug deal gone bad the night before.

And Bryant Smith did actually get arrested for murder. Seth's brother. But when evidence kept coming in excluding Bryant Smith they dropped the charges. So he is no longer charged in this case. They realized they jumped to conclusions in charging Bryant Smith.

But you cannot jump to conclusions because you took that oath this afternoon. And you swore to listen to the evidence in this case and to the law in this case and to deliver a true verdict for Seth. And that means listening to all of the evidence and the arguments and the charges on the law before making a decision. So you cannot jump to conclusions. Your job here is far too important for that.

Because the State must prove Seth guilty beyond a reasonable doubt. And you heard the judge talk a good bit about that this afternoon. And you will hear more about it towards the end of this case as well.

But it is the highest burden that exists in our court system in America. Much higher than mere suspicion. Much higher than probable cause. Which is all they needed to charge Seth Smith with this crime and indict him and have him on trial here today, probable cause.

And the State's burden here is much higher than in a civil case, as Judge Dennis told you. That preponderance

of the evidence standard that is only 51 percentage sure is what it is sometimes explained as, it just tips the scale over a little bit, fifty-one percent sure in a civil case. Not here. Not here at all. Because here in this court the State must prove their case beyond a reasonable doubt. Each element of the offense.

So if you are not firmly convinced that they have proven each element of that offense then you must find Seth not guilty.

So let's talk about what the State is not going to present to you during the course of this trial. I already mentioned they don't have any forensic evidence linking Seth to anything in this case.

You will hear that police collected some evidence and had it tested. Fingerprints, DNA, fired bullets and cartridges were collected and tested.

They did a gunshot residue test on the victim's hands. Those were actually never tested. None of that forensic evidence was matched to Seth. Didn't link him to this case in any way.

As I said, no witnesses will come in here and testify that Seth Smith told them about a murder or that Seth Smith had any knowledge that a murder occurred.

You will hear from some witnesses who say they interacted with Seth shortly after this incident happened.

Jeremy Wright and Jibral Acevedo, they are going to testify that Seth was present with them, they were in certain places after the incident. And the State is going to make -- try to make that activity look suspicious.

But both witnesses will clearly say that Seth never said anything to them about knowing of a murder. And both of those witnesses are going to say that they had no knowledge of the shooting. Seth didn't tell them anything because Seth didn't have anything to tell.

So none of the State's witnesses will say that Seth had knowledge of a murder. None of the forensic evidence will connect Seth to this crime. The police weren't there when this happened. And Mr. Osborne and the Solicitor's Office they certainly weren't there when this happened. They don't know who did it or why they did it. So they are going to throw some things at the wall and see what will stick.

They had suspicions and now they are making assumptions. But that is not how this works. Suspicion and assumptions is not justice.

The State is probably going to show you some cell phone records. They are going to point out what they consider to be suspicious phone calls; and they are going to try to, you know, use cell phone locations to try to show that an individual was in a certain place. Including

Seth. And they are going to say that this stuff makes Seth look suspicious.

And they are going to have some neat graphics and a nice-looking presentation for that. But don't be fooled by those attempts to try to get something to stick. Because all you have to do is just kind of take a step back and think what do these graphics really tell me, what does this data, this information, actually tell me. And it tells you two things, the general area where a phone was and what number that phone call -- or received a call from.

But it certainly doesn't tell you that Seth Smith knew a murder happened. When listening to the State's witness, Jibral Acevedo, please play attention to what motives he has for testifying. Does he have a reason to try and protect himself, is he hoping to get a benefit from the State by making his story fit with what they want to hear.

A man lost his life here. And it is a tragedy. George Bennett didn't deserve to die the way that he did. No one does. It is only human to feel some emotion during this trial, feel for the family who've lost someone. But please don't let that emotion cloud your judgment. And I would ask you to please try and separate the two and evaluate the State's evidence independently of that emotion.

And remember, as Mr. Osborne said, Seth Smith is not

on trial for murder. No one is. They don't know who killed George Bennett. And Seth doesn't either.

They have a car that looks like Seth's old car. And then they have speculation and assumptions. Suspicion, that is all the State is going to present to you. Suspicion is never enough to convict someone of a crime. Because looks can be deceiving.

And throughout this trial think back to all of those if's that I pointed out; the car, the identity of the shooter. And the biggest if, the hardest thing to swallow, is going to be this, the State is going to ask you to go into someone else's head and determine what they knew at the time. That is what you would have to do.

Because not one witness is going to say that Seth told them anything about a murder. And none of the State's evidence is going to show you that either. So the State is asking you to make an assumption now to assume what Seth Smith knew at the time. And we all know what they say when we make assumptions.

So we don't convict people on assumptions or suspicion in this country. That is not how our justice system works.

Seth Smith had no knowledge of a murder, no witness to say that he had knowledge of a murder. No one currently charged with that murder. No fingerprints. No DNA. Means no way to convict Seth Smith. And for those reasons at the

end of this trial I would ask you to find him not guilty.

Thank you.

THE COURT: Thank you, Mr. Loignon.

You may call your first witness, Solicitor. Thank you.

THE COURT: Thank you, Your Honor. The State calls Officer Faustin.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: Please state your first and last name and spell your last name loudly and clearly into the microphone.

THE WITNESS: Marchent Faustin. Last name F-A-U-S-T-I-N.

DIRECT EXAMINATION BY MS. OSBORNE OF MARCHENT FAUSTIN:

Q. Good afternoon, Officer Faustin.

MR. OSBORNE: Your Honor, may I approach the witness?

THE COURT: You may.

Q. We are going to do something a little out of order so I can get this cued up, okay. So I am going to show you State's Exhibit Number 23. Can you tell me if you recognize that?

A. Yeah.

Q. And what is that?

A. This is appears to be some footage from the incident on Reid Street.

Q. And how do you know that?
A. I have seen this before in your office.
Q. And did you do anything to the CD to make you -- or help you remember that that was in fact the CD?
A. I didn't do anything to it.
Q. Did you initial it?
A. I don't see my initials on here.
Q. But do you remember watching the video ---
A. I do.
Q. -- inside -- and how do you know that that is the video from Reid Street from the date -- was it the video from the date of the murder?
A. It was.
Q. And how do you know that?
A. Because I was the first officer on the scene that day.
Q. And did you see yourself on the video?
A. I did.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit State's 23 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection State's 23 is admitted.
(WHEREUPON, State's Exhibit Number 23 was admitted into evidence.)

Q. All right. While that is getting cued up we will go back and start introducing yourself a little bit.
A. Okay.
Q. All right. So you work with the Charleston Police Department?
A. Correct.
Q. And how long have you been there?
A. Eight years now.
Q. All right. During that time what have been some of your various assignments?
A. I have worked for the Flex Unit. And I currently work for the Community Action Team which is a unit Downtown where primarily on the East Side where this incident took place.
Q. Okay. What is -- what do you do as a community ---
A. So Community Action Team is you go to work primarily on the East Side. We do a lot of community events, fund raisers, bike give-aways; things like that. And just every day -- we also do patrol and things like that.
Q. Okay. So you said that you work on the East Side. What are the borders to the East Side?
A. So the East Side is pretty much Meeting, East Bay, Huger to to you go on up probably down to maybe Mary Street, Charlotte; in that area.
Q. Okay. Would you consider that area a high crime area?

A. Correct. I would.
Q. And what type of crimes generally occur on the East Side?
A. We have everything from our shootings to our robberies, to assaults, B&E's, vehicle thefts, narcotics. Everything.
Q. Okay.
A. A little bit of everything in that area.
Q. All right. So let's go back to April the 18th. Were you working that day in 2015?
A. I was.
Q. And did you have the occasion to respond to a shots fired call for service?
A. I did.
Q. And that was what, around 11:40 I think?
A. I can't remember the time; but yeah, it was earlier in the day.
Q. Okay. Where were you dispatched?
A. I was dispatched to the area of Reid and East Bay Street.
Q. Okay. Reid and East Bay, is that in the City and County of Charleston?
A. It is.
Q. All right. All right. Now let's talk about Reid a little bit. It is a one-way or a two-way street?

A. Reid Street is a one-way street.
Q. Coming from which direction?
A. Coming from East Bay. It is one way all the way down until it ends on King Street.
Q. Okay. From East Bay headed back toward -- okay.
A. Correct. One way all the way down.
Q. All right. So when you approached I take it you would have come from East Bay then?
A. Correct. I can't remember where I was coming from. But I responded to the call. I was coming down on East Bay Street and then made a right onto Reid Street.
Q. Okay. All right. Tell the jury what you saw when you arrived on the scene.
A. On that particular day I get -- I was dispatched to the area of Reid Street and East Bay in reference to a shooting. I came down East Bay. I made a right onto Reid Street in the area of I guess it is 1 Reid Street. It's a lot of commotions, a lot of people running around.

I got on the scene, and I saw a white four-door vehicle. I can't remember what it was, a Crown Vic, a Mercury; something along those lines. Again, it was a lot of chaotic -- a lot of chaos going around.

I saw a gentleman in the passenger seat -- passenger seat slumped over with several gunshot wounds all over his body.

Q. Okay. Okay. When you responded -- well, let me just ask you like generally. When you respond to a shooting scene like this, crimes of violence, walk the jury through what your duties are and how you respond to those type of crimes.

A. Initially when we get on the scene the first thing we do is obviously locate the incident and see what's going on. I responded to Mr. George Bennett to see if I could render aid. So I get to the scene. I figure out what is going on. Once I realize what is going on then I relay the information out to the responding officers; you know, suspect description, which way the vehicle went. EMS obviously I called EMS that day.

So I got on the scene. I saw Mr. Bennett was shot several times. I called for EMS. At that time several officers arrived on the scene. And we try to separate -- separate witnesses and then secure a scene.

Q. Okay. And render aid to the victim you said?

A. Yes.

Q. And so there was a second victim?

A. Correct.

Q. And did you happen to notice what type of gunshot wound he suffered from?

A. I don't know. I just remember there were many holes in his body when I arrived on the scene.

Q. Well, what about the first victim?
A. Mr. Rivers?
Q. Yes.
A. Um ... ---
Q. If you don't remember that's all right.
A. I don't remember making much contact with Mr. Rivers. Because again I came-- I approached from the passenger's side. So Mr. Bennett was the first person that I saw. And I spent most of my focus on Mr. Bennett. I think the other officer that arrived on the scene spent more time with Mr. Rivers. But I focused my time on Mr. Bennett.
Q. Okay. And did EMS arrive on the scene?
A. EMS did arrive -- EMS and fire arrived on the scene.
Q. And did they end up transporting Mr. Rivers?
A. I believe so, yes.
Q. Okay.
MR. OSBORNE: May I approach, Your Honor?
THE COURT: You may.
Q. I am showing you State's Exhibit 1 through 3. Can you tell me if you recognize those and what are they?
A. I do. That the Mercury -- whatever kind of car it is. Yeah, the four-door right there right in the intersection of Reid and East Bay Street.
Q. Okay.
MR. OSBORNE: Your Honor, at this time I would seek to

admit 1 through 3 into evidence.

THE COURT: Any objection?

MR. OSBORNE: No, Your Honor.

THE COURT: Without objection State's 1 through 3 are admitted, each being a photograph.

(WHEREUPON, State's Exhibit Number 1 was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 2 was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 3 was admitted into evidence.)

Q. All right. State's 1 (displaying). Can you tell the jury what we are looking at here?

A. We are looking at the intersection of Reid and East Bay. And like I mentioned before, when I got dispatched to the call I came down East Bay and made a right onto Reid Street. And I approached the white vehicle from the passenger side where I made contact with Mr. George Bennett.

Q. Okay. And you can mark on that screen in front of you. And the white vehicle being where?

A. Right there (pointing).

Q. Okay. Do you see your police vehicle on the scene there ---

A. I do.

Q. --- on the picture?
A. It is right here (pointing). Behind -- so this is the first vehicle (pointing). I am directly behind that. The gentleman -- behind the first cruiser. It is like right here (pointing).
Q. Okay. So our back to this point would be at Meeting and we are looking toward East Bay; is that fair to say?
A. Correct. I am the one parked sideways. The Chevy Caprice.
Q. All right. Now I am showing you two. And what are we looking at here?
A. Just another picture of the area. I guess it is maybe 3 Reid Street. But again, the white four-door vehicle, that was parked in that area.
Q. Okay. Again here our back would be toward East Bay?
A. Correct.
Q. And just another image a little closer maybe (displaying).
A. Okay.
Q. Is that correct?
A. Yes, sir.
Q. All right. So you had mentioned the individual -- or at least the victim George Bennett?
A. Correct.
Q. He ended up succumbing to his injuries?

A. Correct.
Q. Were you familiar with Mr. Bennett?
A. I honestly met him once before. Actually stopped him on Reid Street. I believe he was recently released from prison. I made a brief contact with him. Spoke with him briefly. But I only met him one time prior.
Q. Do you know why he went to prison?
A. Narcotics charges.
Q. Okay. All right. When you arrived on the scene did you see any narcotics in the vehicle?
A. I did not. Honestly at the time there was so much going on. The only thing that I truly remember is people running around, a lot of people outside. And, again, I focused most of my time on Mr. Bennett trying to see if he was still breathing and things like that. But I don't remember seeing narcotics in the vehicle.
Q. Okay. Now you said that you had worked on the East Side for a number of years?
A. Correct.
Q. Are you aware that the East Side -- well, you are because you said it. But are you aware that there are cameras, surveillance cameras, outside ---
A. There are.
Q. --- on the East Side?
A. I believe there is a camera at the intersection of

Reid and Drake.
Q. Okay. Are there other cameras throughout the East Side?
A. All over.
Q. Okay. You as an officer of course are aware of those cameras?
A. Correct.
Q. Do you find with your interactions with the community that they too are aware of those cameras?
A. They are. Everyone knows where the camera is at. Especially the one that we have at the intersection of Hanover. Several. But, yeah, everyone in the area know exactly where the cameras are, where they point to, how they pan out. It is well aware that they know with the cameras.
Q. Okay. All right. We are going to show you a clip from 23. We are going to start at 11:39:47.
(WHEREUPON, publish portion of exhibit.)
Q. Okay. The individual standing by the white car do you -- can you tell -- I know it is kind of blurry.
A. I can't make out who that is.
Q. Okay. I am going to keep playing to 11:40:14.
(WHEREUPON, publish portion of exhibit.)
Q. All right. Now I am going to move ahead to 11:41:30.
(WHEREUPON, publish portion of exhibit.)

Q. All right. Do you see that vehicle?
A. I do.
Q. And which direction is the vehicle backing up toward?
A. That would be east towards East Bay Street.
Q. Okay. Can you tell anything unusual about it?
A. Unusual? Obviously unusual that it is going backwards into a -- East Bay Street is a very populated street. So the fact that he is going back into a busy street makes no sense. Obviously he should have went up Reid Street the -- the right way. But the fact that he went the wrong way is kind of a little weird to me.
Q. And that passenger door being open?
A. And that obviously being open as well.
(WHEREUPON, publish portion of exhibit.)
Q. All right. That is East Bay?
A. That is East Bay Street.
Q. All right. We are going to move ahead to 11:43:13.
(WHEREUPON, publish portion of exhibit.)
Okay. This -- I want to just direct your attention to the front passenger side of the white vehicle. Do you recognize that individual that my pointer is on right there? I know it is hard to see.
A. I can't tell. But I would assume that is Rivers, that that came out of the driver's side seat. But I can't tell for sure.

(WHEREUPON, publish portion of exhibit.)
A. But, yeah, it is Mr. Rivers right there.
Q. Limping?
A. Right -- yes, sir.
Q. I am moving ahead to 11:44:57.
(WHEREUPON, publish portion of exhibit.)
Q. Okay. And y'all have already responded or y'all are already on the scene?
A. Correct.
Q. Okay. And so you said that when you got there Mr. Bennett was from the passenger seat and he was slumped over onto the driver's side?
A. Correct, slumped over to the left; yes, sir.
Q. Okay.
MR. OSBORNE: No further questions, Your Honor.
THE COURT: Cross-examine.
CROSS-EXAMINATION BY MR. LOIGNON OF MARCHENT FAUSTIN:
Q. You said there were a lot of people out there; right, it was pretty chaotic when you got there?
A. Correct.
Q. I think one of the reports said like 75 people were out there at one point, right?
A. Yeah, whenever we've got incidents in the East Side everyone comes out. Yeah, so it was definitely -- I can't remember exactly. But, yeah, there was a lot of people out

there. Correct.
Q. Okay.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.
MR. OSBORNE: No further questions.
THE COURT: Redirect, Mr. Osborne?
MR. OSBORNE: No, Your Honor.
THE COURT: You may come down, sir. Thank you.
Do you wish this witness to be excused?
MR. OSBORNE: Yes, Your Honor.
THE COURT: Any objection, Mr. Loignon?
MR. LOIGNON: No, Your Honor.
THE COURT: You are also free to leave, Officer.
THE WITNESS: Thank you.
THE COURT: Thank you, sir.
(WHEREUPON, witness steps down.
THE COURT: You may call your next witness, please.
MR. OSBORNE: The State calls crime scene technician Randy Unterbrink.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: Please state your first and last name and spell your last name loudly and clearly into the microphone.
THE WITNESS: Randall Unterbrink.
U-N-T-E-R-B-R-I-N-K.

DIRECT EXAMINATION BY MR. OSBORNE OF RANDALL UNTERBRINK:

Q. All right, Mr. Unterbrink, where do you work?

A. Charleston Police Department.

Q. And how long have you worked there?

A. A little over 28 years.

Q. Okay. What is your position there?

A. I work in the Crime Scene Unit.

Q. All right. And just generally tell the jury what are some of your duties and responsibilities as a crime scene technician?

A. Whenever we go to a scene we look for anything that would relate to evidence to the scene. It would be identifying items. It would be collecting items and then also preserving those items for future reference.

Q. Okay. And for this case though I think you didn't actually respond to the scene; is that correct?

A. I did not go there.

Q. Okay. And how did you -- or what did you do in this investigation?

A. When I came into the office there was a vehicle already in the bay. And a search warrant became available for me then to document the vehicle, how it appeared and any evidence that may be in it.

Q. Okay. And that's -- and this was involved in a shooting or a murder?

A. Yes, sir.
Q. Okay. And that is pretty standard ---
A. Yes.
Q. --- operating procedure? Okay. All right. So and now the vehicle is in the bay and you are going to process it. Walk the jury through how you go about processing a car.
A. The first thing I do is I want to become familiar with the vehicle. I take a walk around it to see what it looks like. I want to see if there is anything unique about it, any dents, scratches; general condition of the vehicle.

And then once I do that I also will then take a look as well at inside of the car. I don't disturb anything. I want to document it. So I begin to photograph it.

I go around the exterior fist. And then after I am satisfied with documenting the vehicle I then will open up each individual door. In this particular case there were four.

I will open up one door, photograph it as it appears, peer inside of the vehicle, photograph that, move to the next door. Do the same process clear around. Which would also include the trunk. And, again, it is just to document how it appeared when I first saw it.
Q. Okay. And did you do that in this case?
A. I did.

MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you what has been marked as 68 through 91 excluding 70 and 71. Can you take a look at those and tell me if you recognize those?
A. I do.
Q. And what are they?
A. These are photographs of that vehicle I just spoke about.
Q. Okay.
MR. OSBORNE: Okay, Your Honor, at this time I would seek to admit into evidence 68 through 91 excluding 70 and 71.
THE COURT: Any objection?
MR. BOWDEN: Objection to 69 on the same basis as we objected to Number 70.
THE COURT: All right. Based on the testimony thus far I think it is relevant and I would -- we have discussed briefly the 403 analysis. But I would find that the probative value of that particular picture given the others is more probative than prejudicial and I will allow it. So 69 is admitted subject to the objection. The others are without objection, Mr. Bowden?
MR. BOWDEN: That is correct, Your Honor.
THE COURT: Okay. Very well.

(WHEREUPON, State's Exhibit Number 68, was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 69, over objection was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 72 through State's Exhibit Number 91, were admitted into evidence.)
THE COURT: You may proceed.
MR. OSBORNE: Okay. Thank you, Your Honor.
Q. All right. Mr. Unterbrink, we are starting off with State's 68. I know it is obvious. What is this?
A. That is the vehicle. That is the bay. And that was the vehicle in the bay when I first saw it.
Q. All right, 69?
A. This is the beginning part of where I would open up a door. This is what I saw. And so I took a photograph as it appeared when I first saw it.
Q. Okay, 72?
A. This would be the floorboard of the driver's seat area.
Q. All right. And what is that on the ground there?
A. There is a fired cartridge casing right there by the mat.
Q. Okay. And I know you are not a firearm expert or anything like that.
A. I am not.

Q. Can you just briefly tell the jury how that -- how a gun works in case someone doesn't know with when you reference to a fired shell casing?
A. Sure. Normally whenever a firearm is loaded we say that we are going to load it with bullets. Actually it is more than just a bullet. It is actually a casing. A casing is what you see in this photograph. It is what contains the gun powder in it. And then it is plugged in by the bullets. And so when you pull the trigger the firing pin will hit the back of the casing. That ignites the gun powder which creates an explosion. And that is what forces the bullet out towards its destination. What is left is the casing which is what you see there. It is just laying on the floorboard.
Q. Okay. And showing you State's 73 which dovetails into that. What is that?
A. That is the armrest of the driver's door, interior side, where all of the window controls are located. And I saw this transfer of what appeared to me to be blood on the armrest.
Q. Okay. And above the blood?
A. Yes, that would be a projectile.
Q. Okay. All right. State's 74?
A. This would be on the driver's side back door. Opened it up. This is what I saw. So I photographed that.

Q. Okay. State's 75, what are the placards all about?
A. The placards is to help draw a person's attention to certain areas. And so that is what I did here just to show where there were points of interest.
Q. Okay. Shell casing on the ground, one, things ---
A. Yes.
Q. --- like that?
A. That is correct. Shell casings primarily. And even a projectile. Two over there.
Q. All right, 76?
A. This is the rear driver's side door frame when you first opened up the door. We looked at that picture just a few moments earlier. This is a cartridge casing that is on that door frame.
Q. Seventy-seven, this is a close up?
A. This -- yeah, I take photographs of the -- the back of these cartridges just to show the round. In which case this is a 40.
Q. All right, 78?
A. This would be one of the projectiles in the car.
Q. Seventy-nine?
A. This would be another casing found in the car. And it again is a 40.
Q. Eighty?
A. Another one found in the car. Again it is a 40.

Q. Eighty-one?
A. Another casing. And it is a 40.
Q. Eighty-two?
A. Same thing. Also in the car. And it is a 40.
Q. Eighty-three?
A. This is also a casing that you can see that it is hollow inside, which means it has been spent. And this particular location is right where the back part of the driver's seat meets the back of the seats. And it was tucked inside those two little areas.
Q. All right. Eighty-four?
A. Another casing which is a 40.
Q. Eighty-five?
A. And this is a projectile also found in the car.
Q. Eighty-six?
A. Another casing which is a 40.
Q. Eighty-seven?
A. Another casing. Also a 40.
Q. Okay. Now we are moving on. Eighty-eight?
A. This was -- there is a bag to the right of this photograph.
Q. All right. Well, here, 89?
A. There you go. Crown Royale. This was found underneath the armrest that really separates the driver's seat from the passenger seat. And this bag was tucked

underneath there slightly. And the items that you see there were inside of the bag.
Q. Okay. So in between the driver and the passenger?
A. Yes, that little armrest that you can pull up and pull down. And it was sort of tucked a little bit underneath that.
Q. Okay. Ninety?
A. This is a cell phone that was in the glove box.
Q. All right. And lastly, 91?
A. And this is a South Carolina driver's license. It was originally underneath the front passenger's seat. But I couldn't photograph it there, so I pulled it out so that I could then photograph it.
Q. Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes, you may.
Q. I am showing you what has been marked as State's Exhibit 92 to 101. Can you take a look at those and tell me if you recognize them?
A. Some of these may still have blood on it. Can I put my gloves on?
Q. Yes.
A. You wouldn't happen to have scissors?
Q. I wouldn't.
(WHEREUPON, scissors provided by the clerk for opening.)

A. Out of this box would be a shell casing.
Q. Okay. And so is it fair to say that what you are looking at right there are - we are not going to go through each one.
A. Okay.
Q. -- are all the ballistics and all of the fired shell casings that were recovered from inside the white Grand Marquis?
A. That would -- correct, all inside.
Q. Okay. And is that -- are you the one that actually collected those and put those into evidence?
A. I would have. Because I can identify it with my initials for one thing. And my printing on the front.
Q. Okay.
MR. OSBORNE: Well, Your Honor, at this time we would seek to admit 92 to 101 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No objection.
THE COURT: Without objection they are admitted.
(WHEREUPON, State's Exhibit 92 through 101 was admitted into evidence.)
Q. Okay. And let me just so that we don't have to go through each one, is it fair to say that this Item Number 310 that is on this right here (pointing) corresponds to the Placard 10?

A. Yes, in most cases it will.
Q. So if you wanted to go back and look at the photographs and look at the item number at the back you can marry each one of these up to the car; is that correct?
A. That is correct in most cases.
Q. Okay.
MR. OSBORNE: No further questions, Your Honor.
THE COURT: Very well. Cross-examine, Mr. Bowden?

CROSS-EXAMINATION BY MR. BOWDEN OF RANDALL UNTERBRINK:

Q. Good afternoon. How are you doing today?
A. I am doing well, sir.
Q. Good. So your involvement in this case is limited to processing the interior of Rayshawn River's car?
A. The interior and exterior. But it primarily involved the interior.
Q. Okay. And all the items that you collected were from the interior?
A. That is correct.
Q. Okay. And just so we don't go over the same ground twice, you scoured the scene to collect anything that may be relevant to the case?
A. That is correct.
Q. And you have to be extremely thorough in this process because forensic evidence often makes or breaks cases these days?

A. That is correct.
Q. And so you did things like searching the door panels?
A. Yes, sir.
Q. And the console?
A. Yes, sir.
Q. And you found a cell phone in the glove box?
A. Yes, sir.
Q. You found -- you found a fingerprint in the vehicle?
A. In the vehicle? I don't recall a fingerprint in the vehicle.
Q. And you don't control what is done with the evidence you collect after you collect it and submit it into evidence?
A. Right, once it is submitted it is out of my hands.
Q. Okay.
MR. BOWDEN: Beg the court's indulgence.
(WHEREUPON, pause.)
MR. BOWDEN: No further questions.
THE COURT: Redirect.
MR. OSBORNE: Just briefly.
REDIRECT EXAMINATION BY MR. OSBORNE OF RANDALL UNTERBRINK:
Q. So the evidence you did find inside of the vehicle, eight fired shell casings; that sounds about right?
MR. BOWDEN: Beyond the scope, Your Honor.
A. I think ---

THE COURT: I overrule it. You asked him where he found things so.

A. I think that was the number. Eight I think. Seven or eight.

Q. And two projectiles?

A. Two projectiles.

Q. Okay.

MR. OSBORNE: No further questions.

THE COURT: Recross, Mr. Bowden?

MR. BOWDEN: None, Your Honor.

THE COURT: Thank you. You may step down.

Call your next witness, please.

(WHEREUPON, witness steps down.)

MR. OSBORNE: The State calls Rayshawn Rivers.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: Please state your first and last name and spell your last name loudly and clearly into the microphone.

THE WITNESS: My first name is Rayshawn. Rivers.

DIRECT EXAMINATION BY MR. OSBORNE OF RAYSHAWN RIVERS:

Q. All right, Mr. Rivers, if it is not obvious, you are not too thrilled about being here; is that fair to say?

A. Are you doing all right today?

THE WITNESS: Are you doing all right today, Your Honor?

THE COURT: Mr. Rivers, you are going to answer the question, sir.
A. No, I don't.
Q. No, we didn't give you much of a choice did we?
A. Y'all didn't.
Q. You were subpoenaed to be here; is that correct?
A. (Nods.)
Q. You are going to have to answer.
A. Yes, sir.
Q. Or at least so she can hear you.
A. Yes.
Q. All right. Well, then let's just go ahead and get right into it. On April the 18th did you have the occasion to see George Bennett?
A. Yes, sir.
Q. Okay. And tell the jury how that came about.
A. Dang, that's crazy. How long it's been -- you say three years? Dang, ain't nobody not one asked how my child's doing or nothing. That is crazy.
Q. Well, tell the jury how is your child doing.
A. We are trying. But anyways, as far as that, that is like crazy man. I had my child -- I was in -- I don't -- I don't -- I really don't know. Like I don't know. That is crazy.
Q. All right ---

A. I be trying -- like to protect my child like -- it's crazy. Like I don't find no ways to get over this. And like, man, come on man, that is crazy. I don't understand that side.
Q. Okay. How did you come about meeting up with George on that day?
A. He must be calling me.
Q. What is that?
A. He must be calling me.
Q. Okay. Would you consider George to have been a friend of yours?
A. I mean a friend wouldn't leave nobody -- I feel like I was in the blind. So no.
Q. Okay, not a friend?
A. I mean -- no.
Q. Okay. Did you talk to him much?
A. Yeah, a lot of -- like gee with -- man, like -- that's -- that's crazy. I wouldn't believe he would put me in that situa- -- I had my child. You know, what I am saying. Like me, myself, yeah. But what that did, no.
Q. All right. The shooting -- and you were shot, right?
A. Exactly. I am okay.
Q. Okay. That shooting it occurred in the area of 2 Reid Street I think?
A. Uh-huh.

Q. Are you familiar with that area?
A. Yeah, I am born and raised down there.
Q. Okay. When George showed up what did y'all do?
A. He wanted to smoke. I just like, you know, got my -- I'd been trying to like leave, go to the flea market and spend some time with my baby. Chill and then wait until my girl, you know, come from -- up to us so I can go shopping.
Like, you know, I don't -- that is crazy, man. I wouldn't believe he would put me through something like that. I had my child. You think I would go through something like -- come on, man; that don't make no sense.
Q. Okay. Was it uncommon for you and George to hang out though?
A. Big G, I loved Big G. Big G used to stay in my Mamma's house. My sister like -- more than probably his own damn family. That didn't make no sense.
Q. Just before you were shot and George was shot where were y'all at; were y'all inside of your car, outside of ---
A. In my car.
Q. Okay. And what kind of -- what kind of car did you have?
A. White Grand Marquis.
Q. All right. And were you seated in the driver's seat or a passenger seat?

A. In a passenger.
Q. You were in the passenger's seat?
A. Uh-huh.
Q. And George would have been in the driver's seat? As ---
A. To be honest ---
Q. --- best as you can remember.
A. He was in the front somewhere. Like in the front of my car.
Q. Okay.
A. But in the passenger.
Q. And did you have your child with you?
A. Yes.
Q. A boy or girl?
A. A boy.
Q. And how old was he then?
A. Three.
Q. So you were literally holding him?
A. Uh-huh.
Q. All right. Just prior to the shooting did something draw your and George's attention?
A. Like me personally, I asked him, damn, do you know this car. Because, you know, my mamma stay right there. And I know everything that go on right -- like I say, you know this car. He was like, no. And went back to what we

were doing. So I went back to what I was doing, my head down. And, you know, before then shit happened.
Q. What kind of car was it?
A. It was a brown Cadillac if I'm not mistaken.
Q. Okay. Black maybe?
A. It was -- as far as my -- I thought it was brown. I thought it was either going -- a lady named Ms. Carla. Like, you know, females, you know, so.
Q. Okay.
A. So I didn't really ....
Q. Let me show you this. Do you know about what year it was and what the make and model was?
A. No, sir, I am not into Cadillac's.
Q. Let it go. All right. Showing you State's 1. Where was the not-Cadillac parked?
A. Probably where y'all's police car at.
Q. Okay. Now ---
A. Damn, that is crazy.
Q. What happened after -- you said y'all went back to your business. What happened next?
A. I don't know. I guess shots rang out. And must be got scared as hell. And like I wasn't even thinking for myself. You know, I had my baby with me so it was like what -- you know what I'm saying. Like that is what I'd be more worried about.

Q. Let me give you some cover. Can you identify the shooter?
A. Like how can I?
Q. Well, I am asking. You were there; ---
A. I couldn't ---
Q. --- can you identify the shooter?
A. I couldn't. I was like face down, to be honest.
Q. Okay.
A. Shit, and like scary.
Q. You were holding your child. You were -- shots were ringing out.
A. Uh-huh.
Q. So you weren't really focusing on trying to identify a shooter?
A. Who would? That's -- who would?
Q. Okay.
A. That's dumb.
Q. Okay.
A. Unless they are selfish.
Q. All right. So where was the shooter positioned while he was shooting; was he by the driver's side, was he by the passenger's side; where was he?
A. The passenger. Like where me and my child was at.
Q. Okay. He was by the front passenger?
A. Uh-huh.

Q. Okay.
THE COURT: Was that a yes?
THE WITNESS: Yes, sir.
Q. All right. Did you see him as he approached the car?
A. Did I see anybody -- um, after shots rang out I pretty much -- pretty much like ducking and stuff like that. Like -- I think I got hurt. I had to wait until, you know, -- I had to wait -- like I got hurt. I had to wait and cover my child up. That's like -- that's crazy.
Q. Tell the jury where you were hit.
A. I was hit in my leg. Exactly where my child was at. So it is like how could I be -- you know, my mind could be focused on this and that's -- that's just -- that's scary. Like that's -- I don't know. That's hurtful. I don't know, that's ---
Q. But you were hit -- weren't you hit on the back of your leg?
A. Exactly. So if I wasn't ---
Q. So you would have been leaning back away from the shooter?
A. No, I wasn't; ---
MR. LOIGNON: Objection. Leading.
A. --- I was like right here (motioning).
THE COURT: Sustained.
A. Wow.

Q. Were you leaning toward the shooter when he was shooting you or away from him?
A. See, I was like this (motioning). Like holding my baby like this (motioning). And I couldn't -- I couldn't -- I don't know. That is crazy. I don't know.
Q. Okay.
A. I couldn't be leaning towards no shooter.
Q. That is what I am getting at.
A. When I was with my baby like this (motioning).
Q. Right.
A. That is crazy.
Q. Okay. So when the individual was firing how close was he to the car?
A. I guess close. Like close. Like -- like this close (motioning). Probably like this close (motioning).
Q. Like just a feet or two away?
A. I guess however far the -- I guess you and the passenger -- I don't know. However far. You know -- you know that ---
Q. Yeah.
A. You know.
Q. Was he leaning inside of the car or was he back away from it?
A. I don't recall nobody leaning in no car.
Q. Okay. After the shots were fired where did the guy go

then, the shooter?
A. Shit, probably hauled ass.
Q. And where did he go to?
A. I guess the car.
Q. All right. Driver's side or passenger's side?
A. Shit, I been so hurt so I wasn't even thinking. Only think I said is like told my little brother to get my son and, you know.
Q. Do you remember being interviewed at the CPD Police Station on April the 20th two days after you got out of the hospital?
A. I mean if you say so. Yeah.
Q. Okay. Do you remember being interviewed by Detective Lamark Williams and Detective Richard Burkhardt, a white guy and a black guy?
A. I do -- yeah, I don't. But, yeah.
Q. Okay. Do you remember telling them that after the shooter leaned into the car and fired multiple shots he ran back and jumped into the passenger side of a 2000 or 2002 Cadillac Seville, black?
A. Shit, I thought it was brown, to be honest. I thought it was brown. Like that shit -- excuse me, y'all, but it happened -- it is like it happened so fast. Like I am not that type of nosey person. Like I thought it was going to this female's house, Ms. Carla's house. Like, shit, the

whole time it happened the lady was praying. So I don't -- I don't remember that.
Q. What did the car do after the shooter jumped in it?
A. Must be ride off. I didn't see all that.
Q. Did it ride off toward you or away from you?
A. Well, that should ride out -- I don't -- I don't -- I don't remember that. Like I got shot too. I was -- you know. That don't make no -- I couldn't write about all of that when I got shot.
Q. All right. I am showing you now State's 89. Did those belong to you, Rivers -- Mr. Rivers?
A. Hell, no.
MR. OSBORNE: Beg the court's indulgence.
THE COURT: Certainly.
Q. Before I move on and show you this video, do you remember telling Detective Burkhardt and Detective Williams that after the shooter entered into a 2002, 2000, black Cadillac that it backed up onto East Bay Street?
A. Sir, I don't never remember saying nothing about no black Cadillac. I say I thought it -- it maybe could have been brown.
Q. Okay. I ---
A. I see those cars a lot. Like -- I don't see no black Cadillac out there.
Man. Selfish.

Q. All right. I am showing you State's -- or playing for you State's 23 starting at 11:41:30 seconds.
(WHEREUPON, publish portion of video.)
Q. Do you recognize that car backing up there?
A. I mean if y'all see that. But, like I said, I was wounded. I was like, you know, down near about to pass out. You know, I am okay now. But, damn. That is crazy. That is selfish. Nobody asked how -- I -- I should be flipping out. Nobody asked how I'm doing or nothing.
MR. OSBORNE: No further questions.
THE COURT: Cross-examine.
THE WITNESS: Crazy, man.
CROSS-EXAMINATION BY MR. BOWDEN OF RAYSHAWN RIVERS:
Q. Hi, Mr. Rivers. I am sorry you have to be here. I am glad to hear that you and your son are doing well.
So you said you see a lot of Cadillac's on the East Side?
A. Uh-huh.
THE COURT: Is that a yes?
THE WITNESS: Yes, sir.
Q. And you don't remember whether it was black or brown?
A. No, sir. Mainly brown. Like, you know, like I always -- I am not no Cadillac man.
Q. And you can't identify the shooter in this case?
A. No, sir.

Q. And you don't know what was going on between George and the shooter?
A. Exactly. No, sir.
Q. And you don't know what happened immediately preceding the shooting between George and the shooter?
A. No, sir. I really wish -- I wouldn't have been no where around with my -- I would not -- like see it, no. I would say that.
Q. But with everything that happened to you, you tried to be as helpful as possible?
A. I mean helpful, like as far as you mean like -- like the family wise?
Q. Just saying what you knew.
A. Like how do you mean helpful?
Q. Just to the police.
A. Oh, are you talking about ---
Q. Told them what you knew?
A. Yeah, with -- yeah.
Q. Thank you.
MR. LOIGNON: Beg the court's indulgence.
THE COURT: Okay.
MR. LOIGNON: No further questions.
MR. OSBORNE: Thanks for being so helpful, Mr. Rivers. No further questions.
THE COURT: All right. You may step down. You are

free to leave, sir.
(WHEREUPON, witness steps down.)
All right. Ladies and gentlemen, at this point we will take a break, take a recess, let you go to your jury room. Don't -- do not begin your deliberations. Do not discuss this case. We will be with you in about ten or fifteen minutes. You may retire.
(WHEREUPON, jury exits 1/7/19, 3:59 p.m.)
THE COURT: All right. Anything from the State before we recess?
MR. OSBORNE: No, Your Honor.
THE COURT: Anything from the defendant?
MR. LOIGNON: No, Your Honor.
THE COURT: We will be at ease for about ten minutes.
(WHEREUPON, break 1/7/19, 3:59 p.m.)
(WHEREUPON, resume 1/7/19, 4:11 p.m.)
THE COURT: Bring in our jury.
THE COURT: Let the record reflect Mr. Smith is present. Bring in our jury.
(WHEREUPON, jury enters 1/7/19, 4:13 p.m.)
THE WITNESS: The jury is all present, Your Honor.
THE COURT: Thank you very much. Thank you, ladies and gentlemen. We are ready to continue. You may call your next witness.
MR. OSBORNE: The State calls Jeremy Wright.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: Please state your first and last name and spell your last name loudly and clearly into the microphone.

THE WITNESS: Jeremy Wright. W-R-I-G-H-T.

DIRECT EXAMINATION BY MR. OSBORNE OF JEREMY WRIGHT:

Q. All right, Mr. Wright. My name is David Osborne. I am the prosecutor in this case. Is it fair to say that you don't want to be here today?

A. Yes, sir.

Q. And you are only here because you have to be; is that fair to say?

A. Yes.

Q. And you have to be here because that man over there subpoenaed you, Investigator Jeff Fort; correct?

A. Yes, sir.

Q. Okay. So I will make it as brief as I possibly can, okay. Do you know who murdered George Bennett?

A. No, I don't.

Q. Do you even know George Bennett?

A. No, sir.

Q. All right. The only thing I am going to ask you about is who left a car at Whitney Johnson's house at [redacted] Street on Saturday morning April 18th of 2015; who was that?

(WHEREUPON, pause for witness.)
THE COURT: Mr. Wright, if you know the answer you need to answer the question.
(WHEREUPON, pause for witness.)
A. I don't know how to answer that question.
Q. I'm sorry, say it again.
A. I don't know how to answer that question.
Q. You don't know how to answer that question?
(WHEREUPON, pause for witness.)
Q. Well, let me ask you this: Who lives at [redacted] Street?
A. Whitney used to.
Q. Whitney used to?
A. Uh-huh.
Q. Okay. And she is your girlfriend?
A. My wife now.
Q. Okay. All right. Do you remember being interviewed on May the 14th of -- or May the 4th of 2015 at the Charleston Police Department by a Detective Burkhardt?
A. Yes, sir.
Q. And do you remember your attorney Brian Schwartz being there during the interview?
A. Yes, sir.
THE COURT: Is that -- I didn't hear you.
A. Yes, sir.

THE COURT: Thank you.
Q. And do you remember Detective Burkhardt asking you who dropped off a black Cadillac at [redacted] Street on April 18th at 2015 between 1:00 and 2:00 p.m.?
A. Yes, sir.
Q. And do you remember what you told him?
A. Yes, sir.
Q. And what did you tell him?
A. I said Bryant and Seth came to my house.
Q. Okay. Bryant and Seth come to your house?
A. Yes.
Q. All right. How do you know Bryant and Seth?
A. I know Bryant growing up.
Q. You know Bryant growing up?
A. Yeah.
Q. What about Seth?
A. I met him through Bryant.
Q. Okay. So you don't know Seth all that well but you do know Bryant?
A. Yes, sir.
Q. All right. When they dropped off the car what if anything did Seth say to you?
A. He didn't say any -- he said the car needed to be repaired, if I could give 'em a ride.
Q. Okay. So asked for a ride?

A. Uh-huh.
Q. And did you give Bryant and Seth a ride?
A. Yes.
Q. And where did you drop them off at?
A. Bryant downtown and Seth in North Charleston.
Q. Bryant downtown. So you went downtown first?
A. Yes.
Q. And you dropped Bryant off and then you went to North Charleston ---
A. Yes, sir.
Q. --- and dropped Seth off; is that correct?
A. Yes, sir.
Q. Okay. Whereabouts downtown?
A. I can't remember the street.
Q. Hanover?
A. I think so.
Q. Okay. Do you remember -- you know, I know it goes across the East Side. Do you know about what cross street?
A. I am not sure.
Q. Okay. Do you remember telling Detective Burkhardt that it was near Columbus, near a church?
A. We pointed it out on the map.
Q. Okay. Did that seem about right?
A. I think so.
Q. Okay. Now when Bryant got out of the car what -- did

he go somewhere?
A. He get in his car and left.
Q. What's that?
A. He get in the car and left.
Q. Okay. What kind of car did Bryant get into?
A. A gray car.
Q. Okay. All right.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes, you may.
Q. I am showing you State's Exhibit Number 120. Can you take a look at that and tell me if you recognize that?
A. Yes, sir.
Q. And what is that?
A. Bryant's car.
Q. Okay. And at the bottom of 120 do you recognize the markings that are at the bottom?
A. Yes, sir.
Q. And what are they?
A. My initial.
Q. That is your initial?
A. Yes, sir.
Q. Is this what was presented to you during that interview that we spoke about?
A. Yes, sir.
Q. Okay.

MR. OSBORNE: Your Honor, at this time I would seek to submit State's 120 into evidence.

THE COURT: Any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: It is admitted without objection.

(WHEREUPON, State's Exhibit Number 120 was admitted into evidence.)

Q. Okay. So the silver car there belongs to Bryant?

A. Yes, sir.

Q. You have seen him in that car before?

A. Yes, sir.

Q. And on the day of April the 18th you dropped Bryant off and he got into that car?

A. Yes, sir.

Q. What kind of car was left at your residence at [redacted], or Whitney's residence?

A. A black Cadillac.

Q. Have you seen that car before?

A. Yes, sir.

Q. Who does that car belong to?

A. Seth.

MR. OSBORNE: Your Honor, may I approach?

THE COURT: You may.

Q. I am showing you State's 104 through 112.

MR. OSBORNE: This is going to be for ID purposes

only.

THE COURT: Okay.

Q. Can you take a look at those and tell me if you recognize those pictures?

(WHEREUPON, pause for review by witness.)

A. Yes, sir.

Q. What do those photographs depict?

A. A black Cadillac.

Q. Seth's vehicle?

A. Yes.

Q. Now obviously -- well, let me ask you. When was the last time you saw that black Cadillac?

A. It had been a while.

Q. Was it when it was parked at your house or at [redacted]?

A. Yeah, I saw it at [redacted] Street.

Q. Okay. Did you -- do you know what happened to it; did you see it when it was taken away?

A. I was at work.

Q. Okay. Is it fair to say that you recognize this as being Seth's vehicle, but did it look like that the last time you saw it?

A. I recognize it from the front.

Q. Okay. But the -- with the wheels and all the damage that was done did it look like that the last time you saw

it?
A. I didn't -- when it was parked it was parked and only I could see the front.
Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Cross-examine, Mr. Loignon.
MR. LOIGNON: Thank you, Your Honor.
THE COURT: Uh-huh.
CROSS-EXAMINATION BY MR. LOIGNON OF JEREMY WRIGHT:
Q. Thanks for being here, Mr. Wright. I know you don't want to be involved in anything, right?
A. No, sir.
Q. That is why you were a little emotional earlier, right?
A. Just a big burden on me.
Q. And that is understandable. And I don't think anybody would fault you for feeling that way. But you do understand why you are here thought, right?
A. Yes, sir.
Q. And as you spoke to police back in 2015 you told them everything you knew, right?
A. Yes, sir.
Q. Just like you are doing here today, right?
A. Yes, sir.
Q. Now you have said that on April 18th, 2015, that Seth

and Bryant were at your house; right?
A. Yes, sir.
Q. You heard a knock on the door?
A. Yes, sir.
Q. And that woke you up, correct?
A. Yes, sir.
Q. You were asleep?
A. Yes, sir.
Q. You walk out to the front door and opened the door, right?
A. Yes, sir.
Q. The Cadillac is already in the driveway, right?
A. Yes, sir.
Q. You didn't see Seth in that car?
A. No, sir.
Q. You don't know how that car got in your driveway, right?
A. No, sir.
Q. Now Seth said the car was broken down, didn't he?
A. One of them did. I can't remember.
Q. Well, that is what you told police was that Seth said the car was broken down, right?
A. Yes, sir, it was a while.
Q. And they asked for a ride downtown?
A. Yes, sir.

Q. You didn't have any reason to doubt that the car was broken down, did you?
A. No, sir.
Q. I mean it didn't look like it was in great shape at that time, did it?
A. It looked the same.
Q. When you dropped Seth off you said you dropped him off in North Charleston, right?
A. Yes, sir.
Q. He said he was going to come back with his mechanic, right?
A. Yes, sir.
Q. And you actually talked to him on the phone later about -- about that as well, didn't you?
A. I can't remember.
Q. Well, you did speak to him on the phone after -- after dropping him off out there in North Charleston, right?
A. I remember -- I think so. I can't remember what I did.
Q. It wasn't unusual for you two to talk on the phone, was it?
A. No, sir.
Q. Y'all were -- y'all were coworkers, right?
A. Yes, sir.
Q. And you can't say for sure whether or not he had a

mechanic look at the car, can you?
A. No, sir. I worked two jobs.
Q. Exactly. So you wouldn't know if a mechanic came out to your house and worked on the car at all, right?
A. No, sir.
Q. You never saw Seth working on the car though?
A. No, sir, that it was there.
Q. You never saw Seth taking off the bumper, did you?
A. No, sir.
Q. You never saw Seth spray painting the wheels, did you?
A. No, sir.
Q. And when you talked to police they showed you a picture of that, of a black Cadillac; right?
A. Yes, sir.
Q. And the detective asked you about a bright red pin stripe, didn't he?
A. I can't quite remember that whole interview.
Q. Do you remember -- do you recall whether Seth's car had a stripe on it or not?
A. No, sir.
Q. The detective asked you about that pinstripe; and you said that it had always been on there, didn't you?
A. Probably did. But it'd been so long.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.

Q. Would looking at a transcript of that interview help to refresh your memory about whether or not you said that there had always been a bright red pinstripe on Seth's car?
A. I might have -- I might have said it. It has just been a while since.
Q. So you did say that?
A. Yes, sir.
Q. Okay. The afternoon of April 18th you went to work that afternoon, right?
A. Yes, sir.
Q. Holiday Inn?
A. Yes, sir.
Q. And that is on Spring Street downtown?
A. Yes, sir.
Q. You worked from about 3:00 to 5:00 that afternoon; does that sound right?
A. I am not sure of the schedule. But I was there most of the time.
Q. Seth came into work that afternoon too though, didn't he?
A. Yes.
Q. And he was still there when you left work, wasn't he?
A. I think so.
Q. All right. So going back to the beginning, you said that Seth and Bryant are at your house when you see this

black Cadillac in your driveway; right?
A. Yes, sir.
Q. And then he ride -- he rode with you in your car from Mt. Pleasant to downtown, right?
A. Yes, sir.
Q. And then actually from downtown y'all went back over the bridge to Mt. Pleasant and turned around at the Scotchman, didn't you?
A. I think so.
Q. Yeah, and then you went out to North Charleston, right?
A. Yes, sir.
Q. And then you saw him at work later that afternoon on the 18th, right?
A. Yes, sir.
Q. And you talked to him on the phone later that night?
A. Yes, sir.
Q. And Seth never said a word to you about a murder, did he?
A. No, sir.
Q. You talked to Seth again on the phone Monday, April 20th?
A. Yes, sir.
Q. Seth never said anything about any crime, did he?
A. No, sir.

Q. You didn't know about any crime, did you?
A. No, sir.
Q. Seth never told you to hide a car for him, did he?
A. No, sir.
Q. Just sitting in your front yard, right?
A. Yes, sir.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.
MR. LOIGNON: Nothing further, Judge.
THE COURT: Very well. Redirect, Mr. Osborne.
MR. OSBORNE: Yes, Your Honor.
THE COURT: Okay.

REDIRECT EXAMINATION BY MR. OSBORNE OF JEREMY WRIGHT:

Q. So Mr. Loignon asked if you spoke to Seth or Bryant on the phone. Do you recall if they called you and told you that they were coming by?
A. No, sir, I never received a call.
Q. Prior to doing that?
A. No, sir, I never received a call.
Q. Okay. And so -- and piggy backing off of what Mr. Loignon said, you never saw them pull up into the black Cadillac?
A. No, sir.
Q. Okay. Do you know anyone else to own that black Cadillac other than the defendant?

A. I was really ---
Q. What is that?
A. No, sir, not that I know of.
Q. Okay. So prior to Seth and Bryant -- or you don't know. You heard the knock on the door. So prior to the knock on the door did you see that Cadillac parked out in front of your house?
A. Not before they came.
Q. Okay. So it was only after they showed up that you saw the car parked there?
A. Yes, sir.
Q. And Seth said that the car broke down?
A. Yes, sir.
Q. Okay.
MR. OSBORNE: Beg the court's indulgence.
THE COURT: Certainly.
Q. Okay. You said that you identified -- that Detective Burkhardt showed you a photograph of the Cadillac?
A. Yes, sir.
Q. Was it -- did it look like the pictures that I showed you, with the Cadillac being, you know, picked apart?
A. I think he showed me a picture of it in a junkyard.
Q. Okay.
MR. OSBORNE: May I approach, Your Honor?
THE COURT: Yes, you may.

MR. OSBORNE: For ID purposes only.
THE COURT: Okay.
Q. I am showing you State's Exhibit 128 through 130, and 141.
And tell me if you recognize those pictures, or more importantly that vehicle.
(WHEREUPON, pause for witness to review exhibits.)
Q. Whose car is that?
A. That looks like the Cadillac.
Q. And who did the Cadillac belong to?
A. Seth.
MR. OSBORNE: No further questions.
THE COURT: Recross.
MR. LOIGNON: Thank you, Your Honor.
RECROSS-EXAMINATION BY MR. LOIGNON OF JEREMY WRIGHT:
Q. You said that you were sleeping when you heard the knock on the door, right?
A. Yes, sir.
Q. You had been sleeping for a while I would imagine, right?
A. Yes, sir.
Q. So you don't know how long that car had been there?
A. No, sir.
Q. And you testified that Seth's car always had a bright red pinstripe down the side, right?

A. Yes, sir.
Q. And that car Mr. Osborne just showed you didn't have a bright red pin stripe, did it?
A. It's just got black on black.
Q. It didn't have a pinstripe?
A. No -- no, sir, I didn't pay attention to the stripe.
Q. The pictures he just showed you, you did not see a pinstripe; correct?
A. I didn't look for a stripe on that. I just looked at it. I didn't see any though, but I didn't look for a stripe.
Q. I am just going to show you the same ones again that Mr. Osborne showed you. It is State's Exhibit 128 through 130, and 141 that he has marked for identification purposes only.
MR. LOIGNON: May I approach, Your Honor?
THE COURT: You may, sir.
Q. Just take a look through those please one more time. Specifically looking for the pinstripe.
(WHEREUPON, witness reviewed exhibits.)
A. No, sir.
Q. No pinstripe, right?
A. No, sir.
Q. Seth's car always had a pinstripe, right?
A. I guess so.

Q. That is what you told police in 2015 -- I know it has been a while, but that is what you told police almost four years ago; right?
A. Yes, sir.
MR. LOIGNON: Nothing further.
THE COURT: All right, sir. You may come down. And you are free to leave.
(WHEREUPON, witness steps down.)
THE COURT: Call your next witness.
MR. OSBORNE: The State calls Jerry Roberts.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: Please state your first and last name and spell your last name loudly and clearly into the microphone.
THE WITNESS: Jerry Roberts. R-O-B-E-R-T-S.
DIRECT EXAMINATION BY MR. OSBORNE OF JERRY ROBERTS:
Q. Good afternoon, Mr. Roberts.
A. Good afternoon.
Q. Where are you employed?
A. City of Charleston Police Department.
Q. All right. And tell the jury about your work experience.
A. I have been employed by the Police Department for 29 years. And I have worked every area of the Police Department; patrol, investigation, major crimes, the IT

side of it, and now currently digital evidence.
Q. Okay. And tell -- in the -- well, in reference to digital evidence what type of specific training have you received?
A. I have been trained by the FBI at Quantico, Federal Law Enforcement Training Center in Glynco, Cellebrite which is one of the vendors that we use. Oxygen. Several others.
I have also sat on subcommittees for digital evidence for the University of Central Florida. And I am a technical matter expert for ASCLD Lab.
Q. All right. Have you testified previously in a court of law?
A. Yes, sir.
Q. Okay. And in which courts?
A. This one several times. Dorchester, Berkeley County, and Family court in Charleston County.
Q. Okay. Have you ever been qualified as an expert?
A. Yes, sir, in all of them.
Q. In all of the courts? Okay.
A. Yes, sir.
Q. In what area is your field of expertise?
A. Digital evidence.
Q. Okay. And you have received, like you said, training in reference to that?

A. Yes, sir.
Q. I wanted to talk about the lab. Do you actually run the lab here?
A. Yes, sir, I created the lab in 2002 and got it internationally accredited in 2003. So for the last 16 years we have been international accredited by ASCLD Lab.
Q. Okay. And I mean that is not exactly a common thing, is it?
A. No, we were the first state and local in the United States to be accredited.
Q. Okay. And do you have to go through to maintain that accreditation any yearly qualifications or training ---
A. Yes, sir.
Q. --- or certifications?
A. Yes, sir. We are annually proficiency tested. All of our work is peer-reviewed to the international standards.
Q. Okay.
MR. OSBORNE: Your Honor, at this time I would offer Mr. Roberts as an expert in the field of digital evidence.
THE COURT: Do you care to examine him as to qualifications?
MR. LOIGNON: No, Judge.
THE COURT: Very well. He will be permitted to render opinions in the area of digital evidence.
Q. All right. Mr. Roberts, explain to the jury what is

digital evidence.
A. Digital evidence basically is anything transmitted electronically that is of a probative value. So that would be data transmitted by cell phone, computer, GPS; those type of devices.
Q. And were you asked to examine a phone, a telephone in this case?
A. Yes, sir.
Q. All right. When you examine a telephone walk the jury through how you go about doing that.
A. Depending upon the type of phone that it is, the operating system, we have both software and hardware that we utilize. The hardware is a pretty straightforward process. There are some things that we do to the phone that we are walked through by the actual hardware to prepare the phone for a dump.
And basically what we do is we take the contents of the phone and we dump it from A to Z. So the entire content is fed into a sorting type of software that categorizes text messages, call logs, pictures, videos. And it is basically a nonintrusive step on our part from there.
Q. All right. And you did that in this case?
A. Yes, sir.
Q. And I think you examined a number of phones in this

case; ---
A. Yes, sir.
Q. --- is that fair to say?
A. Several.
Q. Okay.
MR. OSBORNE: Your Honor, May I approach?
THE COURT: Yes, you may.
MR. OSBORNE: I beg the court's indulgence.
THE COURT: Certainly.
Q. All right. I am showing you what has been marked as State's 63 and 46. Can you take a look at those and tell me if you recognize those?
A. Yes, sir, I recognize the -- I recognize the cell phone. And ---
Q. Have you analyzed ---
A. Yes.
Q. I'm sorry, go ahead.
A. And the other one as well. And the reason that I say that is that if you look, there's labels that are on here, electronic labels, and they are initialed with my initials.
Also you can see where the bag had been sealed. That also has my initials. So both of these have been analyzed and sealed by myself, sixty-three and forty-six.
Q. And after you ended up downloading those phones do you actually put the downloads onto a medium?

A. Yes, sir.
Q. All right.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Sure.
Q. For ID purpose I am showing you 117. Can you take a look at that?
A. Yeah. That is all also my -- this was put on a USB thumb drive. That is probably because of the size of the data that is contained. We usually go that or CD's. This was a USB. And you will see there is a label here as well that has my name on it and my initials with the lab number and the actual case number that was a part and assigned to the case. So this would have been my report.
Q. Okay. And when you -- after you get done with that information you end up forwarding it on to the case agent I suppose?
A. Yes, sir, after we are done with it we create a voucher in our laboratory management system and it is entered into evidence at the Police Department.
Q. Okay. And you are not actually analyzing the information so much as providing that to the case agent; ---
A. No, sir ---
Q. --- is that fair to say?
A. That is exactly correct.

Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Cross-examine.
CROSS-EXAMINATION BY MR. BOWDEN OF JERRY ROBERTS:
Q. Good afternoon, Mr. Roberts. How are you doing today?
A. Good afternoon. Fine, sir. How are you?
Q. Good. So you dumped the cell phones in this case?
A. Yes.
Q. And the first ones that you dumped were way back in like April, May, of 2015?
A. I would have to check and look at my report to see.
Q. But they were certainly around the time of the incident in this case?
A. Yes.
Q. That is well over three-and-a-half years ago?
A. Correct.
Q. And then you were contacted in November by Sergeant Tupper?
A. Yes.
Q. To dump additional cell phones?
A. Correct.
Q. And you don't have any control over what items officers bring you to ---
A. No, sir, ---
Q. --- extract?

A. --- I do not.
Q. You don't keep up with the details of investigations generally?
A. No, sir.
Q. So you have to rely on investigators to bring you the evidence to extract from?
A. Yes. And we provide -- we actually ask them to provide us authorization to do the work. Whether that is a search warrant signed by a judge or consent from either a victim or from the officer themselves, the item.
Q. Okay. And if they don't bring you certain items you wouldn't have any way of knowing?
A. No, sir.
Q. You know, unless they ask you to examine them at a later time?
A. Correct.
Q. And that's what happened in this case?
A. Yeah. And also, just to add to that, because we are in an ever-advancing technology sometimes the tools that we use make advancements and things that weren't able to be extracted or done then are now able to be done. So there are those instances where it wasn't previously supported and it could possibly be supported now.
Q. But they brought you different devices in this case?
A. I am not exactly sure of that. I would have to look.

I thought that one of them was a redo.

MR. BOWDEN: Beg the court's indulgence.

THE COURT: Yes, sir.

Q. Do you have your -- a copy of your report in front of you?

A. I do not.

MR. BOWDEN: No further questions.

THE COURT: All right. Redirect.

MR. OSBORNE: Just briefly.

REDIRECT EXAMINATION BY MR. OSBORNE OF JERRY ROBERTS:

Q. Is it uncommon for as a trial approaches that you will receive requests to do more downloads on phones?

A. No.

Q. Okay.

MR. OSBORNE: No further questions.

THE COURT: Recross, Mr. Bowden?

MR. BOWDEN: None, Your Honor.

THE COURT: Thank you. You may step down. Do you wish the witness to be excused?

MR. OSBORNE: Yes, Your Honor.

THE COURT: Any objection, Mr. Bowden?

MR. BOWDEN: No.

THE COURT: You are also free to leave, Mr. Roberts. Thank you, sir.

THE WITNESS: Thank you.

(WHEREUPON, witness steps down.)

THE COURT: All right. Solicitor, at this point is this a stopping point; do you have -- is the next witness lengthy or ...?

MR. OSBORNE: Beg the court's indulgence.

(WHEREUPON, State counselors confer.)

MR. OSBORNE: They are all going to be a little bit of time.

THE COURT: All right. I think this is a good breaking point, ladies and gentlemen, to let you go home for the evening. Please remember again that you are not at liberty to discuss this case among yourselves or talk about it with anyone outside. That includes when you go home tonight and there is somebody there I imagine the first questions is going to be what are you doing and what is this case about. And if you start responding to that you will have commenced your individual deliberations at that point. Tell them when you finish it you will be free to talk about it but the judge won't let you talk about it right now. It would violate your oath.

Also another thing, as we know we live in an information society and sometimes -- and I have had it happen in the past. Others judges have had it happen. And as a result our chief justice years ago told us to make sure we remind jurors you are not at liberty to conduct

during this trial any independent research.

And because we can all Google and that -- a great tool and everything else, but the information you receive first of all you are going to take the law as I give it to you. If you choose to research it afterwards you are free to do that. But I have found for myself -- I did it one time, Googled a statute that I needed. And when I got to the office the next day I checked the code book and Google had the wrong -- it had been amended.

So it would not be a wise idea. And furthermore it would violate your oath. So after it is over if you want to look at it you can. But right now do not conduct any independent research. Certainly don't allow anybody to approach you or talk about the case in your presence.

Have a good evening. I am going to let you come in at 10:00 tomorrow. I don't know what your -- everybody's -- everybody has a different feeling about football games. But there might be somebody that wants to watch a game. It is probably going to be late tonight. So taking that into consideration. I would normally come in at 9:30, but we will come in at 10:00 tomorrow.

Have a good evening. Thank you.

(WHEREUPON, jury exits 1/7/19, 4:54 p.m.)

THE COURT: Anything from the State's before we recess?

MR. OSBORNE: No, Your Honor.
THE COURT: Thank you. Anything from the defendant?
MR. LOIGNON: No, Your Honor.
THE COURT: Mr. Smith, thank you. You honored and you were back at 2:30 today. I am going to let you remain out on bond, sir. And just be back at ten o'clock in the morning. Okay. Thank you, sir.
(WHEREUPON, 1/7/19, 4:54 p.m. recess.)
(WHEREUPON, resume trial 1/8/19, 10:02 a.m.)
THE COURT: The defendant is present. Good morning, sir. Is the defendant ready to proceed, Mr. Loignon?
MR. LOIGNON: Yes, Your Honor.
(WHEREUPON, jury enters 1/8/19, 10:04 a.m.)
THE COURT: And thank you, ladies and gentlemen. I hope you had a good evening and are ready to continue. Those of you that stayed up late and I hope your team won; and those of you that your team didn't, my condolences to you. Are we are now to return back to the business here.
And good morning, Solicitor. If you are ready to proceed you may call your next witness, sir.
MR. OSBORNE: Thank you, Your Honor. Good morning. The State calls Richard Wiersma.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: Richard Wiersma. W-I-E-R-S-M-A.

DIRECT EXAMINATION BY MR. OBSORNE OF RICHARD WIERSMA:

Q. Good morning, Officer.

A. Good morning.

Q. Where do you work?

A. The City of Charleston Police Department.

Q. All right. And for how long?

A. Fourteen years.

Q. And what is your position at CPD now?

A. Currently I am assigned to patrol division, West Ashley.

Q. Okay. What other positions have you held?

A. Prior to that I was in the crime scene unit. And prior to that I was in patrol downtown.

Q. Okay. How long did you work in the crime scene unit?

A. About ten years.

Q. And on April the 18th of 2015 were you in the crime scene unit then?

A. Yes.

Q. And in that capacity did you have the occasion to respond to a shooting, murder, call for service?

A. Yes.

Q. And for what purpose did you respond?

A. I responded to document the scene and collect any evidence that might be there.

Q. Just basis crime scene ---
A. Yeah.
Q. --- work?
A. Yes.
Q. All right. So you actually responded to the scene. So walk the jury through what you as a crime scene investigator do when you respond to the scene of a murder such as this.
A. The first thing I will do is talk to the officers on the scene and just getting any information they have. And then we will kind of walk around and assess the scene and make mental notes of what we need to do. And then once we have done that we will start documenting the scene for photographs or video, sometimes sketches. And then once that is done then we will start marking and collecting the evidence, package that and take it back to wherever it needs to go.
Q. Okay. And so some of that information that you learn early on is it fair to say that that helps direct you in the areas in which you are going to try to collect evidence?
A. Yes.
Q. All right. And in this case in particular where was your area of focus on?
A. The area of focus was the car that the two victims

would have been sitting in and the area immediately around that car.
Q. Okay. All right. And with that in mind did you have the occasion to photograph the area?
A. Yes, I did.
Q. All right.
MR. OSBORNE: Your Honor, I think one, two, and three has already been marked and admitted.
Q. I am going to show you State's 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22. I wanted to make sure we didn't take any out. So State's 4 through 22 can you take a look at that and tell me if you recognize all of those.
(WHEREUPON, pause for witness review of exhibits.)
A. Yes.
Q. All right. May I see those again?
THE COURT: You have got eight in there too?
MR. OSBORNE: I think it is 18, Your Honor.
THE COURT: No, because you said four inclusive. Just want to be sure eight is not.
MR. OSBORNE: It is eight. Yes, Your Honor.
Q. Okay. So at this time, Your Honor, we would seek to admit four through twenty-two excluding eight.
THE COURT: Okay.
Any objection, Mr. Loignon?

MR. LOIGNON: No, Your Honor.
THE COURT: Thank you. Four through twenty-two excluding Number 8 is -- are admitted without objection.
MR. OSBORNE: Thank you, Your Honor.
(WHEREUPON, State's 4 through State's 7 was admitted into evidence.)
(WHEREUPON, State's 9 through State's 22 was admitted into evidence.)
Q. All right. I am showing you State's Number 4. Can you take a look at that and tell me if you recognize that?
A. Yes, it is ---
Q. All right.
A. --- a photograph.
Q. And what is it?
A. It is a photograph of the scene standing in front of the white car. It's the car the victims were found in.
Q. All right. And we see placards throughout the car. Can you tell us what they are?
A. If I can look at my evidence list. There are items of evidence that were found outside of the car that -- or potential evidence that was found outside of the car.
Q. So just generally speaking when you see items of potential evidence you actually are the ones that put those markers down?
A. Yes.

Q. Okay. State's 5, what are we looking at here?
A. Same scenes, just a different angle.
Q. Okay. State's 6?
A. Again just a different angle. Same scene.
Q. And we are looking back toward East Bay I think here?
A. Yes.
Q. State's 7?
A. Again just a different angle.
Q. All right. And Number 12 right there, what was that item?
A. Yes, cell phone.
Q. Okay. And this white Grand Marquis again that was the vehicle the victims were in when they were shot?
A. Yes.
Q. Okay. Now we will start looking at some of the individual items of importance. State's Number 9?
A. Yes, it's a fired shell casing that was found on the ground.
Q. All right. And then State's 10 we just had some dice on the ground?
A. Yes.
Q. State's 11?
A. That is a shell casing in there.
Q. Okay. And that is Placard Number 4. State's 12 I think shows a closer up view of that?

A. Yes.
Q. State's 5, this is by -- is this by the front passenger tire?
A. Yes.
Q. And State's 14, that is a close-up view?
A. Yep.
Q. And what is that again?
A. Another fired shell casing.
Q. State's 15, we are still looking at the passenger side of the vehicle?
A. Yes.
Q. And I am drawing your attention to State's 16, Placard Number 8. What is that?
A. It is another cell phone on the passenger-side of the vehicle.
Q. All right. State's 17, a little closer view of Placard 12. That is the cell phone you mentioned earlier?
A. Yes.
Q. State's 18. What were you doing with Placard 14?
A. That was I believe some blood that was on the vehicle next to the victim's vehicle.
Q. Okay. State's 19?
A. That's another fired shell casing.
Q. And this is just showing the head stamp, State's 20 is?

A. Yes.
Q. And this is showing the head stamp to another fired shell casing, State's 21?
A. Yep.
Q. And State's 22?
A. Yes.
Q. How many fired shell casings in total did you recover from around the vehicle?
A. Four.
Q. Four. And all of those shell casings were recovered from the driver's side of the vehicle or the passenger's side of the vehicle?
A. All from the passenger side of the vehicle.
Q. Okay. All right. Now I am showing ---
MR. OSBORNE: May I approach, Your Honor?
THE COURT: You may.
Q. I am showing you State's 42. Can you take a look at that and tell me if you recognize that? Do you need scissors or ...?
A. No, I can get them out.
(WHEREUPON, opened packaging.)
A. Yes, these are fired shell casings collected from the scene.
Q. Okay. And you collected those fired shell casings?
A. Yes.

Q. Okay.

MR. OSBORNE: Your Honor, at this time we would seek to admit State's 42 into evidence.

THE COURT: Any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: Without objection, State's 42 is admitted.

(WHEREUPON, State's 42 was admitted into evidence.)

MR. OSBORNE: Yeah, you can put them back in.

(WHEREUPON, witness complied.)

Q. Okay. And again I just wanted to point out one other thing here. Each one of these boxes you have marked with the Item Number 101, 124 and 125.

A. Sure.

Q. Just like it is up here it is here on the envelope?

A. Correct. Yes.

Q. And the one for -- or 124 and 25, they correspond to the placard number that we were looking at?

A. Generally -- yes. They usually show -- I mean the placard numbers we only have one through forty, but the item numbers we start with 101. Generally, yes, we try to keep them in order of the placard numbers.

Q. So if you wanted to marry the two that is how you could find out ---

A. Yes.

Q. --- exactly where these were found?

A. Yes.
Q. And ---
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes.
Q. I am showing you State's 46. Can you take a look at that and tell me if you recognize that?
A. Yes, that is the cell phone I collected.
Q. The one that was collected on the passenger ---
A. Yes.
Q. --- side?
A. Yes.
Q. On the ground?
A. Yep.
Q. Okay.
MR. OSBORNE: It is just for ID purposes.
THE COURT: Okay.
Q. All right. Now did you process the vehicle in any way in this case, the Grand Marquis?
A. No, because ---
Q. On the scene?
A. No, I knew that was getting towed back to the crime scene office for further processing.
Q. Okay. Okay. Did that end your involvement in this investigation?
A. No. On May 2nd I was called to it was [redacted] Park

Avenue for a search warrant the detectives had done.
Q. All right. So you as an officer you are somewhat familiar with search warrants and how they go about and how they are obtained, correct?
A. Yes.
Q. All right. So you as a crime scene investigator were called to Green Park to do what exactly?
A. Document -- or photograph, document the evidence that they had found and then collect that evidence.
Q. Okay. Do you remember exactly what evidence you were looking for, or were you mainly directed by the detectives?
A. Mainly directed by the detectives. So whatever they point out is what we document and collect.
MR. OSBORNE: Okay. Your Honor, may I approach?
THE COURT: Yes, you may.
Q. I am showing you State's 48 through 62, excluding 49. And can you tell me if you recognize those and if so what are they?
(WHEREUPON, exhibits reviewed by witness.)
A. Yes, these are photographs that were taken at the scene on Green Park detectives had pointed out. Some of the items the detective pointed out that they wanted noted.
Q. Okay. And you actually photographed these yourself?
A. Yes.
MR. OSBORNE: All right. Your Honor, at this time we

would seek to admit 48 through 62, excluding 49, into evidence.

THE COURT: Any objection? Without which one, 49?

MR. OSBORNE: Excluding forty- -- oh, did I say 49? Fifty-nine.

THE COURT: Fifty-nine.

MR. LOIGNON: Could you repeat all of the numbers again.

MR. OSBORNE: Forty-eight through sixty-two, excluding fifty-nine.

MR. LOIGNON: No objection, Your Honor.

THE COURT: Without objection State's 48 through 62, excluding 59, each being a photograph, are admitted.

(WHEREUPON, State's Exhibit 48 through 58 was admitted into evidence.)

(WHEREUPON, State's Exhibit 60 through 62 was admitted into evidence.)

Q. All right. We will start with 48. What are we looking at there?

A. It is a photograph of the residence of that address.

Q. Okay. Forty-nine?

A. It is the inside of the residence leading up to the area that detectives found evidence in.

Q. Okay. Fifty?

A. The bedroom where the items were located.

Q. Okay. Fifty-one?
A. It's the same bedroom. It is just a close-up view of a dresser drawer that had been pulled out.
Q. Okay. Detective at this point had already pulled out the dresser drawer, --
A. Yes.
Q. --- is that correct; they are just asking you to photograph and collect?
A. Correct.
Q. Fifty-two, what is that?
A. The same dresser drawer. It is a baggy of a green leafy substance.
Q. Okay. And you collected this?
A. Yes.
Q. All right. Fifty-three, are we in the same room here?
A. I believe this is a different bedroom.
Q. All right. And 54?
A. That bedroom in the dresser drawer.
Q. Okay. And what was it?
A. It is a baggy of a green leafy substance.
Q. Okay. And 55?
A. This is mail that was found at the residence they wanted me to photograph for the address and any names on there.
Q. And the name was?

A. Bryant Smith.
Q. Okay. And this -- these letters were found in that bedroom where that bag of ---
A. Yes.
Q. --- green vegetable matter was found?
A. Yes.
Q. Fifty-six?
A. Just a display on the wall that again they wanted notated the names and photographs.
Q. Tasha and Little B?
A. Yes.
Q. And that was in the same room?
A. Yes.
Q. Fifty-seven?
A. A shoebox with a large amount of money found.
Q. Same room?
A. Yes.
Q. Fifty-eight?
A. That is the money just laid out.
Q. On the bed?
A. Yeah.
Q. All right. Sixty, is this in another location ---
A. Yes.
Q. --- in the house?
A. Yeah, this is another location in the residence.

Q. All right. Now I see there is some documentation on top there?
A. Yes.
Q. All right. Sixty-one, is that the documentation?
A. Yes.
Q. And what is the name on it?
A. Seth Smith that -- at that address. The [redacted] Park.
Q. Okay. And now lastly, 62?
A. It's a Social Security card that was found with the name Seth Smith on it.
Q. Okay. And all of those were found at [redacted] Park?
A. Yes.

MR. OSBORNE: No further questions, Your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION BY MR. LOIGNON OF RICHARD WIERSMA:

Q. You went over to the incident location shortly after this happened, right?
A. Yes.
Q. And you talked about collecting some evidence?
A. Yes.
Q. Did you collect two cell phones I believe?
A. Yes, sir, two cell phones there.
Q. And you swabbed both of those phones for touch DNA?
A. Yes.

Q. You submitted the phones to the digital evidence unit for downloads?
A. Yes.
Q. And the swabs, the DNA swabs, were placed into evidence as well?
A. Yes.
Q. You didn't have anything else to do with either of those two items after that?
A. No.
Q. You also processed the scene for latent fingerprints?
A. Yes, and I believe I processed the car that was next to the victim's car.
Q. You collected four lifts from the hood of that car?
A. Yes.
Q. You also collected one lift from one of those phones, right?
A. Yes.
Q. And those were all submitted for examination, right?
A. Yes.
Q. Let's talk about the Green Park Avenue search warrant that we just viewed the pictures from. You collected some items there, right?
A. Yes.
Q. A phone?
A. Yes, a phone.

Q. You swabbed that phone for touch DNA?
A. Yes.
Q. And you submitted that into evidence, right?
A. Yes.
Q. And we saw the picture of that money you found in the box, right?
A. Yes.
Q. And you laid it all out on the bed ---
A. Yes.
Q. --- to photograph it? That was in the room with the documentation for Bryant Smith, right?
A. Correct.
Q. And the marijuana was in that same room, right?
A. There was some in that room too, yes.
Q. And none of those bills that you had spread out on the bed were counterfeit bills, right?
A. I don't know. I didn't collect the bills or do anything with those. They just requested they be photographed. I didn't look at them close enough to see.
Q. If they were obviously counterfeit you probably would have noted that in your report though, right?
A. If I noticed it, yes, I probably would have.
MR. LOIGNON: Court's indulgence.
Nothing further.
THE COURT: Redirect.

MR. OSBORNE: Just briefly.

REDIRECT EXAMINATION BY MR. OSBORNE OF RICHARD WIERSMA:

Q. Any decisions in reference to swabs to be sent up to be analyzed for DNA for comparison or to SLED, that would have been made by you or the case agent?

A. The case agent.

Q. Okay. And the date of the murder you said was April the 18th of 2015?

A. Yes.

Q. And the -- the search warrant at [redacted] Park was executed on May the 2nd of 2015?

A. Yes.

Q. Okay. Now I understand that you did not, you know, examine each of the bills; but you did have detectives there who were familiar with the case; ---

A. Yes.

Q. --- is that fair to say?

A. Yes.

Q. And you would have anticipated that they would have examined the bills?

A. Yes.

Q. And no one brought to your attention that it was counterfeit money, just to be clear?

A. No.

Q. All right.

A. No, I don't recall any of that being mentioned at all.
Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Any cross?
MR. LOIGNON: No, Your Honor.
THE COURT: Thank you. You may come down.
You may call your next witness.
MR. OSBORNE: The State calls Ashley Wojo.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name and spell your last name.
THE WITNESS: My name is Ashley W-O-J-S-L-A-W-O-W-I-C-V.
DIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY WOJSLAWOWICV:
Q. Wojslawowicv ---
A. Um ---
Q. No?
A. Close.
Q. Okay.
A. Very close. Wojslawowicv.
Q. Everyone calls you Wojo?
A. Yes.
Q. And your husband?
A. Which is fine.
Q. Sorry. Okay. Where are you employed?

A. I work for the Charleston Police Department. I am a crime scene investigator.
Q. All right. For how long?
A. I have been with the Department for about eight years.
Q. All right. In that capacity did you have the occasion to become involved in this investigation?
A. Yes, I did.
Q. And how did that come about?
A. I was notified by Officer Wiersma who was in crime scene at the time that there had been an incident involving a shooting and homicide. I was requested to respond to MUSC ER where I was informed that parties had been transported to with injuries.
Q. Okay. And so your responsibilities at that point was to go to MUSC I suppose and collect any evidence?
A. Yes.
Q. Okay.
A. Take photographs, collect evidence, or anything else that might be required forensically at the time at that location.
Q. Okay. And generally speaking is it accurate to say that pretty much any property that a victim would have had on him you would have taken all of that?
A. Yes.
Q. Whether it had evidentiary value or not because at

that point you don't know?
A. Correct.
Q. Okay. So I just want to talk about a couple of items though.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes, you may.
Q. I am showing you State's Exhibit Number 63. Can you take a look at that and tell me if you recognize that item?
A. Yes, I recognize this.
Q. And what is that?
A. This is a cell phone that I collected. It was part of the property from the decedent, Item 320-15.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit - and that is 63 -- yes, 63 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection State's 63 is admitted.
(WHEREUPON, State's Exhibit Number 63 was admitted into evidence.)
Q. Okay. So this phone was taken from the victim -- or the victim's property?
A. Yes.
Q. Okay. Now I want to show you State's 64 and State's 165 and tell me if you recognize those.

A. I do recognize this.
Q. And that is that?
A. It is Item 22-07 which I labeled as counterfeit cash. That was collected from the decedent's property. And then an image depicting the counterfeit money.
Q. Okay. Just spreading it out and showing it?
A. Yes.
Q. And how much was all of the counterfeit money; did you count it?
A. I did. It was $3,000 in $100 increments.
Q. Okay.
MR. OSBORNE: Your Honor, at this time I would seek to admit State's 64 and 165 into evidence.
THE COURT: Sixty-four and one sixty-five?
MR. OSBORNE: Yes, Your Honor.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: State's 64 and 165 are admitted without objection.
(WHEREUPON, State's Exhibit Number 64 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 165 was admitted into evidence.)
Q. All right. Let's see if I can do it like this. I am going to show you 165. Now you said that you recognize

these items as being counterfeit?
A. Yes.
Q. Was that based on -- well, tell me what was that based on.
A. It was based on noticing that the bills contained the same serial number and they were lacking a water mark.
Q. Okay. Did -- was there any property that was found -- or money that was found on the victim which was not counterfeit?
A. It appeared to be, yes.
Q. No, I mean that wasn't. Separate from this.
A. Yes.
Q. And how much was that if you can recall?
A. I would say -- I have it in my report. Approximately $153 and some change.
Q. Okay. Did you collect any other items from MUSC prior to leaving?
A. Yes. In addition to clothing and a gunshot residue test I also collected some metal fragments which were stated to have been removed from the victim and the decedent by MUSC nurse personnel, that they had transferred that metal fragments to the MUSC public safety officer who then gave it to me at the time that I was collecting all of the other property.
Q. Okay.

MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you 35, 66, and 67. Tell me if you recognize those. If so, what are they?
A. Yes, I do recognize these.
Q. And what are they?
A. So I have Item 18-217. This is a metal fragment. 35-231 is also -- it is two metal fragments. And then these items 901 through 906 were collected by myself after the autopsy of the decedent. These were stated to have been removed from his person.
Q. Okay. And that is State's 35?
A. Yes.
Q. So 35 contains your items 901 through 906, bullets recovered from the victim at the autopsy?
A. Yes.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit State's 35, State's 66, and State's 167 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: State's 35, 66, and 167 are admitted ---
MR. OSBORNE: Sixty-seven.
THE COURT: Sixty-seven?

MR. OSBORNE: My mistake. Sixty-six, sixty-seven, and thirty-five.

THE COURT: All right, 35, 66, and 67?

MR. OSBORNE: Yes, Your Honor.

THE COURT: Admitted without objection.

(WHEREUPON, State's 35 was admitted into evidence.)

(WHEREUPON, State's 66 was admitted into evidence.)

(WHEREUPON, State's 67 was admitted into evidence.)

Q. Before I show you this last photograph you had mentioned that you took GSR from the victim?

A. Yes.

Q. All right. What is GSR?

A. GSR is gunshot residue. It could be described as the combin- -- combination - excuse me - of different particles that when you see present in order for it to be determined as GSR it is when a firearm is discharged these particles are emitted from the firearm. It is a combination usually of antimony, barium and lead. Depending on the type of firearm used they are lead-based ammunition and lead-less. So depending on what type of firearm was used will determine the makeup. But you need a confirmatory test to determine that yes it was GSR.

Q. Okay.

A. The test that I do is just the collection of it. So I collected it from the decedent, his hand. And then that

test would have been sent off to the state laboratory where they did the actual analysis of the test.
Q. It would have been sent to the state laboratory if it had been requested to be sent?
A. Correct. Yes.
Q. And that would be the case agent's decision?
A. Yes. I don't request that test being done. It is the investigator who does that.
Q. And in layman terms when you fire a gun so there are particles that emit from the gun?
A. Yes.
Q. And those particles can stick to things in the area?
A. Yes.
Q. Okay. And lastly.
MR. OSBORNE: May I approach, Your Honor?
MR. OSBORNE: Yes.
Q. State's 123 do you recognize that item?
A. I do.
Q. And what is that?
A. This is a photograph depicting a vest that was among the decedent's property.
Q. Okay.
MR. OSBORNE: Your Honor, I would seek to admit 123 into evidence.
THE COURT: Any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: Without objection State's 123 is admitted.

(WHEREUPON, State's Exhibit 123 was admitted into evidence.)

MR. OSBORNE: And we will just publish that through another witness.

THE COURT: Very well.

MR. OSBORNE: No further questions.

THE COURT: Cross-examine. Any questions?

CROSS-EXAMINATION BY MR. LOIGNON OF ASHLEY WOJSLAWOWICV:

Q. We were just talking about the gunshot residue test?

A. Yes.

Q. And you performed one of those on both of George Bennett's hands, right?

A. Yes.

Q. And both of Rayshawn River's hands as well, right?

A. Yes.

Q. And those kits were submitted into evidence?

A. Correct.

Q. And you didn't have anything to do with them after that?

A. No.

Q. You didn't decide whether or not to send them for testing, right?

A. No, that was the case agent.

Q. You collected a cell phone from George Bennett's belongings?
A. I did.
Q. And you tried to get fingerprints off that phone but were unsuccessfully in doing that?
A. Correct.
Q. You were able to collect a touch DNA swab though from that phone?
A. Yes.
Q. And that was submitted into evidence?
A. Correct.
Q. You didn't have anything else to do with that, right?
A. No, I did not.
Q. But if it were sent somewhere to SLED presumably it could be tested, right?
A. That would be correct.
Q. And matched with another known sample of DNA?
A. Depending on the quality of the sample that was taken, yes.
Q. Now a couple of days later you went back to MUSC?
A. Yes.
Q. And you collected some fingernail clippings from George Bennett, right?
A. I did, yes.
Q. Any why do you collect those?

A. The forensic pathologist who actually performs the autopsy will collect those usually under the possibility if there was a struggle or coming into contact that exchange of evidence or exchange of trace evidence could possibly occur between one party and another.

So it is from my understanding it is their standard operating procedure to collect fingernail clippings regardless of the circumstances. That is just one of the things that they collect. So in the evidence that I collected that was part of the list of items that was transferred to me.

Q. And again you don't have anything to do with it after you submit it into evidence, right?

A. Correct.

Q. But if someone wanted to test those fingernails it would be for DNA, right, underneath the nails?

A. I would assume yes.

Q. Now that same day, April 20th, you followed up on the search warrant of the white Mercury Grand Marquis?

A. I did, yes.

Q. And you were asked to collect a touch DNA swab from that car, right?

A. Can I look at my report?

Q. Sure.

(WHEREUPON, pause for review of records by witness.)

A. I would say that is incorrect. My only involvement with this vehicle was that there was an item that I had collected, an Item 220, which accessed the trunk of the vehicle, which before that time was locked and secured and we were unable to open it. Because of the item that was in my possession I was able to unlock that trunk. Because the interior release for the trunk wasn't functioning.

So my only involvement was to open the trunk and do an inventory of the trunk's contents. I wasn't requested to -- let's see. I don't have in my report where it says I was -- I collected anything.

Q. Is your report one or two pages there?

A. I only have one page.

Q. If I showed you a second page would you think that would refresh your memory and maybe that was ---

A. Yes.

Q. --- part of your report?

A. Yes.

MR. LOIGNON: May I approach, Your Honor?

THE COURT: Yes, do you want to have it marked for ID purposes ---

MR. LOIGNON: Yes.

THE COURT: --- for purposes of the record, please.

(WHEREUPON, Defendant's Exhibit Number 1, report, was marked for identification.)

Q. And I am showing you what has been marked as Defendant's Number 1. If you could just take a look at -- take a look at the front page and familiarize yourself with it. And then flip over to the second page and let me know if that is a continuation of your report.
A. Ah, yes, it is.
Q. And if you could read down at the bottom the highlighted portion just to yourself and let me know if that refreshes your memory.
(WHEREUPON, pause for witness review of exhibit.)
A. Yes, it does. So, yes, I did collect a touch DNA swab from the exterior front passenger door frame which was directly above the front passenger door.
Q. Okay. And then you submitted that into evidence, right?
A. Yes. Correct.
Q. All right. On May the 6th you also processed a scene out at a motel ---
A. Yes.
Q. --- in Walterboro, right?
A. I did.
Q. Okay. And at that scene you collected some items, right?
A. Correct.
Q. You collected two bank cards from the room, didn't

you?
A. I did, yes.
Q. And they had the name Seth Smith on them, didn't they?
A. Yes.
Q. And you collected two cell phones, right?
A. Yes.
Q. And you submitted that into evidence?
A. Yes.
Q. I will take that back.
(WHEREUPON, witness returns exhibit.)
Q. Thank you.
A. Thank you.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.
MR. LOIGNON: Nothing further, Your Honor.
THE COURT: Very well.
Redirect.
MR. OSBORNE: Just briefly.
THE COURT: Sure.
REDIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY WOJSLAWOWICV:
Q. Collected the fingernails. Again, if they were sent to SLED then that decision would have been made by the case agent?
A. Yes, correct.
Q. And if you wanted to know why that case agent didn't

send it to SLED all you have to do is ask him?
A. Correct.
Q. And the touch DNA from the Grand Marquis if that was sent to SLED and you wanted to know the results all you have to do is ask the case agent; ---
A. Correct.
Q. --- is that correct? And the motel room on May the 6th of 2015 in Walterboro that room was searched. You said you found some bank cards in the defendant's name?
A. Yes.
Q. And a cell phone or two?
A. Yes.
Q. And if you wanted to know the results if that phone was downloaded all you have to do is ask the case agent; ---
A. Yes, ---
Q. --- is that correct?
A. --- correct.
MR. OSBORNE: No further questions.
THE COURT: Recross.
MR. LOIGNON: No, Your Honor.
THE COURT: Thank you. You may come down.
(WHEREUPON, witness steps down.)
THE COURT: Call your next witness, please.
MR. OSBORNE: The State's calls Jeff Miller.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name, spelling your last name for the record.

THE WITNESS: Jeff Miller. M-I-L-L-E-R.

DIRECT EXAMINATION BY MR. OSBORNE OF JEFF MILLER:

Q. All right, Mr. Miller, where are you employed?

A. Charleston City Police Department.

Q. And for how long?

A. Thirty-three years.

Q. Okay. You were an officer I think and then a supervisor?

A. Yes.

Q. And now you are a crime scene ---

A. Retired crime scene investigator.

Q. I am just moving along. Sorry. All right. So in that capacity as crime scene investigator did you become involved in a murder investigation on April the 27th of 2015?

A. Yes, I processed a car.

Q. And what kind of car did you process?

A. It was a 2000 Cadillac.

Q. Okay. And we have already heard some testimony when you process a car you photograph, you fingerprint; things of that nature, correct?

A. Yeah, and collect items from it.

Q. Okay. Do you know where the car was towed from?
A. It was towed from a salvage yard.
Q. Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. All right. I am showing you what's been marked as State's 104 to 114, minus 113. So 104 to 114, minus 113. Do you recognize those?
A. Yeah, these are photos that I took of the car.
Q. And what type of car was it?
A. A 2000 Cadillac.
Q. 2000 Cadillac, okay. And you were actually the photographer of those photographs?
A. Yes.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit State's 104 to 114 into evidence, minus 113.
THE COURT: Any objection?
MR. LOIGNON: No objection, Your Honor.
THE COURT: Without objection State's 104 through 114, minus 113, are admitted. Each being a photograph.
(WHEREUPON, State's Exhibit Number 104 through 112 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 114 was admitted into evidence.)

Q. And let's just go ahead and do this one as well.
MR. OSBORNE: May I approach?
THE COURT: You may.
Q. I am showing you State's 164. Can you take a look at that and tell me if you recognize that?
A. This is the envelope that I lifted eight fingerprints off of the car and then I placed them in this envelope and sealed them.
Q. You lifted eight prints in total from the car?
A. Yes.
Q. Okay.
MR. OSBORNE: This is just for ID purposes.
THE COURT: Okay.
Q. All right. Let's go through these pictures. And again this was on -- you processed this on April the 27th?
A. Yes.
Q. All right. What are we looking at in State's 104?
A. This is the Cadillac that I processed showing the right rear area of the car.
Q. Okay, 105?
A. That is still the right side. Same car.
Q. 106?
A. Same car. Right front quarter panel.
Q. 107?
A. Another one, the quarter panel area.

Q. I just draw your attention just for a second to the wheel itself. Did anything strike you as being ---
A. Well, they appeared to have been painted.
Q. Did it appear to have been factory painted?
A. No.
Q. Could you make a determination on how recent it may have been?
A. How recent, no.
Q. Okay. 108?
A. That is the front of the vehicle.
Q. Missing its bumper?
A. Yes.
Q. 109 is another image?
A. It is showing the hood and the windshield area.
Q. And 110 are we moving now to the driver's side?
A. Now we are back on -- yeah, we are on the driver's side of the car.
Q. 111?
A. Same driver's side showing the back door.
Q. 112?
A. In the left rear quarter panel area.
Q. Okay. And lastly, 114?
A. That is a picture of the AC control unit from inside of the car.
Q. Okay. And what are you trying to show here in this

photograph?
A. Well, you can see right on the -- just above the buttons is like a piece of tape. I fingerprinted that item and saw ridge details. So then I placed the tape on it. Took a photograph and then lifted it.
Q. Okay. So we could see later exactly where you got that print from?
A. Yes.
Q. Okay. And do you know -- did you number this print when you put it on the card?
A. Yes.
Q. Do you remember which it is?
A. Not that one, no.
Q. Okay. But it would be on the card?
A. Yes.
Q. Okay. You said that you got eight prints in total from the car?
A. Yes.
Q. Do you remember -- I am not going to ask you if this was the location of all the prints, but I mean do you remember how many were inside and how many were outside?
A. No, not without looking at them.
Q. You would have to look at the cards?
A. Yeah.
Q. Let's just do that real quick if you don't mind.

State's 164 and tell me if looking at that you can tell me where you lifted the prints.

A. All right. Number one in the AC control unit.

Q. Is that what we were looking at there?

A. Uh-huh.

THE COURT REPORTER: I'm sorry?

MR. OSBORNE: You have to say yes, I'm sorry, or no.

THE COURT REPORTER: I didn't hear your answer.

THE WITNESS: Yes.

A. Yes. Exterior right rear door, exterior right front door, exterior right front door, exterior right front door, to the hood, another one from the hood, and a third one from the hood.

Q. Okay. And so if I counted correctly seven of the eight prints that you lifted were from on the outside of the car?

A. Yes.

Q. And you only got one print from the inside of the car?

A. Correct.

Q. And you said you have been doing this for, what, 28 years?

A. I have been processing items for 24.

Q. Twenty-four. Do you find that that is normal in your 24 years to only recover one print from the inside of a car?

A. Well, you never really know where you are going to get any prints at any time. It is just you just take it -- you process it and if it develops then you lift it. And of course this car here had been at a salvage yard and had parts missing and removed from it.
Q. Okay. Would being at a salvage yard affect your ability to lift prints?
A. Well, you could tell that somebody had gone through the car and removed parts.
Q. Okay. Can you comment at all to what the elements do to your ability to lift prints?
A. Well, any time you are looking for a fingerprint you have the person who leaves a print, the item that they are touching, humidity, weather, everything plays an effect in whether or not a print is even left so that we can find it.
Q. Okay. And the inside of this car did it appear as though it was picked apart in any way?
A. Yeah, there were parts hanging down. There were parts just laying around inside of the car.
Q. Okay. So is it fair to say then being at a salvage area, being exposed to the elements and whatnot would affect your abilities to lift prints?
A. Yes, it can affect it; yes.
Q. Okay.
MR. OSBORNE: No further questions.

THE COURT: Cross-examine.

MR. LOIGNON: Just briefly.

THE COURT: Sure.

CROSS-EXAMINATION BY MR. LOIGNON OF MR. JEFF MILLER:

Q. You also collected some touch DNA swabs from this Cadillac, right?

A. Yes.

Q. And you took a swab from the driver's seat headrest?

A. Correct.

Q. And one from the passenger seat headrest?

A. Correct.

Q. And the reason you take that swab is to try to find some DNA, right?

A. Correct.

Q. And match that to a known standard ---

A. Yes.

Q. --- of someone, right?

A. We collect it for that reason, yes.

Q. And in this case maybe some skin cells would have shed onto the headrest and that would be the source of the DNA?

A. Correct.

Q. And so an analyst can compare that DNA if it is submitted into evidence and sent for analysis, right?

A. Correct.

Q. And you submitted it into evidence?

A. I collect it and then turn it into evidence, yes.
Q. But you don't send it for ---
A. I don't send it, no.
Q. Okay.
MR. LOIGNON: Nothing further.
THE COURT: Briefly redirect.
REDIRECT EXAMINATION BY MR. OSBORNE OF JEFF MILLER:
Q. Are you able to comment on what effect if any elements have to touch DNA?
A. Well, it is the same thing as the fingerprint. It is just one of those chance things that you try to -- with contact DNA you are just swabbing an area that you think something was touched or rubbed against. And it is just a chance. So you are just taking a chance that there might be something there.
Q. You said taking a chance. I mean I am not asking for statistics here, but do you know of a lot of success with touch DNA?
A. We collect a lot of touch DNA. Whatever the results are that usually goes to the detective, so I ---
Q. Case agent?
A. Yes.
Q. Okay. All right. No further questions.
THE COURT: Recross?
MR. LOIGNON: No, Your Honor.

THE COURT: Thank you. You may step down.
THE WITNESS: Can I be excused from the trial?
THE COURT: You are free to leave, sir.
THE WITNESS: Thank you.
THE COURT: Any objection from either?
MR. OSBORNE: None, Your Honor.
THE COURT: Thank you.
(WHEREUPON, witness steps down.)
THE COURT: Call your next witness.
MR. OSBORNE: The State calls Nada Kerstein.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name for the record spelling your last name.
THE WITNESS: Nada Kerstein. K-E-R-S-T-E-I-N.

DIRECT EXAMINATION BY MR. OSBORNE OF NADA KERSTEIN:

Q. Good morning, Ms. Kerstein.
A. Good morning.
Q. Tell the jury where you work.
A. I work for the City of Charleston Police Department.
Q. And what do you do there?
A. I am a latent fingerprint examiner which means I look, I analyze and compare prints lifted from crime scenes that are latent impressions for the purpose of elimination or identification.
Q. Okay. And how much of your time is devoted at CPD

dealing with fingerprints?
A. One hundred percent.
Q. All right. And how long have you been working as a latent examiner?
A. I started my formal training in December of 2007 with the Latent Print Division. And I had a formal training with them until May of 2009 when I was released to do my own casework.
Q. All right. And what study and preparation have you made for this type of work, fingerprints?
A. My background is in ten-prints. I started in 2004 with the Police Department. A ten-print card is a card designed specifically to capture the ten fingers individually on the card. The card is used for identification.
And then I had my formal training with the Latent Print Division.
Q. Okay. Are you a member of any professional associations related to fingerprint identification?
A. I am a member of the IAI which is the International Association for Identification. I am also a member of the SCIAI which is the South Carolina Division of the IAI.
Q. All right. And what type of training or schools or seminars have you attended in reference to your profession?
A. I have had over 400 hours of fingerprint classes,

classes designed specifically for fingerprint work. And usually the instructors are latent print examiners who have been working in the field.

Q. Let's talk about what type of technical equipment you use in your work.

A. We use magnifying glasses. And we use pointers. I use special lighting. And now we have a way of blowing up a print digitally. I have a Waycom tablet. And we use a Photoshop software program.

Q. All right. During your profession how many comparisons of fingerprints do you estimate that you have made?

A. I have done thousands of comparisons. Probably over a hundred thousand. With casework and proficiency testing and training it is probably over a hundred thousand or somewhere in that number. It is not something that we keep a record of. So that is just an estimate.

Q. And during that time have you been able to identify an individual to a latent print?

A. Yes.

Q. Okay. And have you ever testified in court before?

A. Yes, I have.

Q. Have you ever been qualified as an expert in the fingerprint analysis?

A. Yes, I have.

Q. And how many times?
A. Twenty-one times for the State of South Carolina.
Q. Okay. Now let's talk about the difference between a known print and a latent print. What is a known print?
A. A known print is a reproduction of the friction ridges of your fingers and palms. And now it is done digitally. But it still can be done with a printer's ink. And it is transferred onto a contrasting background which is usually the ten-print card. And it captures the ten fingers individually. And then simultaneous flaps at the bottom.
Q. Okay. And what is a latent print?
A. Latent means invisible or not readily seen by the naked eye. It is an impression that can be left when you touch a surface. It usually has to be developed by a powder or some type of chemical.
Q. So is it fair to say that anytime you touch anything you are going to get a fingerprint off of it?
A. No. If you are touching a surface that is smooth and you have oils on your hand or moisture on your hand or dirt or dust on your hand then you can leave an impression. But there are times where you might not leave an impression. If your hands are very cold, if you are touching a surface that is textured and won't hold a fingerprint then you might not.
Q. And do the elements play a factor at all into being

able to recover a latent print?
A. Yes. A print that is left on a surface that is not touched or doesn't have the elements around it will stay longer than a print that is outside. Let's say if you leave a print on a car and there is rain or, you know, a squirrel rubs up against it or a person even rubs up against it then that is not going to stay as long as a print say left inside underneath a counter. Than can stay for a long time.
Q. So you say a person rub -- so an individual rummaging through or touching a print can affect it?
A. Absolutely.
Q. Okay. And does time play any factor into the ability to recover a latent print?
A. There is no way to date a print. Prints have been found in studies more than a year later. But there really is no way to say how long a print can stay definitely.
Q. Okay. And that is kind of what I was getting at. I didn't know that about the year. But so when you are recovering a print and you are making that comparison and you identify it to an individual you can't timestamp it?
A. The only way that you can set a timeframe is if you have a circumstance like say you have a glass window and you know it gets cleaned at the same time every day and they use a cleanser and they wipe the whole thing and then

a print is lifted you can say that that print was put down after that was cleaned. But there is no way to put a definite timeframe on it.

Q. I see. All right. What are the basic factors for the use of fingerprints as a means of identification?

A. There are two reasons that we can use fingerprints for identification. The first reason is fingerprints are unique. No two fingerprints have the same ridge arrangement, even on the same hand. And the second reason is they are permanent. The ridge arrangement that you have when you are born you keep that ridge arrangement through your entire life until death or decomposition.

The exception to that would be scars or intentional mutilation.

Q. All right. How many points of identifications are needed to make identification?

A. In the United States there is no set number. When we look at a print we are looking at the entire picture. We are looking at the pattern type, the ridge flow. We look at the point in the print. And the points are the minutia in that ridge flow. Ridges are -- they are not just continuous. They are broken. They are bifurcation. There are ending ridges. There's dots. There are short ridges.

We use all of that minutia to make an identification or an elimination. But we don't have a set number of how

many we need. Because we are looking at the entire print. We are looking at everything. We are looking at whether it is clear, whether there is distortion. So you don't have a set number that we use. Every print is different.

Q. And do you use a method in comparing prints?

A. We do. The methodology for latent examiners is called ACE-V. It is analysis, comparison, evaluation, and verification. The analysis stage is where we look at the print initially. And we are looking at all three levels of detail. We are looking for scars, creases, pattern type, ridge flow.

We are looking to see what we have to work with. If there is enough in that print then we move on to the comparison. And the comparison is a side-by-side comparison of the latent print next to the known print. And we use magnifying glasses or we can blow it up on a screen. And we pick a starting point in the latent print, something unique or a little cluster of characteristics, that we can use. And then we look for those same characteristics in the known print in that same location.

And then I am going to go around the entire print ridge by ridge. And what I am looking for is that the associations are the same. The characteristics need to be the same. And they need to be in the same order around the entire print.

If I find that then I can say that there is an identification, meaning those two prints were made by the same finger.

If there are any differences within those arrangements then I can eliminate and say that those two prints were not made by the same finger.

So then after the comparison it is evaluation. And that basically is my opinion. I am going to say whether or not there is an identification, whether or not there is an elimination. Or if I can't say either of those then I am going to call it inconclusive.

Then after the evaluation it goes to a second examinor who goes through the first three steps from the beginning.

Q. Okay.

MR. OSBORNE: Your Honor, at this time I would move to qualify Ms. Kerstein as a expert in the field of latent print comparison.

THE COURT: Do you care to examine her as to qualifications?

MR. LOIGNON: No, Your Honor.

THE COURT: Very well. She will be permitted to render opinions in that area.

MR. OSBORNE: Your Honor, may I approach?

THE COURT: Sure.

Q. Okay. I am showing you now what has been marked as

State's Number 164. Can you tell me if you recognize that?
A. This is the envelope that was submitted on Case 1506223.
Q. Okay. And in reference to this case you analyzed a lot of prints, is that correct?
A. Yes, there were several envelopes.
Q. Okay. And this is only just one envelope; is that right?
A. Correct.
Q. Okay. And who was the crime scene technician who lifted those prints?
A. Jeff Miller.
Q. And do you know where he lifted those prints from, what item?
A. It says it on the card. Each card when the crime scene tech goes through and lifts the prints they write on the card where they are lifting it from and the date and the case number. They put all of that information on the back of each card.
Q. Okay. And when those prints were received by you did they appear to have been damaged or altered in any way?
A. When I receive the prints they are usually in this envelope in a sealed plastic sleeve.
Q. All right.
MR. OSBORNE: Your Honor --

Q. And the analysis that you mentioned before did you perform that same analysis on those prints, the methodology?
A. Can I look at my notes?
Q. Sure. Without getting into the results quite yet.
A. Yes, I did an analysis on this envelope.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit 164 into evidence.
THE COURT: Objections?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection 164 is admitted.
(WHEREUPON, State's 164 was admitted into evidence.)
Q. All right. Now did you compare the latent prints lifted that -- well, that Mr. Miller lifted to any known prints?
A. Yes.
Q. And who was that?
A. Arthur Lee Mungin and Corrie Allen Kemper.
Q. Okay. And anyone else?
A. No.
Q. Do you have your lab reports in front of you?
A. Yes, I do.
Q. Can you take a look a Lab Report Number 13?
A. Yes.

Q. Did you ---
A. Oh, I'm sorry, this envelope wasn't included in that report. Okay.
Q. So you went back and did ---
MR. LOIGNON: Your Honor, I think we have a matter of law that we need to discuss.
THE COURT: All right. Ladies and gentlemen of the jury, I will let you go to your jury room. There is a matter -- sometimes we can do it with a bench conference and let you sit there and we do it out of your hearing, but sometimes we need to put it on the record; and so I need for you to go to your jury room.
It is about the time we would -- closer to getting to our break time. I do it at about an hour-and-a-half typically. So we will let you have your break here as well. So please do not begin your deliberations of course. We will be with you as quick as we can. Thank you.
(WHEREUPON, jury exits 1/8/19 11:06 a.m.)
THE COURT: All right. Mr. Loignon.
MR. LOIGNON: Your Honor, I'm just -- I was just making sure we didn't get into some testimony when I didn't have -- it just seemed we were going in a direction where I might not have had some discovery. So we are just making sure that we actually have what he is about to ask this witness about.

(WHEREUPON, counselors confer.)

THE COURT: I tell you what, while y'all are doing that let's be at ease. That way everybody can take a break.

(WHEREUPON, break 1/8/19, 11:08 a.m.)

(WHEREUPON, resume 1/8/19, 11:28 a.m., defendant present as well.)

THE COURT: So not -- no objection to any of that. Correct. Okay. So let's bring them in. Thank you so much.

(WHEREUPON, pause awaiting jury.)

(WHEREUPON, jury enters 1/8/19, 11:30 a.m.)

THE WITNESS: Jurors are all present, Your Honor.

THE COURT: Nobody wants to sit in that first chair.

THE JUROR: I have sat in it a couple of times now.

THE COURT: I understand. Somebody -- sometimes I think it is by default. But as it said, you don't have to do it right away. But until you do it is free game for everybody.

Thank you for your patience, ladies and gentlemen. We try to minimize those things. But that is just the way the process works. So I appreciate you allowing us that opportunity. We are ready to continue.

Solicitor, you may resume your examination.

MR. OSBORNE: Thank you, Your Honor.

THE COURT: You bet.
Q. All right. We left off, Ms. Kerstein, with you naming some individuals who you had compared to latent prints recovered from the vehicle. And name those individuals again.
A. Envelope 83 was compared to Arthur Lee Mungin, Corey Allen Kemper, Beth Hassan Smith, and Bryant Michael Smith.
Q. Okay. And were you able to make any comparisons ---
A. Yes, ---
Q. --- or any identifications?
A. --- I compared those four. I'm sorry?
Q. And those individuals were identified?
A. Authur Lee Mungin was identified. Cory Allen Kemper was identified. Beth Hassan Smith was identified. Bryant Michael Smith was eliminated.
Q. Okay. And can you tell the jury the locations or the -- reading off of the print card where those prints were recovered and the identifications that was made to each?
A. Yes. Latent Lift 83-1, the lift location as it is written on the card is AC control piece. That was identified to the number six finger which is the left thumb of Seth Smith.
Latent Lift 83-3, lifted from exterior right front door was identified to the number seven finger which is the left index finger of Corey Kemper.

Latent Lift 83-5 lifted from exterior right front door was identified to the fingers three and four. So that would be right middle, right ring, of Authur Mungin.

Latent Lift 83-6 was identified to the number seven finger, so that is left index finger, of Corey Kemper.

Latent 83-8 lifted from the hood was identified to fingers seven and eight, so left index, left middle, of Corey Kemper.

Q. Okay. So if I am reading that correctly the only print that was able to be identified from the vehicle was the print that was from the inside - or at least the AC panel, that is the way it is worded - and that came back to Seth Smith?

A. That's correct.

Q. All right.

MR. OSBORNE: No further questions.

THE COURT: Cross-examine.

MR. LOIGNON: Thank you, Your Honor.

THE COURT: Sure.

CROSS-EXAMINATION BY MR. LOIGNON OF NADA KERSTEIN:

Q. Just continuing to talk about those prints. Where did you get the prints for Mungin and Kemper, where did those come from?

MR. OSBORNE: Objection, Your Honor.

THE COURT: What is the basis?

MR. OSBORNE: The basis is where that goes from there.
THE COURT: Well, I don't know -- it is a relevant question. I don't know where it is going from there. But I overrule the objection to the question. I
If you want to continue, that is fine.
(WHEREUPON, pause for defense counsel.)
THE COURT: Do you want to rephrase your question?
MR. LOIGNON: Yes, Your Honor.
THE COURT: Very well.
Q. So you already told Mr. Osborne that you got these comparisons back and we had multiple prints from those two individuals Kemper and Mungin, right?
A. That is correct.
Q. Okay. Now the one from Mungin, just so I am clear, is on the exterior, right, passenger-side, front door?
A. The way it is written here is exterior, RF - so I assume that means right front - door.
Q. Okay. And Kemper there were three lifts that were matched to Corey Allen Kemper; is that right?
A. That is correct.
Q. One from that same door?
A. Yes, it is written as exterior RF door. And then two from the hood.
Q. Okay. Now you also analyzed three lifts from the hood of the Mercury Grand Marquis, correct?

A. I am not sure what the car is -- there is no indication on the evidence which car it is ---

THE COURT: Rephrase your question, because she -- you have qualified it by from the where it came. So she has testified that she has got the prints so.

MR. LOIGNON: Yes sir.

Q. So I believe in your report you refer to a lift from a tan Mercury; is that correct?

A. That is from a different envelope.

Q. Okay. Do you have your reports with you by chance?

A. I do.

Q. If you need to refer to them feel free to refresh your memory about whether you compared some lifts from a tan Mercury.

A. The tan Mercury was from Envelope 44. Okay. So are you asking me if anything identifies to that?

Q. Well, first I was just making sure that you actually did the comparison with those lifts.

A. Yes, I did.

Q. Okay. And it is my understanding that your report indicates Seth and Bryant Smith were both eliminated as the source of those impressions?

A. They were eliminated from those impressions. And in the report I asked for additional prints. Normally on a 10-print card what we get is nail bed to nail bed of the

first joint. On one of the impressions it appeared to be a second or third choice. So I don't have that information on the ten-print card. So we asked for additional prints. We asked for fingerprint joints. And those were never provided. So the comparison was never made.

Q. So you are not aware that Seth Smith did voluntarily come down and submit those prints to Nova Grilley another analyst in your office?

A. I don't have her report. So ---

Q. Okay. So you're not aware that he was then subsequently again eliminated after providing those finger joint prints?

A. That is not -- that is not a report that I did.

Q. Okay.

A. So no.

MR. LOIGNON: Court's indulgence.

THE COURT: Certainly.

MR. LOIGNON: Nothing further.

THE COURT: Redirect.

MR. OSBORNE: Just one question.

REDIRECT EXAMINATION BY MR. OSBORNE OF NADA KERSTEIN:

Q. In situations like that where you have to get additional prints and additional print comparisons done are those requests often made by the case agent?

A. I'm sorry, I didn't hear the last part of your

question.
Q. Are those requests for additional comparisons to be done are those requests often made by a case agent who is handling the case, the detective who is handling it?
A. Yes. There is a software system. With our LEM system if they are asking for a comparison they put that request in and then it connects to our computer system and then it comes in as a request.
Q. And they would be aware of the results?
A. Yes.
Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Recross.
MR. LOIGNON: No, Your Honor.
THE COURT: Thank you. You may come down. You are excused. Thank you.
(WHEREUPON, witness steps down.)
THE COURT: Call your next witness.
MR. BOWDEN: Thank you, Your Honor. The State calls Debra Turner.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name spelling your last name for the record.
THE WITNESS: My name is Debra Turner. T-U-R-N-E-R.
DIRECT EXAMINATION BY MS. ELLIOTT OF DEBRA TURNER:

Q. Good morning, Ms. Turner. Will you tell us a little -- a bit about where you were employed in April of 2015?
A. I was employed at Dollar General as a district manager.
Q. And tell us a little bit about what the position of district manager entailed with Dollar General.
A. I oversaw about 15 to 16 stores. I would visit stores, you know, during the day. Different stores different days of the week just monitoring their business.
Q. And how would you monitor that business; what kind of information would you use?
A. Reports, I would go in and check the reports, check the status of the store, sometimes review the videos. Talk -- you know, talk with the customer and see how things were going. Just pretty much anything you can think of in a retail business.
Q. And so from what you've told us it sounds like you would have access to both sales records and surveillance records for any store within your juris- -- within -- well, is jurisdiction the right word; what kind of word would you use?
A. District.
Q. Within your district.
A. Yes. Yes.
Q. Would that be correct?

A. Yes.
Q. And are you familiar with the Dollar General store at Ashley River Road?
A. Yes.
Q. And was that part of the -- your district managing area?
A. Yes, it was.
MS. ELLIOTT: Your Honor, may I approach?
THE COURT: Yes, you may.
Q. Ms. Turner, I am showing you what has been marked for identification as State's Exhibit 161. Do you recognize that document?
A. Yes, I do.
Q. What is it?
A. It is a copy of the journal tape from that location on Ashley River Road.
Q. And what is a journal tape?
A. A journal tape is a record of every transaction that is rung up on a daily basis.
Q. And that is just a snapshot of two transactions?
A. Yes, ma'am.
Q. And are these records created at or near the time that a person makes a purchase at Dollar General?
A. Yes.
Q. And you have reviewed this record before?

A. Yes, I have.
Q. And is it the regular practice of Dollar General to keep these records?
A. They are computerized. So I am sure they are stored on a hard drive for long-term. But short-term we would have access to about two or three month's worth on a journal tape.
Q. And these are kept in the normal course of business?
A. Yes.
Q. And you at the time as the district manager had the ability to retrieve these records?
A. Yes.
Q. And you actually retrieved that record and provided it to law enforcement?
A. Yes, I did.
MR. BOWDEN: Your Honor, at this time the State would move in State's Exhibit 161 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No objection.
THE COURT: Without objection it is admitted.
(WHEREUPON, State's Exhibit Number 161 was admitted into evidence.)
MR. BOWDEN: At this time I am going to publish it. Can you hand that back to me, please.
(WHEREUPON, witness complied.)

Q. Thank you. Now, Ms. Turner, you have a screen in front of you. Are you able to read this information on this journal entry?
A. Yes.
Q. What are the dates that are referenced on this?
A. April 20th.
Q. And what items were you focused on?
A. The two cans of brown paint and the autism speaks donation.
THE COURT REPORTER: I'm sorry, I didn't hear you. The two cans of brown paint and ...?
A. The two cans of brown paint.
THE COURT REPORTER: And ...?
A. And the autism speaks donation.
Q. So would that indicate that that was one sales transaction?
A. Yes.
Q. Are there any other sales transactions referenced on this journal?
A. I mean down at the bottom there is some other paint ---
Q. Let's focus at the top. Are those three separate entries?
A. Yes.
Q. What are they related to?

A. One transaction.
Q. Are they one transaction?
A. Yes.
Q. What are the dates?
A. April 20th.
Q. What is the bottom date right there (pointing)?
A. The 22nd.
Q. Okay. So that would have been a separate transaction, right?
A. Yes.
Q. And they are referencing what item?
A. Dark brown paint.
Q. And so these two sales receipts do they all feature that brown paint?
A. Yes.
Q. And so this portion (pointing), that was the sales receipt from what day?
A. The 20th.
Q. And this portion (pointing), was a sales receipt from what day?
A. It is a little blurry.
(WHEREUPON, adjust display on ELMO.)
Q. Does that help?
A. No.
Q. Truthfully, with my eyes I can't see any of it anyway.

THE COURT: Ladies and gentlemen, the document you will have. You will be able to look at it in greater detail obviously when it goes to your jury room so.
(WHEREUPON, adjust display on ELMO.)
Q. Did that help at all?
A. It looks like 51.
Q. I am going to hand it to you.
THE COURT: I was just going to say just hand her the document.
(WHEREUPON, document provided to the witness.)
A. I can't read that either so.
THE COURT: Do you want to borrow my glasses?
A. I know the top one I saw up on the screen as 4/20.
Q. Okay.
A. And then the bottom one I can't tell what the date is.
Q. Can you tell whether or not those represent two separate sales transactions?
A. Yes, that is a completely different transaction from the top one. Because I recognize how it is ---
Q. Okay.
A. --- posted on this paper.
Q. Perfect. Thank you. Ms. Turner, I am now going to show you what's been marked for identification as State's Exhibit 118 and 119. Have you -- do you recognize them?

A. Yes, I do.
Q. Have you seen them before?
A. I have.
Q. What are they?
A. They are copies of the video I made for the law enforcement.
Q. And what is it video of?
A. The transaction noted on this paper for that day.
Q. For April 20?
A. April 20th.
Q. And have you reviewed both of those CD's?
A. Yes, I have.
Q. And is 118 a full depiction of the video that you pulled off of your surveillance video ---
A. Yes.
Q. --- for 4/20? And is State's 119 specific clips from that video?
A. Yes.
Q. And which particular store was that for?
A. The store in West Ashley on Ashley River Road.
Q. And those are fair depictions of what you provided to law-enforcement and surveillance for April 20th, 2015?
A. Yes.
MS. ELLIOTT: Your Honor, at this time the State would move in State's Exhibit 19 into evidence.

THE COURT: State's Exhibit 119?

MS. ELLIOTT: One nineteen. Yes, I'm sorry.

THE COURT: And that is the excerpts from 118?

MS. ELLIOTT: Yes, Your Honor.

THE COURT: So 118 though will be a part of the record. It is just you are not admitting 118?

MS. ELLIOTT: Yes, Your Honor.

THE COURT: All right. Any objection?

MR. LOIGNON: No objection.

THE COURT: Very well. State's Exhibit 119 which are excerpts from Item 118.

(WHEREUPON, State's Exhibit Number 119 was admitted into evidence.)

THE COURT: And, ladies and gentlemen, let me use this opportunity to tell you something. Because I've had questions over the years from jurors. They say can we look at an exhibit that was mentioned in the trial. Sometimes -- this is a good example. We introduce one, it is for the purpose of the record; but for the purpose of your consideration 119 are simply excerpts from 118. So it is a part of that.

So thank you. And it is very proper. You are not to consider the fact that you are not having a chance to look at 118. That deals with some issues that are my concern concerning admission of evidence during this proceeding.

Thank you, Solicitor. You may proceed.

MS. ELLIOTT: Thank you, Judge.

Q. Ms. Turner, those are all the questions I have for you at this time.

THE COURT: Cross-examination, Mr. Bowden?

MR. BOWDEN: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. BOWDEN OF DEBRA TURNER:

Q. Good morning. How are you today?

A. Good, thank you.

Q. The journal tape you looked at, it doesn't give you any indication who bought those items?

A. No, not just the journal (inaudible).

THE COURT REPORTER: I'm sorry, I didn't hear the last part.

A. Not just looking at the journal tape. No, we would not.

Q. And you have seen the video that the solicitor asked you about?

A. Yes.

Q. And you can't identify the people in that video?

A. I don't know who they are, no.

Q. Okay.

A. Just seen the video.

Q. Thank you.

MR. BOWDEN: Beg the court's indulgence.

THE COURT: Certainly.
MR. BOWDEN: No further questions.
THE COURT: Redirect.
MR. BOWDEN: No, Your Honor.
THE COURT: You may come down and you may be excused. Any objection to the witness being excused?
MS. ELLIOTT: No, Your Honor.
THE COURT: Thank you. You are free to leave.
(WHEREUPON, witness steps down.)
THE COURT: Call your next witness, please.
MR. OSBORNE: The State calls Susan Amerman.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name spelling your last name for the record.
THE WITNESS: My names is Susan Amerman. And my last name is spelled A-M-E-R-M-A-N.

DIRECT EXAMINATION BY MR. OSBORNE OF SUSAN AMERMAN:

A. Good afternoon, Ms. Amerman.
A. Hey.
Q. Where do you work?
A. I work at the South Carolina Department of Motor Vehicle.
Q. Okay. And how long have you worked at the Department of Motor Vehicles?
A. Five years.

Q. And what is your position there?
A. Branch manager.
Q. And what are some of your duties and responsibilities as a branch manager?
A. Just to run the daily operations of the office and ensure that everything has been done correctly each and every day.
Q. Okay. What kind of records does the DMV keep?
A. We keep all types of records pertaining to drivers licenses, ID's, titling vehicles, registering vehicles.
Q. Registered vehicle?
A. Uh-huh.
Q. All right.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes.
Was that a yes?
THE WITNESS: Yes.
THE COURT: Okay. Thank you.
Q. I am showing you what's been marked as State's 148 and 149.
A. Okay.
Q. Have you had the opportunity to review those records prior to testifying in trial?
A. Yes, sir.
Q. Now are those the type of records that are created at

or near the time by a person at DMV?
A. Yes.
Q. And is it in the regular practice or course of business for DMV to keep those records ---
A. Yes.
Q. --- such as those?
A. Yes, sir.
Q. And you in your capacity do you have the ability to retrieve those records?
A. Yes.
Q. Okay. And are those records accurate?
A. Yes.
Q. All right.
MR. OSBORNE: Your Honor, at this time I would seek to admit State's 148 and 149 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No objection.
THE COURT: Without objection State's Exhibits 148 and 149 are admitted.
(WHEREUPON, State's Exhibit Number 148 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 149 was admitted into evidence.)
Q. And we will start with 149. And so just generally speaking tell the jury what we are looking at here.

A. Well, you are looking at a list of what vehicles that are being titled, the vin number, the year, make and model, who owns that vehicle, and the address. And of course the actual mileage of the vehicle.
Q. Okay. And this specific entry specifically who -- what customer are we looking at as far as what vehicle they own?
A. On the 2000 Chrysler ---
Q. Well, the name I guess.
A. It would be the Bryant Michael Smith.
Q. Okay. And so we are looking at vehicles registered to Bryant Smith; is that fair to say?
A. That is correct.
Q. All right. Am I am just going to go ahead and shift to the one that -- the last vehicle on this list can you tell the jury what type of vehicle that is?
A. It is a 2005 Infinity.
Q. And the license plate for that vehicle?
A. The license plate to this vehicle is KMW627.
Q. Okay. And it has then what is the owner's address listed there?
A. That is 98 Spring Street in Charleston.
Q. And I want to draw your attention to an entry for another vehicle. What is the top address listed for Bryant Smith?

A. The owner address [redacted] Park Avenue.
Q. We have two addresses, [redacted] Park and 98 Spring Street; is that fair to say?
A. Yes.
Q. All right. Now we are going to move into State's 148. Which customer - or what is the customer's name for this vehicle list?
A. That would be the owner's name is Seth Hassan Smith.
Q. All right. And what is his address?
A. 98 Spring Street.
Q. And what is the mailing address?
A. [redacted] Park Avenue.
Q. Okay. And what type of vehicle is this one for?
A. This is for a 2000 Cadi -- Cadillac.
Q. Deville?
A. Yes.
Q. Four door?
A. Yes.
Q. And what is the plate number?
A. And that plate number is KSM819.
Q. All right. I am going to change gears a little bit here. And I want to talk to you a second about titling a vehicle and selling a vehicle.
A. Okay.
Q. Okay. So let's say that there is a sale of a vehicle

between private owners.
A. Okay.
Q. All right. Walk the jury through the process in which a vehicle is sold between private owners. How does the buyer go about putting that vehicle in his name?
A. Okay. So if one individual sells another individual a vehicle they usually sign over the back of their title to the other individual and then that individual brings that title to the DMV. And then they fill out a Form 400 where they are changing that title into their name in that ownership of that vehicle.
Q. Okay. So the Form 400 actually changes the title ---
A. That is correct.
Q. --- up at the name to the vehicle?
A. That is correct.
Q. Okay. And is registering a vehicle a different process?
A. A little bit. Because that -- what I was just saying was title only.
Q. Yeah.
A. But if you wanted to actually put a plate on that vehicle then you would just go to your tax assessor's office and bring in the tax receipt along with the title and the Form 400 so that we could issue you a plate.
Q. Okay. Why would an individual title a car in their

name and - if you know - and not put the plate in their name?
A. There's a couple of re- ---
MR. LOIGNON: Objection. Speculation.
THE COURT: State the question.
MR. OSBORNE: Why would an individual title a vehicle in their name and not register the plate in their name?
THE COURT: I would sustain the objection.
MR. OSBORNE: All right. May I approach?
THE COURT: Sure.
Q. I am showing you now State's 158A through E, 159A and B, 160A through B, and then 166. And tell me if you recognize those documents.
A. Yes.
Q. Okay. And when you are identifying what they are, just go ahead and say 159A through B is ---
A. Okay. Okay. Do you want me to say what they are or just that I recognize this document?
Q. Well, you recognize them as being what. What they are.
A. Okay. So 158A is a title cover sheet for that individual. I recognize that. And then 158B is an actual vehicle inquiry; that screenshot of what we see when the vehicle is titled, to who it is titled to. 158C is what happened that day at service for customer and what time it

happened and the dates.
Q. Okay. So that is 158A through C?
A. Yes.
Q. All right.
A. And then 158D is just the title information inquiry, when that title was actually printed, the information of the vehicle, the odometer legend, the sale price of the vehicle. And then 158E is just the service display of the fees that were collected on that vehicle.
Q. Okay.
A. For that transaction.
THE COURT: Let me make an observation there, Solicitor. Because the copy that is provided I understand it is sequential and therefore it is an E. But it looks like a C or could be determined to be a C.
MR. OSBORNE: Okay.
THE COURT: For the purposes of the record it is the page that is entitled service display. But that is E, not C. Thank you.
MR. OSBORNE: Thank you, sir.
THE COURT: Excuse me. I apologize for interrupting you.
Q. So that is the whole packet that is 158?
A. That is correct.
Q. Okay. All right. Now moving on.

A. Okay. And then 159A is actually the Form 400 that it is a Form 400 that we use to register a vehicle. And 159 is the back of that form, 159B, with the signature of who is purchasing it. So and then 168 that is a title. And 160B is the back of the title.
Q. Okay.
A. And then I do have 166 here which is an actual title.
Q. Okay. Is 166 the actual title which corresponds to 160A and B?
A. Yes, it is.
Q. Okay.
A. Yes.
Q. Now 158 -- the packets of 158 and 159 and 160 are those document that are -- or records that are kept in the ordinary course of business at the DMV?
A. Yes.
Q. And you as being a manager at DMV do you have access to those records?
A. Yes.
Q. And are those records entered, recorded, and stored at the time in which the entries were made?
A. Yes, in real time.
Q. Okay. And 166 is the actual title to 160?
A. Yes.
Q. Okay.

MR. OSBORNE: So at this time, Your Honor, we would seek to admit the packets of 158, 159 and 160, and also 166 into evidence.

THE COURT: Any objection?

MR. LOIGNON: No objection.

THE COURT: Without objection each are admitted.

THE COURT REPORTER: And just to clarify, 158 that is A through F?

THE COURT: No, 158 is A through E, I think.

MR. OSBORNE: Just A through E.

THE COURT REPORTER: Okay. So just what they talked about.

THE COURT: And then 160 is A and B.

THE COURT REPORTER: Okay. I just wanted to make sure.

THE COURT: Thank you for the clarification.

(WHEREUPON, State's Exhibit Number 158A through E was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 159A & B was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 160A and 160B was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 166 was admitted into evidence.)

Q. Okay. We will start off with 158A. Just a cover

sheet?
A. Yes.
Q. Okay. And what is the name -- or dealer name here?
A. Acevedo.
Q. Okay. And the date of the record what does that reflect exactly?
A. This is actually -- this title -- after we process a transaction this is what gets printed out the day that we actually do it and the purchase who -- the person who purchased the vehicle or titled that vehicle their name is going to be on there. The new title number and the vin number or any plate number that was attached to that vehicle at that time.
Q. Okay. So another way of putting it is everything we are looking at here in this packet occurred on April the 20th, 2015?
A. That is correct.
Q. All right. Now we are moving to 158B. All right. So what is the vehicle that we are dealing with that we are talking about here?
A. The 2000 Cadillac Deville.
Q. All right. And what does this document here represent?
A. This represents -- this is how I would go into this in the computer system and I could see the vehicle detailing

where this vehicle I would know who the owner was, their address, the vin number, the title number, and any plate registration that was attached to that vehicle.

Q. Okay. And we have an application date here of April the 20th of 2015?

A. That is correct.

Q. All right. 158C. Now so is it fair to say that something happened with Jibral Acevedo and this Cadillac on April the 20th; is that correct?

A. That is correct.

Q. And what happened?

A. Well, we actually did a South Carolina title transfer on 4/20/15 for the amount of $50. And it also gives us the time that it happened.

Q. Okay. And what was the time?

A. It looks like 3:49:28 to me in the afternoon.

Q. And do you know the location in which this transaction occurred?

A. I actually do know the location. I just can't ... ---

THE COURT: And keep your voice elevated too.

THE WITNESS: I'm sorry.

THE COURT: No, that's fine.

A. It could ---

Q. Is that shown on another document that we are going to get to?

A. I believe so.
Q. Okay.
A. Yes. I can see the person who processed this transaction, but I don't actually have the office on this one.
Q. Okay. All right. Moving to 158D. All right. So what are we looking at here?
A. This is the title information where this is just letting us know the title number. The day the title was actually printed was on the date of the transaction. It also shows the purchase date of that vehicle, the name of the seller, and then of course all of the vehicle information, the sale price of it and everything that was entered into the computer.
Q. Okay. So I want to show a couple of things. So the seller's name is?
A. Seth Hassan Smith.
Q. Okay. And we see that address there again of 98 Spring Street?
A. Yes.
Q. Okay. And sales price?
A. $300.
Q. Okay. $300. And 158E?
A. Yes.
Q. What are we looking at here?

A. We are looking at -- this is like a service display. This tells us what they paid for it and for each transaction what was -- what was covered in that transaction; how they paid, whether it was cash, Visa, or whatever. And then also it does have again the service date. And at the top there is the actual office that it was processed at.
Q. And the actual office is?
A. And then that I -- there's like tons of offices. I can't really see on there. But I think it said 93.
Q. Yeah ---
A. Yeah, it is 93. And I am unfamiliar with exactly what Office 93 is. I would have to look that up in my dictionary.
Q. That's fine. So -- all right, so let's break down some of these charges here. The South Carolina title transfer for five dollars, what is that?
A. Well, it breaks it down into three parts. It is actually $15 to title a vehicle.
Q. Okay.
A. So that is what that is. Why they break it down to that I don't know exactly. But it is 15.
Q. So any time you come into the DMV to title a vehicle with a bill of sale you are going to pay $15?
A. That is correct.

Q. Now what is this $20 expedited title?
A. That is if you actually want it printed that day.
Q. Okay. So if you want the title printed that day where you walk out of the DMV with a title in hand you have to pay an extra fee for that; is that fair to say?
A. That is correct.
Q. And if you don't pay that extra fee where you can walk out with title in hand then what happens?
A. It comes to you in the mail with the address you have on file.
Q. Okay. So you would have to wait for it to get to you in the mail?
A. Right.
Q. And you know by looking at this that Jibral Acevedo walked out of the DMV with title to that Cadillac in hand?
A. That is correct.
Q. All right. Showing you 159A. What are we looking at here?
A. This is our actual Form 400. This is the application to title a vehicle or a mobile home.
Q. Okay. And I noticed that it has title only checked.
A. Yes.
Q. And another option there would be title and plate transfer?
A. Yes. You can do a new title and registration. That

is where you are getting a plate for the first time. You can transfer a plate from your other vehicle to this new vehicle. Or you can just do a title only. Or if you just need to come in and pick up a duplicate title because you lost yours you use this form.

Q. Okay. So if I buy a car from someone else and it is private owner to private owner and I do a title only, what effect if any does that have with the registration of the plate?

A. It throws the current plate off the vehicle. It is no longer attached to that vehicle.

Q. Okay. So when Mr. Acevedo walked out of this DMV he walked out with a title but he did not walk out with a plate?

A. That is correct.

Q. So he could not drive the vehicle?

A. That is correct.

Q. Again, it is the Cadillac Deville?

A. Yes.

Q. All of this information that is written in here is this something that the clerk would write in or the customer?

A. The customer fills this out.

Q. Okay. And we see this is the new owner here, Jibral Acevedo?

A. Yes.
Q. All right. Moving to 159B. Now this is just the back of it?
A. Yes, it is.
Q. What is the date of purchase?
A. 4/1 of '15.
Q. And you said this transaction occurred on April the 20th?
A. That is correct.
Q. So 19 days later?
A. That is correct.
Q. Yet an expedited fee was paid to title it on that day?
A. That is correct.
Q. And I see the sales price here again listed as 300?
A. Yes.
Q. And what was the expedited fee again?
A. $20.
Q. $20. A $20 fee was paid to title a $300 vehicle in his name that day?
A. $35 was actually charged, yes. But $20 to get the title in hand that day.
Q. Okay. And then we see a signature there?
A. Yes.
Q. And then there once again we see the title fee, title only?

A. Correct.
Q. Now you had stated earlier that 160 is the certificate of title and has the bill of sale on the back; but 166 is actually the original, is that fair to say?
A. That is correct.
Q. All right. So we will just track off 166 then. All right. So this is a certificate of title; this is what South Carolina does ---
A. Yes.
Q. --- for all vehicles? And again we are talking about the Cadillac?
A. Yes, sir.
Q. And here on the back can you read what -- that first sentence there starting with undersigned hereby certifies?
A. Could you point out to what you are talking about?
Q. Right there at the top. Right above Jibral Acevedo's name.
A. Oh, it just says the undersigned hereby certifies that title to the vehicle described herein has been transferred on this April 1st, 2015.
Q. Okay. And it gives the address?
A. Correct.
Q. And who is the seller again?
A. The seller, Seth Smith.
Q. And again we have the sale April the 1st, 2015, for

three hundred bucks?
A. Correct.
MR. OSBORNE: No further questions, Your Honor.
THE COURT: Cross-examine.
CROSS-EXAMINATION BY MS. ELLIOTT OF SUSAN AMERMAN:
Q. Good afternoon.
A. Hey.
Q. You can't tell from these documents who filled out really any of these?
A. Well, if I wasn't there that day of course I'd go in and I would look and see. But the person that is processing is when -- when we process something their picture pops up on our screen. And so we know that when we put their information in we can see who is in front of us.
Q. And all of these documents could be filled out prior to somebody arriving at the DMV?
A. That is correct.
Q. So there is really no way to tell when they were filled out?
A. That is correct.
Q. Or who filled them out, for that matter?
A. That is correct.
MR. LOIGNON: No further questions.
THE COURT: Redirect.
MR. OSBORNE: Just one.

REDIRECT EXAMINATION BY MR. OSBORNE OF SUSAN AMERMAN:

Q. So along those same lines are you aware or do you require your clerks to verify the accuracy of the information that is being filled out?

A. Yes, we do.

Q. And how would you go about verifying the accuracy that the car was actually sold for $300?

A. Well, sometimes -- and it depends. Sometimes we will ask for a bill of sale to go along with it. It is not required. But sometimes we do.

And then also I know some -- some CSR's are really strictly by the book and they will go in and they will go through documents to see if the signatures kind of match. They are not handwriting experts, so they don't have to prove it. But if they feel like there is a big discrepancy they will ask for further documentation.

Q. Okay. But in reference to the $300 would they ask for a receipt or speak to the seller to verify that they actually ---

A. No.

Q. --- received the $300?

A. No, we don't.

Q. Okay. So you just ---

A. Whatever is on the back of that title is what we go.

Q. Whatever is hereby certified to?

A. That is correct.
Q. Okay. No further questions.
THE COURT: Recross?
MR. LOIGNON: None, Your Honor.
THE COURT: Thank you. You may step down.
THE WITNESS: Thank you.
THE COURT: You are free to leave.
(WHEREUPON, witness steps down.)
THE COURT: All right. Ladies and gentlemen, at this point we will recess for lunch. Please of course while you are out do not allow anybody to talk about this case in your presence or talk to you about this case. Do not discuss the case among yourselves. And I ask you to please return to your jury room by let's do 1:45. Thank you. Have a good lunch.
(WHEREUPON, jury exits 1/8/19 12:15 p.m.)
THE COURT: All right. Anything from the State before we recess?
MR. OSBORNE: No, Your Honor.
THE COURT: Anything from the defendant?
MR. LOIGNON: No, Your Honor.
THE COURT: Mr. Smith, you are allowed to remain out. And see you back at 1:45. Thank you.
(WHEREUPON, recess 1/8/19, 12:55 p.m.)
(WHEREUPON, resume 1/8/19, 1:45 p.m. following lunch.)

THE COURT: Let the record reflect Mr. Smith is present. I understand, Solicitor, there are some matters that we need to take up in limine -- take up in advance. Obviously it is in limine. But it depends on my rulings obviously. But I will be happy to hear from you now.

MR. OSBORNE: Thank you.

THE COURT: You anticipate some objections from the defense on certain exhibits, I believe?

MR. OSBORNE: Yes, sir. Dr. Nicholas Batalis from MUSC, the pathologist ---

THE COURT: Right.

MR. OSBORNE: --- who will testify next. We are seeking to admit State's 30 and State's 41. Thirty is a depiction of the victim and the numerous times he was shot in the back. It is actually a photograph of the victim's back. There is no blood shown there.

State's 41 is a diagram prepared by Dr. Batalis himself showing the entrance and exit wounds of the number of times the individual was shot.

At the beginning of this trial, as we talked about, I have to prove that there was actually a murder that was committed. And the defense has raised several questions about GSR from the victim as well as Rayshawn leading me to believe that I now have to prove a murder was committed. And ---

THE COURT: Well, excuse me. Let me interrupt you so you can enlighten me. How does the question of who shot who have anything to do with whether there was a murder?

MR. OSBORNE: That is exactly what I would like to know.

THE COURT: Well, it is not. It doesn't have anything to do with it.

MR. OSBORNE: It does if he is claiming self-defense.

THE COURT: Well, who is claiming self-defense?

MR. OSBORNE: Well, if self-defense occurred and a murder never occurred ---

THE COURT: Well, who is claiming self-defense?

MR. OSBORNE: The ---

THE COURT: There is none. We don't try the abstract. We don't try everything that could possibly be in a case. But go ahead. I interrupted you.

MR. OSBORNE: Right, so that's -- so -- and that's -- and I was really curious too. Because I thought this was clearly murder. But if the defendant -- if the victim fired a gun then there is a claim that whoever murdered him was doing so in self-defense. Otherwise what difference would it make whether he had GSR on him?

THE COURT: One thing I have learned by doing my research and my fun reading about accessory after the facts and other things, there is an interesting case. That

would -- even if it was self-defense wouldn't stop you from prosecuting him for accessory after the fact. And there is a case specifically where the principal was acquitted. So it has no bearing on this case.

And that case really and truly carries the day as far as I am concerned. And the principal -- if the principal -- there was some -- old cases seem to infer that you have got to be guilty of the crime. But that case specifically laid that to rest because it said -- because the principal was acquitted. And the court said that doesn't matter, it doesn't make any difference, a felony was committed, and knew that a felony was committed.

It doesn't have to be convicted. But if there's a felony -- if you shoot somebody, unlawfully take somebody's life with malice, the jury may not have agreed with it but that doesn't mean it is not a felony to be charged with.

So I hear you. My feeling is this, and it has been this: Obviously Dr. Batalis is going to say he died as a result of a gunshot wound. And there is no evidence that it was self-administered. You have evidence that somebody shot him. Because the defendant -- the person, Mr. -- what was it, Rivers?

MR. OSBORNE: Rivers.

THE COURT: Yeah, he clearly says somebody came up and shot him. So I mean you can proffer it if you want.

I'm ---

MR. OSBORNE: So thirty under 403, but forty-one?

THE COURT: Forty-one. Again, what is the purpose of the diagram? It doesn't -- we are not trying a murder -- or we are not trying all the things associated with -- I assume you object to the diagram?

MR. LOIGNON: Yes, Your Honor.

THE COURT: What is the basis?

MR. LOIGNON: It is demonstrative, and I think it can be confusing to the jury.

THE COURT: I really think -- to be honest with you, I was close to saying -- I think you've established all you are going to need to get by directed verdict. And I think -- well, there is no question of getting by directed verdict on the issue of murder. I mean that is done. I will tell you that right now.

There is no way in the world there is not sufficient evidence right now to say the person that is in this picture was killed, murdered. No if's, and's, or but's.

For the doctor to come in -- all she has got to do as a pathologist is say, yeah, he died and he died as a result of gunshot wounds.

And she can testify to where they were. I mean obviously didn't -- I think the fact that she testified he was shot in the back. And I mean that is all ---

MR. OSBORNE: Yeah ---

THE COURT: That is all she has got -- you can't -- kind of hard to commit suicide shooting yourself in the back.

MR. OSBORNE: Yeah, I guess I am just hard-pressed ---

THE COURT: I know what you are doing. I know what you are doing. You are trying -- you are trying -- you are being a great advocate. You are trying the thoroughness of your case. In this case it is really not necessary.

Because the elements of this case -- based on that one case that I just read. I mean I just said, well, daggum, that is pretty tough, you can be charged for accessory after the fact of a felony and you have got to know that a felony was committed. And not only a felony, the felony. You had to know specifically what was done in every case I have read. And the court said, no, that doesn't try and stop you from doing that.

So bingo as far as I am concerned. That part is done, okay.

MR. OSBORNE: I certainly hear you and ---

THE COURT: But -- but you can proffer it if you need to.

MR. OSBORNE: No, I don't think I need to. And I sure hope I am not arguing that a murder occurred ---

THE COURT: No, you're ---

MR. OSBORNE: It certainly seemed obvious.

THE COURT: Well, you are not. And I don't -- I haven't heard a bit -- to be honest with you, I consider that just some evidence that -- just evidence to cross-examine somebody and point out some -- that maybe everything is not open and shut proposition.

Other than that I don't know what it has got to do -- any of that has got to do with the man. Because the key -- the key as I read the case law right now the key is what he knew and what he did with respect not to himself or for himself but for the principal. And that is what seems to be leaping out at me of the law.

(WHEREUPON, break off record 1/8/19, 1:49 awaiting jury.)

(WHEREUPON, resume 1/8/19, 1:54 p.m.)

THE COURT: Okay. Anything else?

MR. OSBORNE: No, sir.

THE COURT: Do we have all? Let's bring them in, please.

Solicitor, after I hear her testimony if there is -- I will call you up if I -- if he leaves some question in my mind. But -- or of course if there is a challenge there is a different ballgame too, okay.

MR. OSBORNE: Okay.

THE COURT: But so I am ruling right now just on direct examination of probably not going to allow it.

MR. OSBORNE: Okay.

THE COURT: Okay. But not precluding you from coming back if something else happens.

And let me just throw on the record too from this, if there is probative value I think the prejudice -- because it just the horrible aspect of the thing outweighs -- clearly outweighs the probative value in this case and even in a 403 analysis.

(WHEREUPON, pause awaiting jury, 1/8/19, 1:55 p.m.)

(WHEREUPON, jury enters 1/8/19, 1:56 p.m.)

THE COURT: We are ready to continue. Solicitor, you may call your next witness, sir.

MR. OSBORNE: Thank you, Your Honor. The State calls Dr. Nicholas Batalis.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name spelling your last for the record.

THE WITNESS: My name is Nicholas Ike Batalis. B-A-T-A-L-I-S.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS:

Q. Good afternoon, Dr. Batalis.

A. Good afternoon.

Q. Where are you currently employed?

A. I am employed at the Medical University of South Carolina here in Charleston.

Q. Okay. In what capacity?
A. I am employed there as a professor in the pathology department, specifically as a forensic pathologist.
Q. All right. What is your educational background?
A. I graduated Butler University with a degree in biology, then went on to attend Indiana University School of Medicine from 1999 to 2003. After graduating medical school I then moved to Charleston for a four-year residency training program in general pathology.

General pathology is the study and diagnosis of disease. So a general pathologist would be the one if an individual has a biopsy taken, has a tumor taken out, the pathologist would be the one to look at it and tell the surgeon what it is.

The pathologist also is in charge of the clinical laboratory. So if you have a blood test drawn the pathologist would be the one overseeing that sort of testing. So after that four-year training program in general pathology I pass an examination to become certified by the American Board of Pathology and then moved on to a one-year fellowship training in forensic pathology at the Dallas County Medical Examiner's Office.

After completing that one year training in forensic pathology then again passed an examination to become board certified and then took my current position.

Q. And in your current position as a forensic pathologist what are your duties there?
A. Forensic pathology is somewhat applying the legal aspects of medicine. Predominantly that involves performing autopsies to determine a cause and manner of death.
Q. Okay. And can you explain to the jury how you begin the process of performing an autopsy and what are you generally looking for?
A. Sure. So our office performs autopsies for -- a number of different kinds across the state. So the typical procedure would be one of the coroners from the various counties would call us, tell us a brief history on a case and ask us to perform an autopsy. When we receive the body we bring it into our autopsy suit and the first thing we do is take photographs of the body before we do any manipulations.

We then note any medical devices, any clothing, any personal effects on the decedent, remove that, clean the body, then take another set of photographs to document the body once it is cleaned.

We then do an external examination which is basically looking at the body from head to toe for stuff as basic as race, height, weight, tattoos, eye color. So just identifying information. But then also looking for

evidence of injury or natural disease.

After we finish that external exam we then move to the internal examination where we make surgical-type incisions to open the body and then dissect the organs one by one, again looking for evidence of disease or trauma.

At the completion of the autopsy we then put together a report that we then issue to the coroners.

Q. Okay. And about how many autopsies have you performed?

A. At this point over the career somewhere over 2,000. But I don't have an exact number.

Q. Okay. Have you ever been qualified an expert in court before?

A. Yes, I have.

Q. How many times?

A. I would say more than 50 here in South Carolina. I believe twice in Texas and twice in North Carolina.

Q. All right.

MR. OSBORNE: Your Honor, at this time we would move to qualify Dr. Batalis as an expert in forensic pathology.

THE COURT: Do you care to examine him as to qualifications?

MR. LOIGNON: No, Your Honor.

THE COURT: He will be permitted to render opinions in the area of forensic pathology.

MR. OSBORNE: Thank you, Your Honor.

THE COURT: Yes, sir.

Q. All right. Did you have the occasion to perform an autopsy of the victim in this case, Mr. George Bennett?

A. Yes, I did on April 19th of 2015.

Q. Okay. On April the 19th. Would you mind -- well, let me just ask you, was there a toxicology panel done on the victim's blood?

A. Yes, as part of the autopsy on essentially every case that we do we collect samples of body fluids - and blood being the preferable specimen - and submit that to a national laboratory where they do toxicology testing. And we did do that in this case.

Q. And what were the results?

A. In this case the testing was only positive for the active ingredient marijuana and a breakdown metabolite. And the test that we -- the laboratory that we sent for the testing the panel changes over time, but it looks for three to four hundred different drugs including drugs of abuse and medications. And so from that panel it came out with marijuana and a breakdown product.

Q. Okay. Let me just ask you -- start by asking you how many times do you estimate Mr. Bennett was actually shot?

A. I identified 12 gunshot wounds on Mr. Bennett.

Q. Okay. Do you mind going through each of those shots

with the jury and explaining to them any findings that you made from each of those?

A. Sure. The first gunshot -- and when I say first, this is just for purposes of description. As I am examining the body essentially the first one I look at I examine that one. So it is not indicating the order. I can't determine which -- what order they occurred in.

But the first one I will start with was one on the left hand. So there was a gunshot wound kind of right at the base of the left palm. And then a large caliber bullet was recovered essentially right underneath that entrance wound. So the bullet kind of went into the palm and became embedded there.

The second gunshot wound was in the posterior aspect of the left forearm. So that would be about right here (motioning) as I am facing y'all.

That gunshot went into the forearm and traveled up into the arm where it fractured the humerus or the big bone in the upper arm. And the bullet stopped there. And, again, it was a large caliber bullet that had -- came into fragments, but we were able to recover that.

The third gunshot wound went into the upper aspect of the right thigh and then traveled across the right leg a little bit upwards to exit the buttocks right near the anus.

Then on the back -- and so those were three individual wounds that were easy to distinguish. On the back extending from essentially the shoulder blades down to the upper part of the buttocks there were nine gunshot entrance wounds.

Unfortunately, or fortunately, all of these traveled in the same direction. And once they kind of went underneath the skin surface it became impossible to tell of the nine which one exactly went where. So we end up clustering them in that situation.

But of the nine gunshot wounds on the back they were all traveling upward and all traveling from his back towards the front of his body.

Of the nine wounds we recovered four of those bullets, and then five of the gunshot entrance wounds that exited. Of those nine gunshot wounds four of them injured critical organs in the body. One of them perforated the liver. Two of them perforated the right lung. And one of them perforated the heart and the two major blood vessels that take blood away from the heart which is the aorta and bringing blood back to the heart which is the vena cava. So injuring those organs would lead to massive bleeding.

Q. Okay.

MR. OSBORNE: Your Honor, may I approach?

THE COURT: Yes, you may.

Q. All right. I am showing you State's 35, 26, 28, 31, 32, 33, and 34. Can you take a look at those and tell me if you recognize those?
A. Can I -- there is some tape. Can I ---
Q. Yes.
A. --- take that off?
(WHEREUPON, pause for witness to access exhibits.)
A. So State's Exhibit 35 includes the six bullets that we recovered during the course of the autopsy. State's Exhibits 26, 28, and then 31 through 34, are all photographs I took at the autopsy of the bullets and the envelope in which they were placed.
Q. Okay. So the photographs are just actually the photographs of the actual bullets that you have right there in front of you?
A. Correct.
Q. All right.
MR. OSBORNE: Your Honor, I think 35 may be in already. If it is not we would seek to move State's 35, 26, 28, 31 through 34, into evidence.
THE COURT: Is there any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection they are admitted.
(WHEREUPON, State's Exhibit Number 26, was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 28, was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 31 through State's Exhibit Number 34, was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 35 was previously admitted into evidence.)
Q. All right. I am going to start by showing you State's 26. What are we looking at here?
A. As it is labeled in the envelope, this was the first gunshot wound I described that entered the base of the left palm and then kind of stopped immediately there. So that was the bullet that we recovered from his left hand.
Q. Okay. State's 28?
A. So this is the bullet from the left arm. So again this one entered the posterior aspect of the left forearm and then again struck and fractured the left arm and at which point the bullet became fragmented. That is why this one is in three or four pieces compared to the prior bullet.
Q. All right, 31?
A. So this is in -- of the nine gunshot wounds to the back, again there were four bullets that we recovered. Two of them were from the left shoulder. This is one of the two bullets that we recovered from his left shoulder.
Q. Thirty-two?

A. The is the other bullet that was recovered from the left shoulder. There were two of them. This one was a little bit more anterior. But two bullets from the left shoulder, and this is the second one.
Q. Thirty-three?
A. This one was recovered from the cervical spine, so the very upper part of the neck. Actually kind of to the point that almost like it is kind of straight through the mouth is where we would be. So very -- a bullet recovered from very high up in the spine that again would have came from one of the gunshot entrance wounds on the back.
Q. And lastly 34?
A. And this one was recovered from the -- another bullet that would have entered the back and was recovered from the kind of right side of the face or very upper part of the neck. Kind of just inside the jawbone or the ear.
Q. All right. Dr. Batalis, within a reasonable degree of medical certainty were you able to determine a manner and cause of death for Mr. Bennett?
A. Yes, I was.
Q. And what were your findings?
A. The manner of death was homicide which is death at the hands of another. The cause of death was gunshot wound to the trunk. And specifically the mechanism would have been from hemorrhage from bleeding out from the various wounds

to the internal organs.
Q. Thank you, Doctor.
MR. OSBORNE: No further questions.
THE COURT: Questions?
MR. LOIGNON: No, sir.
THE COURT: Thank you, Dr. Batalis. You may step down. And you are free to leave, sir.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you.
(WHEREUPON, witness steps down.)
THE COURT: All right, sir, you may call your next witness.
MR. OSBORNE: The State calls Jibral Acevedo.
(WHEREUPON, the witness was duly sworn.)
THE CLERK: State your full name spelling your last for the record.
THE WITNESS: Jibral Acevedo. J-I-B-R-A-L. A-C-E-V-E-D-O.
DIRECT EXAMINATION BY MR. OSBORNE OF JIBRAL ACEVEDO:
Q. All right, Mr. Acevedo, where are you from?
A. I am originally from New York.
Q. Okay. And do you live in the Charleston area now?
A. Yes.
Q. When did you move to Charleston?
A. Like 2003, '04.

Q. Okay. Why did you come here?
A. Parent's mother.
Q. All right. So you moved down here with her, or was she already here?
A. With her.
Q. Okay. Where did you go to high school?
A. West Ashley.
Q. Did you graduate?
A. Yes.
Q. Got any college?
A. Some.
Q. Where is that?
A. Art Institute.
Q. Art Institute ---
A. Yes.
Q. --- right downtown?
A. Yes.
Q. Okay. Married?
A. No.
Q. I think you have been with a girl for a long time though, right?
A. Yes.
Q. A longtime girlfriend?
A. Yes.
Q. Do y'all have any children together?

A. Yes.
Q. How many children have you got?
A. Two. One five, and one is two.
Q. Okay. A boy and a girl?
A. Yes.
Q. All right. Do you work?
A. Yes, self-employed.
Q. Well, what type of work are you doing?
A. Chauffeur.
Q. A chauffeur?
A. Yes.
Q. Okay. All right. So I want to talk about the defendant in this case. Do you know him?
A. Yes.
Q. And do you see him in the courtroom?
A. Yes.
Q. Who is that?
A. Cousin.
Q. He is your cousin?
A. Yes.
Q. All right. About how old were you when you first met him?
A. Probably in my teens.
Q. Okay. Would you say that you're -- after meeting him would you say that y'all were close or not really that

close?
A. I'd say close.
Q. Okay. What if any is his nickname?
A. TJ. That is what I call him by.
Q. TJ?
A. Yes.
Q. And what does that stand for?
A. Tony James.
Q. Okay. Let's go back to 2015. How often would you say that you saw him during that time period?
A. Every other couple of days.
Q. Okay. Did you know an individual by the name of Bryant Smith?
A. Yes.
Q. And who is Bryant?
A. Also another cousin.
Q. Okay. What is his relation to the defendant, to Seth?
A. Brother.
Q. His brother?
A. Yes.
Q. Okay. And did you meet Bryant around the same timeframe?
A. Yes.
Q. And does he go by any nicknames?
A. Brisk.

Q. Say it again.
A. Or Little B. Little B. Excuse me.
Q. What was it again?
A. Little B.
Q. Little B. Okay. Would you say that you were closer to Bryant or were you closer to Seth?
A. Bryant. Because maybe age. Age wise.
Q. Are you saying that you and Bryant were in a closer age?
A. Yes.
Q. Okay. And how often did you hang out with Bryant?
A. Probably every other couple of days as well.
Q. Okay.
A. Weekly. Weekly wise ---
THE COURT: You are going to need to speak up or speak more into that mic, please.
MR. OSBORNE: Just pull it closer to you.
(WHEREUPON, microphone adjusted at witness stand.)
A. Week wise. Weekend or whatever.
Q. Okay. So is it fair to say that -- well, Seth and Bryant are family to you; they are your family?
A. Yes.
Q. Is this easy for you to be here and testify?
A. I mean -- I don't know if that is a trick question. I don't know. I ---

Q. Okay. Do you want to be here and testify?
A. I don't want to be here at all.
Q. You don't want to be here at all?
A. No.
Q. But you were subpoenaed to be here; is that correct?
A. Yes.
Q. But you have another incentive to testify here today, don't you? You have another reason to testify; is that fair to say? And that reason being you have already pled guilty, haven't you?
A. Yes.
Q. And what did you plead guilty to?
A. Obstruction of justice.
Q. Okay. Have you been sentenced yet?
A. No.
Q. In fact you will be sentenced after this trial; is that correct?
A. I believe so, yes.
Q. All right. And what are you looking at?
A. Zero to ten.
Q. Okay. And that obstruction charge you caught because you had lied to detectives; is that fair to say?
A. Yes.
Q. And you pled guilty to that?
A. Yes.

Q. And you are hoping that by testifying in this trial that you will get some sort of benefit; ---
A. Yes.
Q. --- is that fair to say?
A. Yeah.
Q. Has anyone promised you anything in exchange for your testimony?
A. No.
Q. Has anyone told you that if you testify the way the State wants you can get probation?
A. No.
Q. Has anybody, me or anyone from my office, promised you anything?
A. Nope.
Q. In fact when you end up getting sentenced it is going to be a judge that determines your final fate; isn't that true?
A. Yes.
Q. All right. Let's go back to 2015 again. What was your phone number back then?
A. 646-570-9006.
Q. Okay. And I believe that during that first interview with detectives they took your phone from you, didn't they?
A. Yes.
Q. And that -- August or April the 24th of 2015?

A. Yes.
Q. All right. I will get back to that in a minute. Now since Seth and Bryant were family to you did you talk to them on the phone?
A. What do you mean by talk with them?
Q. Did you ever communicate with them on your cell phone?
A. Oh, yes.
Q. And did you have Bryant's phone number saved in your phone?
A. I am pretty sure. I mean, yeah.
Q. And what would you have saved his contact name as? Or what did you?
A. Either Bryan, Briss, or Little B.
Q. Or Little B?
A. Yeah.
Q. Okay. And what was his phone number?
A. It started with a four. I can't remember.
Q. All right. Do you remember -- well, you were interviewed a number of times; but do you remember in particular on March the 1st of 2018 and again on October the 30th of 2018 meeting with me, my investigator Jeff Fort, and your attorney back there, Rodney Davis, in my office?
A. Yes.
Q. And do you remember at that time telling me -- or

telling us that Little B's phone number in your phone was 843-864-1285?
A. Yes.
Q. Does that sound right?
A. Yeah.
Q. All right. Did Bryant have a car?
A. Yes.
Q. What kind of car did he have?
A. Silver -- I forgot the name. It is a small car.
Q. A small silver ---
A. Infinity.
Q. --- car?
A. Infinity.
Q. An Infinity?
A. Yeah.
Q. Had you ever ridden in that car before?
A. A couple of times, yeah.
Q. Okay. So you are familiar with it?
A. Yes.
Q. All right. Did you have Seth's phone number back then as well?
A. Yes.
Q. And what was his phone number?
A. I can't remember.
Q. Okay. On that same -- on those same two occasions do

you recall telling us that the number was 843-489-5286?
A. Okay, yeah.
Q. Does that sound right?
A. Yeah, that sounds about right.
Q. All right. Let's talk about the victim in this case George Bennett. Do you know him?
A. No.
Q. Have you ever even heard of him?
A. No.
Q. So would you have talked to George on your phone?
A. No.
Q. Okay. Let's talk about Saturday, April the 18 and what you were doing that day back in 2015 as best you can remember, okay. Do you remember where you woke up that morning?
A. Home.
Q. And where did you live back then?
A. West Ashley.
Q. In what apartment complex?
A. Moss Creek.
Q. Moss Creek, is that near 61 and the 526 overpass?
A. Yes.
Q. And who did you live with?
A. Mother.
Q. What was her name?

A. Robin Acevedo.
Q. About what time do you think you woke up in the morning?
A. Probably 10:00, 11:00-ish.
Q. All right. How were you feeling that morning?
A. That day I was feeling sick.
Q. All right. Walk us through your day. What did you do when you woke up?
A. I wasn't probably feeling well. I went to my doctor to get a prescription. And I think I was running around trying to go to the pharmacy to get the prescription.
Q. Okay. You went to the doctor. Did you have a car then?
A. No.
Q. How did you get there?
A. Bike.
Q. Okay. Did you eventually go to work that day?
A. Yes.
Q. And where did you work then?
A. Palmetto Parking ---
Q. And ---
A. --- downtown.
Q. I'm sorry, I interrupted you.
A. I said Palmetto Parking downtown.
Q. Okay. Whereabouts downtown?

A. Excuse me?
Q. Whereabouts downtown?
A. I think it is on Wentworth Street.
Q. Okay. On Wentworth. And you -- what did you do; you worked in parking?
A. Yes.
Q. People come park their cars, you watch them and stuff like that?
A. Yes.
Q. All right. And how did you end up getting downtown?
A. I think I -- I called a cab.
Q. Okay. Was that what you normally did?
A. Yeah.
Q. Do you remember about what time you had to be at work or more importantly what time you would have left?
A. 5:00 or 6:00.
Q. Okay. Let's move on ahead to Monday, April the 20th. On Monday, April the 20th, did you speak to Seth that morning?
A. Yes.
Q. And what did -- what did he say?
A. If I still wanted to -- called me and asked me if I still wanted to buy a vehicle.
Q. And what kind of vehicle?
A. Cadillac.

Q. And where would you have been when he called you?
A. Home.
Q. At Moss Creek?
A. Yeah, Moss Creek. Yeah.
Q. All right. And you said a Cadillac. Had you seen the Cadillac before?
A. Yes.
Q. Who did the Cadillac belong to?
A. Seth.
Q. It was his car?
A. Yeah.
Q. And so now he is calling to ask you if you wanted to buy it?
A. Yeah, if I still wanted to buy it.
Q. If you still wanted to buy it. So you had expressed interest in buying the car before I suppose?
A. Yes.
Q. And have you been in that car before?
A. Yeah, a couple of times.
Q. Okay. How long had you known Seth to own that vehicle prior to that date?
A. I would say months to a year maybe.
Q. Okay. Now at this point was there any discussion between you and Seth about how much you were to pay for the car?

A. I paid before then, yes. But I didn't have all the money at that time so.
Q. Okay. Do you remember about how much?
A. I can't remember.
Q. But whatever it was you didn't have the money; ---
A. Yeah.
Q. --- or at least not enough?
A. Yes.
Q. Okay. Did you end up meeting up with him?
A. Yes.
Q. And where was that?
A. I think somewhere near Lowe's near the (cough in audience).
THE COURT REPORTER: I'm sorry, I didn't hear that.
Q. Say it again.
A. Somewhere near Lowes.
Q. Okay. And ---
A. Near the pharmacy I was going to.
Q. Okay. Near a pharmacy near Lowe's?
A. Yes.
Q. Okay. And did he come to get you, or did you go to him?
A. He came and got me.
Q. And how did he get there?
A. In a vehicle.

Q. And what did the vehicle look like?
A. I believe it was a truck.
Q. What color?
A. White.
Q. And when he showed up, Seth, was he by himself?
A. No.
Q. Who was he with?
A. I don't know the dude's name. I heard his name was Bubba.
Q. You are going to have to really speak up. She is trying to hear you.
A. I think -- I think his name is Bubba.
Q. Okay. Had you seen Bubba before?
A. A couple of times.
Q. But you don't know his real name?
A. No.
Q. Okay. Who was driving the truck?
A. Bubba.
Q. All right. Once they picked you up where did you go?
A. To the DMV.
Q. Before that where did you go?
A. It's a blur. Like I said, it is a blur. I can't really remember.
Q. Okay.
A. All those days -- all those days seem the same really

so.
Q. All right. Prior to going to the DMV that day do you remember going to the Dollar General?
A. Okay, yeah. Yes.
Q. Now once they -- you do remember or no?
A. Yes.
Q. Once they picked you up did you go directly there or did you go someplace else first?
A. Directly there.
Q. Okay. And where was the Dollar General?
A. Clo- -- On 61.
Q. And you were about to say close?
A. Yeah.
Q. So it didn't take long to get there?
A. No.
Q. Would you have been -- it was in the morning when you got there?
A. I believe so, yes.
Q. All right. Let me ask you this, Mr. Acevedo. You are there to buy a car, right?
A. Right.
Q. You get into this truck, correct?
A. Yes.
Q. And now you are at the Dollar General?
A. Yes.

Q. Did you ask what about the car?
A. No.
Q. Okay. And do you know why you are at the Dollar General?
A. No.
Q. And you didn't ask?
A. No.
Q. All right. When you got to the Dollar General what happened?
A. I don't really know. I was in the car. I think I stepped out just for a cigarette and that was it.
Q. Okay. Did you go into the Dollar General?
A. No.
Q. Did Seth go into the Dollar General?
A. Yes.
Q. And how about Bubba?
A. Yes.
MR. OSBORNE: Beg the court's indulgence.
THE COURT: Yes, sir.
(WHEREUPON, retrieve exhibit.)
Q. All right. All right. While we are getting that fired up.
(WHEREUPON, retrieve exhibit.)
Q. So you wait outside in a car. They go inside. Do they come back?

A. Yes.
Q. And when they come back did they make a purchase?
A. Yes.
Q. And what did they purchase?
A. I believe spray paint. At the time I didn't -- I didn't know.
Q. How did you find out that it was spray paint though?
A. From investigators, I think.
Q. Okay. When they came out did you see if they were carrying anything or not?
A. I mean I wasn't paying attention really.
Q. Okay. So you don't have any independent knowledge that they bought spray paint?
A. No.
Q. Okay. So all you know is that they went inside and then they came back out?
A. Yes.
Q. Okay. All right. Let's take a look at that video for a second.
Okay, I am playing from 118, the file labeled outside truck.
(WHEREUPON, publish portion of video.)
Q. Okay. Do you see that truck up there in the top left?
A. Yes.
Q. Do you recognize that?

A. Yes.
Q. And what truck is that?
A. That looks like the truck I was in.
Q. Okay. And the time there on the screen?
A. Yeah.
Q. What does it say?
A. 10:41.
Q. And the day?
A. 4/20.
(WHEREUPON, publish portion of video.)
Q. Who were they?
A. That is Seth and the dude Bubba.
Q. All right. The individual with the jacket and the hat on, who is that?
A. Seth.
Q. And so Bubba is in the white t-shirt?
A. Yes.
Q. I'm playing the file, floor entrance.
(WHEREUPON, publish portion of video.)
Q. All right. Playing the file, cashier.
(WHEREUPON, publish portion of video.)
Q. Skip ahead a little bit here to when they come back to the register.
(WHEREUPON, publish portion of video.)
Q. So again that is Seth making the purchase at the

register?
A. Yes.
(WHEREUPON, publish portion of video.)
Q. I am just going to skip ahead here to when they are walking out.
(WHEREUPON, publish portion of video.)
Q. All right. And that is y'all leaving?
A. Yeah.
Q. All right. Where did you go from there? Before the DMV.
A. Mt. Pleasant.
Q. And whereabouts in Mount Pleasant did you go?
A. I don't know the street, but I know it was a dude named Face's house.
Q. And what is Face's real name?
A. Jeremy.
Q. Okay. Have you been to Jeremy's house before?
A. Yeah, a couple of times.
Q. All right. When you arrived at the house what if anything did you see?
A. I saw the vehicle and the dude -- the neighbor standing outside.
Q. Okay. Now when you saw the car did the car appear the same way that you had last seen the car? I mean did it look the same as the last time you had seen it?

A. I can't remember.
Q. Okay. Did -- how long did you end up staying at the car -- at the house?
A. Maybe like an hour.
Q. And where did you go from there?
A. Then we went to the DMV.
Q. Okay. You eventually made it to the DMV? I think you told us at one point you went and maybe smoked a little marijuana somewhere?
A. Oh, okay. Yeah.
Q. Okay. Now let me just ask you this, Mr. Acevedo. You went there to buy a car, right?
A. Yeah.
Q. And now you went to the Dollar General and you left the Dollar General and you went to Face's house where the car was parked. Why didn't you leave with the car?
A. Because it was -- it wasn't in my name.
Q. Okay. But you could have bought the car right there, right?
A. Yeah.
Q. Okay. But you wanted to have it put in your name first?
A. Yeah, if you want to say that; yeah.
Q. Was that your idea?
A. Yeah, it was just something we was just talking about.

I mean that just makes sense. That is just logic.
Q. That is just the way it happens?
A. Yeah.
Q. Okay. So you ended up going to the DMV. Which one did you go to?
A. In West Ashley.
Q. Which one in West Ashley? There may only be one.
A. Wappoo.
Q. Okay, Wappoo and 61?
A. Yeah.
Q. Okay. Once you got there and it is just you and the defendant at this point, or is Bubba still there?
A. I don't think Bubba was there, no.
Q. Okay. When you got to the DMV what happened?
A. Went in the DMV. Just did the paperwork really.
Q. All right. Now when -- you said you went in and did the paperwork. What kind of paperwork did you have?
A. Bill of title, something -- title, what they call.
Q. Okay.
A. Just regular paperwork.
Q. Where did you get the title to the car from?
A. From Seth.
Q. Okay. Did -- now to do this transaction it was going to cost money, right?
A. Yes.

Q. And did you have the money?
A. No.
Q. Where did you get the money from?
A. Seth.
Q. And how much did he give you originally?
A. I would say 25 to 50.
Q. Before -- when you first walked in how much?
A. Twenty-five. Okay.
Q. Did you indicate -- or did the defendant indicate to you anything in reference to how quickly he wanted the title transferred?
A. He didn't say how quickly. But it was said that -- I don't know the word, but that's -- that's -- that was the way that he wanted to get it done.
Q. What way?
A. I don't know the word.
Q. Okay. Do you remember telling us that he told you that he wanted it done that day?
A. Oh, yeah.
Q. Well, did he say it or not?
A. Yes.
Q. When you went into the DMV with that bill of sale and the $25 in your hand what happened?
A. They said it was more and it costs more.
Q. It would cost more to do what?

A. To get it done that day.
Q. Okay. What did you do then?
A. Asked for more money.
Q. Who did you ask for the money to?
A. Seth.
Q. And how did you go about asking him; did you walk out there and talk to him or did you call him?
A. Probably called.
Q. You probably called or did call?
A. Did.
Q. What did he say when you asked him for more money? Did he agree to give it to you or did he say no?
A. Yeah.
Q. All right. I am showing you now State's 159. Let's go over some of this paperwork. Do you recognize that?
A. Yeah.
Q. All right. Where did -- well, how do you recognize that?
A. That is my handwriting.
Q. And did you get this paperwork from the DMV?
A. Yes.
Q. And where did you fill out this paperwork?
A. Inside of the DMV.
Q. Okay. Now I notice that you only put title only.
A. Okay.

Q. Well, if you are buying the car why wouldn't you want a plate too?
A. So I don't -- I mean I don't ....
Q. I mean you wanted to drive the car, didn't you?
A. Yes.
Q. Well, if you drive a car in this state you know you are going to need a plate, right?
A. No, I didn't know that.
Q. You don't know that in the State of South Carolina you have to have a license plate on a car to drive?
A. Oh, a license plate, oh, yeah.
Q. So you are going to drive a car without a plate on it?
A. I guess I wasn't thinking about the -- the car had a plate on it.
Q. The car had a plate on it. They didn't tell you that you were -- that plate was going to have to go whenever you transferred title?
A. I didn't -- I don't remember nothing about that.
Q. You didn't ask, did you?
A. No, I was just trying to buy the car.
Q. And you were just trying to get that title in your name, weren't you?
A. Yeah.
Q. Like you were told to do?
MR. LOIGNON: Objection. Leading.

THE COURT: Sustained. Rephrase your question.
MR. OSBORNE: I will move on, Judge.
THE COURT: Okay.
Q. All right. Now let's take a look here. It says Jibral Acevedo, 4501 Dorsey Avenue, Apartment A.
A. Yeah.
Q. It that where you lived?
A. Used to.
Q. Used to. And there is your phone number down there?
A. Yeah.
Q. All right. Let's look at 159B. Now you are here telling this jury that you are arranging to buy this car from this man, the defendant, on April the 20th. Yet the paperwork that I am looking at right here says that you already bought this car 19 days earlier. How do you explain that?
A. I really can't remember. But I know we was -- I was talking about buying the car before then. So maybe when I see that that is what I just thought.
Q. Wait a minute. Say that again.
A. I said I really can't remember but if I did see that and it was the 20th I know I was talking about buying the car prior so that is maybe what I thought.
Q. So you put down April the 1st because you were talking about buying the car 19 days earlier; is that what you are

here telling this jury?
A. Yeah.
Q. And it says the sales price there of $300. Did you pay $300 for it, or is that what you were talking about paying for it?
A. Maybe that is what we was talking about paying for it. Around there, yeah.
Q. So what we are looking at right here on this documentation is just ideas that y'all had, what y'all were just talking about?
A. I don't know what you mean by that. Ideas?
Q. Well, you didn't buy the car back on April the 1st, did you?
A. No.
Q. Was that your idea to put April 1st on there, or was it his?
A. I can't remember.
Q. Did you fill that out, or did he?
A. The bottom part, my name?
Q. No, the top part with that date of sale.
A. That looks like my handwriting.
Q. Is that your signature there?
A. Yes.
(WHEREUPON, State's counselors confer.)
Q. How do you spell your name?

A. J-I-B-R-A-L.
Q. On 159A it looks like you had a little hiccup. You started out spelling your name J-A?
A. Yeah.
Q. All right.
(WHEREUPON, document displayed.)
Q. Do you recognize this?
A. Yes.
Q. And who wrote that up there; did you?
A. Yes.
Q. I notice your address has changed. You are now at Apartment B?
A. Okay, yeah.
Q. Okay. Why would you change your address?
A. I mean any time I do paperwork really with the government I just put anything most of the time. At least at that time that is what I used to do.
Q. So you just put anything down?
A. Or an old address.
Q. Did you sign the defendant's name here?
A. No.
Q. Who signed it?
A. Excuse me?
Q. Who signed it then?
A. Him -- I don't know who signed it, but I would think

he did.
Q. Well, how would ---
A. That is not my writing.
Q. So you weren't there when he -- it was already signed when it was given to you?
A. No, I am saying I can't remember.
Q. You can't remember.
A. But most likely he did.
Q. Okay. Were you there -- did you write this (pointing), April the 1st of 2015?
A. I don't remember.
Q. You don't remember?
A. And that don't -- and that don't look like my handwriting.
Q. No? I don't think so either. And what was the $300 there, did you write that down?
A. No.
Q. Let me ask you this, Acevedo. When you walked into the DMV you had this document (pointing) in your hand, 160B, right; this -- this is what you had in your hand; ---
A. Right.
Q. --- is that correct? And is it fair to say that when you got into the DMV you found out that in order to transfer the title you had to get this document (pointing), 159A?

A. Okay.
Q. Is that correct?
A. Yes.
Q. And when you got in there and you started to fill out 159A and you put down the date of sale as being April the 1st isn't it true that you just copied ---
MR. LOIGNON: Objection. Leading.
Q. --- what had already been written down ---
THE COURT: Well, excuse me.
Q. --- as April the 1st?
THE COURT: Don't answer the question. What is the objection?
MR. LOIGNON: Leading.
THE COURT: I will allow that question. Overruled.
Q. Do you want me to ask it again?
A. Please.
Q. When you walked into the DMV isn't it true that you had already had this bill of sale with the date of April the 1st written on it and when you tried to transfer title ---
THE COURT: Now wait a minute. You are going ---
Q. --- is that true?
A. When ---
Q. When you walked into the DMV did you have the bill of sale with the date of April 1st already written on it?

A. I mean yeah.
Q. Because the defendant didn't follow you into the DMV, right?
A. No.
Q. So when you walked in it was already written?
A. Yes.
Q. And isn't it true that when you got into the DMV and you were writing -- filling out these blocks that all you did was copy what was already written for you as April the 1st as being the date of sale into that block right there (pointing); isn't that true?
A. I -- I wouldn't say copy. I just -- that just was the date that I just went -- we went with.
Q. Okay. So that was the date and you just went with that date?
A. Yeah. I would have put any date anyway, because I wouldn't think that would be something serious.
Q. You would have just put any date?
A. Going by what things I do, yeah; because I wouldn't think the date was something serious, you know.
Q. Okay. Well, all right, so and I think we already got it answered; but just for clarification, on April the 1st did you have possession of that Cadillac?
A. No.
Q. All right. But when you left the DMV on that day you

had a title in your hand; is that correct, title to the Cadillac?
A. Yes.
Q. Because you paid the expedited fee from the money that was given to you by the defendant?
A. Yes.
Q. All right. When you walked out of the DMV did you get back in the car with the defendant?
A. Yes.
Q. Where did you go then?
A. Back to Mt. Pleasant.
Q. All right. And let me ask you this. Prior to leaving did -- what did the defendant say to you if anything when you got back in the car?
A. I can't remember him saying anything.
Q. All right. Do you remember telling us on multiple occasions during the interviews I have already mentioned with your attorney there that the defendant told you you can either keep the car or sell it?
A. Oh, yeah.
Q. Now let me ask you this. You began this morning with a phone call, according to your testimony, from the defendant asking if you wanted to buy a black Cadillac; ---
A. Yes.
Q. --- correct?

A. Yes.
Q. And now as we have seen before in the afternoon almost at four o'clock the defendant is telling you that you can keep it or sell it?
A. Right.
Q. Now it is in your name and you have got title in hand, yes?
A. Yes.
Q. Well, what did you think about that? Did it seem suspicious or odd to you?
A. Seemed funny, yeah, maybe. I didn't really -- like I said, I didn't pay no attention -- you know, like I said, it was so long ago.
Q. Did you ---
A. What ---
Q. Go ahead.
A. Go ahead. No, go ahead.
Q. It seemed funny. Well, did you ask him, hey, why did you offer to sell me a car and now you are saying that I can keep it or sell it and I haven't paid a dime, what is up with the car? Did you?
A. I think -- I didn't really think of that. But I know I didn't give him the money for the car so. How I was looking at it, I'm making a profit really.
Q. Right. So you are in a good situation right now. You

just got a car for nothing?
A. Right.
Q. And you can sell it, right?
A. Yeah.
Q. Or you can keep it. And you didn't have a car at the time?
A. No.
Q. But you are not asking any questions?
A. No.
Q. Now at some point I said -- you said you went back to Mt. Pleasant. But you never got the car?
A. No.
Q. At some point did you end up going to Bryant and Seth's house that night?
A. I do believe one of them days I spent the night, yes. It could have been that night. It could have been another night. I think it was that night, yes.
Q. You think it was that night?
A. Yes.
MR. OSBORNE: Beg the court's indulgence.
THE COURT: Certainly.
Q. All right. So State's 48 that -- whose residence is that?
A. Bryant.
Q. And who else lives there?

A. I'd say his girl and the kids.
Q. And Seth?
A. He will be there, yeah.
Q. What did you say?
A. I said, yeah, he will be there, yeah.
Q. Okay. So it is common for Seth and Bryant to be there?
A. Yes.
Q. All right. So you said that you think this might have been the night that you slept there. But either way going into Tuesday morning which would be April the 21st walk us through your day that morning.
A. I think I woke up and he asked me did I figure out what I wanted to do with the vehicle. And I probably said I wanted to just sell it since I didn't have my license at the time.
Q. All right. He -- you said that you woke up. And, well, where did you wake up?
A. Yeah, I was at his house -- at Bryant's house.
Q. You woke up at his house?
A. Yeah.
Q. Okay. Now you said that you were just interested in selling the car at this point. Well, why didn't you keep it?
A. Because I didn't have a license neither at the time.

Q. All right. So you were willing to buy the car without a license but now that it is in your name you figure you better sell it; is that what you are testifying to?
A. Right. Yeah.
Q. Okay. Well, did the defendant have -- or Seth have any suggestions to you as to who you should sell the car to?
A. I think he just said junk it and I can get money for it.
Q. He told you to junk it?
A. Yes.
Q. Not CraigsList?
A. No.
Q. Didn't try to put an ad out in the paper or try to sell the car; you are just trying to junk it?
A. (Nods head.)
Q. And that was his suggestion?
A. (Nods head.)
MR. OSBORNE: Oh, you have -- okay.
(WHEREUPON, court reporter asks for verbalization of answer.)
THE COURT: What was the answer to that?
A. The last question, yes.
Q. All right. So now is it your testimony then that Tuesday morning, April the 21st, is the first mention by

either of you of selling and junking the car?
A. I believe the day before we was talking about it.
Q. So you were already talking about with the defendant junking the car on the day in which you put the title in your name?
A. Just weighing out the options, yes.
Q. And now, you know, I have to ask. Did that not seem suspicious to you that you are putting a title to a car into your name that the individual who sold the car but didn't really sell it to you is suggesting that you should junk it?
A. I mean maybe after. But not at the time, no.
Q. Just along for the ride?
A. Yeah.
Q. Free money?
A. (Nods head.)
Q. Yes?
A. Yes.
Q. All right. Did you leave that morning from Seth's house to go anywhere?
A. No.
Q. You don't remember going to Mt. Pleasant that day?
A. Oh, yeah, you stay in Mt. Pleasant -- yeah, Mt. Pleasant.
Q. Well, did you go to Mt. Pleasant?

A. Yes.
Q. And who all went with you?
A. Just me and him.
Q. Just you and Seth?
A. Yeah.
Q. And where in Mt. Pleasant did you go?
A. Back to Face House.
Q. Back to Face House. Tell us what happened when you got to Face House.
A. I believe I just went in the house for a while and waited.
Q. All right. After you waited for a while then what happened -- well, let me ask you this: Was the car still out there, the Cadillac?
A. Yes.
Q. All right. You waited for a while. What were you waiting on?
A. The tow truck to jump the truck.
Q. All right. Did you start calling around different junk companies, tow truck companies, trying to sell the car?
A. Yes.
Q. And while you were waiting what happened? In reference to the car. What was being done to the car and who was doing it?

A. I think I said -- I told him I saw that the car was spray painted, the wheels.
Q. Well, Mr. Acevedo, with all due respect, you have said a lot of things. So I want you to tell the jury what you saw being done to the car prior to the wrecker coming. Not what you said but what you saw on that day.
A. What I saw, the wheels spray painted, and the bumper was looked like it was taken off.
Q. Okay. Who was spray painting the wheels?
A. I don't know. I can't remember who was spray painting the wheels. I don't think I was there.
Q. On April the 30th of 2015 and again on May the 14th of 2015 and again during numerous meetings with your attorney Rodney Davis you remembered then who was spray painting the wheels, didn't you?
A. Okay, what did I say?
Q. You said that it was this man, Seth, your cousin.
A. Okay, like I said, I really don't remember.
Q. But today ---
A. All ---
Q. --- you can't remember?
A. All -- all these -- all these days seem the same. Each of the days seen the same. But, yes, that is true.
Q. What eventually happened to the car?
A. The truck dude came and I junked it and got money for

it.
Q. How much did you get for it?
A. I want to say two hundred.
Q. Two hundred bucks, huh? Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes.
Q. I am showing you 155, 156, for now. Can you take a look at those two items and tell me if you recognize those?
A. Yes.
Q. And what are they?
A. That is the vehicle and the bill of sale.
Q. Okay. It is the vehicle and the bill of -- what vehicle?
A. Cadillac.
Q. Okay.
A. Excuse me.
Q. The Cadillac. And did the Cadillac look like that the last time you saw it?
A. It looked way worse in this picture.
Q. Okay. It looks way worse in that picture?
A. Yes.
Q. But are you sure that that is the Cadillac?
A. Yes.
Q. And what makes you sure about that? Anything about those wheels?

A. Yeah, the wheels, yeah.
Q. And what about the wheels?
A. They are spray painted.
Q. What color?
A. Brown.
Q. All right. And how do you know that is the -- that is the bill of sale that you filled out to sell the car to the wrecker -- or to the tow truck company?
A. Yes.
Q. And how do you know that?
A. That is my handwriting.
Q. And it is not really the actual bill of sale; it is a photograph of it; is that fair to say?
A. Yes.
Q. Okay.
A. Yes.
Q. And you said it is your handwriting?
A. Yes.
MR. OSBORNE: All right. Your Honor, at this time I would seek to admit State's 155 and 156 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection they are admitted.
(WHEREUPON, State's Exhibit Number 155 was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 156 was admitted into evidence.)
Q. All right. I am showing you 155. So is this what the wheels looked like after Seth got done spray painting it?
A. Yes.
Q. They weren't -- what color were the wheels before that?
A. Could have been black.
Q. And this was the bill of sale (displaying document)?
A. Yes.
Q. Okay. You have got Apartment A now? That is right?
A. Yes.
Q. Okay. So on April the 24th, two days later, you were questioned by the police; is that right?
A. Yes.
Q. And you lied?
A. Yes.
Q. You told them that the car basically broke down a few weeks earlier, right?
A. Yes.
Q. Left it on the side of the road?
A. Yes.
Q. But in all fairness you did tell them that you had purchased a car from an individual named TJ?
A. Yes.

Q. And that is his nickname, ---
A. Yes.
Q. --- Seth's nickname? But you didn't tell him that was your cousin, did you?
A. No.
Q. In fact I think you mentioned something like you met him at a club?
A. Yes.
Q. And you were brought back in again on April 30th and questioned again?
A. Yes.
Q. And your story then - I don't know how to say this - but it is similar to what you said today; ---
A. Yes.
Q. --- is that fair to say?
A. Yes.
Q. You sat in jail for a little over a year?
A. Yes.
Q. Couldn't make your bond?
A. No.
Q. And while you were in jail you decided to change your story again; is ---
A. Yes.
Q. --- that right?
A. Yes.

Q. And why did you change your story again?
A. I was just listening to people. And people saying if I make up another story then that could probably help me, just talk to the judge or something or -- basically saying I can get out of the situation by making up another story that makes sense.
Q. And how did you go about communicating that new story? Like did you call someone, did you write someone?
A. Yeah, I wrote everybody. My lawyer, Seth's lawyer. I think I even wrote judges and stuff like that.
Q. Okay. Now but you didn't send the letter to Seth's lawyer though, did you?
A. I believe so. I can't remember really.
Q. Okay.
A. Yeah, I think I did sent it to his lawyer, yes.
Q. Do you remember ---
A. That's -- I sent it to everybody.
Q. Okay. How would you -- how did you know Seth's attorney's name?
A. I believe I got it from my lawyer -- or I can't remember. Most likely it was my lawyer.
Q. Most like- -- not him? He would have never told you that?
A. No.
Q. He would have never told you what to write in that

letter either, would he have?
A. No.
Q. You come up with that all on your own, right?
A. Yeah, like I said, two other people in my unit was helping me.
Q. And you thought it would help you -- you're arrested for lying and you thought it would help you to re-up and lie again and somehow that would help you get out of jail; that is what you are testifying to?
A. Yes.
Q. Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes.
Q. Let me just show you one last thing. One sixty-eight, do you recognize that?
A. Yes.
Q. And what is that?
A. Silver Infinity. That is B car, Bryant car.
Q. That is Bryant's car? Do you recognize anything else on there with the writing?
A. Yeah, that is my writing.
Q. And what is the date on there?
A. 4/30/15.
MR. OSBORNE: All right. Your Honor, we seek to admit State's 168 into evidence.

THE COURT: Any objection.
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection 168 is admitted.
(WHEREUPON, State's Exhibit Number 168 was admitted into evidence.)
Q. Okay. So is it fair to say that when you were interviewed by the police on April the 30th you identified that as being Bryant's silver Infinity?
A. Yes.
Q. And again, Face is Jeremy?
A. Yes.
Q. That is his real name, lives in Mt. Pleasant, and that is where the Cadillac was when you saw it?
A. Yes.
Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Any cross-examine, Mr. Loignon?
MR. LOIGNON: Yes, Your Honor.
CROSS-EXAMINATION BY MR. LOIGNON OF JIBRAL ACEVEDO:
Q. You started out talking about your schooling, right?
A. Yes.
Q. You said you were a high school graduate?
A. Yes.
Q. And had some college classes?
A. Yes.

Q. Were you taking classes at the time back in 2015?
A. I don't believe so. No.
Q. When was the last time you took college classes?
A. Maybe 2014 or '13.
Q. So a little bit before --
A. Yeah.
Q. --- this incident maybe?
A. Yes.
Q. Because this was in April of 2015, so maybe several months before you were in class; is that right?
A. I can't -- I really don't remember when the last time I went to class was in college really. It was years back.
Q. Okay. You also talked about -- I guess you and Seth had talked about buying this Cadillac a while before ---
A. Yes.
Q. --- the date that we were talking about here today, right?
A. Yes.
Q. So you and Seth had been -- you wanted to buy the Cadillac well before I guess April 20th when you actually did, right?
A. Yes.
Q. Okay. And you mentioned Monday, April 20th, when you say you went to the DMV. That is certainly not the first conversation y'all had about the price of the vehicle,

right?
A. No.
Q. The car was in better shape back then when you were talking -- first talking about buying it, right?
A. Yes.
Q. You used to drive around in it bef- -- right?
A. A couple of times.
Q. So you not only rode in it but you also drove it a few times, right?
A. Yeah, you could say that.
Q. It wasn't broken down back then?
A. No.
Q. You couldn't buy it because you didn't have the money ---
A. No.
Q. --- and you didn't have a license?
A. Yes.
Q. But the Cadillac still really wasn't, you know, in great shape evidentially; right?
A. Yes.
Q. It had been messed up pretty much the whole time that Seth had it?
A. Yes. It was a pretty old car.
Q. In fact the driver's side window was permanently stuck down, wasn't it?

A. Yes.
Q. Couldn't get it up?
A. Yeah, I remember that.
Q. All right. Now Monday, April 20th, you say that that is when you went to the DMV to put the title in your name, right?
A. Yes.
Q. You wanted to buy the car at that point?
A. Yes.
Q. You agreed to pay for the car, right?
A. Yes.
Q. But you didn't pay for the car?
A. No.
Q. But y'all are family, right?
A. Yes.
Q. You could just pay him later, right?
A. Correct.
Q. So you go to the DMV and do the paperwork and it is your car, right?
A. Yes.
Q. But you didn't have the car?
A. No.
Q. So you go out and you see the car in Mt. Pleasant?
A. Yes.
Q. Not in good shape, right?

A. Yes.
Q. It is broken down, wasn't it?
A. Yes.
Q. Might explain why Seth was offering to sell it to you for $300?
A. Maybe, yeah.
Q. And you knew you weren't going to really be able to drive the car at that point, right?
A. It was -- it was dawning to me. Because, like I said, at that point it was -- I was thinking about selling it.
Q. Well, you didn't have a license, number one?
A. Exactly, so.
Q. And the car wasn't in good shape, right?
A. Yes.
Q. But you could do what you wanted with it, right; you could sell it or you could keep it?
A. Yes.
Q. Why not try to get some money off of it if you couldn't drive it, right?
A. Yes.
Q. So you called around to wrecker companies to see if they would buy it from you?
A. Yes.
Q. You talked to the police a lot, we heard; right?
A. Yes.

Q. You talked mainly about this Cadillac?
A. Yes.
Q. And they asked you a bunch of the things about it, and you changed your story on some of those things; right?
A. Yes.
Q. They asked you about that red pin stripe, didn't they?
A. Red pin stripe -- if that's -- if that's -- if it's on paper, yeah. I don't remember.
Q. Well, you remember it always had that red pin stripe on it, don't you?
A. Yes.
Q. And you remember the police asking you about that?
A. What was the question they was asking? I mean, yeah, I guess -- yeah.
Q. They were asking you -- they were saying was that red pinstripe always on there.
A. Okay, yes.
Q. You never changed your story on that, did you?
A. No.
Q. Because it was always on there?
A. Yes.
Q. And they were also asking you about something on the bumper. They were asking you about something on the bumper. Do you remember that?
A. No, I don't.

Q. They were trying to get you to remember if there was something distinctive on that bumper, weren't they?
A. Yeah.
Q. But you don't remember anything from that bumper, do you?
A. No.
Q. You never saw in all the times that you rode in that car or drove that car you never saw that Cadillac with a blue and white South Carolina flag license plate on the front, did you?
A. No.
Q. Right up front, never saw it?
A. No.
Q. You and Seth are cousins?
A. Yes.
Q. You knew him pretty well especially at the time this happened, right?
A. Yes.
Q. And he had short hair, right?
A. Yes.
Q. He didn't have dreadlocks or braids, did he?
A. No.
Q. Close cropped hair?
A. Yes.
Q. The first time you spoke with police in this case was

on April 24th, 2015; right?
A. Yes.
Q. They picked you up at work?
A. Yes.
Q. Started asking you a bunch of questions about the Cadillac?
A. Yes.
Q. At some point you say you suspected something could be wrong with the car?
A. Yes.
Q. You thought it could be stolen?
A. Yes.
Q. You even say that in your interview, is it stolen?
A. Yes.
Q. Or involved in a hit and run?
A. Yes.
Q. I think you mentioned that in one of the other interviews, didn't you?
A. Yes.
Q. They wouldn't tell you, but you didn't know?
A. Yes.
Q. You didn't want to be involved if something was wrong with this car, did you?
A. No.
Q. You didn't want to get anyone else involved either,

right?
A. No.
Q. So you lied to the police about it?
A. Yes.
Q. Seth never asked you to lie for him, did he?
A. No.
Q. Seth never told you what to tell police?
A. No.
Q. You just didn't want to get yourself or anyone else involved, right?
A. Yes.
Q. You didn't know this was a murder investigation, did you?
A. No.
Q. All right. So you originally say you bought the Cadillac in March or early April?
A. Yes.
Q. And you mentioned that you bought if from someone you barely knew named TJ and it broke down in Awendaw?
A. Yes.
Q. You decided that you were going to sell it to a wrecker service?
A. Yes.
Q. That was kind of the first story; you needed to put it in your name, right?

A. Yes.
Q. Okay. You said you and your friend Skinny drove out there to get the car and no one else was with you, right?
A. No.
Q. And then you sold it to the wrecker service and that was it?
A. Yes
Q. All right. Second interview you are in custody at this time, right?
A. Yes.
Q. You are being charged with obstruction of justice?
A. Yes.
Q. You know that already because you are in handcuffs?
A. Yes.
Q. They didn't believe that first story that you told them?
A. No.
Q. It wasn't very believable, was it?
A. No, I just came up with that.
Q. Right. You gave them some more information that second time though, right?
A. Yes.
Q. They were pretty pleased with your cooperation; they were telling you good job, right?
A. Yes.

Q. You still lied about the spray paint though?
A. What did I lie about the spray paint about?
Q. You said you didn't know anything about the spray paint. You said you didn't know anything about the spray paint?
A. Okay.
Q. Didn't you?
A. I mean if that is what they say on paper then, yeah, that is what I said.
Q. You said you weren't there when the spray painting was done?
A. Yes.
Q. So that was a lie?
A. That is the truth.
Q. You were not present when the spray painting was done?
A. No.
Q. So we have already established that you met with police on April 30th, 2015; right?
A. Yes.
Q. And they asked you about the spray paint, and you are saying that you said that you were -- you never said that you weren't there when the spray painting was done; is that what you are saying?
A. Excuse me, come again.
Q. You are saying today that you were never there when

the spray painting was done, right?
A. Yes.
Q. And you never told police that you were there when the spray painting was done, right?
A. Yes.
Q. Okay.
(WHEREUPON, pause to set up video.)
THE COURT: Is this in evidence? If we are about to play something is it in evidence?
MR. LOIGNON: No, sir, I was just going to impeach him with it.
THE COURT: Well, that is fine but it has got to be in evidence before you play it.
Q. If you saw a transcript of that interview would that help refresh your recollection?
A. Yeah.
Q. All right.
MR. LOIGNON: Beg the court's indulgence.
THE COURT: Certainly. Take your time.
MR. LOIGNON: It might take me a moment.
THE COURT: Well, how long do you think -- do you want to take a break at this point?
MR. LOIGNON: Just a few -- yeah, if we could just take a break.
THE COURT: Why don't we do that, ladies and

gentlemen. It is almost an hour-and-a-half since we have been going. But why don't you all -- we will take our break at this time.

Do not begin your deliberations. Don't discuss the case. We will be with you in about ten or fifteen minutes.

(WHEREUPON, jury exits 1/7/19, 3:21 p.m.)

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

MR. OSBORNE: No, Your Honor.

THE COURT: Anything from the defendant before we recess?

MR. LOIGNON: No, Your Honor.

THE COURT: Mr. Acevedo, I am going to ask you to just remain seated, please. Don't have any conversation with anybody during the break.

THE WITNESS: Yes, sir.

THE COURT: Thank you. We will be at ease for about ten or fifteen minutes.

(WHEREUPON, break 1/9/19, 3:22 p.m.)

(WHEREUPON, resume 3:37 p.m.)

THE COURT: All right. Let's bring in our jury. The jury has made a request for notepads. I don't prohibit that. I just have a little forewarning about it beforehand. And I will discuss that with them. If anybody has any objection to that I will give you an opportunity at

the break to put the objection on the record.

(WHEREUPON, jury enters 1/8/19, 3:39 p.m.)

THE COURT: I have an inquiry. The bailiff said that some of you expressed a desire to have notepads. We will have those available.

Some judges don't permit that. I am not one of them. But I caution the jurors in this respect: You of course are the judge of credibility and believability of a witness. And as I talked with you when we started, sometimes it is not only what somebody says but it is how they say it. It is body language.

And the concern that I have is when you are taking notes -- and some people are better note takers than others. If you look down you might just miss that very important facial expression. And but that being said I also understand that some people want the recollection.

I am going to share this with you. Because I was talking with my court reporter about it when we heard. I guess it has been three or four years ago. And it is the only time in my 25 years of doing this that I have had it done. And my thought was, well, that is really an effective use of a notepad; the jurors had completed -- and they didn't have the notes, and they were deliberating. And they had a discussion and I guess a disagreement about what a witness said or didn't say. And so they came back

in and they asked then if they could have notepads. And they heard several witnesses and then took notes.

That is effective because that juror through the discussion was recalling something and they were listening for something to confirm what they heard and to verify and to hear specifically what the person said.

I just mention that to you. But that being said, if anybody wants one raise your hand.

(WHEREUPON, several jurors raised hands.)

THE COURT: Okay. That is fine. We will make those available.

Have you selected a foreperson?

JUROR: (Raised hand.)

THE COURT: Okay. And your name and number, please?

That's all right, Mr. Robinson.

THE CLERK: Naquita Green, Number 130.

THE COURT: Thank you, Ms. Green. And that will be your seat for the balance of the trial. I would ask that you as the presiding juror collect the notepads at the end of the day from the jurors that have them. Hand them to the bailiff and we will make them available to you. They need to remain in the courthouse. That is the only restriction. Okay. If you will. But thank you, ladies and gentlemen. I appreciate it.

Okay. All right. We are ready to continue. You may

resume your examination.

MR. LOIGNON: Thank you, Your Honor.

THE COURT: Yes, sir, Mr. Loignon.

Q. Mr. Acevedo, I am going to restate my question to you because I think it was a little confusing. You have really been distancing yourself from that spray paint, haven't you?

A. Yes. I mean what do you mean?

Q. You don't want to admit having anything to do with the spray paint, right?

A. I mean what would I admit? I didn't know nothing about no spray paint.

Q. Well, that is what you said here today during your direct testimony; right?

A. Yes.

Q. You said they made a purchase, you don't know what it was?

A. Yes.

Q. And you learned it was spray paint from investigators, right?

A. Yes.

Q. But actually on April 30th, 2015, you said that you were there when they -- when Seth and Bubba spray painted the tires?

A. Okay.

Q. You said that, right?
A. I mean I am not sure. I can't -- I telling you ---
Q. Okay.
A. --- it has been so long I don't remember.
Q. All right. So you mentioned before, that looking at a copy of that portion of the transcript from that interview would help to refresh your memory' right?
A. Yes.
Q. Okay.
MR. LOIGNON: May I approach, Your Honor?
THE COURT: Have it marked for identification, please.
MR. LOIGNON: Yes, sir.
THE COURT: Defendant's 2?
THE COURT REPORTER: Correct.
THE COURT: Defendant's 2 for identification only.
(WHEREUPON, Defendant Exhibit Number 2, transcript, was marked for identification.)
Q. Just read through that if you would, Mr. Acevedo, and let me know when you are finished. The top half is really the important part.
(WHEREUPON, pause for witness review of exhibit.)
A. Okay. I see what you are saying. I am reading it.
Q. Are you finished?
A. Yes.
Q. Do you mind if I have that back?

A. (Witness returned transcript.)
Q. So the detective basically said there is no way that you couldn't have been there when the spray painting was going on, right?
A. Yes.
Q. And you admitted that you were?
A. Yes.
Q. You said you were on the phone?
A. Yes.
Q. But you were there?
A. Yes.
Q. Okay.
THE COURT: Mr. Loignon, before it gets in those notes ---
MR. LOIGNON: Yes, sir.
(WHEREUPON, exhibit set aside.)
THE COURT: Thank you. Thank you very much. Excuse me for interrupting.
MR. LOIGNON: No, I appreciate it, Your Honor. It definitely would have gotten shuttled in.
Q. All right. So let's talk a little bit about the letter that you wrote to me, okay?
A. All right.
Q. You were changing your story again, right?
A. Yes.

Q. Because you said you wanted a bond or something like that?
A. Yeah.
Q. Okay. Now the State wanted to know -- they wanted to make sure that that was your handwriting, right?
A. Yes.
Q. And so you were ordered to come into court and so we could have a hearing about that?
A. Yes.
Q. And we were actually in front of Judge Dennis and he told you that you needed to provide a handwriting sample?
A. Yes.
Q. To make sure that it was you that wrote that letter, right?
A. Yes.
Q. Nobody else wrote it for you or something, right?
A. No.
Q. And you did write the letter?
A. Yes.
Q. You spoke to the solicitor just last week I think before this trial about the letter?
A. Yes.
Q. You told them that you did in fact author that letter?
A. Yes.
Q. Which we already knew from the handwriting analysis,

right? Right?
A. Yes. Oh, sorry. Yes.
Q. Your attorney probably informed you of the results of that handwriting analysis?
A. Yes.
Q. Okay. But you denied that the envelope that was addressed to me was your handwriting last week with the solicitor?
A. I denied what?
Q. Last week when you met with the solicitor you denied addressing the envelope to me?
A. Yeah.
Q. You know that it was -- the envelope was also compared to your handwriting sample?
A. I find that that would make sense. The only reason why I said that probably wasn't my handwriting is probably because it didn't look familiar.
Q. Well, you just said that your attorney informed you of the results, and he would have informed you that the envelope was also analyzed and it was your handwriting; right?
A. No, he didn't inform me that -- nothing about no envelope. He wasn't specific. Nobody was specific.
Q. You also told the solicitor that Seth never asked you to write the letter, right?

A. Yes.
Q. Okay. Now back in 2015 when you spoke with police you denied knowing Jeremy Wright at all, right?
A. Yes.
Q. You told them you didn't know whose house that was?
A. Yes.
Q. That was not true?
A. Yes.
Q. You had been there before?
A. Yes.
Q. You knew Face, right?
A. Yes.
Q. Okay. And we know you went through with Mr. Osborne that you have been convicted already of obstruction of justice, right?
A. Yes.
Q. And you pled guilty to lying to police?
A. Yes.
Q. That was back in October of this year?
A. Yes.
Q. Okay. And we heard that the sentencing was delayed until after this trial, right?
A. Yes.
Q. But that you could get 10 years in prison for that?
A. Yes.

Q. You don't want to get 10 years in prison, do you?
A. No.
Q. And your hope is that the solicitor will put in a good word for you, right?
A. Yes.
Q. Just like when you were speaking with police before and you changed your story, you were hoping they wouldn't charge you with this; right?
A. Yes.
Q. So changing your story is best when it benefits you, right?
A. I don't know.
Q. Well, that is what you have done here, right; several times already you have changed your story so that hopefully it will benefit you, right?
A. If you want to say that, I guess.
Q. All right. Just a couple more things, Mr. Acevedo. I want to talk to you about this car title, okay?
A. All right.
Q. You have met with Mr. Osborne, the solicitor here a few times about this, right?
A. Yes.
Q. To talk about this case, right?
A. Yes.
Q. And one of those times was in March of 2018, right?

A. Yes.
Q. And in that meeting y'all specifically talked about this DMV paperwork that you went over today, right?
A. Yes.
Q. And you told Mr. Osborne that you filled out - just like you did here today, you told him today - that you filled out that part of that Form 400, the DMV Form 400; right?
A. Yes.
Q. Okay. I am going to actually try to find that and display it if we could.
(WHEREUPON, retrieve document.)
Q. All right. Okay, Jibral, so you said -- let's see. What are we looking at. Section -- this is the first page, right -- or, no, this is the second page. Let's look at the first page. My apologies. Okay. So we have got Section B here, right, and you said you filled that out?
A. Yes.
Q. And you wrote down the vin number and make and model, body style, all of that information up there in Section B?
A. Yes.
Q. Okay. Section D, you filled that section out as well?
A. Yes.
Q. And the back part that we just looked at, you said that that was not filled out by you, right; Section H, I

think it was and I?
A. No, that is my handwriting as well.
Q. Okay. Section H is your handwriting?
A. Yes.
Q. And Section I is also your handwriting?
A. Yes.
Q. And then that is your signature down there at the bottom?
A. Yes.
Q. Okay. That was State's 159A and B. And then let's take a look at the title as well which is State's 160A and B. I am going to show you 160B actually which is the only portion with the writing on it.
Okay. And you said you filled out the top part of that, right?
A. Yes.
Q. You were unsure about the box there in the middle, right; you said -- I think you said you filled out the date but not the purchase price, right?
A. I don't remember -- that don't look like my handwriting.
Q. The purchase price or both?
A. Both.
Q. Okay. When you spoke with detectives back on April 30th, 2015, you said you didn't fill out anything on there;

right?
A. That is what I said.
Q. That's what you said, right, that you didn't fill out any of that; you just signed it; it was already filled out when it came to you?
A. Okay. Oh, yeah ---
Q. I'm ---
A. Yeah, I mean if that is what it say on paper that's what I said, then yeah.
Q. I'm asking if you remember telling detectives that back on April 30th of 2015.
A. Yeah, I do remember. But I don't think they showed me anything.
Q. All right. So back then it wasn't your handwriting and today it is, right?
A. Yes.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.
Q. Last thing. You and Seth are cousins, right?
A. Yes.
Q. And you were very close back then, weren't you?
A. Yes.
Q. You testified that you hung out pretty regularly, right?
A. Yes.

Q. Do you believe that Seth would purposefully set you up like this, like the State's is saying that he did?
A. No.
Q. Seth never told you anything about a murder, did he?
A. No.
MR. LOIGNON: Nothing further.
THE COURT: Redirect.

REDIRECT EXAMINATION BY MR. OSBORNE OF JIBRAL ACEVEDO:

Q. Mr. Loignon asked you if you don't believe your cousin would ever set you up; and you said no, right?
A. Right.
Q. If you knew or had information that his name was somehow involved in that murder, that would change that answer; wouldn't it?
A. Come again.
Q. If you had information or believed that what you had heard, that he was somehow -- or his name was being implicated in that murder, being called for the murder, the question that Mr. Loignon just asked you would be entirely different, wouldn't it, the answer that you gave him?
A. Yes.
Q. Okay. And when you were interviewed back on April the 30th of 2015 this man right here asked you when did you first learn about the murder; and you said, well, I heard the streets and the street says they might have did it.

And you were talking about him, weren't you?
A. Yes.
Q. Okay. So ---
A. Basically Bryant.
Q. Bryant?
A. Yes.
Q. But you said they?
A. Okay.
Q. Okay.
A. Didn't think.
Q. Okay. So the correct answer is that -- to that question is it is possible or you would believe that he would set you up, right?
A. Right.
Q. Okay. But you are a pretty agreeable guy; I mean I think we have seen that over the last hour-and-a-half, right; you have agreed a lot to what Mr. Loignon has said and you have agreed to a lot to what I have asked you; right?
A. Right.
Q. And when detectives have asked you questions you just agreed with them a lot of times too, right?
A. Right.
Q. Now they did ask you over and over and over again to describe the vehicle, the Cadillac; right?

A. Yes.
Q. And not once did you mention anything about the driver's side window being down; isn't that correct?
A. Yes.
Q. Not in -- that is correct?
A. Yes.
Q. Not until your cousin's lawyer said: That driver's side window was down, wasn't it; and then ---
A. Yes.
Q. --- you said, yes?
A. Yes.
Q. That is the first time you said that?
A. Yes.
Q. Now he did say that you thought when you were interviewed on April 24th that you thought that that car might have been involved in a crime, right?
A. Yes.
Q. Your idea to help yourself then, thinking that that car was involved in a crime, was to tell the police that you were in possession of that car weeks earlier; right?
A. Yes.
Q. And that was going to help you or that was going to help him?
A. Me.
Q. It would help you to be in possession of a car that

was involved in a crime for a longer period of time?
A. From my first story?
Q. That doesn't make a lot of sense, does it?
A. I am saying you are saying that for my first story?
Q. Yeah.
A. Well, I -- I said that -- because -- I said I burned it -- whatever I said. I said I did something with the car that week so I wouldn't be in possession of the car.
Q. And neither would he because you would have had it two weeks earlier, right?
A. Right.
Q. Okay. So your testimony -- and he was asking about your testimony in hopes that you might receive some sort of benefit here today, right?
A. Yes.
Q. And so you are testifying here today hoping to get a benefit, right?
A. Yes.
Q. And he is your cousin, right?
A. Yes.
Q. He is family to you?
A. Yes.
Q. And it would benefit you for him to still think highly of you, for y'all two still to get along; right?
A. Yes.

Q. Okay.

MR. OSBORNE: No further questions.

THE COURT: Recross.

MR. LOIGNON: Just briefly, Your Honor.

THE COURT: Sure.

RECROSS-EXAMINATION BY MR. LOIGNON OF JIBRAL ACEVEDO:

Q. You stated the streets were saying they did it. It could have been Bryant and somebody else, right?

A. Yes.

Q. It could have anybody, right?

A. Yes.

Q. You never specifically knew anything about Seth, right?

A. Nothing.

MR. LOIGNON: Nothing further.

THE COURT: All right. You may come down.

(WHEREUPON, witness steps down.)

THE COURT: Call your next witness, please.

MR. OSBORNE: The State calls Loretta Mitchum.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name spelling your last for the record.

THE WITNESS: Loretta Mitchum. M-I-T-C-H-U-M.

DIRECT EXAMINATION BY MR. OSBORNE OF LORETTA MITCHUM:

Q. Good afternoon, Ms. Mitchum.

A. Hello.
Q. Where do you work?
A. I work for the Charleston County Sheriff's Office at Al Cannon Detention Center.
Q. Okay. And what do you do there?
A. Administrative assistant for the security threat group.
Q. For the security threat group?
A. Threat group.
Q. Okay. And tell the jury what are some of your duties and responsibilities.
A. I handle all of the subpoena requests, warrants, that come in for inmate records.
Q. Okay. And let's talk a little bit about booking photographs. Explain to the jury what exactly a booking photograph is.
A. Some people refer to them as mug shots.
Q. Mug shot?
A. Pictures taken once they come inside the jail.
Q. Okay. Do jail personnel make it a point to try to photograph any identifying characteristics in an inmate when they come in?
A. Yes.
Q. And are tattoos considered identifying characteristics that are normally photographed?

A. Yes.
Q. Okay. Now does the jail maintain copies of those photographs?
A. Yes.
Q. And as -- is part of your duties and responsibilities to receive subpoenas and answer those concerning those type of photographs?
A. Yes.
Q. And did you receive a subpoena in this case?
A. Yes.
Q. Now let me ask you something about the booking photographs. Are they maintained and kept as an ordinary course of business for the Al Cannon Detention Center?
A. Yes.
Q. And are they stored and maintained at the time in which the photographs are taken?
A. Yes.
Q. Okay. And you -- you said you received a subpoena in reference to this case?
A. Yes.
Q. And what were we asking for; do you remember?
A. Booking photos.
Q. For who?
A. Seth Smith.
Q. And did you retrieve those photos?

A. Yes.
Q. Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you what's been marked as State's Exhibit Number 157.
A. Yes.
Q. Can you take a look at that?
A. Yes.
Q. And what is that?
A. One of the pictures that are on our file.
Q. Okay. And this would have been from the date of arrest as it pertains to this incident, correct?
A. Yes.
Q. All right.
MR. OSBORNE: Your Honor, at this time I would seek to admit State's 157 into evidence.
THE COURT: Any objection?
MR. LOIGNON: Court's indulgence.
THE COURT: Yes, sir.
MR. LOIGNON: No objection, Your Honor.
THE COURT: Without objection it is admitted.
(WHEREUPON, State's Exhibit Number 157 admitted into evidence.)
MR. OSBORNE: Okay. I will publish through another

witness, Your Honor.

THE COURT: Sure.

MR. OSBORNE: No further questions.

THE COURT: Cross-examine.

MR. LOIGNON: No, Your Honor.

THE COURT: Okay. You may step down, and you are free to leave. Thank you.

(WHEREUPON, witness steps down.)

THE COURT: Call your next witness.

MR. OSBORNE: The State calls special agent Clay Simmonds.

THE COURT: Okay.

MR. LOIGNON: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, bench conference 1/8/19, 4:06 p.m.)

THE COURT: Ladies and gentlemen, we had a bench conference concerning an evidentiary matter. But rather than excuse you we are going to go forward, so we will take that. And but please understand what was done was perfectly normal. It was out of your hearing and it was supposed to be. It was for my edification, not yours.

Okay. Come forward.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name spelling your last for the record.

THE WITNESS: My name is Robert Clayton Simmonds. Spelling the last name as S-I-M-M-O-N-D-, as in David, -S.

DIRECT EXAMINATION BY MR. OSBORNE OF ROBERT CLAYTON SIMMONDS:

Q. All right, Agent Simmonds. Where are you employed?

A. I am a special agent with the FBI here in Charleston, South Carolina.

Q. All right. How long have you been with the FBI?

A. A little over 16 years. And prior to joining the FBI as a police officer here in Charleston at the Charleston Police Department for five years.

Q. Okay. So you worked here and now with the FBI?

A. Yes, sir.

Q. All right. And what are some your duties and responsibilities as an FBI agent?

A. Currently I am assigned to what we call the Charleston Resident Agency. Here I work on the violent crime squad, gang squad, where I investigate almost any federal violation of violent crime laws that are on federal statutes, drug investigations, gang investigations, bank robberies, kidnappings, robberies of businesses that engage in interstate commerce. You know, there is stuff crossing state line; things of that nature.

I am also specialized, for lack of a better term, in the analysis of call detail records or historical cell

phone records and part of a team called a CAST team which stands for the cellular analysis survey team.

Q. Okay. And, well, you kind of mentioned it a little bit, but as a member -- and that is like an auxiliary responsibility of yours being a part of that team?

A. Sure, it is a collateral duty that I do almost on a daily basis. I look at cell phone records, and kind of a simple way of putting it is I take the cell phone records and draw a picture of what those records would look like if they were plotted on a map.

Q. Okay. And what type of training if any have you received to become a member of that CAST unit?

A. In addition to my training at Quantico for becoming a special agent we -- to become a member of the cast team you have to go through approximately 400 hours of training. It is four -- kind of four stages of training.

The initial stage of training is just basic cellular analysis of records. They give you different records from every major service provider. You take a look at the records. You see what information is available. You learn how to obtain that information through the various legal process that you can get them. You look at them. You analyze those records. And then you take those records and draw them out on a map to give a visual depiction of what those records look like over that period of -- period of

time.

The second phase of the training is what we call advanced cellular call detail record analysis. Basically there are some issues that come up with the records. They may not be in the right time zone. Because some companies give you records in what they call UTC or the Universal Time Code, which records are four or five hours ahead of our time. Here you have got to learn how to convert those records. Sometimes they are just out of date and you have to sort through those records and put them in chronological order; things of that nature.

Third phase is we go through a what we call a tracking class. It is a two-week course where again we are looking at cell phone records. We learn how the phone works, how it communicates with cell phone towers. And then we have specialized equipment that we go out and try to find those phones. We analyze the records and then we use the equipment to verify our analysis from there.

And then after that we have an instructive development course, because everyone that is certified to be a CAST agent in the FBI also is certified to teach on the subject matter itself. So we go through a week-long course for that.

And then finally we go through our two two-week certification process where the first two weeks we learn

about radiofrequency theory, how the phones work, how they interact with the cell phone towers, why they -- why they perform the way that they do.

We bring in all of the service providers from every major network; T-Mobile, Verizon, Sprint, AT&T, U.S. Cellular. We are bringing their law enforcement personnel to tell us what records are available, how we go about getting them. Their engineers come in and explain it to us their network how -- the network is set up and why it is set up that way, how the phones interact with the network once the phone call gets into the network how they process it out.

We take a tour of the switches that -- all the towers and the switches where the signals come back to to connect everybody's phones together, we take a tour of that.

And then the final two weeks is we are given a practical exercise where we have to analyze the records, go and dry test those records to get the footprint of the cell tower in question. Make that a presentation. And then we go through a mock trial where we present our findings. And then we have attorneys come in as prosecutors and defense attorneys prepping us for, you know, expert witness testimony during those final two weeks.

And after the end of each phase of testing everybody must pass a test after each phase to move on to the next

one.
Q. Okay. Do you have to go through an annual recertification or annual training to be a member of the CAST team?
A. Yes, sir, every year we get together as a group, bring back in the service providers to seek new information on what new technology is out there. You know, if they've changed something, the records. If they are able to provide us additional information. We meet with them to get updated each year.
Q. Okay. All right. So rolling right into that, what is historical cell site data?
A. So the CAST unit was formed at the FBI because the prevalence of cell phones and everybody has one. Everybody uses them. It is kind of like their lifeline. And it provides a picture of what a person was doing at that moment in time.
And so we developed this unit because we realized that cell phone records will help us in locating fugitives, missing children, evidence, putting individuals in a general area of crimes that took place, giving us a general area to maybe start a search to find a child or evidence or a fugitive of that nature. So they formed this team because of it.
And after we go through all of the training and

certification we, again, like I said before, take those records, analyze those records, see which tower that phone was used and which side of the tower that phone was used and then place that proximate location on a map to give you a visual depiction of what those records that were provided.

Q. Okay. Approximately how many times have you performed historical cell sight analysis and what type -- well, you have already mentioned the cases. Just analysis ---

A. I look at records almost -- almost every day. Some days I don't -- there's some days I look at several dozen records throughout the day. But most -- almost every day I use it for my own cases. When other agencies or jurisdictions ask -- ask me to do it I take a gander at the records.

Q. Okay. And so any law enforcement agency can ask you to do this type of analysis?

A. Sure.

Q. Okay.

MR. OSBORNE: All right. Your Honor, may I approach?

THE COURT: Yes, you may.

Q. I am showing you what has been marked as State's 115. Can you take a look at that and tell me if you recognize that?

A. Sure. It is a compact disk of four call detail

record -- a disk that contains four numbers for call detail records that you showed me in your office.
Q. Okay. And you know that because of how?
A. I initialed it and date it when it was provided to me.
Q. Okay. Now and you were asked to perform cell sight data analysis on those four numbers in this case; is that fair to say?
A. Yes, sir. So I was given four numbers. I believe two of them were T-Mobile. Two of them were Sprint. And asked to analyze those records over the period of time that was requested.
Q. Okay. Now let's -- so we are mentioning this term, call detail records. Explain to the jury what are included in call detail records.
A. Sure. So call detail records I try to use the analysis of when you used to get phone bills. I don't know if anybody still gets cell phone bills anymore. But back when they charged you all the time for your minutes you got a bill for each call that you made. It showed you the date, the time, the duration, who called you, or who did you call. It might even have broken it down to what city you were in when those calls were made.
With call detail records or CDR's they give you a little bit more information on it. It also -- with all of that information I just stated it also gives you

information about what tower and what side of the tower, what we call the sector, was used when that call was made, thus giving us an approximation of where that phone was located at that particular moment in time.

Q. Okay. And after being provided with State's Exhibit 55 what did you do next?

A. So after being provided with the call detail records I obtained information of what was pertinent to the investigation location; whether it was locations, timeframe, things of that nature.

And I used the information that was provided along with the call detail records to put together slides or maps showing the transactions the phone had with their particular network, whether it was Sprint or T-Mobile, over that period of time I was requested.

Q. Okay. And generally speaking what -- do you remember the timeframe that we were looking for in this case?

A. I believe if I recall correctly it was April 17th, 2015, through April 21st of 2015.

Q. Okay. And were you able to identify specific cell towers that were being used by target numbers during that relevant timeframe?

A. Yes, sir.

Q. And how were you able to identify those specific towers?

A. So when -- you request the records from them. The cell phone companies have a list of towers in their data base that tells us the location where they are. They combine latitude and longitude for each one of those towers. They tell us what sector the towers are angled or oriented within the tower record list there.

And so we take that information from the tower record list, place the towers on a map, and then match the tower list up with the call detail records to give us that visual depiction of the call detail records.

Q. Okay. And did you prepare a PowerPoint presentation in anticipation for this trial?

A. I did, sir.

MR. OSBORNE: May I approach, Your Honor?

THE COURT: You may.

Q. I am showing you what has been marked as State's Exhibit Number 116. Can you take a look at that and tell me if you recognize it?

A. Yes, sir. It is the presentation of maps that was provided to your office after I conducted my analysis.

Q. Okay. Let me ask you this. Is it fair to say that the information that was provided in State's 55, the call detail records, that what you did right there during that PowerPoint presentation is just present it in a visual format that is easier to see for the relevant target

numbers for the relevant time that we ask?
A. That is all ---
Q. Okay.
A. --- the presentation shows.
Q. And would referencing to your PowerPoint presentation contained in that exhibit help explain to the jury your findings?
A. Most definitely.
MR. OSBORNE: Your Honor, at this time we would seek to admit State's 116 into evidence and publish it for the jury.
THE COURT: All right. Subject to the objection of counsel.
Approach please.
(WHEREUPON, bench conference was had 1/8/19, 4:21 p.m.)
THE COURT: Ladies and gentlemen of the jury, I thought we could take it up. I am going to ask you to go to your jury room. Do not begin your deliberations. We need to place something on the record.
(WHEREUPON, jury exits 1/8/19, 4:23 p.m.)
THE COURT: All right. There's been a bench conference concerning whether or not his testimony -- objections. First we started as to whether or not he is qualified. I haven't heard anything -- there is no -- I haven't heard a question about an opinion yet. All I have

heard is he prepared a document, taking data and placing basically the data onto a map that would correspond with locations that -- you can challenge that. But they don't have to have an expertise to do that. He has already testified to experience of preparing the document. So that part if allayed.

But you mention there is a lack of foundation. What is your objection?

MR. LOIGNON: Well, Your Honor. Basically just that the State hasn't -- I assumed they were going to attempt to try to introduce the phone records first. But I don't believe they have established any legitimate link of these phone records to Mr. Smith or anybody else in the case. I

They have simply said that -- I mean in Mr. Smith's case that through Jibral Acevedo he called somebody named TJ that ends up being Mr. Smith on a particular number.

THE COURT: Well, that's legitimate cross-examination material, you don't know that in fact is Mr. Smith's number; it was a number given to you and somebody told you it was Mr. Smith's. That is all he is testifying to. That -- and there has been testimony that this number was Mr. Smith's. There has been testimony of Acevedo's number. He testified to that. That is one of the numbers. Is where is Bryant's Smith's testi- --

MR. OSBORNE: That is coming through Acevedo as well.

He said Little B, knew him as Bryant Smith, and he gave the number.

THE COURT: Oh, he did give a number. That is right.

MR. OSBORNE: And the last one is George Bennett's. And that is coming from the phone that was taken from MUSC.

THE COURT: That is fine. Those are already in evidence. Those numbers are there. So he can extrapolate that from the evidence that is in this case thus far.

MR. OSBORNE: Yes, Your Honor. And for the records -- it would go -- for the record it would probably be cleaner for me to put notice -- to make these court's exhibits where I filed notice that I intended on bringing these in without calling a custodian.

THE COURT: All right. You don't have to by the statute. That is to protect them I think, to allow you to get the information from it. Again ---

MR. OSBORNE: Okay.

THE COURT: I mean you are not objecting to the authenticity of the records he has used, are you?

MR. LOIGNON: Not the authenticity, no, sir.

THE COURT: All right. Folks, this is nothing more than taking stuff we have had, just like as he just said, what we get -- have gotten with our telephone lines when those of us have had landlines. We saw what calls we made. That is all this is.

Now he obtained certain information. And that came through the -- through your request of where the towers were, a list of the towers, which he then took and then as I understand it placed on this map that he has prepared.

So it is -- again, is there potential for error? You bet. Is that something that is objectionable? No. Because that is subject to cross-examination. You can suggest all of those things.

For instance, State versus Rogers is one that they use the tower -- the towers to show -- this is a case, a Court of Appeals case, in September of 2013. Judge Hyman was trying it. There was no real objection made, but they mentioned that towers were used to show the phone's usage in a certain area. It doesn't say that that phone was in that man's hand. It just simple says it pinged in that area. And that is basically what these are saying.

As I understand of her testimony along the lines -- I think the last part of what this witness has testified to, because I heard one in a case in Horry County where they talked the angles that would have to be to land at a certain point of the tower. And that part of it, I haven't heard any testimony he is planning to do that.

MR. OSBORNE: No, sir.

THE COURT: I mean I understand there's -- I didn't realize that, the numbers show actually the tower and then

where it is located on that particular tower.

THE WITNESS: What sector it uses.

THE COURT: What sector.

THE WITNESS: Yes, sir.

THE COURT: He is not -- he is not suggesting -- you are not having him testify to that?

MR. OSBORNE: There is only that one on [redacted] Park. And then just -- just we are just going to introduce evidence that it just hit off that tower. I don't care what sector.

THE COURT: That is fine. That would be the only one where I would have to hear some testimony about -- because I think that requires some degree of expertise to make that determination.

Although to be candid with you it is really like the bloodhound expert when the dog barked and went. That was an indication, and he knew that because he worked with the bloodhound all of his life.

So I mean this is one of the similar situations. You have done it enough that that just comes from experience of doing it over and over. And I realize that. But as I understand, that opinion is not going to be. If it does you can make your objection again.

As to the relevance I think it is relevant. As to whether or not it connects, that is up to the jury to

decide that. There is certainly evidence in the trial on these numbers.

I think it would be -- it has probative value just to show the usage, number one; number two, where they were during this period of time. It is important. I don't -- I haven't seen this. This is nice. I am like the jury, I don't know where it relates in connection with where this all took place. I am sure there may be some connection to that. But I am looking forward to seeing that.

But thank you very much. Your objection is noted as to those. Anything else?

MR. LOIGNON: Just one last bit, Your Honor. And it is based on the presentation itself. I think it is misleading just because it shows the names associated with the numbers as if that is established as fact and it is going to be admitted into evidence as such. And I think it is misleading in that way.

If it just had the numbers up there and they have already made that connection they can argue it in closing. But with the names next to ---

THE COURT: Did you object when Mr. Acevedo testified that these were the numbers?

MR. LOIGNON: No, sir.

THE COURT: Or are they people -- so he has already identified that. That is all it is. Now is that their

number? I don't know. That is up to the jury.

But there's evidence to say that number connects with this person based on the testimony of someone that knew him. So your objection in so far as that is overruled as well.

MR. LOIGNON: Thank you, sir.

THE COURT: Okay.

MR. OSBORNE: Can you just put it up real quick and let's make sure that -- sorry, Judge.

THE COURT: Sure. But I do not fault the objection.

MR. OSBORNE: Okay. Thank you, Judge.

THE COURT: You bet.

All right. Are we ready?

MR. OSBORNE: Yes, sir.

THE COURT: Okay. Let's bring back our jury, please.

(WHEREUPON, bailiff provides jury note regarding foreperson, Court's Exhibit Number 1.)

(WHEREUPON, break awaiting jury 1/8/19, 4:30 p.m.)

(WHEREUPON, jurors enter 1/8/19, 4:30 p.m.)

THE CLERK: Jurors are all present. Your Honor.

THE COURT: Thank you.

Thank you, ladies and gentlemen. I appreciate your patience. Again, that is very normal.

Now you are offering State's 116, I think. Subject to the objections that have been fully argued on the record

now, and I overruled those objections. It is admitted. But it is protected for further review should that become necessary.

(WHEREUPON, State's Exhibit Number 116 was admitted into evidence.)

All right. You may proceed, Solicitor.

THE COURT: All right. Thank you, Judge.

Q. And you had said that that was a printout. But you had presented it in a PowerPoint, so that was just a printout?

A. The printout, and I provided it also in electronic format on PowerPoint.

Q. On PowerPoint. Okay. All right. So this is your PowerPoint presentation. I will kind of let you go and you just tell me when you want me to move.

(WHEREUPON, slide displayed.)

A. Sure. So this page right here is just the coversheet. It just tells you who I am, what organization I work for, what numbers were -- I was asked to be -- asked to analysis, and the date that I finished my analysis.

And I want to state that once I complete an analysis it is submitted to another CAST certified FBI agent to review it and make sure I don't have any typographical errors or anything else. So it is subject to peer review before I present it to the folks that ask me to create the

PowerPoint.

Q. Okay.

(WHEREUPON, slide displayed.)

A. This next page is just the background, what I was asked to do, the phone numbers I was asked to analyze, the date range that was provided, the methodology that was used to conduct the analysis. And then at the very bottom it shows -- tells you that the conclusions will be provided on the following pages.

Q. Okay.

(WHEREUPON, slide displayed.)

A. This is basically an example to show you what a cell tower looks like. Cell towers and phones are constantly -- phones are constantly looking at cell towers to see where they get the strongest clearest signal from. So when a call comes in, a text comes in, or you want to surf the internet, the phone knows what tower to ask for resources or services from.

Most cell phone towers in the United States and especially here in South Carolina are divided up into three sections. We call them Section 1, Section 2 or -- Sector 1, Sector 2, or Sector 3. Or also some companies will call it Alpha, Beta, or Gamma.

We estimate that the sectors are approximately 120 degrees sectors, with three of them gives us 360 degrees to

give us a full circle of that particular tower.

So when we draw these sectors out on the map and show you what side of the cell tower that phone was utilizing at the time we place it by the sector and that sector is about a 120 degree pie wedge even though the actual footprint of the tower is not that perfect little pie wedge.

(WHEREUPON, slide displayed.)

Q. And this is just showing that in a different format?

A. So, yeah, this shows you how we determine the orientation or the direction of a particular sector on a tower. So when we have the tower lists that are provided by the cell phone provider they tell us what sector the towers are on and what orientation they are facing to provide us that sectors.

So in this example if you will click one time.

(WHEREUPON, display slide.)

A. We will find out that the orientation is at zero, and we use a clock to determine how many degrees to go. So we want to sit up there and say the strongest signal coming forward from that orientation for Section 1 is at zero, we want to go 60 degrees to the right of that -- of 12:00 and 60 degrees to the left. So we are going to draw it out at 10:00 and 2:00. And then we continue that for each of the next sectors that draw out so we get our 360 degrees.

(WHEREUPON, display slide.)

This slide is placed in here to show you that the little area there is not the location of the cell phone. I only draw that in there to show you the energy that the radio frequency is coming off that tower and sector just to show you the direction that that phone had to be in when the call was placed or the text was received or whatever the activity that is going to be plotted is shown.

We use that just to show you the direction of the energy for that sector. And we don't want people to get mixed up that the phone had to be in the shaded area. It could be anywhere in between these arms in that area.

(WHEREUPON, slide displayed.)

This is just a map of the Sprint and T-Mobile network for the Charleston area in April of 2015. The flags demonstrated -- or presented on the map are the relevant locations that were provided to me that were important to the investigation. The green dots represent T-Mobile towers while the black dots represent the Sprint networks towers.

(WHEREUPON, slide displayed.)

So on this slide these are towers that were used by telephone number 843-489-1354. Based on the investigation and my understanding this was a phone that was used by an individual with the last name of Bennett on April 17th, 2015, from approximately 6:59 p.m. to 7:54 p.m.

Q. And looking at this from that timeframe can you say what towers he was hitting off of going in, you know, in time sequence?
A. So initially around 6:59 the phone utilized this tower (pointing) in this, you know, general area here (pointing). Went back and forth between this next tower up here (pointing). Went back and forth between these two towers between 6:59 and 7:15. And eventually the phone began moving over towards West Ashley area, starting to utilize towers in the West Ashley market around 7:47 to around 7:54.
Q. Okay. So I am going to mark here too just so we are all on the same page. So this is the last tower. Once it gets into West Ashley this is the first tower it hits (pointing) and then the second towers it hits (pointing)?
A. That is correct.
Q. Okay. So generally in that direction (pointing)?
A. That is correct.
Q. Okay.
A. Again, this is the same phone number used by an individual with the last name Bennett on April 17th from 8:00 p.m. to approximately 8:20 p.m. So at eight o'clock between 8:00 and 8:03 the phone used this tower here (pointing). Eventually he traveled kind of southbound and then over back northbound up this way (pointing) and

eventually ended up up here at this tower up here (pointing) at 8:20 p.m.

Q. Okay. On the previous slide this phone was pinging off near this tag here when CS -- that was crime scene?

A. Yeah, I believe it was just west of that.

Q. Okay. And I know you had this on your other, but I didn't mention anything about it; DV this was Department of Motor Vehicles?

A. DV is Department of Motor Vehicles, yes, sir.

Q. And the yellow one over here, DG, that was Dollar General?

A. Dollar General.

Q. Okay. And then this house here was [redacted] Park?

A. That is my understanding, yes, sir.

Q. Okay. So just repeating what you had just said, I think, from 8:00 until about 8:04 p.m. the phone number belonging to Bennett was pinging off of a phone near a tower near [redacted] Park?

A. Correct, it was using that services on that tower both on the south and the west side. At eight o'clock and 52 seconds it was using this sector right here (pointing) that would cover that residence.

Q. Okay. All right. We will move on.

(WHEREUPON, slide displayed.)

Q. All right.

A. So then afterwards the same phone utilized by a Mr. Bennett on April 17th it just shows you what towers and sectors were used from 9:02 to 12:34 in the morning.

The phone started off in the north area of Charleston, North Charleston. Northern Charleston, South Carolina, up there. And eventually moved, you know, down southwards into the Peninsula area.

Q. Back where it started from the requested target frame?

A. Yeah, the phone utilized mostly during this timeframe this tower and sector, that would cover this general area here (pointing).

Q. Okay. Short visit to West Ashley and then we end up back over here (pointing), specifically Green Park?

A. Yeah, according to the phone records, yes, sir.

(WHEREUPON, slide displayed.)

Q. Going on into the night again?

A. And then just continuing on through the night of April 18th from 1:11 a.m. to 1:36 a.m. the phone utilized these two towers that are depicted on the map. With this one here (pointing) have got only covering what was the crime scene on the map.

Q. Okay.

(WHEREUPON, slide displayed.)

Q. And here? Let me ask you something specifically about this presentation right here. From that timeframe that we

had saw Bennett's phone from 8:00 to 8:04 p.m. it hit off the cell tower near [redacted] Park; is that correct?

A. It utilized the tower that would provide service to that residence, yes, sir.

Q. Okay. This phone here (pointing) that is labeled as belonged to a Bryant Smith. Between that timeframe of let's say, I don't know, 8:00 until 8:15 what tower did that phone hit off of?

A. So between 8:00 and 8:15 if you notice on my presentation I have numbers 3:15 at the end of the time, right in there (pointing). That is the orientation of the -- of that particular sector. It shows me what side of the tower he was using. So between 8:00 and 8:15 to 8:43 that phone used this tower sector right here (pointing). Which ---

(WHEREUPON, display adjusted.)

Q. Oh, I'm sorry.

A. Used that -- this tower sector here (pointing) which also provides -- would provide service to that residence that is depicted.

Q. Okay. Now I know we've got a lot of information here about this phone, but I want to ask you a couple of specific question. At eight o'clock this phone labeled as belonging to Seth Smith, what tower did that phone hit off of?

A. That tower is utilizing -- or that phone is utilizing this tower (pointing).
Q. Okay. Track the phone's usage after that until it ends.
A. So -- let me see. Eight -- from 8:00 to 8:10 it moves, you know, down -- excuse me. So this phone used -- at eight o'clock the phone used this tower up here (pointing), then utilized this tower at 8:10. Came here (pointing) at 8:23 to utilize this tower (pointing). And then from 8:39 to 9:59 it stayed down here (pointing) and used this tower (pointing).
Q. Towers near the crime scene ---
A. That is correct.
Q. You know, where you have it marked?
A. Right. It looks like that tower would provide -- possibly provide service to the crime scene.
Q. Okay. Now again from when that picked up at about 9:50 and tracked from 9:50 until 10:50 for an hour where -- well, let's go further than that. Until 11:50. For two hours what towers was that phone hitting off of?
A. So the tower -- the phone was utilizing these towers (pointing) -- these two towers right in this general area (pointing). You know, from 10:30 to 10:50 this tower (pointing) down here. And then from 11:40 to 11:50 this tower (pointing) up here.

Q. Okay.
A. And so this is a phone, 646-570-9006 used by an individual with the last name of Acevedo on April 17th from 9:04 p.m. to the 18th of April at 12:49 p.m. And so the phone utilized these two towers that are depicted on the map.
Q. Downtown, not West Ashley?
A. It appear -- yeah, the services are of the towers would be downtown. Definitely downtown.
Q. Okay.
(WHEREUPON, slide displayed.)
A. Again -- now we have three numbers that are displayed on this map; the 9006 used by Acevedo, the 5286 number used by an S. Smith, and a 1354 used by Bennett on April 18th from 9:31 a.m. to 1:35 p.m.

It appears the Acevedo phone utilized the tower marked in blue here (pointing). The S. Smith phone utilized this tower up here (pointing) marked in green. And then the Bennett phone utilized this tower down here (pointing) which, you know, appears to provide service to the crime scene area.
Q. Okay. So I want to talk about 11:40 a.m. specifically. At 11:40 a.m. is it fair to say that the last communication on Bennett's phone occurred at 11:37 and that would have put him near the crime scene?

A. That is the last communication that -- by the tower information.
Q. Okay.
A. So ---
Q. So the texts don't provide tower?
A. Yes. At the time -- at the time Sprint did not -- Sprint still does not provide tower information for their phone records. And at the time in 2015 T-Mobile did not provide tower information for their text messages. They do now. But back then they didn't do so.
So this -- these are voice transactions that took place. And the last one that took place on Bennett's phone ending at 13:54 was at 11:37:54 ---
Q. Okay.
A. --- a.m.
Q. Okay. And in regards to Acevedo's phone, at 11:40 a.m. is the closest you can get to that at 12:00 p.m. putting his phone in West Ashley?
A. Yeah, that would be at noon over here (pointing) near the Dollar General store.
Q. And then at 9:30 he was in West Ashley too?
A. That's -- according to the records, yes, sir.
Q. According to the records, right. And in regard to the phone labeled Seth Smith is it fair to say that there was no cellular data at all until 1:30 p.m.?

A. There is no tower information available until 1:30 p.m. for that particular phone. And that would have been located up here (pointing) in North Charleston.
Q. Okay. All right. Now we are looking at April the 20th. At 9:30 in the morning where do you have Acevedo's phone?
A. So that would be the phone ending in 9006. It is still over here (pointing), West Ashley area, again, using a tower that appears to provide service to the area of Dollar General.

As the day progresses the phone eventually moves and comes over here to the Mt. Pleasant area first using towers at 11:12 a.m. and then finally stopping at this tower over here (pointing) with the last call taking place at 11:48 using a tower that provides service to this residence marked with a green tag.
Q. Okay. Jeremy Wright?
A. Mr. Wright's residence.
Q. All right. So we have a little bit of information here. Let's look at specifically from three o'clock until four o'clock.
A. Okay.
Q. When you have cell data from three o'clock to four o'clock in reference to Acevedo and Seth Smith's phone what tower are they pinging off of?

A. So the two phones, Mr. Acevedo's phone ending in 9006, and the phone of Mr. S. Smith's ending in 5286, from approximately 3:12 to 3:55 they are using this tower that I am circling here. Both of them are providing service or would provide service to the Department of Motor Vehicles which is depicted with the blue flag on the map.
Q. And that is why you have the phones overlapping or at least ---
A. That is correct. So I would have to go back and verify. But I believe Sprint and T-Mobile share space on the tower, so I think the tower -- are located on the same structure. But they have them oriented a little bit different. That is why you have the green and the blue arms kind of overlapping with each other.
(WHEREUPON, slide displayed.)
Q. Okay. Now in reference to this slide at 7:30- -- and this would be April the 21st. So now we are -- Monday was the 20th. The 21st is Tuesday. At 7:37 a.m. which tower do you have Acevedo's phone?
A. So Acevedo's phone is the one that ends in 9006. Again it is over here (pointing) using this tower that's been marked CID 5 -- 525-1 which provides service to the store marked as Dollar General.
Q. And what tower do you have the Seth Smith phone at 9:22 a.m.?

A. At what time?
Q. 9:22 a.m. -- or 9:23. I'm sorry.
A. So that phone would be up here (pointing) kind of off of Rivers Avenue, between Rivers and I-26, up more towards North Charleston.
Q. Okay. And is that a similar location that you have Acevedo's phone at 9:22?
A. Correct. With -- that tower is, again, just a little bit south of the one that Mr. Smith was -- phone was utilizing at the time. But, you know, that could be somewhere in the general overlap area that I have scribbled up there.
(WHEREUPON, slide displayed.)
Q. Okay. And the last slide. I know it's a little bit busy. But we are looking at April the 21st from 10:02 a.m. to 1:26 p.m.; is that correct?
A. That is correct. That is what is displayed up there. Yeah, it is a little busy because a lot of towers being displayed with the markings. Also relevant points being displayed.
But Mr. S. Smith's phone at 10:02 was utilizing this tower. Utilizing this tower here (pointing). Kind of into North Charleston just above the Peninsula area of Charleston at 10:02.
Q. Okay. And from 11:30 -- well, 11:33 which tower do

you have Mr. Smith's phone on?
A. At around 11:33 it is down in the Mt. Pleasant area utilizing this tower -- this tower here (pointing). And specifically at 11:33 it is using the south sector right here of this tower (pointing). So it's ---
Q. And a 12:05 Mr. Smith's phone?
A. And then so now that phone has moved and sought services off of this tower here (pointing). And that is the cell tower that provides service to Mr. Wright's residence in Mt. Pleasant.
Q. Okay.
MR. OSBORNE: No further questions.
THE COURT: Cross-examine.
MR. LOIGNON: Thank you, Your Honor.
THE COURT: Uh-huh.
CROSS-EXAMINATION BY MR. LOIGNON OF CLAY SIMMONDS:
Q. So you are testifying as to what specific tower a phone used in a particular time, right?
A. Tower -- tower and sector of that phone and giving you the general area of where that phone would have been for that tower and sector.
Q. Obviously you have no way to know who is actually using the phone at the time?
A. That is why most of the time I say the phone utilized that tower and sector.

Q. Right. And many of these towers can pick up signals from as much as 20 miles away?
A. No.
Q. No?
A. No, ---
Q. How far?
A. --- that is -- well, every environment -- every environment's -- every environment's different. And we hear the argument all the time; we have asked the engineers when we go through our training, and every engineer laughs at a comment of that the towers can pick up signals 20 miles away. They say that it would have to be a perfect environment, flat, no services by anybody else to be used.

So they set up their networks in the manner that they do to provide the best possible service to the customers, to you the users. Because they don't want you to drop calls because it makes you mad, you get frustrated, you have to call people back. And so they set up those towers.

So every network is spaced differently. You know, here in Charleston they might space towers out every half a mile, mile, maybe two miles, depending on what demand is placed upon those services.

While in New York they might have them every block because there's 10,000,000 people in New York and 10,000,000 people wanting to use services on their phone so

they have to have more towers to provide more capacity to provide better service to those customers. So every network and every market is a little bit different.

Q. Well, generally the phone is going to seek out the closest tower, right?

A. It seeks out the tower that provides the strongest, clearest signal for service at that time. And it is generally the closest one, but it is not always. There's various factors that depend on what tower the phone sees it with its strongest, clearest signal.

Buildings get in the way. How the tower is oriented, how the antennas are pointed down towards the street, they could be pointed out a little bit higher so they provide a further footprint. So there's various factors that determine what the phone sees as the clearest, strongest signal. But it will always try and find the clearest, strongest signal. And that usually is the closest tower. But not always.

Q. Other than interference from buildings and things like that, a tower could simply be overloaded; right?

A. No, because then the records would not be populated. So when the phone -- as I explained a little bit earlier, the phone is constantly looking to see what tower and sector and what tower is providing the best possible service. So when you hit the green button or you swipe the

green button to answer the call, send out that text or whatnot, it sends a signal to the tower and says I need resources to complete this call, to complete this text, to complete this data session. And at that moment the services are generated. And once those services are generated because a cell phone chose that tower, that tower and sector is put into the call detail records which is analyzed.

So if that tower was not working at that particular time those records would not have been generated.

Q. Yeah, I think maybe -- maybe I didn't state my question as clearly as I should have. A reason for the phone to seek out another tower would be if a particular tower was overloaded or down for maintenance or something like that?

A. Well, there is nothing in the records that indicated that any of these towers were overloaded or down for maintenance. Because they were there. There is no other information saying that any other towers were down or overloaded at the time.

And I am sure this has happened to y'all; it happened to me -- it has happened to me in the past; but you are at a major event when you sit up there and you want to record that. We use a football game last night. You record the great win of your favorite team that night and you want to

send out a text. You are sitting there in the football stadium and you print -- push send and you try and call somebody, and you just kind of look at your phone going why in the heck does that take so long, where you get that fast busy signal.

That is an indication to you at that particular moment that services aren't available and therefore no records will be populated into your call detail records.

That might be how you would determine that a tower is overloaded at that particular moment, but no record is ever generated and your phone is just going to wait for services from that particular tower sector because that is what it sees as the strongest. It is not going to reach out to another one.

The only way that would possibly happen is if you happen to be in an overlap area of two cell phone towers. Because they set up the cell phone towers kind of like a sprinkler system, because you don't want to have dead spots; again, because it makes you mad and you won't have good service.

They set it up like a sprinkler system so you have a little bit of overlap so in your yard you don't have a dead piece of grass in your yard, you have that overlap.

And so if you are in that overlap you might have that situation where it might seek out another tower. Most of

the time it is going to wait on services from the one that provides the strongest, clearest signal.

Q. Yes, so I am just trying to figure out in general. You know, there's things like a tower being overloaded at a particular time or if a tower is down for maintenance or if the topography or certain buildings get in the way then a phone might not be able to connect to the closest tower and it might have to go to another one.

A. Again, it will connect to the tower that has the strongest, clearest signal when it asks for resources at that time. It may not be the closest tower, but it usually is.

Q. But a phone could connect to -- you know, if I stood here and made five different calls I could connect to potentially different towers, right?

A. Unlikely, unless, again, you might be in that overlap and it is probably going to be in the overlap of sections. You might be in Section 1 and Section 2 in that overlap period. But it is unlikely that you are going to, unless you were starting to move around in, you know, big areas that will make the phones look for a stronger, clearest signal.

Q. Okay. You can't say how close someone is to a specific tower?

A. No, that is why I said they -- they fall within that

general range of that pie wedge that I draw out on the maps.
Q. Okay. So it is not like a GPS; we are not pinpointing their exact location or anything?
A. No, it is just try to give you a general idea of where the phone is located when those calls were made.
Q. Okay. Now this is going to be the difficult part where I have to try to find these slides. Let's see.
(WHEREUPON, pause to retrieve records.)
Q. Okay. So on this slide, for example, when we are looking at the call at the top, the phone number that has been said to have been associated with Mr. Smith, Seth Smith, you can say that that phone is not in West Ashley; right?
A. That is correct.
Q. And it could be somewhere in say North Charleston, maybe Daniel Island area?
A. Because you have this tower over here (pointing) that is shooting off a signal of radio frequency that way (pointing) -- this is what I talk about your overlap. So this one (pointing) is going to go out so far. This tower (pointing) is going to go out so far. These towers (pointing) are going to go out so far. And then you are going to have an overlap.
So based on the records there that the phone utilized

this tower (pointing) and this sector (pointing) most likely is going to be in this general area here (pointing).

Q. All right.

MR. LOIGNON: Could you switch to Slide Number 8, please.

A. All right. So I think we were looking at two -- we looked at two slides to kind of explain this earlier. But let me just make sure. In this slide we don't have anything on -- maybe it is not Number 8.

(WHEREUPON, slide displayed.)

Okay. So this slide obviously we don't see anything -- this is just showing Mr. Bennett's phone from 8:00 to 8:20, right?

A. That is correct.

Q. Okay. And then I think we referenced another slide here. And I just need to find that. Just give me a moment.

Okay.

MR. LOIGNON: And that is Number 11, I believe.

(WHEREUPON, slide displayed.)

Q. Okay. And this is showing Bryant Smith's phone from April 17th, 7:00 o'clock, until April 18th, 1:00 in the morning; right?

A. Correct.

Q. Okay.

MR. LOIGNON: Number 12.
(WHEREUPON, slide displayed.)
Q. All right. We have now the phone that has been associated with Seth Smith on April 17th from 7:30 to 9:30. And it is showing -- I think we talked about the calls from 8:10 -- or eight o'clock and 8:10, right?
A. Correct.
Q. And those are up there in the North Charleston area?
A. Correct. So eight o'clock would have been here (pointing). And 8:10 there (pointing).
Q. Okay. So at those times the phone that has been associated with Seth Smith we can say was not in the West Ashley area kind of near the 5:26 boundary or any further east, I guess?
A. Correct. It was -- it was generally in this area (pointing) at 8:10 (pointing) and generally in this area there (pointing) ---
Q. Okay.
A. --- at eight o'clock.
Q. Okay.
MR. LOIGNON: And then 13.
(WHEREUPON, slide displayed.)
Q. Okay. And this is another slide showing the number that is associated with Seth Smith. And, you know, you talked about these little pins with the initials on there

and what they are associated with, the Dollar General and the DMV; right?
A. Yes, sir.
Q. And there's not one on here -- I mean we are seeing these calls from I guess later in the evening, 10:30 up through 11:00 midnight almost, and they appear to be downtown; right?
A. For the most part, yes, sir.
Q. And there is not a pin on there showing Mr. Smith's address at 98 Spring Street, right?
A. I wasn't provided with that address.
(WHEREUPON, slide displayed.)
Q. Okay. And finally on April 18th from 9:31 to 1:35 p.m. the phone that is associated with Seth Smith is the only activity that you have is it communicating with that tower up there in North Charleston?
A. That is correct.
Q. Okay.
MR. LOIGNON: Court's indulgence.
THE COURT: Certainly.
MR. LOIGNON: Nothing further, Judge.
THE COURT: Any redirect?
MR. OSBORNE: None, Your Honor.
THE COURT: Thank you. You may come down, Agent. Appreciate it. And you are free to leave as well.

THE WITNESS: Thank you.
THE COURT: Thank you so much.
THE WITNESS: Thank you.
(WHEREUPON, witness steps down.)
THE COURT: All right. At this point, ladies and gentlemen, we will take our recess for the evening. Please remember you are not at liberty to talk about this case with anyone including anyone at home. Don't do any independent investigation.
I am going to ask you to be in your jury room please by 9:45. That will give you a little bit of extra time with the traffic situations we typically have. And hopefully it will be helpful to you. We will bring you out about that time.
Thank you so much. You are free to leave. Make sure you leave the pads with your presiding jury. And you can give them to the bailiff, Ms. Green.
(WHEREUPON, jury exits 1/8/19 5:09 p.m.)
THE COURT: All right. Anything from the State before we recess?
MR. OSBORNE: No, Your Honor.
THE COURT: Anything from the defendant?
MR. LOIGNON: No, Your Honor.
THE COURT: Let me supplement something consistent with our ruling earlier. And I listened closely to the

State. One of the -- and it probably could be a close question of whether that is an opinion of an expert because there is this school that he goes to. But I really liken it to testimony that we hear, police officers -- what comes to mind for instance, a patrol officer observes somebody operating a car and he says I think that person is under the influence. That is based -- that is a 701 opinion. This is based on that person's experience, background, and training.

Although 701 throws in this little catch that is quite interesting. I'll put it in there in case it has to be reviewed. It will be good -- I won't be around I don't think, if it does. The C-part is what is perplexing to me. Does not require any special knowledge, skill, experience or training. Well, that obviously is pertinent to any officer testifying. So obviously they didn't mean that in the strictest of sense.

I think this person testified to based on his training, testified to reactions. The only time that he got into it -- and you asked him, and I don't have any problem with his answer because he really didn't say -- he didn't specifically say yes or no. He equivocated on one. But was when you asked what does it mean.

Now when he talked about a tower can only -- registering 20 -- that, now we are getting into the area of

an expertise. But it wasn't elicited by the State. It was elicited by you. I don't know that it was that big a deal. But I just wanted to make that observation for the record to supplement my ruling on that.

MR. LOIGNON: Yes, sir. Thank you.

THE COURT: Thank you so much. Appreciate it.

(WHEREUPON, recess for the evening, 1/8/19, 5:12 p.m.)

(WHEREUPON, resume trial 1/9/18, 9:48 a.m.)

THE COURT: Is the State ready to proceed?

MR. OSBORNE: Yes, Your Honor.

THE COURT: Is the defendant ready to proceed?

MR. LOIGNON: Yes, Your Honor.

THE COURT: Let the record reflect that Mr. Smith is present. Good morning, sir.

All right. Let's bring in our jury, please. Thank you, sir.

(WHEREUPON, jury enters 1/9/19, 9:49 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope you had a good evening. We are ready to continue. I would ask that you give your attention to the next witness.

Good morning, Mr. Osborne. You may call your next witness.

MR. OSBORNE: Good morning, Judge. The State calls Detective Sergeant Paul Krasowski.

THE COURT: Okay.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name and spell your last for the record.

THE WITNESS: My name is Paul Krasowski, and my last name is spelled K-R-A-S-O-W-S-K-I.

DIRECT EXAMINATION BY MR. OSBORNE OF PAUL KRASOWSKI:

Q. Good morning, Sergeant.

A. Good morning.

Q. Where are you employed?

A. I work for the City of Charleston Police Department.

Q. And for how long?

A. I have been there for going on 13 years now.

Q. All right. What is your current position there?

A. So I am the detective sergeant over the violent crimes unit, what we commonly refer to as the homicide unit.

Q. Okay. And where were you assigned back in September of 2015?

A. So I was in that unit, the violent crimes unit, as a detective at that time.

Q. Okay. So you got promoted to sergeant?

A. That is correct, I was promoted in 2017.

Q. And from there you went back out on the street a little bit?

A. Yes, I did just over a year as a patrol supervisor in the West Ashley district and then was recently brought in

as the supervisor over the homicide unit.
Q. Okay. And back in September of 2015 you said you were in the violent crimes unit. What were your duties and responsibilities as a detective in the violent crimes unit?
A. So in that unit where -- there is a rotation of case assignment. So when we get a case assigned to us, whether it be a homicide investigation or an aggravated assault or shooting or other death investigations, obviously we go through the case and some cases require a call-out just because of the severity of the investigation. And so it is about compiling evidence, following the evidence in a case, and being able to present it here, prepare it for trial.
Q. Okay. Just so the jury can understand how the investigation evolves, in the early stages of the investigation is it sort of an all-hands-on-deck approach?
A. It is. So in this case this case involved a call-out. It was a Saturday late morning. And so our detective bureau was not staffed with many. There was only on-call detectives. So our unit, the violent crimes unit, was called in. Several detectives from the unit were called in. I was one of them that was called in.
Q. Okay. And is -- when a case of this -- when a homicide occurs, or any case I guess, isn't the -- is the case assigned to a specific detective?
A. It is. That is called the case agent of the

investigation.
Q. Okay. In the early stages of this investigation were you the case agent?
A. I wasn't initially.
Q. And who was?
A. Detective Rick Burkhardt.
Q. Okay. And where is Detective Burkhardt now?
A. He has since retired from the Department.
Q. Works across the street in security for the Federal Building I think?
A. He does. He is a security officer in his retirement status just for an extra income.
Q. Okay. Did you later become the case agent of this case?
A. I did. And I had a pretty significant working involvement in this case. So it was -- it just made sense for me to become a case agent.
Q. Okay. And just tell the jury briefly I guess what are some of the duties of the case agent in specific in regards to the investigation.
A. So in this case you have heard testimony and saw evidence that shows that this is a pretty involved investigation. There's a lot of moving parts to it. And that just goes -- just increases the responsibility of the case agent.

So they are responsible for delegating different tasks, tasks that need to be completed with other detectives in our division, and then compiling that and organizing all of that information and then continuing to access what follow-ups need to be done and prioritizing those follow-ups.

And inevitably it's organizing all of that and preparing it for to present over to the Solicitor's office. And then any other kind of follow-ups that come along.

And you will see in these cases there will be follow-ups that present themselves throughout the entire portion of the investigation leading up to the trial.

Q. Okay. And the case agent then would also make decisions on what evidence needs to be analyzed and what evidence doesn't?

A. Yes, they will.

Q. Okay. And did you have the occasion in this case to go back and look at some of the evidence and some of the early findings in the case?

A. I did.

Q. All right. Did you have the occasion to go back and look at the actual crime scene and what evidence was collected from that?

A. I did.

Q. Well, I will just ask you specifically. How many

fired shell casings were found outside of the victim's vehicle?
A. So outside of the victim's vehicle there were four.
Q. How many fired shell casings were found inside the victim's vehicle?
A. There were eight casings.
Q. How many times was George Bennett, the murder victim, shot?
A. He was shot 12 times.
Q. How many times was Rayshawn Rivers shot?
A. He was shot once.
Q. Okay. So we have thirteen hits, thirteen strikes to victims; twelve on Bennett and one on Rivers; and you recovered twelve fired shell casings?
A. That is correct.
Q. Did that surprise you that you appeared to be missing one?
A. It did not.
Q. And why is that?
A. So you heard the pathologist testify yesterday. Some of those wounds that George Bennett suffered were what are referred to as through and through. So there will be a fired shot that will enter the victim and then travel through the victim, exiting the victim and continue traveling. Which we believe that is how Rayshawn was --

Rayshawn was hit.
Q. Okay. Through your experience have you also found that sometimes you just -- shell casings can go missing?
A. Absolutely. Unfortunately. But the reality is they can get kicked during the initial response. We have a lot of personnel that comes on the scene. So you have EMS that is responding, and then you also have a fire department that typically responds. And so there's a lot of moving parts in those initial stages.
So they can get kicked. They can get wedged in places where you just can't find them or things like that.
Q. Stuck in boots -- and normal citizens just arriving on the scene ---
A. Absolutely ---
Q. --- prior to you arriving?
A. And there is a period of lapse when officers are able to secure the crime scene and the incident from happening. So there is an opportunity there.
Q. Okay. And what caliber were the shell casings?
A. They were all 40 caliber.
Q. All 40 caliber?
A. Yes.
Q. All right. So we have heard some testimony about what gunshot residue is. So let's talk about that for a second since it has been brought up. Did -- was the victim tested

for gunshot residue?
A. He was.
Q. And was Rayshawn Rivers tested for gunshot residue?
A. He was.
Q. And were those gunshot residue tests sent up to SLED to be analyzed?
A. No, they weren't.
Q. Why not?
A. So there was no evidence to suggest that they fired back. Every piece of evidence that we collected between the video and also witness testimony was that Mr. Bennett was ambushed.
Q. Well, let's talk about that. Now you have fired shell casings inside of the car. Does that give you any indication on the proximity to where the gun was and to the victims?
A. Yes, it does. We know that the gunman was -- was fired in a close proximity, some of his shots, which allowed the projectile -- or the -- excuse, me, the casings to be ejected into the car.
Q. Okay. And would that affect the gunshot residue results and any evidentiary value that might come out of that?
A. It would have an impact on the testing results, yes.
Q. Okay. And are you aware that SLED has even adopted a

policy that they are not doing GSR tests on victims anymore for gunshots?
A. Yes, generally speaking that is correct. They are inundated with cases, and it takes about two years to get any kind of gunshot residue test back.
Q. And the reason for that is, as you expect to find if you were shot with a gun, that there may be gun powder on you -- or gunshot residue?
A. Absolutely. Especially in a vehicle which is closed. Despite maybe a window being open or a car door it is a very contained environment, and when a gun is fired it is essentially a controlled explosion. So it is sending that gunshot residue those elements into like a cloud essentially. So it will cover a large portion of what is within that containment.
Q. Okay. Now we have heard some talk about surveillance video in this case. Did you go back and review the surveillance video?
A. I did.
Q. And let's talk about cameras. Are there surveillance cameras that the City has put up?
A. Yes. They are called the City of Charleston Safety And Security Camera Systems.
Q. And are they in various locations?
A. They are.

MR. OSBORNE: May I approach, Your Honor?
THE COURT: You may.
Q. I am showing what has been marked as State's 142. Can you take a look at that and tell me if you recognize it?
A. I can.
Q. And what is that?
A. And so this is a map of all of the safety and security cameras at the time. So this was -- this map was created in April of 2012. And that would have been an accurate depiction of the cameras that the City of Charleston had at the time of this incident in 2015.
Q. Okay.
MR. OSBORNE: Your Honor, at this time we would seek to admit State's 142 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection State's 142 is admitted.
(WHEREUPON, State's Exhibit 142 was admitted into evidence.)
Q. Okay. So this is the peninsula of Downtown Charleston?
A. Yes.
Q. And we see some dots here. That's denoting a location of surveillance cameras?
A. Yes, it is. And they are color-coded.

Q. Okay. So this murder, we have heard testimony already, occurred on the East Side?
A. That is correct.
Q. And so those are the green cameras, correct?
A. Yes, they are.
Q. Okay. And on here are you able to put or mark on there where the murder occurred?
A. Yes. So this is -- you can see Reid Street. And it's -- the murder occurred just somewhere right around here (pointing) -- well, it is a little bit further east if you will. But it is right in that close proximity here (pointing).
Q. Okay. So that green dot just to the left of where you put the blue dot, that is going to denote the camera that was rotating that captured the end of the murder?
A. Yep. And you see that camera is referred to as Reid Street and Drake Street.
Q. Okay. All right. We are going to move to State's 23.
(WHEREUPON, publish video.)
Q. Now again, the timeframe of the murder was 11:40; is that right?
A. That is correct.
Q. So we are looking at about 13 minutes before?
A. We are.
(WHEREUPON, publish portion of video.)

Q. All right. Do you see anything significant here?
A. So the subject you see towards the right-hand side of the screen just to the right of the sidewalk, that is going to be George Bennett our victim.
(WHEREUPON, publish portion of video.)
Q. Was that the first time that you saw Mr. Bennett appear on the video?
A. I believe it was, yes.
Q. Moving ahead to 1:31:18.
(WHEREUPON, publish portion of video.)
Q. Okay. Anything significant here?
A. You see Mr. Bennett talking to a couple of people on the sidewalk there.
Q. And what about his clothing?
A. So not right -- oh, right there; if you stop it right there.
(WHEREUPON, publication paused.)
A. You can see that distinct mark on the back of his shirt there in white lettering. That is how we ultimately verified that that is in fact our victim George Bennett.
Q. I am showing you now State's 123. Is this what you are referring to?
A. Yes, it is.
Q. Moving ahead now to 11:32:53. All right. Anything here significant?

A. So this is the first time that you are going to -- you see the car, the white vehicle that is parked to the right of that -- of that beige vehicle, that boxy vehicle. And that is going to be the Marquis, Rayshawn's Marquis. And you see Mr. Bennett and Rayshawn walking over there.
Q. Okay. Is that the first time that you first see the white car?
A. It is.
Q. And again I think we have already said it; but this camera is rotating, right?
A. Yes. And you saw that. And so these cameras pan. They have multiple sessions that they will pan through through a time period. So it can be frustrating at times when you are seeing what you want in one moment and then it pans and you lose what you are seeing.
Q. And is it set on an automatic timer?
A. Yeah, we can't control the pan unless you manually go in during live -- a live viewing, and then you can control it. But when it is on its rotation that means it is not been manned.
Q. Okay. I am just going to let this run just to illustrate that.
(WHEREUPON, publish.)
A. And that -- what it just zoomed in, again, that is part of its cycle. That is not somebody zooming in or

anything like that.
Q. All right. Now over again this is 11:33. So over the next about seven minutes -- I guess six and a half minutes did you see anything significant regarding Mr. Bennett or Mr. Rivers out there on Reid Street?
A. No, nothing more. No.
Q. Talking to individuals; anything like that?
A. That is just the extent of it. Just out there socializing essentially.
Q. Okay. At 11:41:30.
(WHEREUPON, publishing)
Q. All right. After you saw this did you think that -- or at least was there a car -- did you find a car that seemed to match that description in that same area earlier?
A. We did.
Q. And what did you find?
A. We found that car circling the neighborhood about 30 minutes before this incident.
Q. Okay. Let's go backwards now and look at 11:12:23.
(WHEREUPON, publishing.)
Q. That was pretty quick. So I am going to go back and then -- I guess it is one of these times it turns that you wish it didn't.
A. That is one of those frustrating moments right there.
Q. Are you referring to what? And you can point it out

on the screen if you want.
A. So initially this vehicle right here (pointing) was what we believed to be the same vehicle that you just saw backing out of Reid Street onto East Bay Street.
Q. And did you notice any other vehicles of interest?
A. We did. So right before this black vehicle is approaching this intersection you see this silver vehicle. And we started looking into that vehicle as well when we saw this.
Q. Okay. So you had a silver vehicle followed by a black vehicle coming down the exact same road that Bennett was killed?
A. That's correct.
Q. Minutes earlier. And now this is just pointing up Reid toward Meeting, right?
A. That might be Drake Street right there.
Q. Okay. Okay.
(WHEREUPON, publish.)
Q. This is Reid toward Meeting?
A. Yes.
(WHEREUPON, publish.)
Q. Do you like the movies have the abilities to zoom in and catch that plate there?
A. I wish we could. We weren't able to get any better picture of that license plate. And when you try to zoom in

the quality of the footage isn't the greatest, so you start really pixilating when you go any further than this.

Q. All right. So that one said 11:12 -- let's see. Yeah, 11:12:50 or so. Did you go back and try to find that silver vehicle and that black Cadillac on any other cameras in the area?

A. We did.

Q. And did you have any luck?

A. We did.

MR. OSBORNE: May I approach, Your Honor?

THE COURT: You may.

MR. OSBORNE: I am showing you State's 125 through 141.

Q. Can you take a look at those and tell me if you recognize those.

(WHEREUPON, pause for witness review of exhibits.)

A. Yes. These ---

Q. What are they?

A. These are still images from our video surveillance here that we were just looking at.

Q. Starting at eleven o'clock until 11:12 on the day of the murder?

A. That is correct.

Q. Okay.

MR. OSBORNE: Your Honor, at this time we would seek

to admit 125 to 141 into evidence.

THE COURT: Any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: Without objection they are admitted, each being a photograph.

(WHEREUPON, State's Exhibit Number 125 to 141 was admitted into evidence.)

Q. All right. Let's start with the first one that you picked up. And this is at -- this is at 11:43 I think or eleven o'clock ---

A. Eleven. Yes, eleven o'clock.

Q. Okay. And that is at Columbus and Aiken?

A. That is correct.

Q. All right. So I just want to point out something here. If you want to see where the image was taken from can you go back and look at 1:42 and see the green dot that corresponds to Columbus at Aiken?

A. I can.

Q. Okay. All right, 126 what are we looking at here?

A. That is going to be that silver Infinity coupe.

Q. What is the time?

A. This is 11:01.

Q. And the location?

A. This is captured from the Reid and Drake camera.

Q. All right. 127.

A. And so this is Hanover and Cooper Street camera. And this is at 11:04. And just coming up this is going to be Cooper Street and you are going to see that black vehicle right there.
Q. All right, 128.
A. And so this is just you see more of that vehicle. It is just more revealed of that vehicle right there.
Q. Okay, 129.
A. And now you see that vehicle making a turn onto Hanover Street.
Q. One thirty?
A. And there is the vehicle completing its turn essentially.
Q. Is this the same intersection on 131?
A. It is. So now this is at 11:05. And that vehicle has gone and now you see the Infinity coupe.
Q. Okay. Yes or no, was that guy interviewed?
A. He was interviewed.
Q. Anything to further the investigation?
A. No, he wasn't -- there wasn't.
Q. One thirty-two?
A. So you see the coupe turning down that is Cooper Street at that point.
Q. And this is a zoomed in image, 133?
A. This is a zoomed in image.

Q. This is what you talk about when you zoom in it pixilates, you lose detail?
A. Yes.
Q. One thirty-four?
A. And so this was at 11:06. And this is that Infinity Coupe.
Q. Hanover and Cooper?
A. Yes, Hanover and Cooper.
Q. One thirty-five?
A. And so this is the Columbus and Aiken camera. And this is now at 11:09 and you see that Infinity Coupe again.
Q. And you mentioned Drake Street earlier. What is 136?
A. This is Reid and Drake camera. And in the distance there you see right here (pointing) is that Infinity Coupe again.
Q. Do you know how to clear that?
A. This, yeah.
(WHEREUPON, screen cleared by witness.)
Q. And then this is where I was mistaken before. The camera at Reid and Drake is pointing up Reid up toward East Bay and then it rotates to the left to go up Reid, go up Drake, and then it rotates again to go up Reid toward Meeting?
A. Yes. So it is capturing. I believe it is going to capture a 360 of each intersection.

Q. All right. Now 137?
A. So this is the Reid and Drake camera. This is at 11:11. And here you can actually see -- this is just the camera how it zoomed at the right time. And you can capture pretty much the license plate of this Infinity Coupe.
Q. All right. With this image -- and I know you can make out some of the letters perhaps, but with this image did that help you then later identify that vehicle and who it was registered to?
A. It sure did.
Q. Okay. And we will get to that. And 138 this is just another image of the same picture?
A. That is another image. And again you can get a partial on that license plate which actually helped us a little bit more as well.
Q. Okay. I am not sure 139, but it looks like it is about the same image?
A. That does look about the same image. I think in each of those you can see -- it helps you in a different way to see that license plate.
Q. Oh, okay. All right. Now this is screenshot of what we saw earlier, 140 of the two vehicles coming up Reid; is that correct?
A. Yes. So, yes, they are turning onto Reid Street here

(pointing). So when that camera pans west looking up Reid Street that is where we say him continuing to travel west.
Q. Okay. And 141 just another screenshot of them?
A. That's -- that's what -- that is looking west up Reid Street.
Q. Okay. And the time there is 11:12.
Q. All right. Did you obtain any other surveillance footage in this case that was relevant?
A. We did. So we gathered video from the Bridgeview community. Neighbor -- it is another neighborhood down the street.
Q. Okay. And you say down the street. About how far is Bridgeview from -- reach to Reid and East Bay that is?
A. It is not too far. And you travel up East Bay Street where it turns into Morrison. And it is just a turn over there. It is within a mile or two. Within a mile.
Q. Okay. And there are City surveillance cameras there as well?
A. There are.
Q. All right. And you had the occasion to review those?
A. Yes.
Q. And the timeframe you were looking at was around the timeframe of the murder?
A. Yep.
Q. Okay.

MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you State's 124. Can you take a look at that and tell me if you recognize that.
A. I do.
Q. What is it?
A. This is video footage from the Bridgeview community. And I initialed the CD, and that is how I know.
MR. OSBORNE: Your Honor, we would seek to admit State's 124 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection. It is what, 124?
MR. OSBORNE: Yes, sir.
THE COURT: One twenty-four is admitted without objection.
(WHEREUPON, State's Exhibit Number 124 was admitted into evidence.)
Q. I will tell you what, while that is pulling up -- it does take a second.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes, you may.
Q. And am showing you 143 and 144. Can you take a look at those and tell me if you recognize them?
A. Yes.

Q. What are they?
A. Just Google overhead satellite images of the neighborhood on the East Side including the Bridgeview area.
Q. Okay. And would these images help put into perspective for the jury the location of Bridgeview in reference to Reid and East Bay?
A. Yes.
MR. OSBORNE: Your Honor, at this time I would seek to admit 143 and 144 into evidence.
THE COURT: Any objection?
MR. LOIGNON: No, Your Honor.
THE COURT: Without objection they are each admitted.
(WHEREUPON, State's Exhibit Number 143 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 144 was admitted into evidence.)
Q. All right, 143 this is basically the East Side?
A. Yes, it is.
Q. I know it is a little bit bigger, but this is a section of it?
A. This is a section.
Q. Okay. And then 144 it is a kind of zoomed out view. Can you point out where the Bridgeview community is and where the murder occurred?

A. Yep. So this is the Bridgeview community right here (pointing). It is right off Romney Street. So this is Morrison Avenue and it turns into -- oh, actually, you know what, I think -- it goes this way (adjusting display). So I'm sorry. And then it turns into East Bay right here.

And so Reid Street the homicide occurred right -- right where this dot is right here (pointing).

Q. Okay. Okay. In State's 124 I am starting at 11:25:55.

(WHEREUPON, publish.)

Q. Okay. And again what we are looking at here, this would have been 11:25; so this is about 13 minutes after the last time that we see these -- or see this car on the image on Reid Street?

A. That is correct.

(WHEREUPON, publish.)

Q. Any luck with the plate here?

A. No. Unfortunately.

(WHEREUPON, publish.)

Q. All right. So that is at 11:25. We are moving ahead now to 11:34:47.

(WHEREUPON, publish.)

Q. So I suppose -- well, anything here of interest to tie this back to the car that was the getaway vehicle?

A. Well, you see that -- again, it is an all -- a black

Cadillac, and you see that front vanity plate which goes back to the vehicle that you see traveling around the East Side a little bit beforehand.

Q. Let's -- with that sitting there like that let's just go ahead and talk about a couple of other things, okay. So what can you tell me about this car -- or what did y'all -- to better to put it, what did y'all find out when y'all started researching this car and started looking at the images that we just went through?

A. So this vehicle we found to be very unique. A Cadillac Deville is not an uncommon car. And the unique factors in this car were that there was customization done. So what I mean by that is we know that it is -- this body style was between a 2000 and a 2005 Cadillac Deville. And so you see the front grill there. It is an all-black grill. I believe that to be a personalized or customized feature. And also it has black rims which is also a customized feature.

One other -- and it has tinted windows, pretty heavily tinted windows. And another thing is in the front this is a good image right here, because you don't see any kind of emblem on the front of the car.

So the Cadillac Deville's have either a marking -- an emblem on the front grill which is almost like a badge, for lack of a better term, with some coloration in it with some

circular leaves on it. And so you don't see that in the middle of the grill. Nor do you see that mounted on the front hood. Because some of the Cadillac's do have that emblem or that shield on the front. So that is all removed as well.

So the only chrome feature that you see on this vehicle is just around the windows of it. Which, again, typically there is more color to it.

Q. And so I guess that is typical to all Cadillac's would be typical to all cars, they put some decals on their car to identify it as being that make of car?

A. Of course. Most every vehicle has an emblem on the front, and then there will be other images that we will see that on the back also. You will see what I am talking about when you see the back of the vehicle.

Q. And that -- just that famous Cadillac emblem that you see everywhere?

A. It is like a shield for the best description I can ---

Q. And through your research that make and model also have that emblem on the back on the trunk?

A. That is correct.

Q. And did you find that on this vehicle?

A. No, we didn't.

Q. Okay. So this was a vehicle of interest; is that fair to say?

A. Yes, absolutely.
Q. Did you have another vehicle of interest?
A. There were other vehicles that came up in our searches. But that silver vehicle was also a second vehicle of interest just because it was traveling through in unison with this Cadillac in the time that we just looked at just a little while ago.
Q. Okay. What efforts if any did you take to search for a vehicle that matched these unique characteristics that you mentioned?
A. So we maintain a records management system of all -- of vehicles that we have interaction with, encounters with, as well as looking through SLED -- or, excuse me, the South Carolina DMV. So we -- we knew that this was a vehicle of interest, so we were searching through different Cadillac Deville's once we developed it and we believed it to be that model. And so we had a pretty extensive search in that to try to find vehicles associated with these unique characteristics.
Q. Okay. And specifically I am asking you about ALPR. Did you search ALPR, and if so what is that system; can you explain that to the jury?
A. So we -- yes. So what we did is we searched our records management system and also DMV. And one thing to note about the DMV is that they don't actually capture a

color of your vehicle. So we can get all of the tags -- or license plates that we want, and vehicle make and model; but it comes short of being able to provide a visual or even a color.

So what we do is we cross reference it to an ALPR system which is an automated license plate reader system. And they have -- the State has mounted those cameras in various places around the City of Charleston, the Tri-County area, and they even go as far as statewide.

Q. Okay. And what did -- you said automated license plate reader cameras. What do they do?

A. So they are taking snapshots of license plates in the area that they are designed to capture. So as a vehicle passes by it is going to take a snapshot of that license plate, and that is what we use to cross reference.

So we look at the registration, and then we take that license plate and then we put it into the ALPR system. And then we look through different images; and we can see the location of the camera, and then we can see the time that it passed by, and when we are trying to verify features of a vehicle we are going to obviously be looking at vehicles in the daytime hours so we can get a good visual representation of that vehicle, of that license plate.

Q. And when you are searching through that ALPR you as a police officer have the ability to search that ALPR system?

A. Yes, you have to have an account; but ---
Q. And you have one?
A. I have an account.
Q. And when you search through that ALPR system you are able to narrow down your search to specific characteristics?
A. Well, no, that is where we are doing the license plate, and that is part of the cross referencing. So we can narrow our search down to specific cameras where they are mounted. And we know locations of where the ALPR system is mounted. And there are a number in the City of Charleston. So we just take that license plate. We can search whatever camera we want to or a variety of cameras.
Q. Okay.
A. And timeframes as well.
Q. And when you searched through that -- what timeframe did you search?
A. Well, when we were initially going through the license plates of the vehicles that were matching -- or Cadillac Deville's I am trying to narrow it down to this unique vehicle. I think we had more of a broad search just to encompass a number of them so we can kind of narrow it down from there.
Once we relocated in our RMS system a vehicle that did come back to all of the characteristics that you see here

then we played with the search characteristics that you see here then we played with the search characteristics of the timeframe to just to narrow it down. Because there was a camera that was close by to the incident location.

Q. Okay. And so your results how far back did you go for those?

A. So for as far as I know the camera system maintained records for quite an extended period of time. But we saw the vehicle of interest right here, the vehicle that we see, went back to 2014.

Q. Okay.

MR. OSBORNE: Your Honor, may I approach?

THE COURT: Yes.

Q. I am showing you State's 145 and 146. Can you take a look at those and tell me if you recognize them?

A. I do recognize them.

Q. And what are they?

A. So these are the actual snapshots that are captured from the ALPR system.

Q. Of the vehicle that matched a unique characteristics of the vehicle that we are looking at here which you believed to be the same vehicle used as the getaway vehicle?

A. That's correct.

Q. Okay.

MR. OSBORNE: Your Honor, at this time we would seek to admit 145 and 146 into evidence.

THE COURT: Any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: Without objection they are admitted.

(WHEREUPON, State's Exhibit Number 145 was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 146 was admitted into evidence.)

Q. All right. And just for clarification purposes, you have other images of this vehicle, correct?

A. Yes, we do.

Q. Okay. But these are two?

A. Yes.

Q. Is 146 probably the best image that you were able to get?

(WHEREUPON, display.)

Q. Okay, would you say that this is probably one of the better images that you were able to get?

A. This was one of the better images.

Q. And what is the date and time of this image?

A. So this is April 1st, 2015. And this is at 12:49 in the afternoon hours.

Q. Okay. So what you said, if I understood you correctly, is that you go through ALPR, you put in these

parameters, you come back with these vehicles, and then you can visually go back and inspect the image that was taken and then see if it matches up to the image that -- of the suspect vehicle?

A. That is correct.

Q. Okay. How many images of Cadillac Seville's (sic) were you able to find in the Tri-County area going back a year that matched the description of the suspect vehicle?

A. Just this one.

Q. Is this 145 is this more representative of the images that you get from ALPR?

A. So this is -- this is at 10:49 at night. This is the night-time hours. And this is what I referred to as when you are trying to compare features of a vehicle you have got to find that daytime image.

And so we know this is the same vehicle because we have the license plate here (pointing). So it is KSM819, which we know to be the vehicle -- the license plate registered to Seth Smith's vehicle.

Q. Okay. And that's -- that's the -- that's the image that the ALPR takes; that is the photograph?

A. Yes, so the system -- and just to go into a little bit more detail. Because there's a lot of numbers here -- or there is a lot of information here on the side.

So this is -- this camera was at the East Bay side.

This is an East Bay camera right here (pointing). You see that. So this is the camera image that captures the license plate. That system tries to -- whatever algorithm it has, I'm not sure what it is, it tries to verify the lettering of that snapshot and tells you what it is. And that is where the confidence marker is right here (pointing).

So you can manually -- you have to manually inspect it. So it is just a quality control measure where you see the lettering and you can confirm KSM819 is the license plate that it captured and this is what it is believed to be. And we know that vehicle license plate was registered to Seth Smith and that was on the Cadillac Deville that he owned.

Q. Okay. The murder occurred on April the 18th. And this image was taken on April the 17th; is that correct?

A. That is correct.

Q. And that is at 10:49 p.m.?

A. That is correct.

Q. All right. And you said it was on East Bay Street.

(WHEREUPON, publish image.)

Q. That image?

A. Yes.

Q. Okay. I am showing you 143. Can you tell us -- are you oriented?

A. I think you need to move ---
Q. (Image adjusted.)
A. There you go.
Q. Show us again where the murder occurred.
A. Okay. So this is -- Reid Street is one street north of South Street. And so the homicide happened -- the murder happened right about there (pointing).
Q. Okay. And where was that image taken?
A. So that ALPR camera captures -- is mounted just around South Street. So it is essentially very close to that post office that is on East Bay Street.
Q. Okay. The night before the murder at 10:49 p.m. that image was taken there?
A. That is correct.
Q. All right. So now let's go back to -- you've already mentioned it was registered to him. So let's go back to the Infinity. Now did you have the occasion to check that plate or various attempts to get to that plate?
A. We did.
Q. And did you find the plate that matched the vehicle that you were looking at?
A. We did.
Q. And who was that vehicle registered to and what kind of car was it?
A. So it was a 2005 Infinity Z-35. And the license plate

on that was KMW627. And that was registered to the defendant's brother Bryant Smith.
Q. And this is the document that told you that, 149?
A. That is correct.
Q. All right. Now on 148 and this is showing the Cadillac Deville being registered to Seth; I see we have two addresses there, 98 Spring and [redacted] Park?
A. Yes.
Q. Are you familiar with 98 Spring Street?
A. I am familiar with that address.
Q. Okay. Is 98 Spring Street a residence?
A. It is a commercial -- little plaza. So there's a couple of different suites with businesses, and 98 is within that.
MR. OSBORNE: Okay. Your Honor, may I approach?
THE COURT: You may.
(WHEREUPON, State's Exhibit Number 170, photo, marked for identification.)
MR. OSBORNE: I am showing you State's 170. Can you take a look at that and tell me if you recognize that?
A. I can. I do recognize that.
Q. And what is that?
A. This is a picture of 98 Spring Street, the building there.
Q. Okay.

MR. OSBORNE: Your Honor, at this time I would seek to admit 170 into evidence.

THE COURT: Any objection?

MR. LOIGNON: Yes, Your Honor, we would object?

THE COURT: What is the basis?

MR. LOIGNON: Foundation and authentication.

MR. OSBORNE: I can ---

THE COURT: Lay the foundation.

MR. OSBORNE: Okay.

Q. All right. Just for clarification purposes, when was this photograph taken?

A. It was taken this morning.

Q. Taken this morning. At whose request?

A. Your request.

Q. And you were here yesterday and you heard testimony from Agent Simmonds, correct?

A. Yes.

Q. And during his testimony he was asked by the defense did he put a flag for 98 Spring Street, being the defendant's residence; and he said he had not, ---

A. That is correct.

Q. --- correct? And so therefore you went by and you took a picture of 98 Spring Street?

A. I did.

Q. All right. Now you used to work patrol, correct?

A. I did.
Q. And what were some of your assignments in patrol before you made -- before you were a detective?
A. Before I was a detective I was -- I spent a portion of my time in the Team II area which was a part -- a portion of the downtown area. And at the time that I was in Team II it went all the way up to the Crosstown. That has since changed.
Q. And did you at that time or since then -- well, at that time had you become familiar with the area of 98 Spring?
A. I did.
Q. And what were the dates on that ---
A. For Team ---
Q. --- that you worked Team II?
A. So I worked Team II from two thousand sev- -- two thousand- -- late 2007 through two thousand -- early 2012.
Q. Early 2012. Okay. During that timeframe and thereafter have you ever known that area of 98 Spring Street or 98 Spring Street to be a residence?
A. No, never.
Q. Okay. This photograph, tell the judge what is the difference between the way 98 Spring Street looks in this photograph as compared to the way it looked back in 2015.
A. Well, in terms of its usage it has been a commercial

property that entire time. There have been different businesses that have come and gone, but it has always been a commercial piece of property.

Q. Okay. So I think at one time a taco shop, a clothing shop at one time?

A. Yes.

Q. Various different businesses?

A. I am familiar with a clothing shop that had been there at one point.

Q. Okay. But never a residence?

A. That is correct.

MR. OSBORNE: Your Honor, at this time we would seek to admit State's 170 into evidence.

THE COURT: Same objection?

MR. LOIGNON: Yes, Your Honor.

THE COURT: Subject to the objection -- the objection is overruled and admitted subject to the objection. It is State's Exhibit what, 170?

MR. OSBORNE: 170.

THE COURT: 170.

(WHEREUPON, State's Exhibit Number 170 was admitted into evidence.)

Q. And that is the area of 98 Spring?

A. That is correct.

Q. Okay. So the Infinity was registered to Bryant Smith;

the Cadillac is registered to Seth Smith; is that correct?
A. That is correct.
Q. Did you make any attempts to see if in particular the Cadillac if Seth had ever driven that Cadillac?
A. I did.
Q. Okay. And what attempts did you make to verify that?
A. So in our records management system it details all the citations that were issued or warning citations. And there was a traffic stop conducted on that vehicle with Seth Smith being the driver of that.
Q. Okay. And what was the date of that traffic violation; do you recall?
A. It was March 2017. So it was about a month before this incident.
Q. Do you mean March of 2015?
A. Or '15. I'm sorry. Yeah. It was about a month before the homicide, 2015.
MR. OSBORNE: Okay. Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you what has been marked as State's 147. Can you take a look at that and tell me if you recognize that?
A. I do.
Q. And what is that?
A. So this is the uniform traffic citation that I was

just referring to.

MR. OSBORNE: Your Honor, at this time we would seek to admit State's 147 into evidence.

THE COURT: Is there any objection?

MR. LOIGNON: No, Your Honor.

THE COURT: Without objection 147 is admitted.

(WHEREUPON, State's Exhibit Number 147 admitted into evidence.)

Q. Who is the driver of the vehicle during the minor traffic infraction?

A. Seth Smith.

Q. And what is the date of the violation?

A. The date is going to be right here. It is a little confusing. It is March 26, 2015.

Q. Okay. So let's go back for a second and talk about DMV again. Did you do anything in reference to DMV checking the title history of the Cadillac?

A. We did.

Q. And what did you learn?

A. Through the search we found that the title search showed that there was a transaction that was done, a change of ownership of the 20th of April.

Q. Okay. Two -- I'm sorry.

A. Two days after the homicide.

Q. All right. And who was the vehicle titl- -- or

transferred to?
A. It was Jibral Acevedo. You heard from him yesterday.
Q. And that is what led to him being interviewed once you found that information out?
A. That is correct.
Q. And we have already heard him testify. I guess it is kind of fair to say that he wasn't 100 percent during your first interview?
A. That is correct.
Q. Probably wasn't yesterday either. But either way, that was on April the 24th of 2015?
A. That sounds correct.
Q. As a result of that interview what decisions were made?
A. His -- after his first interview we -- there were several inconsistencies with what he was saying, lies. And we ultimately charged him with obstruction of justice.
Q. Okay. And that is what led to him being arrested. Now on April the 24th while he is being interviewed did you seize anything from him?
A. We did. We seized his cell phone at that point.
Q. For what purpose?
A. To execute a search warrant on it to have a forensic download. So that download is essentially taking all of the data off of that phone and copying it onto a DVD where

we can access it.
Q. And some phones can be downloaded, but some can't; right?
A. That is correct.
Q. And was Acevedo's one of those phone that couldn't be downloaded?
A. It was -- it was -- it couldn't be downloaded.
Q. Okay. And so what did you elect to do then?
A. Through the means of the search warrant then we just manually went through it.
Q. All right. And when you manually went through the phone did you see any numbers of interest?
A. There were. There were two numbers of interest.
Q. And what were they?
A. So there was a phone number saved as B or Little B. And that phone number -- I'll just refer to my notes here. That phone number that he had saved was 843-864-1285. There was a second number that was of interest was a number that was saved under TJ. And that phone number was 843-489-5286.
Q. Okay. And why did you take note of those two phone numbers; why were they important?
A. Well, we knew that the victim George Bennett had phone contact with that same number. And in his phone -- or for the same number that -- of B. So it was that 864-1285. In

George Bennett's phone it was saved as Little B Mid. And we knew that he had phone contact with that number through the evening hours the day before the homicide.
Q. Okay. I just want to make sure I got that right. So in Acevedo's phone he had a number saved as Little B?
A. That is correct.
Q. And that number ended in 1285?
A. Yes.
Q. And when you went back and looked at the victim's phone you saw communication between the victim and that number the night before the murder?
A. That is correct.
Q. And the victim had that number saved in his phone as Little B Mid?
A. Yes, that's correct.
Q. Okay. And you said that Acevedo in his phone had a number ending in 5286 saved as TJ?
A. That is correct.
Q. Now were you able to associate that nickname of TJ to the defendant Seth Smith in any way in this case?
A. We were.
Q. All right. And how -- in what way?
A. Well, for one it was noted in our records management system that had -- it listed that he had a tattoo -- Seth Smith had a tattoo of TJ.

And so and I think it was actually knowledge within our detective bureau, one of the detectives I think Detective Burkhardt may have known. I am not positive on that. But either way when you looked him up in our records management system there was a reference to that.

And then from there we did research on social media and we also contacted the Detention Center to verify that information.

Q. All right.

MR. OSBORNE: Your Honor, may I approach?

THE COURT: Yes.

Q. I am showing you State's 150, 151, and 157 which has already been marked for ID before so. Let's start with 150 and 151. We will deal with those first.

A. Okay.

Q. What are they?

A. So 150 and 151 are what I refer to as the social media Snapchat shots of a Facebook page that goes by the name of Tony James.

Q. Okay. How did you go about obtaining those documents?

A. So we have -- we have an account, a social media account, that we use to monitor social media in general. We have a couple of different ones. One that we have access to -- and so we came across this. I am not sure how we actually initially did the search whether we searched

for Tony James or Seth Smith. But we came -- we came to the sight -- the page that says -- that is named Tony James.
Q. All right. Let me ask you this. Did you use any police tactics or any - I don't know - any sort of strategy to get to it, or is this something that is open source for anyone to see?
A. And so this is -- for this specific account, no. There was absolutely no police tactics. There was no -- in fact he had an account that we weren't friends with him on. So we saw nothing that was privileged of being a friend with him. So what we saw here is what any one of you could see if you were to do a search and not be friends with him.
Q. And 150 shows the opening page that you saw on the search; is that right?
A. That is correct.
Q. And then 151 shows you a picture of an individual that you believed to be Seth Smith -- I know there's other people there, but you see Seth Smith in there?
A. I do.
Q. Okay. And you have seen Seth before?
A. Yes.
Q. Okay. So the significance is that -- that the name on that page is associated to TJ, Tony James, which is associated to the defendant; is that correct?

A. That is correct.

MR. OSBORNE: Your Honor, at this time we would seek to admit State's 150 and 151 into evidence.

THE COURT: Any objection?

MR. LOIGNON: Yes, Your Honor, the authentication and also the probative value I believe is outweighed.

THE COURT: He has authenticated it. He has indicated how he retrieved it and how he obtained it. Which he clearly stated in the record it is available to anybody. He downloaded this. It is a copy -- this -- that has been identified as what he downloaded.

So I think the probative value certainly outweighs any prejudice given the initials TJ and other matters. So thank you. It is admitted subject to objection of counsel.

(WHEREUPON, State's Exhibit Number 150 was admitted into evidence.)

(WHEREUPON, State's Exhibit Number 151 was admitted into evidence.)

Q. Okay. So this opening page here illustrates, one, that you weren't friends with him in any way; is that correct?

A. So, yes, you see the add-friend which means that I am not friends with him. And so what we are seeing here is what anybody can see.

Q. Okay. And I know this image may be kind of difficult

to see. But did you associate anybody in this image with Seth Smith?
A. So there is a glare on this which makes it even a little bit more difficult. But the centered person appears to be Seth to me.
Q. And I guess 151 kind of clarifies it a little bit?
A. One fifty-one will show a better image of Seth.
Q. And circle -- well, I guess you can circle it.
(WHEREUPON, complied.)
Q. All right. So now let's move on to -- what is that, 157?
A. One fifty-seven.
Q. Okay. And 157 is simply a -- we have already heard testimony, a booking photograph of Seth Smith related to this incident?
A. That is correct.
Q. Okay.
MR. OSBORNE: Your Honor, at this time -- I think it has already been admitted, 157.
THE COURT: Yes, it is in evidence.
(WHEREUPON, display photograph.)
Q. Do you see a tattooed Tony James?
A. Yes. And there is the tattoo.
Q. Okay. Now so you interviewed Acevedo the first time on April the 24th. You said that he wasn't exactly

forthright and that is what led to him being arrested. But did he give you any information that did sort of further the investigation?
A. So -- so in that -- this was his first statement that we are talking about?
Q. Yeah, in regards to what happened to the vehicle.
A. He gave some information that the vehicle had been broken down and towed. And he said he also purchased the vehicle from a subject that he met in the club that went by the name of Tony James, TJ.
Q. But he never told you, hey, that is my cousin?
A. No, he said he didn't know him from outside of that one encounter that he had with him.
Q. So as a result of knowing that the vehicle which you believed to be the getaway vehicle was towed or at least there was talk of it what did you do then if anything to try to locate the vehicle?
A. Well, so we started looking into tow companies. And there are a number of tow companies. And eventually that expanded to looking at salvage yards as well. So we compiled a list of tow companies and salvage yards and started working with that.
Q. Okay. When you ended up working through some of these salvage companies and tow truck companies did you eventually find the Cadillac?

A. We did. We found it.
Q. And where did you find it?
A. At LKQ which is essentially a junkyard. And that is on Rivers Avenue, North Charleston.
Q. And on April the 27th does that sound right as far as when you actually recovered a vehicle, or was it later; do you remember?
A. For some reason I was thinking April 30th. But I am not positive. I don't have that report in front of me right now.
Q. Okay. Either way it was a week after?
A. Yes.
Q. All right. Now tell the jury what happened when you -- well, you know what, I will just do it a different way.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: Yes.
(WHEREUPON, State's Exhibit Number 169, photo, marked for identification.)
Q. I am showing you 113 and 169. Can you take a look at those and tell me if you recognize them?
A. I can.
Q. And what are they?
A. So these are pictures of the Cadillac at LKQ, the junkyard, when we first found it.

Q. Okay.

MR. OSBORNE: Your Honor, I would seek to admit 113 and 169 into evidence.

THE COURT: Is there any objection?

MR. LOIGNON: Court's indulgence.

THE COURT: Certainly.

MR. LOIGNON: No objection, Your Honor.

THE COURT: Without objection State's 113 and 169 are admitted.

(WHEREUPON, State's 113 was admitted into evidence.)

(WHEREUPON, State's 169 was admitted into evidence.)

Q. Okay. So this one was already admitted, 155. Now when you personally -- you were personally out there when y'all located the car?

A. Myself and Detective Bailey were both there.

Q. Okay. Did you notice anything about the aroma of the car?

A. We did.

Q. And what did you notice?

A. You could smell the distinct smell of spray paint on the vehicle.

Q. And did this car appear to be the same way that it appeared in the image, from the surveillance video and from the LPR; and/or?

A. No. There are differences now.

Q. I am showing you 113. Are we looking at the inside of the vehicle there?
A. We are.
Q. It appears as though it has been pretty well rummaged through?
A. Yes.
Q. Would you say this vehicle is operable with no steering wheel?
A. Very far from it at this point.
Q. Okay. And 169 where did the car go from there?
A. It went to our crime scene division.
Q. And this is when Jeff Miller ended up processing the car?
A. That is correct.
Q. Okay.
MR. OSBORNE: Beg the court's indulgence.
Q. Now I would imagine and I think the defense has already elicited some testimony in regards to this, that you were interested in that pinstripe there, the red pinstripe; is that fair to say?
A. We were.
Q. Do you see the red pinstripe on State's 30?
A. So ---
Q. Or 130?
A. --- one thirty is the top image.

Q. That is right.
A. So you see there is a curvature to the quarter panel along that top edge there. I don't see that pinstripe there. I'm not saying it's not there. But I don't see it there.
Q. All right. Now did it -- well, go ahead; did I interrupt you?
A. No, not at all.
Q. Did it concern you at all that maybe we are dealing with two separate Cadillac Deville's with unique characteristics riding around the East Side on the day of the murder at the same time?
A. So obviously it was enough to raise an eyebrow at. But it became -- it did not become a concern for us for a number of reasons.

This was -- this vehicle had a number of unique features of what we talked about. We talked about the black grill, the no emblem on the front of the vehicle like you would expect it, the black rims, the dark tints. The back of the vehicle had no emblem, had no lettering of Cadillac, no model of Cadillac, no dealership placard which you see in many times as well. And I am not sure if I said the black rims.

And on top of that, the vehicle that was traveling in unison with this vehicle was the defendant's brother Bryant

Smith's vehicle which we were able to capture the license plate. That was part one of what made us feel very comfortable with that. And so then we talk about well why in the world are we not seeing it on this image right here (pointing).

And so there's a couple of the things with that. This image that you see up top here (pointing) is a snapshot of that video. The video quality isn't the greatest. You saw -- you talked about being able to zoom in and clarify anything. It creates -- it is very pixilated. These camera are mounted higher up, so they are at a distance. And it is also capturing moving objects, moving vehicles. And in this case this vehicle (pointing) is moving.

So we called it -- the concern that the quality of it may not capture that dark on dark contrast. And then what solidified it for us was the ALPR image which we had already seen, and we can get -- I can get to that when that image gets back up there if you would like.

Q. Okay. So this image right here, a bit on the tow bed, is a still -- the car is not moving and ---

A. The car is not moving.

Q. And it is a still digital shot from a camera?

A. That is correct.

Q. And this (pointing) is a screenshot taken from a moving vehicle from surveillance video?

A. That is correct.
Q. And you mentioned that you have another screenshot from surveillance video from a moving vehicle in which you know it to be the defendant's vehicle, correct?
A. That's correct.
Q. And that is State's 146 which is the ALPR image.
(WHEREUPON, display image.)
Q. Point out on there the pinstripe.
A. And so this is -- this is what made us feel very good and very comfortable that we are still dealing with the same car. This vehicle is again it is a moving vehicle captured by a camera that is mounted higher up at a distance. And you can't see that pinstripe on this vehicle. And we know this vehicle is the defendant Seth Smith's vehicle.
Q. Because of the license plate?
A. Because of the license plate.
Q. All right. I forgot to mention one thing earlier, and I want to make sure there is no confusion here. Did you capture the car -- that car registered to Seth Smith on ALPR on the day of the murder?
A. On the day of the murder we did not.
Q. Okay. And did that surprise you at all?
A. It didn't surprise us.
Q. And why is that?

A. Well, that camera is mounted one street away. And just going into a little bit about the direction, it is only capturing southern traffic. So that vehicle would have to be traveling towards the Market for it to be captured on that camera.

And so from the video that we have, we saw that vehicle traveling north on East Bay Street making a left turn which would be west onto Reid Street from that camera angle that we saw.

Q. Okay. Showing you State's 142. So here is Reid and East Bay. You had stated earlier that this was the scene of the murder?

A. That is correct.

Q. And you said that at America and South this was the location that ALPR is located?

A. East Bay.

Q. Oh, East Bay.

A. East Bay.

Q. I'm sorry. Easy Bay ---

A. East Bay and South Street. Right in that vicinity there. It may not -- I don't think it is exactly in that ---

Q. Right.

A. --- intersection. But it is across -- it is right in the vicinity of the post office there.

Q. All right. Point -- mark on there and say which direction that ALPR camera is pointed.
A. So the ALPR camera is pointing south. So it is capturing vehicle traffic that is traveling towards the Market Street.
Q. Okay. So if traffic is coming the other way, which is where we saw that Cadillac turning onto Reid just prior to the murder, would ALPR capture that image?
A. No. So we saw that video -- that vehicle travel this way (pointing). And it would not capture a vehicle traveling north.
Q. Okay. All right. Okay. You say that Mr. Acevedo was eventually charged with obstruction. He was brought back in, interviewed a second time. After interviewing him a second time did y'all conduct any search warrants at any residences?
A. Once -- yeah, later in the investigation we did.
Q. And where did -- where was that?
A. [redacted] Park.
Q. I know we have heard it, but there's a lot of moving parts. Who resided there?
A. That is the address for Bryant Smith, the defendant's brother.
Q. And Seth?
A. And the mailing address to Seth Smith.

Q. Okay. So a lot of stuff going on. While -- while all of that is going on is there also an investigation regarding phone activity and looking at phones?
A. That is one of the moving parts of this investigation. It's moving parts most every investigation.
Q. Okay. I am going to show you what's already marked and admitted. I am just going to do a little housekeeping here to some evidence.
State's 15, Item 8. It is kind of hard to see. That is a cell phone?
A. That is a cell phone. That I believe to be the passenger side of the vehicle.
Q. Right. All right, 16 is a better look of it?
A. That is the cell phone.
Q. Did y'all download that phone?
A. We did.
Q. And anything of significance?
A. We were able to determine that was the second victim, Rayshawn Rivers, the phone.
Q. Okay. I am showing you State's 7. We are looking at Item Number 12 here. That is another cell phone, correct?
A. Twelve is another cell phone.
Q. Did y'all download that phone?
A. We did.
Q. And did you find out who that phone belonged to?

A. Yes. It was associated with the victim. That phone number for that second phone is 471-8578. That phone had minimal usage. It was -- some of the contact that was had was through -- was family oriented. There was a contact saved as grandpa or something along those lines, grandfather or something.
Q. Okay. Anything that like helped further this investigation I suppose?
A. No, that phone did not.
Q. Mostly just family phone it seemed like?
A. Yes.
Q. So how about a phone that was taken from the ER from Mr. Bennett's position, did y'all download that phone?
A. So that -- there was a phone recovered from the victim George Bennett. And it was obtained at MUSC from his clothing.
Q. And I think that is State's 63?
A. That sounds right.
Q. Did you download that phone as well?
A. That phone was also downloaded.
Q. And did you get a number to associate to that phone?
A. We did. And that phone number was -- there was a lot of activity on that phone. And that phone number was 843-489-1354.
Q. Okay. And you mentioned this earlier. Looking at the

call detail records you were able to determine that there was communication between -- well, contact. Little B Mid, Little B Mid and the -- and the victim the night before.
A. That's right.
Q. When you looked at the download and you looked at the call detail records that -- you later obtained the call detail records for the victim?
A. Yes.
Q. And did they marry up to what the download showed?
A. They did.
Q. All right. So you got call detail records for the victim's phone. Let's go through the four numbers that we were talking about. What call detail records did you obtain and for which numbers?
A. Okay. The phone numbers that we focused on here are George Bennett the victim. And that was 843-489-1354. That was serviced by T-Mobile.

Little B, Bryant Smith, or Little B Mid, that phone number was 843-864-1285. And that was through Sprint.

Seth Smith the number we focused on was 843-489-5286. And that was a T-Mobile number.

And Jibral Acevedo who we heard from yesterday that phone number was area code 646-570-9006. And that was a Sprint number.
Q. All right. And did you analyze those numbers to see

who was called, you know, during pertinent timeframes?
A. Yes, we did.
Q. And did you create some sort of visual format to help explain to the jury your findings in analyzing those phone numbers?
A. We did. So it is not mapping. It is not a pretty map like what you saw yesterday. This was -- is just an Excel spreadsheet that we use to be able to notate numbers that are identified or of interest to us.
So I just essentially added another column of a working copy of those call-detail records so we can look at it quickly and see what -- see exactly what we are looking for.
Q. Okay. And in that extra column that you added you notated the number that you had associated through your investigation to that number or the name that you associated to that number?
A. The name to that number.
Q. Okay.
MR. OSBORNE: Your Honor, may I approach?
THE COURT: You may.
Q. I am showing you what has been marked as State's 152, 153, and 154. Can you take a look at those and tell me if you recognize them?
A. I do. So 152 is Bryant Smith's phone, AKA, Little B

or Little B Mid. And that was that phone number ending in 1285. And that is the Excel -- that is the working Excel sheet that I color-coded and added the extra column for the identification of a phone number.

One fifty-three is Acevedo's phone. And I'm just going to -- okay, these are number that we identified. There are numbers that we identified here and color-coded. And then 150- -- 154 is the phone number ending in 5236. And that is the number we identified for Seth Smith.

And this is again a color-coded version -- a working copy that I used where we notated numbers with names.

Q. Okay. And you also I think denoted the dates, Saturday, Sunday, Monday, Tuesday ---

A. That is true, just to break it down to be a little bit easier during viewing, put the time of the incident, put an extra row in for the time of the incident. So then we kind of had something to work with back-and-forth knowing, you know, where our target was. And then broke down by day just to make it a little bit easier. Again, because there's a lot of columns and a lot of rows where it is a little bit difficult to follow.

Q. Okay. Would referencing those spreadsheets, 152 and 154 -- 152, 153, and 154 assist you in explaining your findings to the jury?

A. Yes, they can. I have another version if you want to

put them up there. Or however you want to do.
Q. No.
A. It doesn't matter.
MR. OSBORNE: Your Honor, at this time we would seek to admit 152, 153, and 154.
THE COURT: Is there any objection?
MR. LOIGNON: Your Honor, just object to they are cumulative and not the best evidence. The records are already in evidence.
THE COURT: Okay. It is a compilation of matters that are in evidence. I find that while it may be have some cumulative aspect I don't think it violates 403 at all. I think from the standpoint of the jury analyzing the evidence it may be of assistance to them in summarizing it. So for that reason I find it to be more probative than prejudicial and I will admit 152, 153, and 154 subject to the objection of counsel.
(WHEREUPON, State's Exhibit Number 152 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 153 was admitted into evidence.)
(WHEREUPON, State's Exhibit Number 154 was admitted into evidence.)
Q. All right. We are going to go through this kind of quickly. We are not going to belabor this. We will start

with Bryant Smith's phone. We are going to start at Friday. So this will be the night before the murder. And I see you have notated a communication here in the morning to a number that you would have associated to Seth Smith?
A. That is correct. That is going to be that number ending in 5286 assessment.
Q. Okay. And then here we have some communication between the victim and Seth, and then we also have -- I'm sorry, Bryant and Seth, and then we also have between Bryant and the victim?
A. That is correct.
Q. Okay. And that was all in the morning. Now we are going on into the night. Bryant and the victim about 7:09?
A. Yep, that is 7:09 p.m. the starting out there.
Q. And then from 7:48 until 8:09 back-and-forth from the -- from Bryant to the victim?
A. That is correct.
Q. All right. And I notice that we have what appears to be about a six maybe seven -- maybe six, six-and-a-half minute gap, between 8:02:21 and 8:08:52?
A. That is correct.
Q. And this -- this over here this is duration; this is 48 seconds?
A. That is correct. Those are in seconds.
Q. So what we are looking at here is after that gap we

have Bryant calling the victim for 48 seconds?
A. Yes, you see -- you see the outgoing call from this number that you see, the records that you see here, 12:85 from Little B going to the victim for 48 second.
Q. Okay. And right after that we have an outgoing call from Bryant again to the victim. And this one is only two seconds, correct?
A. That is correct.
Q. And then we have a call immediately after to an unknown number, correct?
A. That is correct.
Q. And then we have a call directly after that to Seth Smith and he speaks to him for over five minutes?
A. Yeah, that is 308 seconds. So that is a little over five minutes.
Q. Okay. All right. We will look at Acevedo's record. That is 153. And just for the jury's edification you put the incident time showing some calls here to all unidentified numbers?
A. That is correct.
Q. And now but on the day of the murder he has an outgoing call to Yellow Cab?
A. That is correct.
Q. Okay. Had some calls to Bryant. Okay. Now we are getting into Monday morning. Monday morning at 8:30 we

have communication with between Jibral Acevedo and defendant Seth?
A. That is correct.
Q. 9:30 again you have got a call from Seth?
A. Yep, that is an inbound call.
Q. And the other one is routed so it is kind of hard to say I guess?
A. Yeah, I wouldn't be able to say one way or another on that one.
Q. Okay. We have another call at 2:20, Seth. And then we have an outbound call to Cash for Junk Cars. How do you know that number is associated with Cash for Junk Cars?
A. So we were looking for standout numbers in his phone records. So there's -- that one was an 888. Thinking it is some sort of commercial business, what you will. And so we started just Googling phone numbers. As we were just looking at different Q's to help us maybe identify a number.

But and that is how we identified that phone number. We just did a basic Internet Google search and it came back to Cash for Junk Cars.
Q. Okay. And you know as a case agent the transaction date -- I can pull it up. But the transaction date and time at DMV for the title transfer was about 3:49 on April the 20th, correct?

A. That is correct.
Q. And you see a call between Acevedo and the defendant at 3:26; is that correct?
A. That is correct.
Q. So before Acevedo even went to DMV his phone at least is calling Junk -- Junk Cars?
A. That is correct.
Q. And let's move right on into Tuesday. Auto salvage company ---
THE COURT: Solicitor, at this point -- I know I am interrupting the train, but I think it is a good point to take a break while you continue that.
MR. OSBORNE: Okay.
THE COURT: Let the jury take a break as well. And let you go to your jury room. Do not begin your deliberations. Don't discuss the case. We will be with you in about ten or fifteen minutes.
(WHEREUPON, jury exits 1/9/19, 11:04 a.m.)
THE COURT: First, I apologize for interrupting. I thought you moved into another day and it was a good stopping point. And I wanted -- because I am anticipating there will be some cross-examination of this witness and so that we don't have to break at that point and it can move I thought it would be a good stopping point.
MR. OSBORNE: No, I appreciate that. I am running out

of gas too.

THE COURT: No, no, you are doing fine. But I want to apologize for interrupting your train of thought as well.

MR. OSBORNE: Not at all. Thank you.

THE COURT: Thank you. Anything from the State before we recess; Mr. Osborne, anything?

MR. OSBORNE: No, sir.

THE COURT: Anything from the defendant, Mr. Loignon?

MR. LOIGNON: No, Your Honor.

THE COURT: Detective, at this point you are free to step down if you need to. I just ask you not to have any conversation with any of the attorneys, please.

THE WITNESS: Absolutely. Thank you, Judge.

THE COURT: Thank you so much.

(WHEREUPON, break 1/9/19, 11:25 p.m.)

(WHEREUPON, resume 1/9/19, 11:33 p.m.)

(WHEREUPON, bench conference regarding jury note.)

THE COURT: All right. Mr. Smith, you have had a chance to discuss this note with your lawyer, sir? I need for you to speak up so my court reporter ---

DEFENDANT SMITH: Yes, sir.

THE COURT: And you can remain seated. And you are okay with my asking her if this will influence or affected her?

DEFENDANT SMITH: Yes, sir.

THE COURT: All right. And I will tell you what she says when I get back.

(WHEREUPON, Court Exhibit 1, juror note, was marked for identification.)

(WHEREUPON, break for Court.)

THE COURT: All right. I have discussed with the jury specifically. And again she reiterated that she had not discussed it with anyone. She said it would not influence her at all but because she recognized it -- and she said I knew it as 100 and not 98. And that is why she said I just didn't make a connection until I saw it and then I -- and I think she said I was the arborist or I worked with the arborist that went.

And she said it wouldn't affect her one bit one way or the other, but she just wanted ya'll to be aware of it. So any objection to the juror remaining?

MR. OSBORNE: None, Your Honor.

THE COURT: Any objection from Mr. Smith?

MR. LOIGNON: No, Your Honor.

THE COURT: Thank you so much. Okay. Good. Thank y'all. I appreciate that.

(WHEREUPON, pause for the Court.)

THE COURT: All right. State is ready to continue?

MR. OSBORNE: Yes, Your Honor.

THE COURT: The defendant is ready to continue?

MR. LOIGNON: Yes, Your Honor.
THE COURT: Okay. Let's bring in our jury, please.
(WHEREUPON, jury enters 1/9/19, 11:40 a.m.)
THE COURT: You may resume your examination, sir.
MR. OSBORNE: Thank you, Your Honor.
THE COURT: Okay.
Q. All right. So we left off with Acevedo's phone records and you had indicated that there was a call to Cash for Junks on Monday, the DMV day, prior to him transferring title in the DMV; ---
A. That is correct.
Q. --- that was at 3:49?
A. That is correct.
Q. And now moving into Tuesday. And then we see a slew of calls -- or a lot of calls to wreckers and things of that nature, correct?
A. That is correct.
Q. Calls to the defendant and his brother; is that correct?
A. That is correct.
Q. And this is all on Acevedo's phone. To his brother later on in the afternoon. And then we have some other numbers going on. Okay.
Now I am showing you State's 154. It is the defendant's phone records. The jury is going to have this

back here. These are the records from the day of the murder we have a call; and this is voice, a voice call, at 7:48 a.m.; is that correct?

A. So this -- there's -- this is in UTC. So these are records from T-Mobile. And typically when I compile my working list I create another column specifically for the time difference. So this is -- and I didn't do that on this one. So you have to do the math for each of these phone num- -- or each of these calls here.

Q. Okay.

A. So the last set of phone -- or the last two sets of phone records that we used were both from Sprint. And those come eastern standard time. This -- this one is UTC here. So you have to subtract four hours from the times that you see here.

Q. Okay.

A. So that is the one thing I want to point out.

Q. Thank you for pointing that out. So this call would actually be at 3:48 a.m.?

A. That is correct.

Q. And the next activity we have on his call is at 1:35 p.m.?

A. That's correct.

Q. Okay. And so again we have to subtract four. We have the -- this is on Monday, April the 20th; we have the

Acevedo call 3:26 p.m.; is that correct?
A. That is correct.
Q. And so now this would -- this call to Gainey Auto this is another one of these salvage companies?
A. It is another one of the salvage companies. And that is really at 4:18 p.m.
Q. 4:18. So this call would have been the second call to a savage company or a wrecker that you found through your analysis of all the phones; the first one being to Acevedo when Acevedo called the wrecker, and now this one would have been after?
A. Yes. Yes.
Q. And we have the time here of 4:18. So about 20 or 30 minutes after they left the DMV?
A. After the DMV. That is correct.
Q. And now subtracting four. So 12:41 p.m. who is Wolf?
A. Wolf is the tow truck driver that purchased the vehicle from Acevedo and brought it to LKQ.
Q. Okay. And we have communication between the defendant and Wolf, communication between the defendant and Acevedo, and then again communication between the defendant and Wolf?
A. That is correct.
Q. And you said Wolf is the one who actually took the car to LKQ?

A. That is correct.
Q. Purchased it in essence from Acevedo, correct?
A. Yes, sir.
Q. Okay. End it with this. You weren't here on Monday, correct, the day before yesterday?
A. Yes.
Q. And that is because you are adopting a baby, correct?
A. That is correct.
Q. All right. Congratulations.
A. Thank you.
Q. You and Nora. I know it has been a long haul, right?
A. That's right.
Q. But I do want to ask you something about some comments that were made that day. All right, there was a comment that was made that there was an individual charged for murder by the name of Bryant Smith; is that correct?
A. That is correct.
Q. The defendant's brother?
A. That is correct.
Q. So he was charged with murder?
A. Yes, he was.
Q. All right. What other charging decisions and charges did you make in this investigation, and to whom?
A. So as the solicitor stated, Bryant Smith was charged with murder and attempted murder. Acevedo was charged with

obstruction of justice for lying in our investigation and misleading this investigation. And then Seth Smith was also charged with murder and attempted murder.

Q. Okay. So you charged the defendant with murder and attempted murder?

A. That's correct.

Q. Okay. But that is not why we are here?

A. That is correct.

Q. We're -- this is here for accessory after the fact of murder?

A. That's right.

Q. All right. There was also another comment that was made that -- that was mentioned on Monday that said that you or the police department had developed information that exonerated Bryant Smith, the defendant's brother, had found him not guilty. Is that true?

A. That is not true at all. I was surprised to hear that actually.

MR. OSBORNE: No further questions.

THE COURT: Very well.

You may cross-examine, Mr. Loignon.

MR. LOIGNON: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION BY MR. LOIGNON OF PAUL KRASOWSKI:

Q. Good morning.

A. Good morning.
Q. Well, since we were talking about Bryant Smith I will just start there. Obviously Bryant is Seth's brother, right?
A. That's correct.
Q. And Bryant is the reason for what you believe to be the motive in this whole thing, right?
A. Yes, with the robbery.
Q. The drug deal gone bad the night before?
A. That would be part of the motive, yes.
Q. And that was between Bryant Smith and George Bennett is what your theory is, right?
A. That is correct.
Q. Obviously you weren't present when that drug deal happened, right?
A. That is correct.
Q. And you haven't talked to any other witnesses that were present when this drug deal happened, right?
A. That were -- not present for it.
Q. And that drug deal is not on video recording or anything like that, right?
A. No video.
Q. And we did see that the charges -- or we heard just a moment ago that the charges against Bryant Smith for murder and attempted murder were dismissed, right?

A. The Solicitor's Office dismissed them.
Q. Right, you didn't dismiss them; Mr. Osborne dismissed them, right?
A. That is correct.
Q. That is because the State couldn't prove that Bryant had any involvement in the murder, right?
MR. OSBORNE: Objection ---
THE COURT: Sustained. That calls for a conclusion on the part of the witness that he is not able to render. And it would be a legal decision and not -- his -- he can't enter an opinion about it either. So I sustain the objection.
Q. You know some of the reasons why the State had to dismiss the charges against Bryant Smith?
A. Never discussed it in detail with Solicitor Osborne.
Q. Are you familiar with a status change form?
A. I am not.
Q. Do you know that the State has to file something ---
THE COURT: Mr. Loignon, I am not going to allow you to go into that, sir. Those are legal matters, not -- not pertinent for this jury and not proper for this witness to render opinions. Thank you, sir. Under Rule 611(A) I am going to prohibit that examination as to that part of it.
MR. LOIGNON: Thank you, sir.
Q. You know that multiple witnesses described the shooter

as having dreadlocks, right?

MR. OSBORNE: Objection. Calls for hearsay.

THE COURT: Sustained.

Q. Do you know if Bryant Smith had dreadlocks?

A. I believe at the time that we were able to establish it -- at one point he did, but I think at the time of the incident we learned that he did not.

Q. You didn't have any evidence to establish that Bryant Smith was the driver of the car that actually transported the shooter, right?

A. That he was the driver, no.

Q. Okay. And there was insufficient evidence that he was actually the shooter as well, right?

A. I guess I would agree with that.

Q. Okay. So Bryant Smith is not charged with murder; and right now there is no one that is a suspect, right, in that murder?

A. Well, suspect? We -- we have our suspects.

Q. As the principal, the shooter; right?

A. So charging wise, no.

THE COURT: Mr. Loignon, approach please. Solicitor.

(WHEREUPON, bench conference.)

THE COURT: All right. We have had a conference, 611 -- under 611(A) as I mentioned earlier concerning this line of questioning. And we will put it on the record at

the first break. But thank you. You may continue, Mr. Loignon.

MR. LOIGNON: Thank you, Your Honor.

Q. All right. So let's talk about the -- we talked a little bit about the ALPRS camera, right?

A. The ALPR, yes.

Q. So and we saw some pictures and a video of a black Cadillac from the day of this incident?

A. That is correct.

Q. Now the ALPR camera pictures that we saw were not from the day of this incident, right?

A. That is correct.

Q. But the pictures, the stills from the City camera, they were from the day of this incident?

A. That is correct.

Q. And that is in the area of Reid and East Bay?

A. That is correct.

Q. And riding through the area I think you said circling multiple times, right?

A. Yes, sir.

Q. That first picture we saw shows the Cadillac -- well, let's -- from the ALPR, the automated license plate reader, the first picture is from April 1st; right?

A. That was the daytime photo, yes.

Q. The daytime photo. So that was approximately -- I

mean that is 18 days prior to the murder?
A. That is correct.
Q. Okay. The second picture is from April 17th. That is the night before, right?
A. Yes, sir.
Q. And that was the dark one that you couldn't really make out anything?
A. Yes, sir.
Q. Okay. But you know it is the same Cadillac in those two ALPR's photos because of the license plate?
A. Yes, sir.
Q. And we can read the letters on there when it is enhanced?
A. Not -- well, not enhanced. What you see, that lower left picture was the actual picture of the license plate. And the right part is what the computer believed it to be. And so then when you observe it and verify that information you are looking at the license plate to the license photo of the registration. So there is no enhancement there. It is just what it believes it is.
Q. Okay. The -- we don't have an ALPR's hit from the day of the incident from anywhere, right?
A. That is correct.
Q. And you did mention that -- that is not the only ALPR's camera in the City of Charleston, is it?

A. No, that is not the only one.
Q. You had a lot of phones analyzed in this case we've heard about?
A. We did.
Q. I think it was more -- like around ten or so, right?
A. There were a significant amount. And a lot of them came from the search warrants at the time of the arrest.
Q. And we heard about when a phone is analyzed a bunch of data is extracted from the phone?
A. Yes, sir.
Q. We saw the person's call history just a moment ago; we saw some of that, right?
A. What we saw -- the call history was from the call records. But, yes, you get something similar to that.
Q. And in some cases you can actually see text messages, right?
A. Yes, you can.
Q. Printouts from the actual texts that were sent and received?
A. It is possible in those extractions.
Q. And what times those texts were sent, right?
A. Yes, sir.
Q. You can see in some cases in those phone records you can see someone's Web history, what they have search; right?

A. The contents of the phone, yes, you could potentially see that.
Q. What websites they visited?
A. Yes, you can potentially see that.
Q. And when they visited them?
A. You should be able to see that, yes.
Q. And in some cases this could be very useful to your investigation, right?
A. Yep, it could be.
Q. If you suspect someone of a crime and they're talking about it via text and you see that in the phone records that is pretty useful, right?
A. Yep. Yes.
Q. And if they are searching for information about the crime either before or after, that could be helpful to your investigation; right?
A. It could be.
Q. This is an indicator that they have knowledge of the crime, right?
A. It could be if they can make those -- if their connections are made it is possible.
Q. So out of all those phones that were analyzed no text messages showing Seth Smith had any knowledge of the murder, right?
A. None of the phones that we were able -- what we were

able to look into there was nothing that showed that -- any communication about the homicide, the murder.
Q. And on Seth's phone no Web searches that furthered your investigation in any way, right?
A. Not on the phones that we recovered, no.
Q. And there were a few other phones, I think two or three others, that you associated with Seth as well; right?
A. So there were at the time of his arrest. We never recovered the phone that serviced the phone number of his primary phone number.
Q. The one that Jibral Acevedo says was his primary phone number, right?
A. The one that he communicated with Seth with, yeah, that phone number -- we never found the phone for that number.
Q. But the phones when he was arrested, those were dumped; right?
A. They were.
Q. Nothing in there to further your investigation, right?
A. No.
Q. And we already heard about the phone -- I think there were two George Bennett's phones from the crime scene, right?
A. There were two phones, yes.
Q. And both of those phones were downloaded?

A. They were. One may not have been successful. But, yes, they were analyzed.
Q. And you looked through his contacts, right?
A. We did.
Q. Call history?
A. We did.
Q. Text messages?
A. Yeah, I believe so, yes.
Q. And none of the numbers that you have associated with Seth Smith from any of those phones were found in George Bennett's contacts, right?
A. Yes, from my recollection of this the communication was just between George and Bryant.
Q. So no calls in or out with George Bennett from any number associated with Seth Smith?
A. None that we found.
Q. No text messages to or from any of the numbers associated with Seth Smith to George Bennett?
A. No.
Q. And the same goes for Rayshawn River's phone, right?
A. That is correct.
Q. Nothing linking Seth to Rivers or Bennett found on Rivers' phone?
A. Correct.
Q. Okay. So there was a handwriting sample taken in this

case, right?
A. There was.
Q. From Jibral Acevedo?
A. That is correct.
Q. He testified about that yesterday and that he wrote me a letter?
A. Yes. Yes, he did.
Q. He was changing his story for like the third time, so you wanted to make sure that it was his handwriting?
A. Yeah, wanted it to be validated.
Q. And we heard that there was a court order for him to provide that sample, right?
A. There was, yes.
Q. And you administered it?
A. I did. I did.
Q. And you sent it to SLED?
A. That was submitted to SLED.
Q. And that is so an expert could compare the handwriting sample that you took with the letter that you -- that was sent to me?
A. Correct.
Q. And you received a report back from SLED with the results of that?
A. Yes, I did.
Q. And it was a match, right?

A. It was.
Q. Jibral did write the letter?
A. I believe that was the conclusion drawn.
Q. And he also addressed the envelope to me?
A. Yes.
Q. And now during the course of your investigation and a little bit during this trial there has been an issue with the date on that Cadillac title, right?
A. Yes, there was an issue.
Q. I mean you believe it was intentionally backdated, right?
A. Yes.
Q. Okay. You questioned Acevedo about that date during your meetings with him, right?
A. Correct.
Q. You wanted to know if he filled in the date or if Seth did?
A. Correct.
Q. You didn't send that DMV title up to SLED to have that analyzed against Jibral's handwriting, did you?
A. No, we didn't.
Q. We heard that there was a tow truck driver in this case, a Henry Wolf?
A. Yes, sir.
Q. And you interviewed him, right?

A. Detective Baily and I. I was there for it. I think Detective Bailey documented that.
Q. He is the one who came out to [redacted] Street in Mt. Pleasant?
A. That is correct.
Q. He picked up the car that he bought from Jibral?
A. He did.
Q. And that was on April 21st of 2015?
A. Yes, the Tuesday; yeah.
Q. He didn't see Seth Smith out there ---
MR. OSBORNE: Objection. Calls for hearsay.
THE COURT: He asked whether he saw or not.
MR. OSBORNE: He asked what Mr. Wolf saw.
THE COURT: Excuse me, what he saw?
MR. OSBORNE: He asked what Mr. Wolf saw.
THE COURT: Okay. I sustain it. Well, first of all 602, he can't testify as to what Mr. Wolf saw.
MR. LOIGNON: I will move on.
Q. There was a search warrant of Green Park Road, correct?
A. There was.
Q. We saw that there were some pictures taken from the crime scene analyst?
A. Yes, that is correct.
Q. And in Bryant's room there was some money in a box,

correct?
A. There was.
Q. And then it was spread out on the bed and photographed, right?
A. Yes, that is correct.
Q. None of that money to your knowledge was counterfeit, right?
A. I wasn't there. But it didn't catch the eye of the detectives that were there.
Q. We heard from Crime Scene Tech Miller who testified that he collected two touch DNA swabs?
A. From the vehicle, yes.
Q. Yeah, from the headrest of the Cadillac?
A. Yes, that is correct.
Q. And those two spots were not sent for testing, right?
A. No, they weren't.
Q. And we also heard a lot about the -- there was a good bit of fingerprint evidence in this case, right?
A. Yes, there were.
Q. There were latent lifts that were collected from the black Cadillac?
A. There were.
Q. And some from the white Mercury Grand Marquis, right?
A. There were.
Q. And Seth even came down to CPD headquarters and

voluntarily gave his fingerprints, right?
A. Yes, sir.
Q. And Seth was eliminated as the source of the prints from the Mercury Grand Marquis, right?
A. Yes, he was.
Q. And he was eliminated from all of the prints except the one on the AC panel in the Cadillac?
A. In the Cadillac. That is correct.
Q. And that Cadillac was -- that Cadillac was processed after it was picked up from the LKQ yard, correct?
A. That is correct.
Q. All right. Just making sure we are talking about the same thing. We already talked about the DNA. There was some that was tested, I believe; right?
A. There was -- there was some DNA that was collected from the Marquis that was sent up to SLED.
Q. Okay. And that was compared to DNA from Seth, right?
A. Yes. Yes, sir.
Q. And you got the report back from SLED, right?
A. We did.
Q. Seth was excluded as a contributor of that DNA?
A. It was the victim's DNA.
Q. There were some fired bullets and cartridge casings that were sent to SLED for testing?
A. Yes, that is correct.

Q. And there were no matches for any of that evidence that you know of?
A. Well, we never recovered a gun for a comparison. And the casings are what analysis is in IBIS testing, and that there are no matches in the system for a gun that had been seized after the -- since that incident.
Q. None of that -- the cartridge casings, none of the stuff -- the bullets, none of that links Seth Smith to this crime in any way; right?
A. No, there was no DNA, latent prints. It's near impossible to recover those -- such evidence from fired casings.
MR. LOIGNON: Court's indulgence.
THE COURT: Yes sir. Take your time.
Q. You also reviewed a lot of videos in this case, right?
A. There was quite a bit of video in this case.
Q. There were multiple videos that captured the black Cadillac around the time of the shooting?
A. Yes, sir.
Q. And there was video from City cameras, right?
A. City cameras, yep.
Q. Video from the Brideview Apartments, right?
A. That is correct.
Q. None of that video unfortunately shows us anybody that is in the car, right?

A. It doesn't, unfortunately.
Q. And just to be clear, none of the video shows anybody get in or out of the car before or after the incident?
A. That is correct.
MR. LOIGNON: Nothing further.
THE COURT: Redirect.
REDIRECT EXAMINATION BY MR. OSBORNE OF PAUL KRAWSOWSKI:
Q. All right. So let's pick up with that last question. The video doesn't show -- it is not good enough quality for you to be able to identify who is in the car, right, to make an ID; correct?
A. That is correct.
Q. But it does show you one thing though, doesn't it, in reference to the getaway vehicle as it was backing up; how many people can you tell were in that car at least -- put a number. At least there were how many people in that car?
A. Well, there had to have at least have been two.
Q. And why do you say that?
A. The car was backing up as you saw that the passenger door was still open. And through the video and then witness statements it was clear that there was a driver in that vehicle and then the person -- the shooter got into that vehicle as it was backing up.
Q. Unless the shooter drove the car from the passenger side; I suppose that would be possible?

A. It could be a mailman.
Q. Okay. So and there was some question about charging decisions. And I don't want to leave the jury with a false impression. When you -- how long have you been doing murders?
A. So I've spent about a little over five years in the homicide unit altogether.
Q. Okay. So let me ask you something. When you are making a charging decision and you have been able to identify two individuals which you believe you have probable cause that are involved in a murder do you have to be able to say definitively before you make an arrest that A or B pulled the trigger to make an arrest?
A. No. We ---
Q. Okay.
A. No, we don't have to do that.
Q. Right. So I guess what I am getting at is if you can -- if you can determine and just by probable cause standard that two people are actively involved in the murder you can charge them both with murder even if you can't prove who pulled the trigger?
A. That is correct. That active part is the key to that.
Q. Okay. But again, much different standard from making an arrest to what we are here today; right?
A. This is beyond a reasonable doubt.

Q. Your standard is much different than mine?
THE COURT: All right. That is as far as you can go, Solicitor.
MR. OSBORNE: I just wanted -- thank you, Judge.
THE COURT: As far as you can go.
Q. All right. So let's talk about some of this evidence. Now he talked about DNA on the headrest.
MR. OSBORNE: Beg the court's indulgence.
THE COURT: Yes, sir.
Q. Okay. I am going to show you State's 113. A decision was made not to send up the DNA which was recovered from the headrest of that vehicle. Does that represent, fairly represent, the way that vehicle appeared when you saw it at LKQ?
A. That is correct.
Q. What if any evidentiary value would it have had to get DNA from the headrest of a vehicle that appeared to have been rummaged through the way that one had?
A. Well, that was part of the concern. And mind you, it was a swab for possible DNA. There was no DNA profile at that point. It was just a swab from the headrest.
Q. And so would that have -- let's say that you get a DNA profile from someone. Would that have held any evidentiary value with the car in this condition?
A. At this point we had obviously people going through

it. It was not secured at that point. Anybody had access to this that paid their fee to get into the yard.

And we also had latent prints from subjects that were clearly unrelated to this investigation. We had obviously pieces that were already purchased from the vehicle. So at that point it was contaminated.

Q. Now if you had been able to get a hold of that car let's say when it was parked at Jeremy Wright's house and you had swabbed it then would it have had evidentiary value?

A. Absolutely.

Q. Oh. So Jeff Miller did process the vehicle for prints, and you testified that it came back to two individuals; correct?

A. Yes. So I think Kemper ---

Q. Three individuals. I'm sorry.

A. Well ---

Q. Defendant and two others?

A. There were three. There were two -- two people not associated with the investigation. Kemper I believe was one. That was a white male subject. His hands. His finger -- latent prints were on the hood I think.

Q. Okay.

A. And then Mungin was another one. And he was an older black male. That name never came up in the investigation.

I believe wasn't around the downtown area -- or is not associated with the downtown area.
Q. And his print was also on the outside of the vehicle?
A. It was on the outside. I think it was the passenger side.
Q. Okay. So there was some discussion about the phones and the analysis that was done on the phones. So let's talk about that briefly. The defendant was arrested on May the 6th in a hotel room in Walterboro I think we've heard?
A. That is correct.
Q. Okay. And at the time of his arrest he was in possession of or at least there were some phones found in the hotel as well as his possession?
A. There were.
Q. All right. So let's just in general go through some of these phones. So there was a phone found during the execution of the search warrant at Bryant Smith's home, correct?
A. That's correct.
Q. And I believe analysis on that phone showed that there were several texts indicating that that phone belonged to Bryant Smith?
A. There were. So and all of these phones were searched through the means of a search warrant. But, yeah, on that first phone that you are referring to calls it looked like

it dated back to three days after the homicide. So it was a newer phone. Newer than the incident -- the incident.
Q. But nevertheless not the defendant's phone, ---
A. Correct.
Q. --- could be Bryant's phone? All right. Let's talk about another phone seized from the defendant at the time of his arrest on May the 6th. Y'all did try to extract information from that phone, correct?
A. We did try.
Q. Okay. So to say that when you extract a phone you can find out everything that happened on that phone, Google searches, things of that nature, while that is sometimes true many times you don't get anything back from the extraction, it is just not compatible?
A. It is hit or miss.
Q. And in this incident you have got a phone number 7892 ending in. 872-7892, but no other information?
A. That is correct. The extraction only pull -- was able to pull the phone number from that.
Q. Okay. And that number didn't appear throughout the investigation in any other way?
A. Correct.
Q. All right. Let's talk about a third phone. This one was seized from the hotel where the defendant was arrested. And from that extraction am I accurate by saying you got a

phone number, 452-4155; is that correct?
A. That is correct.
Q. But no call log, no text data at all; correct?
A. That is correct.
Q. You only had some pictures?
A. Yes, there were pictures with Seth Smith and a female.
Q. Okay. No Google searches, nothing like that?
A. No.
Q. Okay. All right. The next one a phone seized again from the hotel. Y'all tried to extract that one but couldn't get anything off of that one; is that fair to say?
A. That is correct.
Q. And then I don't even know if this one was mentioned, but there was a phone that was seized from inside of the victim's vehicle. Tried to download that and couldn't get anything from that either?
A. The phone was secured.
Q. Okay. And Mr. Loignon said that you had developed a motive for this case, you had developed a theory for this case; correct?
A. We did.
Q. And part of that motive and theory was the reason for the arrest, correct?
A. That is correct.
Q. Well, where did that information come from?

A. We had two independent sources that provided that information.
Q. What information?
A. That there was a robbery that happened the night before this incident.
Q. Specifically?
A. A robbery of drugs.
Q. And who committed the robbery?
A. And George Bennett committed the robbery.
Q. And where did the robbery occur?
A. In West Ashley.
Q. And what was the subject of the substance that was taken?
A. It was marijuana.
MR. OSBORNE: No further questions.
THE COURT: Redirect.
MR. LOIGNON: Just briefly.

RECROSS-EXAMINATION BY MR. LOIGNON OF PAUL KRAWSOWSKI:

Q. You were asked what if any evidentiary value could come of testing DNA from a car that was in a junkyard, right?
A. Correct.
Q. You are not the one who tests the DNA, right?
A. No, that's correct.
Q. And you didn't -- you didn't -- I'm sorry.

A. Yeah, no, I don't test the DNA.
Q. You didn't collect it, right?
A. I didn't do the swab, no.
Q. You don't develop a DNA profile of anyone as part of your job, do you?
A. No, that is correct.
Q. So you wouldn't know what evidentiary value it had unless you tested it, right?
A. Well, I suppose in so many ways yes.
MR. LOIGNON: Nothing further.
THE COURT: All right.
You may come down, sir. I ask you to remain in the courtroom for just a little bit, please.
THE COURT: All right. You can call your next witness.
MR. OSBORNE: The State rests, Your Honor.
THE COURT: All right, ladies and gentlemen, at this point there are some matters of law that I have to take up out of your presence.
It comes at a very good time because we are at lunchtime. I will let you go to lunch. Do not begin your deliberations. Don't discuss the case. You are still not at liberty to talk among yourselves. And certainly do not allow anybody to talk with you about it.
There are some matters that we have got to take up, so

I'm going to give you a little bit longer. I am going to let you -- come back please to the jury room at two o'clock. We will resume the trial at that time. Thank you.

(WHEREUPON, jury exits courtroom 1/9/19, 12:18 p.m.)

THE COURT: Thank you very much. Before we go through the process now -- I want to hear at length from the defendant concerning the motions at this point. But before we do that -- and I asked the detective to remain.

We had a sidebar concerning examination about dismissal of charges and pending charges and how long -- what was the effect of that and sort of thing, or that was my assessment of where we were going. And I stopped you.

First I want you to feel free to proffer any testimony you want for the record. That is why I asked him to remain. But I want to put on the rational.

611(A) is a rule that I have used periodically in my career. It was pointed out to me by Justice -- later became Chief Justice, but he was a judge. It is the only one that I know that allows the court some discretion in controlling witness interrogation.

And while certainly it is my responsi- -- not my province to determine the truth and believability of the evidence, that's -- we know that belongs to the jury. But it says that the first -- it says the court shall exercise

reasonable control - and that is a very scary term, reasonable control - over the mode and order of the interrogating of witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth. Then the needless consumption of time possible has some, but the first part is because it really -- because of the state of the law in this -- and this is where we get into that problem. And I respect your argument about that.

Massey -- State versus Massey sort of clarifies that, that not only do you not have to prosecute a person but in that the person -- the principal was acquitted and it still didn't prevent the State -- and that -- that at first blush gives me some concern. How can you be an accessory after the fact of a felony murder and you were acquitted meaning that you didn't commit the murder? But that is what the law says.

Because of that and because that in addition to the fact we have the rule now that we have to address these cases and we know that one of the strategies -- and there is a strategy that I think I am going to -- I am being presumptuous, but I think I have an idea about whether or not there are going to be any additional witnesses called because of certain other strategies that exist in these prosecutions.

But one of which is the State of South Carolina and at least here -- and other states have a similar right. But theirs has somewhat of a restraint because in some states there are statutes of limitation. Not so in the State of South Carolina.

And therein lies the real issue here because the fact that they dismiss it. And furthermore, this witness didn't dismiss it. It was the State that dismissed it. So that gets into an area where he really doesn't have any independent knowledge or can't really respond. I don't think -- he doesn't have the ability to respond under 602.

And furthermore it then leads a jury into a possible look of - which would be inconsistent with the law - of why aren't they prosecuting this person and why haven't they done that.

Those I believe would -- could lend a jury to proceed down a line that would be undue waste of time because that is an alley they don't need to go and it would not help us get to the truth.

And the truth is what we are about to hear. And that is -- I know I can't. I'm going -- you put a request to charge of murder of defining it. And I am going to give that charge because obviously they have got to know what murder is.

But so there has to be a felony murder, because in

this case the State -- at one point I was thinking, boy, you have boxed yourself by putting murder in there, if you had just put felony there could have been any number of things. But you didn't. And that is fine. That is okay.

But clearly that is what we have to prove. And so the death of this individual became very important and how he died became significant.

Of course I knew -- having been -- -as a lawyer and having been a judge for a while I have heard pathologists testify do you have an opinion of the cause of death. And typically they come out with homicide which we know is murder. So another way of saying murder.

So that's -- that evidence is there. But I will charge that. But the real key in this case and it has been one that has caused me to read a lot is -- some of the conduct we have heard in this case could be -- could warrant a charge of obstruction of justice, just by destroying the car. I mean that could have been a possibility of destroying something because of what was testified to.

It doesn't do a lot of good to lift fingerprints as far removed from the time as that was and what -- how many people had touched that vehicle. So it really would have been burdensome and not very productive.

But they've got to prove not that he interfered with

it but he -- he interfered with it with the intent to protect the principal, to allow the principal to avoid. And that is clear. And therein lies the real issue here. And that is what has given me some concern.

So all of this other stuff about concerning the brother really and truly has no relevance whatsoever to that particular issue in my opinion. And that is why I restricted you.

But, Mr. Loignon, as I said, that word reasonable I respect you and I may differ on that; and so if you wish to examine the witness further concerning the line of questions that I stopped please feel free to do so, sir.

MR. LOIGNON: No, Your Honor, I don't. Thank you.

THE COURT: And do you wish to supplement anything else -- we had -- I know you didn't agree with my decision; but is there anything else you wish to say?

MR. LOIGNON: No, Your Honor. Thank you.

THE COURT: Solicitor, is there anything else you wish to say?

MR. OSBORNE: No, Your Honor.

THE COURT: Very well. Thank you very much. And I assume you are going to stay anyway, Detective. But you are now free to leave if you want to.

THE WITNESS: Thank you, Judge.

THE COURT: All right. Are there any motions from the

State at this point?

MR. OSBORNE: No, Your Honor.

THE COURT: I didn't think so.

Mr. Loignon, I would anticipate one from y'all. I will be happy to hear from you, sir.

MR. LOIGNON: Yes, Your Honor. Thank you very much. At this point the defendant would respectfully move this court to direct a verdict on the charge of accessory after the fact of murder. And that is based on two main grounds here.

The State has relied solely on circumstantial evidence and they have failed to produce a substantial amount of circumstantial evidence to prove each element of this offense.

Second, the State has failed to produce any evidence whatsoever, direct or circumstantial, that Mr. Smith had knowledge that a murder occurred.

The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. That is from State v. Odoms. In a circumstantial evidence case the trial court must grant a directed verdict when the evidence merely raises a suspicion the accused is guilty.

Any evidence related to Mr. Smith in this case may appear suspicious; but as the court knows, mere suspicion is insufficient to survive that motion for a directed

verdict.

In Odoms a woman saw two men get out of a brown car and knock on her cousin's door. One of the men put something in the trunk of the car, and they drive off. And a deputy stops that car a short time later. And two of the occupants including the defendant -- or the defendant and two other occupants flee from the car. And the car contained items stolen from that home.

So the State's case in Odom relied primarily on three pieces of circumstantial evidence. Less than 90 minutes after the burglary police located the defendant in the getaway car with the stolen goods. Number two, he fled. And number three, he asked an uninvolved person to lie for him.

The court found the defendant's actions were suspicious but insufficient to support the verdict and circumstantial evidence was not substantial to prove his involvement in the crimes.

State v. Cherry says the court is concerned with the existence or nonexistence of evidence and not with its weight, the trial judge should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.

In other words, the case can only go to the jury if there is substantial evidence which reasonably tends to

prove the guilt of the accused or from which his guilt may be fairly or logically deduced. And that is State v. Bostick.

The trial court has a duty to submit the case to the jury where evidence is circumstantial, if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced but the trial judge should grant a directed verdict when the evidence merely raises suspicion.

All of that that I keep citing is from State v. Arnold. It is a 2004 murder case. And there was evidence of a sexual relationship between the defendant and the victim. The defendant's fingerprint was on a coffee cup in a car that the victim had just borrowed it from a coworker. So he had never -- the victim had never been in this car before.

The defendant's fingerprint is found on a coffee cup in that car establishing that the defendant was in the borrowed car with the victim on the last -- or on the last date that the victim was seen alive.

And in that borrowed car that the defendant -- or that the victim was last seen in was then found abandoned in Tennessee which is the same state where the defendant was located.

And the court found that this evidence obviously raised a suspicion of guilt but there was no evidence that the defendant killed the victim and a directed verdict should have been granted when there was no substantial circumstantial evidence establishing the defendant's presence at the scene.

I mentioned State v. Bostic, I think. In Bostic a victim had been struck in the head and left to die in a fire in her home. The fire was starting using gasoline as an accelerant. And items belonging to that victim were found in a burn pit in the defendant's mother's yard. And an accelerant such as kerosene or diesel was used to start that fire. And the defendant had a chemical pattern that matched gasoline on his shoes.

The defendant argued that the evidence presented by the State obviously didn't rise to the level of substantial circumstantial evidence to survive directed verdict, and the court agreed concluding that the State's evidence only raised suspicion.

Obviously the court is aware that Mr. Smith walked into this courtroom clothed in the presumption of innocence. He doesn't have to have an alibi. He doesn't have to explain to police what he was doing after this incident. And it is the State's burden to prove that.

We would argue that they have failed to do that here.

Just going through the elements, for the record: Accessory after the fact to murder requires the State to prove that a murder actually occurred, that Seth Smith knew that the principal actually committed the murder, and that Seth harbored or assisted the principal to escape detection.

He must know that the person that he aided is the guilty party with the intent of shielding him from the law. So obviously where I am going with this is the knowledge element.

And I am sure that the court is already aware that there are some issues here with knowledge. And there is absolutely no way for the State to ever prove to a jury beyond a reasonable doubt that Seth Smith had knowledge of that murder that occurred.

And this is precisely the situation I think where a case should not be submitted to the jury at all because at best the State has presented circumstantial evidence of the third element. So they presented a lot of evidence that Seth Smith did something to harbor or assist the principal. No doubt they have presented some circumstantial evidence about that.

But then you have to take that leap and say, well, because he harbored or assisted the principal he must have known who the person was. And that is what the State is asking us to do here. And I don't think you can skip that

second element.

So I mean they have a DMV title. They have Seth seen by Jeremy Wright with the car an hour and a half to two hours after the murder. And then they have Acevedo saying that Seth helped to alter the appearance of the car.

Three pieces of circumstantial evidence that all go towards that third element of harboring or assisting the principal to escape detection.

I would argue that it is not substantial, in the first place; and that it has nothing to do with the second element of knowledge.

The State is asking us to take those three pieces of evidence and infer from that that Mr. Smith had knowledge of the murder. And I think that would be improper for the jury to make that inference.

They have presented zero direct evidence of knowledge. No witness testified that Mr. Smith had knowledge or told them anything about this crime. There is no evidence linking Mr. Smith to the crime scene around the time of the murder.

So they can't show that he knew a murder occurred in that way or any way. So certainly not substantial circumstantial evidence to show that he had knowledge. I would argue that there is none.

This case is distinguishable from Pearson which is a

2016 case where the court kind of I believe backtracked a little bit. The standard used to be substantial circumstantial evidence that proves a defendant's guilt to the exclusion of any reasonable hypothesis.

And the court kind of backtracked in 2016 in the Pearson decision. They found that substantial circumstantial evidence still applies but not to the exclusion of every other reasonable hypothesis for a directed verdict motion.

I would argue that it still would apply to a jury charge, but at this stage at the directed verdict stage all that is required is the State to present substantial circumstantial evidence of each element.

But in Pearson the court held that the State presented six pieces of circumstantial evidence. And I would just like to -- let me see if I can pull that up real quick because I want ---

THE COURT: That's all right. You don't -- you don't need to be specific. I understand what you're saying.

MR. LOIGNON: Yes, sir. I mean it was -- it was substantial. They had -- they had -- in Pearson they had -- just briefly, the victim was assaulted and robbed by three men outside of his garage. The defendant's fingerprint was found on the victim's stolen vehicle. Defendant denied that he had contact with the victim's

vehicle or knew the victim or knew where the victim lived.

There was evidence though at the trial the defendant had earlier performed landscaping work at the defendant's residence. The defendant and the codefendant were in the same vocational rehabilitation training program. And DNA evidence on the duct tape removed from the victim's head was matched to the defendant.

So there was six pieces of very strong circumstantial evidence in Pearson. And in this case we don't have even close to that amount. All we have here is someone selling a car and then maybe helping to scrap it. And if you take the evidence in the light most favorable to the State.

And because the State has relied solely on circumstantial evidence and that evidence has not risen to the level of substantial circumstantial evidence, especially to the second element of knowledge, there is absolutely no way for a jury to find that Seth Smith had knowledge without relying on mere suspicion. I believe the court must direct a verdict of not guilty.

Thank you.

THE COURT: Thank you.

Happy to hear from you, Mr. Osborne.

MR. OSBORNE: All right, Judge. Well, and he said, you know, Mr. Loignon ---

THE COURT: Well, let me -- let me ask you to focus.

MR. OSBORNE: Sure.

THE COURT: Where is the evidence that indicates that he had knowledge that a murder had been committed?

MR. OSBORNE: Well, I would point to his extraordinary efforts to destroy the car following the murder. And I am going to track with you. And so if you look at it in a vacuum and say that -- based on what Mr. Loignon said, the only way I can prove it is if I have direct evidence. Well, I don't; and I am not saying that I do.

Although there is direct evidence here to show Element Number 3. So let me just backtrack and tell you what we have.

THE COURT: All right. Do that. Because that is the area -- you know, if there was something that said they were looking for a black car, they were looking for something connected with it, we don't have any of that evidence.

The only -- the only evidence that I can -- really at this point is if the jury concludes that the black car and the silver Infinity were in unison and together.

MR. OSBORNE: That's right.

THE COURT: Then that's -- that's been attributed to the brother.

MR. OSBORNE: Right.

THE COURT: The brother has the beef that has come out

about the drug deal which goes bad. There is conversation with the telephones.

MR. OSBORNE: Right.

THE COURT: Which the jury can infer some discussion there.

MR. OSBORNE: Well, I think I can even do better than that with the phones.

THE COURT: All right. But get me -- get me to how he knows that the murder had been committed.

MR. OSBORNE: Well, so again, I mean if I am in that vacuum then I am kind of in a box. But I don't think I need to be. I think ---

THE COURT: Well, the law puts you in the box. I don't put you in a box.

MR. OSBORNE: No, sir, I think I can do circumstantial. I can prove the whole thing ---

THE COURT: Well, show me circum- -- give me the circumstantial evidence ---

MR. OSBORNE: Okay.

THE COURT: --- that says that he knew a murder had been committed.

MR. OSBORNE: All right. I am going to paint the picture. So there has been evidence that -- or there's been testimony that has been elicited just from the last witness that the victim was involved in robbing some

individuals in West Ashley the night before of marijuana.

The only time that this victim went to West Ashley the night before was to a cell tower that was in their house, that hit on their house.

He communicated with a Bryant Smith prior to going there. There is ---

THE COURT: He being who?

MR. OSBORNE: The victim.

THE COURT: Okay.

MR. OSBORNE: There is about a seven-minute gap there between when they were talking to one another to where it stops. During that seven-minute gap I think it can certainly be inferred that is where the robbery or the drug deal gone bad happens. Because he said it happened last night in West Ashley. And that is the only time he is there. Every other time he is in the car and he is moving.

After that Bryant then calls the victim. They speak on the phone for about 40 seconds. Stops. He immediately calls him back. It is a two-second call. It is either a hang up or I've got nothing to say to you.

He then calls an unknown number. And after that he calls this defendant's number. This defendant is in North Charleston. After speaking to his brother for over five minutes he goes downtown. He then circles the East Side crime scene.

We know that based on the cell tower information and we know that based on the ALPR which hits on his Cadillac. So we have his phone downtown on the East Side and we have his Cadillac down on the East Side after he spoke to his brother who we are alleging was robbed, based on that information that was elicited.

So now we go on into Saturday. Saturday we have that silver Infinity and we have that black Cadillac circling the area in which we know through testimony through Officer Faustin and through this detective that it appeared as though the victim was engaged in narcotic activity.

That is corroborated by the fact that there was marijuana found in the car that he was killed in who a witness who was sitting in the car said it wasn't his. And that was Rayshawn's.

Not only were they circling the area, but like you said, they were circling the area in unison. Silver Infinity and black Cadillac coming down the exact same road about 20 minutes before he would end up being murdered.

Now Jeremy Wright is important because Jeremy Wright says that only about an hour or an hour and a half they both are knocking at their front door, Bryant and Seth. Seth says his car is broken down, give us a ride back downtown. He then drives them, with them directing, to the Infinity.

The Infinity is parked two or three blocks away from where the victim would end up being murdered. He then drives -- Jeremy then says I drive the defendant to North Charleston. Cell tower information confirms that. When he pings on that day on Saturday, the only time he pings, he is in North Charleston.

I think that right there circumstantially enough is -- I mean I think on a murder it would have been tough. But for him being involved in the murder, him having knowledge of the murder, I think I am there.

But then we even go further. On Monday he then calls Acevedo. And like I said in my opening, basically played him for a fool.

Acevedo through his direction ends up getting -- titling the car into his name. But then he predates it. That in and of itself is showing knowledge. Predated it to occur 19 days earlier to reflect that Acevedo would have had the car at the time of the murder and not him.

The car is then transferred. But Acevedo has -- he has no intention on keeping the car. And you see that because he is already Monday morning purchasing spray paint to try to alter or destroy the car.

Then we go on into Tuesday and we see that it is his number that calls the tow truck company that ends up taking the car and destroying the car. I think that is more than

circumstantial evidence to show. And they all fit.

THE COURT: Do you wish to respond?

MR. LOIGNON: Yes, Your Honor. I mean the first part that he started off is just kind of speculating about the content of phone calls. And then I think he mentioned something that didn't come out through any testimony that I recall that Mr. Smith was -- that right after this alleged drug deal gone bad went and circling around downtown. I don't -- I am not sure if that testimony ---

THE COURT: Well ---

MR. OSBORNE: It is.

THE COURT: Well, no, that is what your conclusion is.

MR. OSBORNE: Yes. Right.

THE COURT: You conclude it wasn't. The evidence shows -- the jury could conclude that based on the phones and based on the photographs. So I mean if -- if they conclude that is his car -- and they have to conclude he is driving it obviously.

But so, you know, the evidence is there to support that deduction if necessary. I agree you don't necessarily agree that that shows he is doing it. But there is evidence that would justify and support a jury concluding that it was.

MR. LOIGNON: Even so, I still -- I mean it doesn't go to show that he had knowledge that a murder would then

happen the next day.

THE COURT: All right. Okay. Anything else?

MR. LOIGNON: No, Your Honor.

THE COURT: All right. You know, that -- and I agree with you, the exclusion of any other reasonable hypothesis. But what -- and the whole time I was -- my thought was, well, just because he is getting rid of a vehicle doesn't mean he knows that there is a murder that has committed.

Unless -- and then but there is no rational basis for somebody doing what he did immediately -- coincidentally just after the murder that you go take all these steps. That I think leave a jury -- would for me as a logical conclusion well he has got to know that something was involved with his car because I have got to get rid of it. And not only have I got to get rid of it, I've got to take all kind of steps to cover myself here.

Why else would somebody just suddenly do that if they didn't have some knowledge of that car being involved? Also the fact that he went back downtown where -- near where it was to the silver Infinity.

And, furthermore, you are talking about the defendant's brother. And as I recall the evidence they lived together. And there is no question from what they found, at least in the defendant's part of it -- I am not suggesting -- not the defendant. The defendant's brother

was obviously involved in some marijuana transactions to have all that money there and the marijuana. So that is consistent with and that supports the fact of well there's some discussions. And of course the telephone calls with the victim obviously does that.

The real -- so the knowledge part I can get by because of the actions. The next hurdle though is that I intended to do that with the intent to protect the principal. And therein lies the real question.

And there is a case that came down in February of 2016 at the same time as Pearson. And it Judge Seals case. It didn't involve this type action. It was basically an altercation that occurred. And it is the State versus Larmand, L-A-R-M-A-N-D. It is at 415 Southeast South Carolina 23. It was 2015 but they had a rehearing on it.

And the Court of Appeals basically reversed Judge Seals for not granting a directed verdict on the basis that you said, it just wasn't sufficient.

And apparently this case -- and therein lies why I am using it. It dealt with what was the premeditation, was it premeditated, was it intent. And the court said basically, no, no, that's -- you have got to judge that from all of the evidence. You can't -- because then you are passing on the weight. They don't say that, but that in essence what they are doing saying that it wasn't there.

There is no question they have to prove what he intended to do. If you wanted to destroy it, that isn't sufficient.

In fact I am going to charge this: Although the actions of the defendant may have helped the principal to escape detection or arrest, this is not enough to be an accessory after-the-fact; the State must also prove that the defendant acted with the intention or with the purpose of helping the principal to escape detection or arrest.

So I mean that is really -- it really comes down to where this case has got to go. That is something that they are going to have to make a determination on the weight of the evidence.

I think there is an abundance of circumstantial evidence that ports strongly to it if they want to go there. I also think there is an abundance of evidence for them to say, no, that's not -- that is not sufficient, you didn't satisfy it beyond a reasonable doubt.

But because of those reasons I am going to deny your motion for a directed verdict. Okay.

THE COURT: All right. Any -- anything else -- any other motions at this point?

MR. LOIGNON: Just to renew all prior motions and objections.

THE COURT: Sure.

MR. LOIGNON: Thank you.

THE COURT: Now you had mentioned there was a possibility. But I kind of got a feeling when we didn't introduce the video that probably one of the strategies - and it is a very legitimate strategy - is that I am probably not going to offer any additional testimony. Does the defendant wish to present any additional testimony? If you want to talk with him a few minutes. Or if you haven't already take a minute and do that.

MR. LOIGNON: Your Honor, if we could just have a minute to discuss?

THE COURT: Sure. Absolutely. We will be at ease.

(WHEREUPON, break 1/9/19, 12:44 p.m.)

(WHEREUPON, resume.)

THE COURT: All right. Thank you very much.

Mr. Smith, you can remain seated or stand. Whatever is your pleasure, sir. Doesn't have to stand. But if you want him to -- if he wants to stand he can.

Let me tell you why -- and I appreciate the lawyers doing that. We lawyers have to stand when a judge addresses us. Do you know why? Because it is protocol. And it is proper protocol because we raise our hand and we take an oath when we undertake the practice of law. And in that instant we become officers of the court.

And in order to do respect to -- not to me but to the

robe that I wear, we are required to go through that and to stand in respect of the process.

You, sir, are a citizen of the United States and specifically South Carolina. And this court belongs to everybody in this courtroom as far as I am concerned. I just have the responsibility of presiding over it and maintaining proper decorum.

But it is your courtroom. And so if you want to be seated you can. And that comes from a friend of mine that was -- became the Chief Justice and now retired. But he made that comment. And I said well that makes perfect sense.

So I don't -- if you want to stand you can. But you don't have to. It doesn't offend me in the slightest, sir.

You have had a chance to talk with your lawyers about what you are about to tell me; is that correct?

DEFENDANT SMITH: Yes, sir (spoken very softly).

(Nods head.)

THE COURT: And I need for you -- I can see -- we are communicating. And it is not offensive either. But there is a person in this courtroom that probably -- I think she is more important than I am to be totally honest with you. And I say that sincerely. This lady seated to my left is taking down everything that we are saying. And it is probably the best thing for me, for you, and the State -

her job is that important. It is critical for all of us. But it is equally critical for you - so it is important that she hears what is said.

And so to help me -- and I am also 71 so I need you to speak up so I can make sure I hear you. Was that a yes?

DEFENDANT SMITH: Yes, sir.

THE COURT: And your lawyer has discussed various strategies with not offering evidence; is that correct?

DEFENDANT SMITH: Yes, sir.

THE COURT: And you are familiar fully with that; is that correct? I mean you are familiar -- you have had a chance to talk with him about it, correct?

DEFENDANT SMITH: Yes, sir.

THE COURT: And as you heard me tell the jury when we started, they don't need to look to you to prove or disprove anything at all. Do you understand that?

DEFENDANT SMITH: Yes, sir.

THE COURT: And if you don't testify I will reiterate that in my charge. I will again remind them that that -- you have no obligation to do a thing and that they cannot consider that whatsoever. Do you understand that?

DEFENDANT SMITH: Yes, sir.

THE COURT: But that having been said, you have the right to testify or present any evidence you wish for the jury's consideration. Do you understand that?

DEFENDANT SMITH: Yes, sir. Yes, sir. Yes, sir.

THE COURT: And of course if you do then of course you would then be subject to cross-examination just as you have observed each witness is -- each -- the party that presents the witness does what we call direct examination and then the opposing side get to cross-examine, as your lawyer has done throughout this trial. Do you understand that?

DEFENDANT SMITH: Yes, sir.

THE COURT: It is your decision not to testify, sir?

DEFENDANT SMITH: Yes, sir.

THE COURT: Have you had sufficient time to think about that?

DEFENDANT SMITH: Yes, sir, I guess so.

THE COURT: I mean this isn't the first time y'all have talked about this, is it?

DEFENDANT SMITH: In a sense, yes, sir.

THE COURT: Sir?

DEFENDANT SMITH: In a way, yes.

THE COURT: Well, I mean y'all have talked about -- I would imagine y'all have been talking about the strategy because of the one aspect that your lawyer has told you, if you don't present any evidence then your lawyer gets to say the last word to the jury?

DEFENDANT SMITH: Yes, sir, yeah, he has told me that, yes, sir.

THE COURT: And you consider -- you think that is pretty important in your case ---
DEFENDANT SMITH: Sir, yes, sir.
THE COURT: --- to have that strategy ---
DEFENDANT SMITH: Sir, yes, sir.
THE COURT: --- don't you?
DEFENDANT SMITH: Sir, yes, sir.
THE COURT: Okay. So you are in agreement with that strategy?
DEFENDANT SMITH: I am.
THE COURT: Okay. So in order to get by that, that means you don't testify. Do you understand that?
DEFENDANT SMITH: Yes, sir.
THE COURT: But you understand you have the right to do so?
DEFENDANT SMITH: Yes, sir, I do.
THE COURT: Anybody threaten you in any way or promise you anything to get you to make this decision?
DEFENDANT SMITH: No, sir.
THE COURT: Are you under the influence of any alcohol or any medication?
DEFENDANT SMITH: No, sir.
THE COURT: And are you comfortable with your decision having now had an opportunity to further talk with him and it is your decision that you do not wish to testify; is

that correct?
(WHEREUPON, pause for defendant.)
DEFENDANT SMITH: Yes, sir.
THE COURT: Okay. Let the record reflect there was a hesitation in responding to that. And I certainly respect that and understand why. And I appreciate that fact. It doesn't offend me in the slightest.
As I -- you heard me say I had the privilege of representing persons like you accused of committing crimes when I practiced law for 21 years. And I mean that sincerely, the privilege. And it is a tough decision. I get that. And it is your decision. Do you understand that?
DEFENDANT SMITH: Yes, sir.
THE COURT: Not your lawyer's. Your lawyers can advise you and that is what you have him for. But the ultimate decision is yours. Do you realize that?
DEFENDANT SMITH: Yes, sir.
THE COURT: All right. We are going to have a break for just a little bit. And the jury is coming back at about 2:00 or a little after 2:00.
And when they come back in I am going to ask them -- I am going to then turn and say we have completed -- and I will reiterate what I told them to start that, you know, that the State and the State alone has the burden of proof

and as I told you the defendant while he doesn't have to prove anything has the right to present any additional testimony that they may wish you to hear.

And at that point I am going to turn and ask your attorney does Mr. Smith wish to present any additional witnesses for the jury's consideration.

And given our discussion he is going to say, no, the defendant rests or something similar to that.

At that point, the saying, the dye has been cast, the decision has been made. Up until he tells me that, if you change your mind you let your lawyers know; okay?

DEFENDANT SMITH: Yes, sir.

THE COURT: And I will send the jury back out even if it is at the last minute. No -- it doesn't bother me in the slightest. I will send them back out and we will resume this conversation.

But if Mr. Loignon tells me, no, Judge, we rest, then I am going to assume you stand by what you've just told me and you are in agreement with not testifying; okay?

DEFENDANT SMITH: Yes, sir.

THE COURT: All right. Thank you very much. We will be at ease until two o'clock.

MR. OSBORNE: Charges?

THE COURT: I have got the charge. I will tell you that every one that you have given me is covered in my

general charge.

MR. OSBORNE: So the one thing that I think is going to be key with Massey is ---

THE COURT: I am going to charge it not necessarily precisely that. I am not going to charge acquittal because we don't have an acquittal. I am going to charge it is not necessarily that it be prosecuted.

MR. OSBORNE: Or known?

THE COURT: Or known.

MR. OSBORNE: Okay.

THE COURT: Precisely.

MR. OSBORNE: And the only other thing I would ask in reference to the murder, if we are talking malice aforethought I feel like we probably need to define malice aforethought.

THE COURT: I am not -- I am going to say -- I don't think so. Because I don't think there is any question about that. But if you want me to do that I will be happy to do it.

MR. OSBORNE: I know, I am just concerned that we might get into premeditation and all this stuff. And, you know, and ---

THE COURT: That is why the unlawful killing of another with malice aforethought, malice -- if you want me to give the whole charge. That is the one that I really

and truly would love -- if it was a civil I would direct a verdict that the guy was murdered. I mean there's no question he was murdered. I mean that's --

MR. OSBORNE: I mean do you plan on arguing that he was murdered?

MR. LOIGNON: No.

MR. OSBORNE: Okay.

THE COURT: So I just think -- I mean I just think the unlawful killing with mal- -- he is murdered. I mean there is no question about that.

MR. OSBORNE: I worry about things that ---

THE COURT: I know you do.

MR. OSBORNE: He is sitting here and hearing him talk and I can't talk again.

THE COURT: Well, I understand that. Well, you can say it that there is no question -- there is ---

MR. OSBORNE: Well, I am going to.

THE COURT: I don't believe you are going to hear anybody say that he wasn't murdered.

MR. OSBORNE: Okay. I like that. Yes, sir.

THE COURT: Okay?

MR. OSBORNE: Yes, sir.

THE COURT: All right.

(WHEREUPON, break for lunch 1/9/19.)

(WHEREUPON, resume 1/9/19, 2:05 p.m.)

THE BAILIFF: We are waiting on two, Your Honor.

THE COURT: Waiting on two. That is good because I have got to take the Grand Jury report too.

My game plan is when they come -- I am going to begin talking to Mr. Smith and then I am going to bring them in. If the position is to not testify and not offer any evidence then I am going to excuse the jury, give y'all a chance to collect your thoughts and finalize those. But rather than just start when they come back in, if that is agreeable with everybody.

MR. OSBORNE: Sure.

THE COURT: Y'all are ready to go anyway.

MR. OSBORNE: Yes, sir.

THE COURT: The charge, as I said, I am going to charge murder is the killing of another person with malice aforethought, either express or implied.

And I am going to charge the part that you said probably right after the elements, that accessory -- I am going to say accessory after the fact may be convicted even if the principal is unknown or is not yet prosecuted, okay.

I am charging -- everything that you have in yours is almost verbatim from mine. And the charge that you have asked me to give which recites to the bench book, I am going to read them that verbatim too.

MR. LOIGNON: Thank you, Your Honor.

MR. OSBORNE: And the one that we thought was a little bit -- excuse me, was a little bit confusing, to be perfectly frank, because I spent a lot of time trying to reconcile it, was number three: Unless the State can prove at the trial in the accessory that the principal is guilty ---

THE COURT: I am not going to charge -- that is the Massey part. I think that is -- that part of it was basically replaced because in that one he is acquitted.

MR. OSBORNE: Right.

THE COURT: So it is not -- but he has to -- he has to have committed a crime. They have to prove that he committed -- he knew that he committed a crime. And that is what that means. You have to prove that there was a crime committed and that he knew that the crime had been committed.

MR. LOIGNON: I just took that verbatim from Massey, Your Honor. So it was my understanding that that was still the appropriate ---

THE COURT: Well, must prove that he committed the crime, that the principal committed the crime of murder. It is not the crime here. It is the crime of murder. Not obviously the crime here. But I am going to charge that. I mean that is part of the charge.

Let me pull it up and I will tell you precisely what

it is. It is incorporated I think. But listen to it. And if you think it needs elaboration I will be happy to reconsider it at the end.

(WHEREUPON, pause for the Court.)

THE COURT: Yeah, this is what it says: The defendant knew that another person, the principal, committed a felony and after the crime intentionally helped -- knew the -- committed a felony and the felony was complete basically. I put that -- that is consistent with Massey. Which that's -- has been committed a felony. Has committed the crime of murder.

So I mean that is all it says. It doesn't say that he has to be guilty of it. Massey doesn't say that. Because Massey specifically stands for the principle he doesn't have to prove that. Because in Massey the principal was acquitted.

MR. LOIGNON: I think the distinction is, Your Honor, they don't have to prove that Massey -- that the principal was found guilty in the trial of the principal, but they do have to find that the principal was guilty in the trial of the accessory ---

THE COURT: They don't have to prove he was guilty, because Massey he was acquitted. It said -- that is what Massey stood for. It said that you can still be prosecuted even though the principal has been acquitted. Which would

mean he didn't commit the crime.

MR. LOIGNON: My reading of it was that the jury in the trial of the principal would have to find that the State has ---

THE COURT: Well, we are not in the trial of a principal.

MR. LOIGNON: I mean, excuse me, in the trial of the accessory.

THE COURT: They have to prove that a crime was committed. Whether or not -- in the felony in this case the crime is murder. That a murder was committed. Whether or not the principal is guilty of that crime doesn't -- that is not -- that is not an issue. Because that is what Massey said.

I mean that is -- before Massey, as I recall it -- and I will have to look at it. It was common law that you couldn't -- you couldn't prosecute somebody for accessory if the principal was acquitted. You couldn't do that.

But Massey changed that and said, no, no, you can still prosecute a person for accessory even though the principal was acquitted.

And to me that means that they have to prove a crime, the crime of murder was committed. Whether or not he is guilty of it -- it goes back to what we were talking about with the detective. He is not worried about whether or not

you can convict him. He is worried about whether probable cause a crime was committed. And that is precisely the standard that we are applying, was a crime committed. Probably yes, a crime was. Whether or not this person did it, we don't know.

Because if we know, then that makes perfect sense and consistent with what I tell the jury; you may be found not guilty but that didn't mean that the person wasn't murdered, you just weren't the person that was the person that committed the crime. So ….

THE CLERK: All are here, Judge (jury).

THE COURT: Okay. Just one second. I will pull up Massey. I had it right here.

MR. LOIGNON: I understand what you are saying, Judge. I mean ---

THE COURT: Well, you can except to it. It is not going to ---

MR. LOIGNON: Yes, sir.

THE COURT: It is not going to upset me. I will pull up Massey so I can try to respond intelligently about it.

(WHEREUPON, pause for the Court.)

MR. BOWDEN: I have got an extra copy for you.

THE COURT: Oh, I've got it right here. Thank you. Thank you very much. I have read it several times. That and several others along with it. But thank you, Stephen.

I appreciate it.

MR. BOWDEN: Yes, sir.

THE COURT: All right. Do we have our jury -- grand juror?

THE BAILIFF: Yes, sir.

THE COURT: You can bring them in (jury).

We will take that (grand jury report on another matter) and then we will -- do y'all want to go straight into the argument? Are you ready to go?

MR. LOIGNON: Yes, sir.

THE COURT: All right. Let's -- let me do this while they are still coming in.

Mr. Smith, is it still your decision not to testify?

DEFENDANT SMITH: Yes, sir.

THE COURT: Yes?

DEFENDANT SMITH: Yes, sir.

THE COURT: And you understand when I am going to bring the jury I am going to excuse -- I am going to ask the question. They are going to say, yeah, we don't -- you don't intend to offer any evidence. And with that I am going to say -- and Mr. Loignon is going to say defense rests. And I am going to tell them that that concludes it. And if there are other matters of law which we need to take up. But I am going to take up those matters right now in just a second.

THE COURT: And I am glad to see my new Grand Jury.
(WHEREUPON, the Court take the report of a new Grand Jury on unrelated matters.)
(WHEREUPON, resume trial, 1/9/19, 2:12 p.m.)
THE COURT: Is the State ready to continue?
MR. OSBORNE: Yes, Your Honor.
THE COURT: The defendant is ready to continue?
MR. LOIGNON: Yes, Your Honor.
THE COURT: Okay. Let's bring in our jury.
(WHEREUPON, jury enters 1/9/19, 2:12 p.m.)
THE COURT: Thank you so much, ladies and gentlemen. I hope you had a good lunch and are ready to continue. As you recall when we took our recess the State had rested its case.

And as I mentioned to you when we started this, of course the State of South Carolina and only the State of South Carolina has the burden of proof in this case.

But as we discussed, the defendant still has a right if he chooses to -- now the defendant doesn't have to present anything at all. Not even required to say anything or anything else, because the defendant has no responsibility whatsoever. But still a right if he chose to, to present any additional witnesses.

Mr. Loignon, at this point does Mr. Smith wish to present any additional witnesses for the jury's

consideration?

MR. LOIGNON: No, Your Honor. The defense rests.

THE COURT: Very well. Then at this point, ladies and gentlemen, there will be motions I would be required to hear. We had had some discussion and I had an indication that that was probably going to be the case. Those motions we will argue at the first break if need be. But they are protected.

And does the State have any objection to be that being noted on the record?

MR. OSBORNE: No, Your Honor.

THE COURT: And you have made your motion. And I will hear you fully at the conclusion. And if you wish to elaborate anymore I assume they would be similar to the motions we have heard recently in this matter?

MR. LOIGNON: Yes, Your Honor.

THE COURT: Very well. And but we will allow you to supplement it in any fashion that you wish.

That, ladies and gentlemen, concludes the evidentiary portion. Now as I mentioned to you there are four parts. And you have been through two now. The two remaining parts are very important.

One, now the attorneys have their second opportunity to speak to you. This time, unlike the opening statements where they gave you a little bit about what they expected

you to hear, now it is proper for them to discuss that evidence with you and suggest reasonable inferences that you may draw from that evidence. Those remarks will be extremely beneficial to you when you begin your deliberations. So please give them your attention. And I am sure that you will.

But while extremely important, very -- very helpful, they should not be considered evidence because the evidence as we know will come through the testimony of the witnesses.

Now following the closing arguments I will give you the instruction on the law, which of course you have promised to accept and apply fairly and impartially to the facts that you will determine very shortly.

But just as the attorneys remarks should not be considered evidence, neither should my remarks be considered evidence in any way.

Thank you for your attention thus far. Please give your attention now to the attorneys as they give their closing remarks.

Solicitor.

MR. OSBORNE: Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir.

CLOSING BY MR. OSBORNE:

George Bennett was gunned down. He was shot twelve times, nine times in his back, while he was sitting in the car next to his friend Rayshawn Rivers while Rayshawn was holding his young child.

It was a cold-blooded murder. I don't think anyone would argue that. But like I said in my opening statement, I am not asking you to convict this defendant for murder. I am -- and I will be honest with you. Because we can't prove it. All right. What I am asking you to do is to convict him of a crime we can prove, and that is accessory after the fact to murder.

Now you have all been sitting here paying attention. I am not going to go through all of the evidence, okay. But I am going to highlights some points that I think will be important to you in your deliberations.

All right. Let me start by talking about the victim George Bennett. And you know that he was involved in marijuana. You know that because Officer Faustin stated that he was familiar with him. He had stated that he either just got out of prison or just got out of jail for narcotics.

And you also know that those items were found in the center console of Rayshawn's vehicle. Rayshawn on one side, Mr. Bennett on the other.

Rayshawn said those items didn't belong to him. And

you know from Detective Krasowski who testified that for 14 minute prior to the murder were various people that came up, spoke to George briefly, and then walked away.

Now I want to be clear. I am not at all suggesting that Mr. Bennett is a bad guy. I am not. I am not suggesting that he is a good guy either.

But what I am suggesting is that if narcotics in some way played a motive in this case -- and you have heard evidence that it has with Detective Krasowski's testimony at the end. And when you look at the number of shots that were fired in this case, the very brazen nature of it, you know that someone wanted George dead and they knew where to find him.

The fact of the matter is this: Selling drugs, being involved in drugs, is a dangerous business. And it is even more dangerous when it is involved with counterfeit money.

But if it were true that George was murdered because of his dealings with marijuana then if someone were looking for him for that motive then they would go to where they thought that he might be dealing.

And if that were true, you would expect to see that person on video looking for him or at least have evidence of that. And that is what you have in this case.

And there is the scene where George was murdered. About 20 minutes prior to George being murdered you see

vehicles. Two vehicles. Circling.

(WHEREUPON, display.)

And those two vehicles, the defendant's brother's car, the silver Infinity, and the black Cadillac registered to the defendant.

Now when you are back there you will have the video with you. But sometimes those videos are going to be tough to play on the computer.

When you -- if you know anything about the program, when you put it up you are going to see this Oculus viewer .exe, an execute file. Open that up. Go back to the CD. And then you will see the file. And then double click it and then you can play it from there.

I give you all of these screen shots. So if you want to go back and look at the times just hit that little clock and then punch in the times and then you can play it for yourself.

But if it is not playing for you, you have the screenshots. Or you can send a note to the judge and say you would like to come back out and view the video and we can show it to you again.

But on this flip right -- on this screen shot right here (pointing) you see the silver Infinity. And right behind it - kind of touch to see - you see the black Cadillac coming down the road where George would later be

murdered.

Continuing up.

Now just minutes after that we have the Cadillac again going into Bridgeview. Remember this house we said it is not too far from the crime scene. And this image was taken four minutes before the murder.

And then we had that Cadillac backing up wildly. You know at least two people are in the car. That passenger door swinging. And then it takes off back toward the Ravenel Bridge.

All right. Now about an hour or so after that, Jeremy Wright tells you that he is home at [redacted] Street in Mt. Pleasant and he hears a knock on his door. He answers the door and he sees that it is the defendant and his brother. The black Cadillac was parked outside.

The defendant tells him that his Cadillac's broken down and he would need to leave it there for a few days. The defendant then asked Jeremy if he can give him and his brother a ride downtown. Jeremy agrees.

Now if you take time travel into account, he would have then gone downtown, dropped off his brother at the Infinity. Then Jeremy said, well, then I drove the defendant, Seth, to North Charleston.

Now if that were true you expect to see if he used the phone then it would ping in a tower in North Charleston.

And that is exactly what you see.

This is on the day of the murder at about 1:30 p.m. The phone is pinging right where Jeremy said he dropped off the defendant.

Now you are not going to see any other cell tower information, because like Clay said, FBI Agent Simmons, he didn't use the phone at all that day. This was the first time he used it.

Now I want to talk to you about Jeremy for a second. You saw Jeremy testify. Jeremy was very nervous, very uncomfortable. I've never met the man before. I don't think he was nervous with me.

Now I will ask you this. I will ask you to consider this. When you were asking yourself -- because I could tell by the look on your faces when I was telling you in the opening what Acevedo did and why he did it, or at least what he did. You were probably asking yourself why. Well, I would submit to you when he tells you to do something, you do it.

All right. The defense has made a lot of arguments about the pinstripe, the pinstripe that is on the vehicle that we know to be his vehicle. And I would concede there is a pinstripe there. And I would also concede that from a moving vehicle on a surveillance video with a zoomed in image it is difficult to see a pinstripe.

But you have another image from a moving vehicle, from a vehicle that we know to be the defendant's vehicle. And that is that image (displaying). And it is also difficult to see a pinstripe there. That does not mean the pinstripe is not there. It just means that the video is not clear enough to see it.

So how do you know then, how can you feel confident that it is the defendant's vehicle that is seen as the getaway vehicle? All right. Well, let's look at it.

Again, about an hour after the murder, again, Jeremy Wright dropped off the defendant and he dropped off the defendant's brother. There (displaying).

Now remember the murder occurred right at East Bay and Reid. So we are saying that -- Jeremy Wright is telling you that just about an hour or two after the murder he dropped them off at that location and that's where the Infinity was parked.

The last time you saw that Infinity it was being followed by a black Cadillac headed in that direction (displaying). And that is the scene of the murder there (displaying).

If you think that it is another black Cadillac that is rolling on the Eastside on that day, then here is what you have to believe: You have to believe that there is a second, black, a Cadillac 2000 four-door Cadillac Deville

with tinted windows, with blacked out wheels with the emblems missing identifying it as Cadillac on the front and the back, just like the defendant's Cadillac, and this second Cadillac, just like the defendants, just happened to be following his brother just prior to the murder. That Cadillac (displaying).

Right after that, again, following his brother's car.

Now I do want to take a second here to talk to you about what this whole case really revolved around. It is circumstantial evidence.

Circumstantial evidence is not a bad word. There's two types. There is direct evidence, and there is circumstantial evidence. Direct evidence is when you will hear testimony that I saw something. It is direct. They see it. They are testifying to it.

Circumstantial evidence on the other hand is based on the circumstances. You -- and the law will make no distinction between the weight of direct and circumstantial evidence. It just has to add up.

Use your common sense. You can look at all of the circumstances. The classic example I hear all the time of circumstantial evidence is I am in my house, my spouse comes home, she it soaking wet, she has an umbrella, I can hear the thunder outside. Do I have direct evidence that it is raining? No. But there is certainly strong

circumstantial evidence. It all fits. That is circumstantial evidence.

And lastly, I will tell you this. And this is what Sergeant -- Detective Krasowski said. They looked on the ALPR system. That is the automated license plate readers system for the Tri-county area going back over a year. Those unique, distinctive characteristics that I just mentioned to you when they were looking for that Cadillac they only found one. That was his car.

Now don't get confused by I only showed you two ALPR images. There were many more. Okay. We only showed you two because it was one being the most clear and the other one being from the night before. They picked up the car many other occasions. But only that car. Not a second unknown Cadillac.

All right. On the day of the murder the black Cadillac was registered to the defendant. You see his address there, [redacted] Park Road.

There was some testimony that he lives at 98 Spring. And the defense mentioned something about, well, why didn't we map or put that flag to let you know that maybe he was going there the night before. And I will talk about that in a second. Or that Detective Krasowski showed you. That is a business.

When the detectives executed the search warrant at

[redacted] Park they found information that corroborated that the defendant had property there. Mail.

And we also found -- or they also found mail in the name of his brother, Bryant Smith. And that is important, because that Infinity that was shown circling the area is registered to his brother Bryant Smith. And if you notice, he too has the same address, 98 Spring, [redacted] Park.

Now detectives also found evidence that there was drug dealing going on at [redacted] Park. Found marijuana in a drawer, and more marijuana, and a lot of cash.

And there's more evidence that ties [redacted] Park to this murder. Remember -- and you will have the Excel spreadsheets. So you will be able to go through the call logs yourself. But the night before the murder you will have communications between George Bennett and the defendant's brother.

And remember Detective Krasowski told you George Bennett had that number saved in his phone as Little B Mid. He didn't communicate with the defendant. He communicated with the defendant's brother.

So and you see the communications here (displaying).

All right. So we had some communications early on in the day between George and Bryant. But it really starts to heat up around 7:47 p.m. And that goes right until about 8:02. And then we have a six or seven minute gap there.

And right after that Bryant then tries to call George. It is 48 seconds they talk. And then he tries to call George again. And this time it is only two seconds. It is either a very short conversation or somebody hung up.

This was the placard that was found in his house (displaying) which shows that -- well, somebody in that house went by Little B.

All right. And now we are looking at Bennett's cell phone records. He gets the phone call. And like FBI Simmons told you, he was downtown at the time. After that he ended up traveling to West Ashley.

And I do want to point this out too. Detective Krasowski said that they had information that George had committed a robbery the night before in West Ashley. Look at where he is in West Ashley (displaying). That orange house icon right there is [redacted] Park. Between eight o'clock, 7:59 or so, he is talking to Bryant.

That gap, whatever happened, I think there is a strong inference there that during that gap could very well be what ended up leading to George's death.

Do we have definitive evidence of that? No, we don't. But it is certainly circumstantial evidence.

After that he then -- Bryant then calls George. George goes off into North Charleston. Following that he is back in the area of the crime scene, back where he ends

up on the Eastside.

But what I do want to point out to you is that after that two-second call that Bryant has to George, the victim, where it is either a hang-up or a very short conversation, he then calls an unknown person. They speak to 28 -- for 28 seconds. He then calls the defendant. That is over a five-minute conversation that he is talking to the defendant.

The defendant -- there is the phone call (display). The defendant is there in North Charleston when that call occurs. After that he goes to there (pointing), down to the crime scene. Down to the Eastside.

Now we have the phone that we are saying that the defendant was using that night on the Eastside, the night before, after this interaction, after the victim had an interaction with his brother.

If his phone was on the Eastside you might expect to see that there was some evidence to suggest that the Cadillac, his car, was also on the Eastside.

And you have it. On the ALPR, which ends up being two blocks from the crime scene, we have the Cadillac at 10:49. Right when the cell tower information is putting the phone that we are attributing to the defendant on the Eastside, another thing, the ALPR, another piece of evidence, has the Cadillac on the Eastside.

But again, I am presenting all of this evidence to you because when you are talking about knowledge, you need to know all of the evidence. Not just a vacuum. Not just a small piece. You need to know all of it. You need to know the whole picture.

I am not asking you to convict him of murder. I am asking you to hold him accountable to what we can prove he did, beyond a reasonable doubt; and that is accessory after the fact of murder.

Now I am going to talk to you about the law, okay. But like Judge Dennis said, there are four parts. Now the fourth part is going to be when the judge instructs you on the law. So if anything that I say or that I say right now differs from the law or anything that Mr. Loignon says differs from what the judge tells you, you follow the judge.

But Mr. Loignon said some things in his opening that can be very misleading. I am not saying it was intentional. But it is definitely misleading.

I would bet you will hear the judge tell you something like this: In order for you to convict him for accessory after the fact of murder the first thing you need to find is that a felony was committed.

And this is why we had to put up testimony for Dr. Batalis, the crime scene. We have to prove to you that a

murder was even committed. I do not think this is a battle ground. I think he is going to concede to that. But I do want to tell you murder in order to find someone guilty of murder you have to find that it is an unlawful killing of another with malice aforethought.

So you might find yourself back there asking, well, what is malice aforethought. It is just an ill-will. It is just a hatred. Aforethought does not mean premeditated. You can develop aforethought in an instant.

Twelve shots. That is malice. This was a murder, a cold-blooded murder.

All right. I think this is probably the battleground right here: The accused must have knowledge that the principal committed the felony.

Knowledge. All right. Knowledge is a mental state. I wrote down some things. And you all were listening. I wrote down some things that defense said in their opening. I am not sure if he is going to argue this now or not. But if he does, I want to address it.

He said the defendant must have known the person was going to commit the felony. Must have known the person was going to commit the felony, that is wrong. Knowing the person was going to commit the felon insinuates accessory before the fact, that the defendant had knowledge before it was going to be committed. That is not why we are here.