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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTLY JERMAINE SCOTT,

APPELLANT

APPELLATE CASE NO. 2022-000266

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
COUNTY OF ORANGEBURG) GENERAL SESSIONS

3

4 THE STATE,) CASE NO. 2018-GS-38-1285,
5) 1286, 1287, 1288, 1289, 1292,
Plaintiffs,) 2018-GS-38-1301, 1302, 1303,
6 Vs.) 1304, 1305, 1306, 2017-GS-
ROBERT BAILEY, ANTLY) 38-166, 167, 168, 169, 170,
SCOTT and LUTHER SMITH) 171
7)
Defendants.)

8

9 JANUARY 27, 2022
ORANGEBURG, SOUTH CAROLINA

10 HONORABLE EDGAR W. DICKSON, JUDGE

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13 CHELSEA A. GLOVER, ESQUIRE
Attorneys for the Plaintiffs

14 BY: MARK A. LEIENDECKER, ESQUIRE
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17 RICHARD E. LACKEY, ESQUIRE
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19 Attorney for the Defendant Scott

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21 KATHERINE A. SPIRES,
22 REGISTERED PROFESSIONAL REPORTER

23

24

25

1		I N D E X			
2	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
3	MARTIN JOURNEY				
4	Mr. Osborne	56			
5	DONALD BOYNE				
6	Mr. Osborne	67			
7	Ms. Zmroczek		73		
8	MARTIN JOURNEY				
9	Mr. Osborne	77			
10	Ms. Zmroczek		82		
11	JAMES SHUMPERT				
12	Mr. Osborne	85			
13	Ms. Zmroczek		97		
14	LUTHER SMITH				
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16	Mr. Osborne		117		
17	JAMES SHUMPERT				
18	Mr. Osborne	137		150	
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22	Ms. Zmroczek		156		
23	MARTIN JOURNEY				
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4 **JAMES SHUMPERT**

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1 THE COURT: Is everybody ready to
2 begin?

3 MR. OSBORNE: Yes, Your Honor.

4 THE COURT: Okay. Mr. Osborne, do you
5 mind putting the Indictments and stuff -- I know
6 we're going to be doing motions and like that, but
7 just so I'll have them on the record, I don't have
8 it up here.

9 MR. OSBORNE: Yes, sir. No problem.
10 Your Honor, this is the State verses Robert Bailey,
11 Antly Scott, and Luther Smith. All of the
12 Defendants have been charged with burglary in the
13 first degree, possession of a weapon during the
14 commission of a violent crime, attempted murder,
15 and four counts of murder.

16 The Indictments are 2018-GS-38-1285,
17 1286, 1287, 88, 89, 92, and 2018-GS-38-1301, 02,
18 03, 04, 05, and 06. 2017-GS-38-0166, 67, 68, 69,
19 70, and 71. And, lastly, 2018-GS-38-1300. Going
20 backwards, 1299, 1297, 1296, and 1429.

21 THE COURT: All right. Thank you,
22 Mr. Osborne. Now, Mr. Osborne, you were kind
23 enough to give me an overall order of State and
24 Defense trial motions?

25 MR. OSBORNE: Yes, Your Honor.

1 MS. ZMROCZEK: And, Your Honor, before
2 we go further, I need to address something. So my
3 client was not -- I don't have an Indictment or
4 arrest warrant or anything for possession of a
5 weapon during the commission of a violent crime.

6 MR. OSBORNE: I can look into that,
7 Judge. I mean, we --

8 THE COURT: Okay. And, Ms. Zmroczek,
9 that's Mr. Smith?

10 MS. ZMROCZEK: Mr. Smith, that's
11 correct, Your Honor. I have 166 which is a murder;
12 167 which is a murder; 168 which is a murder; 169
13 which is a murder; 170 which is attempted murder;
14 and 171 which is burglary in the first degree.

15 THE COURT: Okay. You said you don't
16 have possession of a weapon?

17 MS. ZMROCZEK: That's correct, Your
18 Honor.

19 THE COURT: Okay. All right. And,
20 Mr. Osborne, you're going to check on that?

21 MR. OSBORNE: I'm going to check on
22 that, Judge. And in all honesty, and I'll notify
23 the Defense, I may elect not to go forward on those
24 gun charges. I'll give them plenty of notice on
25 that.

1 THE COURT: Okay. Then back to my
2 original question, I guess. Did everybody get this
3 list?

4 MS. ZMROCZEK: Yes, Your Honor.

5 THE COURT: Did you give this to
6 Mr. Chisholm so he could tell you?

7 MR. LEIENDECKER: I don't know.

8 THE COURT: Okay. Anyway, Mr. Osborne,
9 this is just your proposed recommendation of how we
10 go through these things?

11 MR. OSBORNE: Well, it is, Your Honor.
12 But more importantly, I thought it consolidated all
13 of the Defense motions into one list rather than
14 ping-ponging back and forth.

15 THE COURT: No, and I appreciate that.
16 But does anybody have any objection to me going
17 down this way and just kind of see what happens?

18 MS. ZMROCZEK: No objection.

19 THE COURT: Okay. All right. And, Ms.
20 Zmroczek, you filed a Motion For Continuance; is
21 that correct?

22 MS. ZMROCZEK: Well, I acknowledge that
23 I would be requesting one, Your Honor. So here is
24 -- as you know, I was appointed late in the year of
25 2021. And I have been receiving and constantly

1 going through discovery, Your Honor. But there, in
2 fact, I think in one of the memos that the State
3 submitted, they indicated that the sheriff's
4 department had spent 20,000 hours on this case and
5 I couldn't do that if I worked this case for five
6 years.

7 THE COURT: Right.

8 MS. ZMROCZEK: And so, Your Honor,
9 especially with all these new -- they've been
10 downloading these phones again and providing us
11 with phone information which is incredibly
12 voluminous and detailed, and quite honestly,
13 important. I think my motion to continue kind of
14 ties in with my Motion to Sever and my Motion to
15 Dismiss for *Brady* violations.

16 But the continuance, Your Honor, is
17 simply based on just the voluminous amount of
18 discovery that I'm going through and processing.
19 And, I mean, not to brag, but I feel like I've
20 gotten a good handle on the case, but we're talking
21 about defending Mr. Smith's life, in essence. Your
22 Honor, I want to make sure especially with the
23 phone records that I've gotten an opportunity to
24 present to a jury everything that we were able to
25 learn even though a lot of things are still

1 missing.

2 THE COURT: Okay. The things that you
3 believe are missing or like that, have you
4 discussed that with the Solicitor?

5 MS. ZMROCZEK: I have, Your Honor.
6 And, in fact, we -- I think, Tuesday -- we met
7 Tuesday and we -- I went through all the physical
8 evidence, Your Honor, and actually made some notes
9 of some things that were missing. But I know that
10 they can't go back and get now, but things that
11 would be important in discovery.

12 But I also gave Mr. Osborne a
13 comprehensive list and I know that he has replied
14 to a lot of that. In fact, gave us a hard drive
15 this morning that had a bunch of things on it, but
16 I obviously haven't gotten to look at it all.

17 THE COURT: Okay. All right. I
18 believe, and y'all correct me, aren't we shooting
19 for a trial on February 7th?

20 MR. OSBORNE: Yes, Your Honor.

21 THE COURT: Y'all all are aware of
22 that; right?

23 MS. ZMROCZEK: Right. Yes.

24 THE COURT: And you want that put off
25 just out of curiosity, how long?

1 MS. ZMROCZEK: I mean, I'm not -- I'm
2 not talking, you know, a whole bunch of set of
3 months, but I just need at least, at least, 30 to
4 60 days to get through the rest of this stuff.

5 THE COURT: Okay. All right. Anything
6 else you want to tell me, Ms. Zmroczek?

7 MS. ZMROCZEK: Not with regard to that
8 motion, Your Honor.

9 THE COURT: All right. Just --

10 MR. LEIENDECKER: I'm sorry, Your
11 Honor.

12 THE COURT: Mr. Leiendecker?

13 MR. LEIENDECKER: As has been the
14 history of this case and the continuing pattern
15 through multiple representatives of the State, we
16 are still getting evidence. We got phone records,
17 and we appreciate the State's diligence, but we've
18 got phone records as Ms. Zmroczek described,
19 voluminous phone records within the last weeks.
20 And even with two investigators working in my
21 office trying to match up phone calls and records
22 and tower dumps and all of that, I agree that we
23 want to get this resolved. But I also agree with
24 her that we're in -- at this point, to rush to a
25 point where we try a case in ten days because it's

1 old verses given the opportunity to digest the new
2 dump of evidence and put this off for a number of
3 weeks or month is -- would be improper.

4 THE COURT: How my numbers of weeks or
5 months are you thinking about?

6 MR. LEIENDECKER: I'm certain that, you
7 know, we are -- March is clearly, you know, from
8 March on we're clearly ready. And assuming that --
9 this is a terrible assumption, that we don't get
10 other newly discovered things. Or they don't send
11 something else out to SLED for analysis. And, you
12 know, like they did in November and December of
13 this last year.

14 THE COURT: Okay. All right. And,
15 Mr. Johnson, you ready to go; right?

16 MR. JOHNSON: Well, Judge, I would
17 point out to the Court some things. I know
18 everybody has trials, I do have a trial that I was
19 trying to prepare for this week that just pled out.
20 I have another trial that's in Barnwell next week
21 that's first up and, so, that and also with the
22 fact that I've got a basically to get support with
23 an investigator, I'm going to have to discuss that
24 with the Court as far as funding. I don't have the
25 same staff and I don't have staff like public

1 defenders or other counsel, so I'll have to address
2 that issue with more funding for an investigator
3 and deal with the new stuff that's been given to us
4 by the State. So I would agree that that's putting
5 the burden on us to be ready for the 7th.

6 THE COURT: Okay. And how long are you
7 asking for?

8 MR. JOHNSON: Well, I had a trial -- a
9 lot of these trials are getting scheduled pretty
10 fast that are backed up because of COVID. I was
11 scheduled for one in March, that has now been
12 dismissed by the attorney general. So for me,
13 March has cleared up. April, I've got a murder
14 trial scheduled in Lexington. So I would say March
15 at the very least would be a good month.

16 THE COURT: You said April you have a
17 murder trial in where?

18 MR. JOHNSON: Lexington with Suzanne
19 Maze. We have -- we're first up there.

20 THE COURT: Okay.

21 MR. JOHNSON: Thank you, Judge.

22 MS. ZMROCZEK: And if you're
23 considering trial schedules, Your Honor. In March
24 17th I have a murder trial in Richland.

25 MR. OSBORNE: And, Your Honor, I

1 certainly want to be heard on this before we
2 reschedule this.

3 THE COURT: Oh, yeah --

4 MS. ZMROCZEK: Right. Right. Right.

5 THE COURT: And, Mr. Osborne, the only
6 thing I'm trying to do is I want to find out, you
7 know, so that we can -- and you will have ample
8 opportunity to do that, I assure you. You got a
9 murder trial, Ms. --

10 MS. ZMROCZEK: In Richland. Yes, Your
11 Honor.

12 THE COURT: In Richland?

13 MS. ZMROCZEK: Yes, Your Honor. And
14 it's got some age on it as well.

15 THE COURT: Anything scheduled after
16 March 17th? Just out of curiosity.

17 MS. ZMROCZEK: I think that things were
18 floating around. I don't know that I have a date
19 certain for any date certain's for April.

20 THE COURT: Okay. And y'all wouldn't
21 mind me calling any of the other judges and telling
22 them that I win? And I get to do it, you know.

23 MS. ZMROCZEK: Yeah.

24 THE COURT: All right. Just out of
25 curiosity, Mr. Johnson, your murder trial in

1 Lexington is scheduled for when?

2 MR. JOHNSON: Judge, I think that was
3 the second week in April.

4 THE COURT: The second week in April?

5 MR. JOHNSON: With Suzanne Maze, I'll
6 have to confirm it. I'll turn my phone on real
7 quick, I can check my calendar.

8 THE COURT: All right. Well, that's
9 okay. You know -- Mr. Leiendecker?

10 MR. LEIENDECKER: I don't have those
11 kind of conflicts.

12 THE COURT: Well, I'm glad to hear
13 that, Mr. Leiendecker.

14 MR. LEIENDECKER: All I do know is if
15 we're looking into April, that Mr. Chisholm has an
16 order of protection already for a family matter in
17 April and I would just not want to violate that
18 order of protection.

19 THE COURT: Okay. Well, I wouldn't
20 want to do that at all. Okay. All right.
21 Mr. Osborne, I think I'm through hearing from them,
22 so.

23 MR. OSBORNE: Your Honor, for the
24 record, I think I'm just going to go through the
25 chronology of where we're at as best I understand

1 it. Obviously, I just came on to this not too long
2 ago.

3 THE COURT: And, Mr. Osborne, I think
4 they're very appreciative of the work that you and
5 Ms. Glover have done to try and get voluminous
6 records together.

7 MR. OSBORNE: Right. Well, it's
8 interesting; right. Because, you know, they're
9 asking for information, then when I give them the
10 information, they seem to be saying they need more
11 time to look through the information that they
12 requested, so.

13 All right. So in September/October of
14 2016, these Defendants were arrested. Discovery
15 was sent very early on. And discovery was sent in
16 so much so that in October of 2019, they were
17 pretrial motions. Mr. Leiendecker was there.
18 Mr. Lackey who still represents Mr. Smith. And
19 Karl Grant I think at that time represented Antly
20 Scott. COVID hit.

21 Then in March of 2021, Karl Grant filed
22 a Motion to Be Relieved. And this is when --
23 around that time, Mr. Johnson would then have been
24 appointed to represent Mr. Scott. Case was
25 assigned to me in April of 2021. The summer of

1 2021 is when trials started back up in Orangeburg
2 and in Dorchester County. In July of 2021 is when
3 I fired the first shot across the bow to the
4 Defense attorneys. Reached out to them asking to
5 do a status conference. I told them that I was
6 looking for October or November to try the case.

7 At that time, I completed -- we went
8 through everything that we had and we compiled an
9 inventory of Rule 5. Sent that out to all of the
10 Defense attorneys. And I did that just to make
11 sure. I asked them all to go through it all, if
12 you see anything in here that you don't have, then
13 we'll make a copy and provide it to you. If you're
14 not sure, then you can come by and look at it.

15 Heard very little response back. But
16 some of the things that I noticed going back,
17 looking at some of the motions were, like
18 Mr. Leiendecker had asked for summaries for all of
19 the witnesses that we talked to. I don't know
20 about my Protective Order, but as we're meeting
21 with witnesses, we're preparing summaries and
22 sending that to the Defense. So that's why we're
23 still sending new discovery.

24 On August 3rd, we had a status
25 conference. I think that was in Calhoun. We had

1 all agreed then on the trial date of November 15th
2 and November 22nd. We said that we would do
3 pretrials on November 8th. At that time, I
4 provided two of the Defense attorneys and maybe, I
5 think, another later, a two terabyte hard drive.
6 Almost all of this was duplicative. But what I did
7 was, I digitalized it so we could all be tracking
8 off the same sheet of music. And Mr. Lackey was
9 given that hard drive a couple of weeks later.

10 The phone records that they're talking
11 about and I can go through that a little bit. What
12 we ended up doing was we made the decision that we
13 would have -- if I may sit down, Judge.

14 THE COURT: Yeah, go ahead.

15 MR. OSBORNE: We made the decision that
16 we were going to end up re-downloading a lot of the
17 phones. And the reason why we did that was because
18 many of the phones that have been downloaded in
19 this case were downloaded by numerous digital
20 evidence experts. We wanted to consolidate it down
21 to one.

22 So we got new search warrants and we
23 had new downloads done. The downloads that they're
24 referring to is just duplicative for the most part
25 to what they had already been provided. Give me

1 one second, Judge. We had ten new search warrants.
2 But, again, these are all downloads for phones that
3 have already been dumped. And some of them the
4 examiner couldn't even get into.

5 All right. So now we're looking at a
6 trial on November 15th and November 22nd. On
7 September 15th, I submitted to them clips from
8 Luther Smith's interview that we had intended to
9 introduce in our case in chief. In October, Ms.
10 Zmroczek was appointed. I could be wrong about
11 that, but I believe that's correct.

12 On October 28th, we had another status
13 conference. We learned then that we were not
14 having a trial in November because Ms. Zmroczek was
15 just appointed. Then we set a trial date for
16 February 7th and February 14th. We didn't have an
17 agreed upon date, but we said we would do the
18 pretrials in December.

19 Through no fault of anyone, attorneys
20 became ill and then it gets pushed back and here we
21 are today. Mr. Lackey is still on board. He has
22 been on this case from the very beginning. He
23 should be and I believe him to be through my
24 conversations intimately familiar with this case.
25 I know Ms. Zmroczek is because she just submitted

1 to us a very exhaustive supplemental Rule 5
2 discovery request. Which we honored within a day.
3 There still may be two or three different things
4 that are on there, but I replied back to her saying
5 we can get that within the next couple of days.

6 And, Your Honor, I will point out, much
7 of that I don't believe is *Brady* and I don't
8 believe is discoverable, but we're still giving it
9 to her anyway's. One of the things that she asked
10 was the video from Christopher Wright, the father
11 of the victims in this case, which preceded this
12 murder by years. We looked it up. We found it.
13 We copied it and we provided it.

14 I do want to go through just really
15 quickly some of the supplemental discovery that was
16 sent to them. On November 28th we sent a thumb
17 drive to everyone. And on that thumb drive I was
18 introducing the -- I was giving them exactly what
19 we intend to introduce from the Defendants'
20 statements in our case in chief.

21 On October 8th -- and so these are some
22 phone records. Now, there are a lot of call detail
23 records in this case, but in order for us to be
24 able to get the call detail records in without
25 calling a custodian, we have to send them notes.

1 Well, so I sent them notice saying we intend to
2 introduce these call detail records without the
3 necessity of calling in extrinsic evidence.
4 Without the necessity of calling any custodian to
5 testify to simply say these are authenticate.

6 Well, in sending that notice, I resent
7 the records to them so they could marry up the
8 notice to the records. So I did that with Sarah
9 Branham. And then the 4097 number, I believe
10 that's one of Derrick Coleman's numbers.

11 In September of '21, again, more trial
12 clips. And then I put together an entire packet
13 from Robert Bailly's arrest on July 15th. Trying to
14 make it simpler for them to see, like, this is the
15 evidence that we're trying to bring in from Robert
16 Bailly's arrest from July 15th.

17 December 1st, a lot of information on
18 Christopher Wright. Through our meetings with the
19 Defense, they mention Christopher Wright a lot.
20 There was a lot of questions about Christopher
21 Wright. I gave it to them. And then on January
22 28th we have Ms. Zmroczek's supplemental discovery
23 request.

24 And I will just point out, and Ms.
25 Zmroczek I believe is absolutely correct, she has

1 really familiarized herself with this case. Quite
2 honestly, when we were sitting there, and I will
3 share this with the Court, I was speaking to
4 Mr. Tisdale and some of the questions that she was
5 asking, I wasn't even familiar with those people
6 and neither was he. And I know he's dug into this
7 as well. He's the investigator for
8 Mr. Leiendecker. We have tried to answer those
9 questions as best we can.

10 At this point, the victims' family have
11 really been through enough. They want to get this
12 over with. The State wants to get this over with.
13 We're ready to go. The case should go forward.

14 THE COURT: Okay. All right. All
15 right. Well, I'm going to think about it, but I'm
16 inclined to try and press on. I see, you know --

17 MR. LEIENDECKER: Your Honor?

18 THE COURT: Yes, sir, Mr. Leiendecker.

19 MR. LEIENDECKER: I understand, but the
20 State by its own discussion here today has
21 demonstrated to you how much additional things they
22 have provided. They failed and neglected to
23 discuss the recent provision of phone records and
24 those whether duplicative or not are now being
25 waded through, hip deep waded through, to match

1 them and make sure that they are what we have and
2 that they're not providing something new or
3 different to us.

4 To suggest that the Court isn't aware
5 of the discovery debacle that this case has been,
6 you can go back to the initial provision of
7 evidence. But you can also go back to the hearing
8 that was held in this courtroom where the sheriff's
9 office had to take the witness stand and testify
10 about things they hadn't provided, things they
11 didn't have anymore because of electronic problems
12 that had never been revealed before. To suggest
13 that, you know, we all want to get this done, we're
14 in agreement. But to also for the Court to suggest
15 that, you know, 30 days in six and a half years
16 isn't fair. I don't believe that's proper either.

17 THE COURT: Well, I hadn't said it
18 wasn't fair. I just said for this stage for me
19 going on and hearing some stuff today, I'm not
20 inclined -- I may change my mind. Okay. But, I
21 mean, we got everybody here, I want to take care of
22 some of these pretrial matters.

23 MR. LEIENDECKER: I think all the
24 pretrial matters should be taken care of.

25 THE COURT: Okay.

1 MR. LEIENDECKER: We're talking about
2 the start of the trial.

3 THE COURT: Well -- well, thank you.
4 And, Mr. Leiendecker, even if we do it in March, we
5 need to go ahead and do these, don't you think?

6 MR. LEIENDECKER: Absolutely, I do.

7 MR. OSBORNE: And, Judge, if I may.

8 MR. LEIENDECKER: And I don't think
9 anybody suggests we continue this hearing.

10 THE COURT: Oh, okay.

11 MS. ZMROCZEK: No.

12 MR. LEIENDECKER: No one. Everybody
13 wants this hearing to go forward.

14 THE COURT: Okay.

15 MR. OSBORNE: And, Judge, the inventory
16 which was provided to the Defense, and let me
17 double check on the date. I'd like to make this a
18 Court's exhibit. Okay. July of 2021. Can we make
19 this a Court's exhibit just for the record to show
20 that this is the inventory that was submitted to
21 the Defense of everything that we have.

22 THE COURT: Okay. And that's the thing
23 that you sent out to them --

24 MR. OSBORNE: Yes, sir.

25 THE COURT: Okay. And y'all got all

1 that; right? So this will be State's Exhibit 1 for
2 purposes of --

3 MR. LEIENDECKER: We got that
4 inventory, yes, sir.

5 THE COURT: Oh, okay. This will be
6 Court's Exhibit 1.

7 (WHEREUPON, Court's Exhibit Number 1
8 was marked and entered)

9 THE COURT: And that's all the
10 documents and stuff y'all plan to introduce?

11 MR. OSBORNE: No, this is just an
12 inventory showing all the discovery that was sent
13 to the Defense that we were aware of back in July.
14 For the record, I went through the other things
15 that had been submitted to them post that
16 inventory.

17 THE COURT: Okay. All right. Thank
18 you. And so I will take the continuance under
19 advisement. Okay. I'm not ruling on it now is
20 what I meant, Mr. Leiendecker, but thank you for
21 correcting me. Okay.

22 So the next motion I have is a Motion
23 to Dismiss for lack of a speedy trial. And that,
24 again, Ms. Zmroczek, that is your Motion to
25 Dismiss?

1 MS. ZMROCZEK: That's correct, Your
2 Honor. And I know that it seems counterintuitive
3 that I'm asking for a continuance while still
4 arguing about denial of a speedy trial. But I'll
5 tell you why it's not counterintuitive especially
6 in this case.

7 So, as you're familiar the incident
8 that started this off occurred on July 15th of
9 2015. Mr. Smith, my client, was arrested in
10 September of 2016. And so from that time, Your
11 Honor, he has been under arrest, under
12 investigation. He was arrested and finally
13 indicted in these charges in -- or he was arrested
14 in December of 2016 and then indicted in 2018.

15 And, obviously, Your Honor knows that I
16 was just recently put on, but in going through,
17 these are some of the things that I have great
18 concerns about when we're talking about lack of a
19 speedy trial. So, I understand that there were,
20 you know, COVID, but even before that, Your Honor,
21 the State even said that they provided a bunch, a
22 bunch of discovery in the beginning of the case.

23 Well, Your Honor, what's not in there
24 and what can't be retrieved now are my client's
25 phone records, my client's cell tower, seems nobody

1 -- that wasn't requested and now they're not
2 available. They have faded out of all of the
3 systems.

4 Not only that, Your Honor, there are
5 jail phone calls with Mr. Wright. There are jail
6 phone calls with another lay informative witness.
7 And they all center around the focus of our defense
8 which is that all of this was a result of
9 Mr. Wright's drug dealings and drug dealing
10 behavior and owing people money and paying people
11 off using counterfeit money.

12 So, none of those phone calls are
13 available and can't be retrieved anymore. As well
14 as any jail phone calls from my client's confessing
15 his innocence, talking about his mental health, his
16 medical health. None of those jail phone calls are
17 available. None of the jail phone calls from any
18 of the other codefendants especially Mr. Coleman
19 who is also indicted, but will be a testifying
20 codefendant is my understanding. None of these
21 things are available and we can't go back and get
22 them.

23 And so, Your Honor, for that reason
24 we're moving to dismiss based on that lack of
25 speedy trial and prejudice to Mr. Smith because of

1 that. And also I will piggyback later on down when
2 I make the argument for the spoliation charge and
3 Motion to Dismiss. What we would ask that is if
4 the Court decides not to dismiss based on the
5 issues that we've raised that a spoliation charge
6 be administered and allowed to be argued.

7 THE COURT: Okay. All right. Nobody
8 else is involved in this; correct, Mr. Leiendecker?
9 Mr. Johnson?

10 MR. JOHNSON: I have a motion, Your
11 Honor.

12 THE COURT: All right. And,
13 Mr. Osborne, did you want to say anything on the
14 Motion to Dismiss for the speedy trial?

15 MS. GLOVER: Your Honor, if I could
16 take this.

17 THE COURT: Ms. Glover, yes, ma'am.

18 MS. GLOVER: Your Honor, for per *State*
19 *v. Barnes*, there are four factors to consider when
20 determining whether or not to dismiss the case due
21 to a speedy trial. The first one is the length of
22 delay. The second is the reason for the delay.
23 The third is the accuse assertion of his right to a
24 speedy trial. And the fourth is rather than delay
25 prejudice the accused.

1 If I could go into the first factor
2 which is length of delay. Your Honor, based on the
3 amount of time that both the State and the Defense
4 has spent on this, in all honesty, me and
5 Mr. Osborne have been both put on the case in the
6 last two years. Mr. Osborne in slightly less time
7 than I've been on the case working with Solicitor
8 Pascoe. A lot of the Defense attorneys have been
9 on the case since the beginning. Back in 2017 when
10 these charges were first brought on namely the PD's
11 office with Attorney Leiendecker and Richard
12 Lackey.

13 The second reason, the reason for the
14 delay, we understand completely that Ms. Aimee
15 Zmroczek mentioned her client's phone records. I'm
16 sitting right next to Lieutenant Shumpert who was
17 one of the main investigators on the case, to his
18 knowledge, Mr. Smith never had any phone records
19 because they never found a phone that he actually
20 possessed.

21 The second thing that she mentioned
22 with the jail calls all center around the focus of
23 their defense. Your Honor, their case in chief, we
24 don't have any phone calls for Mr. Smith. And I'm
25 not saying that that won't tamper with their

1 defense, Your Honor, but the State does have the
2 burden of proof and if it's not something that
3 we're using in our case in chief, I'm sure that
4 there are ways for them to curtail around having
5 those jail calls. Maybe they can find another way
6 to get into with some type of expert witness or
7 anybody that may have had contact with Mr. Smith
8 during that time period.

9 Ms. Zmroczek also mentioned the mental
10 and medical health jail calls. Again, I feel like
11 there are other ways for that information to come
12 in. Maybe someone that knew him during this time
13 period, knew him before this incident took place,
14 and may have information about his mental health
15 that doesn't sensor around just those jail calls
16 specifically.

17 The third is the accused assertion of
18 his right to speedy trial. Again, he was arrested
19 back in 2017, to my knowledge, this is the first
20 time that anything about a speedy trial has come to
21 light.

22 The last is the whether or not the
23 delay prejudiced the accuse. It's kind of
24 redundant that the Defense has asked for additional
25 time, they've asked for a continuance, and then try

1 to curtail around and also ask for a speedy trial.
2 Your Honor, we don't feel like this will prejudice
3 the accuse in anyway. If anything, it will give
4 them more time to prepare the defenses. That's it
5 for now, Your Honor.

6 THE COURT: Okay. Thank you.

7 MS. GLOVER: Thank you, Your Honor.

8 THE COURT: All right. Now, Ms.

9 Zmroczek, anything you want to put on the record.

10 MS. ZMROCZEK: Nothing in reply, Your
11 Honor.

12 THE COURT: Okay. All right. At this
13 point, I'm going to deny that. I'm going to
14 preserve your objection to my ruling, Ms. Zmroczek.
15 So, the third one is --

16 MS. ZMROCZEK: And we can address the
17 spoliation charge at --

18 THE COURT: I'm sorry, what?

19 MS. ZMROCZEK: And we can address the
20 spoliation charge --

21 THE COURT: Oh, yeah. You want a
22 spoliation charge?

23 MS. ZMROCZEK: Yes.

24 THE COURT: Okay. The next one is
25 exclude third-party guilt motion to include

1 third-party guilt. So I have dualing motions on
2 that. And, so I'm assuming, Mr. Osborne, I believe
3 you filed first and then Mr. Leiendecker you filed
4 after that?

5 MR. LEIENDECKER: Yes, sir, I filed a
6 return. It's not technically a motion, but I did
7 file a return.

8 THE COURT: Okay. I got it. You did a
9 good job. Ash did a good job.

10 MR. LEIENDECKER: The same thing I
11 filed with the clerk was sent to Your Honor and to
12 all counsel.

13 THE COURT: Okay.

14 MR. OSBORNE: We have a copy.

15 THE COURT: Mr. Osborne?

16 MR. OSBORNE: Thank you, Your Honor.
17 The State is moving for an order baring admission
18 of testimony raising third-party guilt. Of reading
19 Baily's reply, I do not believe there's any
20 objection to third-party guilt coming in. It
21 doesn't seem like that's the crux of the reply.
22 Having said that, it seems like what is third-party
23 guilt becomes an issue. So I just want to briefly
24 go over some of the case law on this.

25 The *Seminole* case seems to be *Gregory*

1 from 1941 which is still good law today. I'm not
2 going to read a whole bunch of quotes, but I think
3 this is an important one. It says, "At any rate,
4 the evidence offered by the accused as to the
5 commission of the crime by another must, not shall,
6 must be limited to such facts which -- such facts
7 as are inconsistent with his own guilt and to such
8 facts as raised a reasonable inference or
9 presumption as to his own innocence. Evidence
10 which can have no other affect than to cast a bear
11 suspicion upon another or to raise a conjectural
12 inference as to the commission of the crime by
13 another is not admissible."

14 Your Honor, the *Daley* cites the case
15 *Holmes* for the admission of third-party guilt.
16 *Holmes* is a good case. It makes perfect sense. In
17 *Holmes*, you had evidence that the police had
18 acquired looking at the crime scene at just the
19 evidence in the case that only one person could
20 have committed the crime. Only one.

21 The State had in their possession
22 evidence that another person was saying that he
23 committed the crime. While the trial court kept
24 out and said that's third-party guilt. Went all
25 the way to the Supreme Court. The Supreme Court

1 says, no, that type of evidence should come in.

2 When you have evidence that another
3 person could have committed the crime, and in this
4 case, in that case it would have been evidence
5 which would have been inconsistent with the
6 defendant who's on trial with his guilt because
7 someone else was admitting that he did it. That
8 should have come in. We simply don't have anything
9 like that in this case.

10 Reading Baily's reply. What he is in
11 essence saying, you know, putting words in his
12 mouth, it seems to me like what he's saying is,
13 we're not saying that someone else did it, we're
14 simply trying to show that this was an incomplete
15 investigation by the sheriff's office. I assume,
16 then Bailey wants to say the sheriff's office did
17 not properly investigate the following suspects.
18 And this is not an exhaustive list. Rambo, Darby,
19 the Mexican Cartels, Outlaw, Barnshack, June, Lewis
20 Weatherford, Jigger Man, Debo, C-low, Steven
21 Singletary, the Money Go Gettus, Pat-Pat, Kadeem,
22 Freak, Trigger, Ragu, Product, Biz, Up Against Wall
23 Crew, Fingers, Broad, Al, Dirty. And I think
24 Donkey Man was also in that.

25 Your Honor, this is a high profile

1 case. In a high profile case as police get
2 numerous tips. They got numerous tips in this
3 case. Even if all of the conjecture and innuendoes
4 and this third-party guilt is true, in regards to
5 these other suspects, it's still not the type of
6 evidence that is inconsistent with their guilt.

7 And I was thinking about this earlier.
8 Even if the Defense isn't saying that someone else
9 could have committed this crime, even if that's not
10 their point, the jury hearing all of this
11 conjecture, all of this innuendo is going to be
12 left with no other thought than to say that someone
13 else could -- is more probable to have committed
14 this crime. That type of evidence is third-party
15 guilt.

16 Now, if they want to -- if they want to
17 attack Shumpert and the Orangeburg County Sheriff's
18 Office with saying that they didn't do a complete
19 investigation into their guilt, that's perfectly
20 fine. I mean, obviously, that's acceptable. But
21 they don't get to go into third-party guilt in
22 saying they didn't complete an investigation into
23 all of these suspects. And there's no splitting
24 the baby here, Judge.

25 The law is clear. All of that evidence

1 is irrelevant and it's inadmissible as to their
2 guilt.

3 THE COURT: Okay. Don't sit down quite
4 yet. I mean, and it does seem like when I was
5 reading y'all's memos in this, it looked like y'all
6 were talking over each other a little bit. It
7 seems to me, and, Mr. Leiendecker, you can address
8 this when you get up, but it seems to me he wants
9 to go into the investigation aspect of it. And I
10 believe you said it's okay to go into the
11 investigation aspect of it; correct?

12 MR. OSBORNE: Into their guilt.

13 THE COURT: Well, isn't that -- I mean,
14 to me, the question becomes, if he's going to ask
15 Investigator Shumpert, did you talk to these
16 people, you know, and then you're saying he can't
17 ask Shumpert that?

18 MR. OSBORNE: No, he can't. Because
19 here's what happens. And then we've seen this play
20 out before. Clean hands, we'll try a joint case
21 and the -- with multiple codefendants, the first
22 trial, that evidence was allowed in. And then when
23 you see the circus that comes out of that, maybe
24 not coincidentally, the second trial that evidence
25 was kept out. Because here's what happens. Here's

1 the way that questioning goes. And we're not
2 trying to say that something else could have did
3 this, Judge. What we're simply trying to say is
4 that it was incomplete.

5 Lt. Shumpert, did you have the occasion
6 to speak to anyone with the Mexican Cartels? No, I
7 didn't. But isn't it true that you had information
8 that the Mexican Cartels were involved in this? I
9 did. Well, that sounds incomplete, doesn't it?
10 Well, what Shumpert could say then is that well,
11 you know, that information came from Herman
12 Johnson. Let me tell you about Herman Johnson.
13 Here's who Herman Johnson is. And here's what
14 Herman said. It's opening up a pan of flavin of
15 hearsay.

16 So -- and Mr. Leiendecker was wise in
17 the reply to say, hearsay is not admissible. Okay.
18 So hearsay is not admissible, so how does the State
19 then give the victims a fair trial? Well, it's
20 simple. When Rambo Michael Smith is brought up,
21 then all I need to do is call Michael Smith.
22 Michael, did you do it? No. I need to call Eboni
23 Clark. Eboni is his girlfriend, his alibi. And
24 then I need to call Quamaine Brooks. He's the
25 source of information that said Michael Smith is a

1 dangerous person and he heard about it. Okay. So
2 that's four people. No problem, I can eliminate
3 one. You keep going.

4 Mexican Cartels. I need to call the
5 source of information, Herman Johnson, and impeach
6 him. Then I need to call the Up Against the Wall
7 Crew, June, Jigger Man, and Broad, were y'all
8 involved with a drug deal with the Mexican Cartels
9 with Christopher Wright, it's absurd. I mean, it
10 goes on and on and on.

11 Shamori Davis, "Barnshack." I mean,
12 I've counted them all, Judge, I can keep going.
13 It's about 40 extra witnesses.

14 THE COURT: Okay. All right. Thank
15 you, sir. All right. Mr. Leiendecker?

16 MR. LEIENDECKER: Your Honor, I want to
17 apologize in advance if I'm making this trial hard
18 for the State. And I want to apologize if this
19 trial somehow isn't fair to the victims since it's
20 actually meant to be fair to the system and to the
21 Defendants.

22 Your Honor, I think it's clear and I
23 think you hit a nail on the head when you pointed
24 out that in our reply, we're not asking to bring
25 in, you know, unicorns and rainbows and say that

1 they were involved in this and speculation or
2 anything else. We're asking to investigate and be
3 able to cross examine the State regarding the
4 investigation that the Orangeburg County Sheriff's
5 Department undertook.

6 And to say that it was just mere
7 conjecture belies the fact that as to some of these
8 individuals he read off, they actually drafted
9 affidavits for arrest warrants. Speculation, they
10 didn't think these guys had anything to do with it,
11 I don't know until we get them only the stand. But
12 what they've asked is --

13 THE COURT: You mean the investigators
14 on the stand?

15 MR. LEIENDECKER: Right. What they've
16 asked is, they've asked us to meet a super burden
17 of proof which isn't required in *Holmes* or anywhere
18 else. They've asked us to prove that it's relevant
19 which isn't my role and isn't my responsibility.
20 They've asked us to do all this before we even give
21 an opening statement. They've asked us to do this
22 before we cross examine a witness. They've asked
23 us if we're going to get into it to then -- those
24 investigations of the witness and cross examination
25 in camera which in essence provides a double trial.

1 Talk about delays and additional time and gives the
2 State an opportunity to not only hear my cross
3 examination, but then prepare for my cross
4 examination between themselves and the witness.

5 THE COURT: Mr. Leiendecker, you really
6 can talk to me, I'm the one doing this. Okay.

7 MR. LEIENDECKER: I'm just
8 flabbergasted. And all we're asking to do is what
9 we've done from the beginning as defense attorneys.
10 We're asking to have the opportunity to cross
11 examine the witnesses. We're not wanting to be
12 barred by some third-party guilt theory. If
13 someone else did it, yeah, that's a third-party
14 and, yeah, maybe they're guilty. But we're not
15 here to prove that. We are here to --

16 THE COURT: Don't you have to establish
17 through -- that you believe there's somebody else
18 that did it?

19 MR. LEIENDECKER: For what?

20 THE COURT: Well, I mean, what is the
21 phrase?

22 MR. OSBORNE: Inconsistent with their
23 guilt.

24 THE COURT: Yeah.

25 MR. LEIENDECKER: The other people

1 investigated in this case and the work done by the
2 State's investigators on other people is all
3 inconsistent with our clients' guilt.

4 THE COURT: Well, I understand that
5 that's your argument. And I am very much aware of
6 the problems we've had getting everything together
7 because I believe about two years ago we had a
8 meeting over evidence in this case before
9 Mr. Osborne got involved in it. We've had problems
10 with it. Okay. But the standard for admission of
11 third-party guilt, there must be such proof of
12 connection with the crime, such a train of facts
13 and circumstances as tends clearly to point out
14 such other person as the guilty party. Now how do
15 you deal with that?

16 MR. LEIENDECKER: Your Honor, I am
17 asking to cross examine them regarding the avenues
18 of their investigation. I am not putting up this
19 person or that person as the guilty party.

20 THE COURT: Okay.

21 MR. LEIENDECKER: What they're asking
22 to do is shut down investigative cross examination
23 to anything other than as relates to my client.
24 That is not how it works.

25 THE COURT: So let me ask you. I hate

1 to pick on Investigator Shumpert, but did you ask
2 Investigator Shumpert, who did you talk to, you
3 know.

4 MR. LEIENDECKER: I don't know what I'm
5 going to ask him, but that's reasonable.

6 THE COURT: You know, and you can ask,
7 did you talk to this person. Okay. And you can
8 say, then what do you do after that. If he says he
9 talked to him. You can't get into what that third
10 person said. You can ask him --

11 MR. LEIENDECKER: Are you saying I
12 can't get into why did you draw arrest affidavits
13 for individuals other than my client?

14 THE COURT: I'm not saying that right
15 now. What I'm trying to figure out --

16 MR. LEIENDECKER: I'm just saying --

17 THE COURT: What I'm trying to figure
18 out is where do we stop it. Because clearly he
19 can't tell you -- he can't testify in court as to
20 what the guy told him. Right?

21 MR. LEIENDECKER: We stop it when we
22 reached a point and an objection is entered and the
23 Court believes that we are entering an area of
24 third-party guilt which has no foundation and law
25 to be presented to the jury.

1 THE COURT: Okay.

2 MR. LEIENDECKER: We don't stop it with
3 some blanket, you can't talk about anything,
4 exclusionary rule before the trial.

5 THE COURT: Okay. And right now I'm
6 not talking about a blanket exclusionary rule. And
7 I'm not talking about --

8 MR. LEIENDECKER: Well, that's what the
9 State's motion is asking.

10 THE COURT: I know. But I believe the
11 word that was a burr to your saddle was stringent.

12 MR. LEIENDECKER: Stringent, yeah.
13 Yeah.

14 THE COURT: So I'm not going there
15 either. But what I'm trying to get at is if so
16 when we get to the trial we don't have so many
17 objections that we have to deal with them -- and,
18 of course, with some of the objections you're going
19 to have to do it at trial to preserve them. I'm
20 not getting over that.

21 But what I'm getting at is if he -- if
22 Shumpert -- if Investigator Shumpert says that he
23 -- if he -- after he talked with him he decided it
24 wasn't relevant to go forward or anything like
25 that, it's going to have to -- don't you think it's

1 going to have to stop there?

2 MR. LEIENDECKER: Yes.

3 THE COURT: Okay.

4 MR. LEIENDECKER: And we're not at a
5 place where any of these lists of, you know, 40
6 boogeymen are ever going to be questioned,
7 discussed, or examined. But I'm also not at this
8 point going to reveal my strategy regarding what
9 theories are out there that I would not want to ask
10 about.

11 THE COURT: Well, the other thing is, I
12 mean, you do realize that if we go into -- I
13 understand Mr. Osborne's concern about raising
14 boogeymen and like that. But the other thing is,
15 if you go into this, you start showing what -- how
16 much investigation the State was required to do to
17 determine who they believe is guilty of these
18 crimes, you know.

19 MR. LEIENDECKER: That's absolutely
20 great for the State, isn't it?

21 THE COURT: That's exactly right.

22 MR. LEIENDECKER: And I'm happy to help
23 the State if that's what it does regarding that
24 issue. Because I believe it will ultimately
25 provide other points as well.

1 THE COURT: Okay.

2 MR. OSBORNE: Judge --

3 THE COURT: Well, just one second. I
4 think Ms. Zmroczek wants to join.

5 MS. ZMROCZEK: I figured it was easier.
6 So, Your Honor, with regard to Mr. Smith, I am
7 taking a different avenue which is also a part of
8 the problem with Mr. Smith going to trial on these
9 Defendants. Because I'm absolutely putting forth
10 the notion that someone else other than my client
11 did it. And it's not just based on one bad snitch
12 who they say, there are several witnesses who may
13 interview, some of whom they arrested for objection
14 of justice that provide information consistent with
15 my client's innocence meaning he wasn't there.

16 Two days before this happened, the
17 decedent Ms. Krystal Hutto passed counterfeit
18 money. There have been at least three different
19 witnesses if not four that they've interviewed and
20 received information from that the Cartel or
21 whomever or another drug dealer who was recently
22 arrested federally before this, were unhappy with
23 Mr. Wright cutting his product, and also using
24 counterfeit money.

25 The press release is done by the

1 sheriff's department themselves state, execution
2 style. These -- all of these decedents were shot
3 in the head.

4 THE COURT: No, I understand they were
5 all shot in the head. Just because they were shot
6 execution style doesn't mean the Mexican Cartel did
7 it.

8 MS. ZMROCZEK: And it also doesn't mean
9 that they didn't especially when there's multiple
10 witnesses saying that there was an issue with
11 Mr. Wright and the people from whom he was
12 receiving and delivering drugs.

13 THE COURT: Well, see, that's where we
14 start getting into speculation that I -- we're not
15 going to get to.

16 MS. ZMROCZEK: Well, and I think that's
17 the problem because Mr. Smith has a right to -- a
18 Constitutional right to present a full and fair
19 defense.

20 THE COURT: No, he does.

21 MS. ZMROCZEK: And if the information
22 is out there and corroborated by an arrest two days
23 before with counterfeit money, I don't think that
24 that's some wild hair that we shouldn't be allowed
25 to go into. That is something that is absolutely

1 relevant to this case.

2 THE COURT: So who are you going to
3 call?

4 MS. ZMROCZEK: Your Honor, I think that
5 -- a lot of that information comes from Mr. Wright
6 and then the several other witnesses -- what is his
7 -- it starts with a C. I can't remember his name.
8 But there are several witnesses aside from the one
9 Mr. Johnson that they say is a liar.

10 And not to mention that, Your Honor, I
11 think we also asked Investigator Culpepper, why did
12 you issue arrest warrants for obstruction of
13 justice on X, Y, Z, A, B, C, and D. What relevance
14 -- I mean, that's part of their codefendants in
15 this case. And so I think that whatever they said
16 comes in under, you know, a coconspirator
17 codefendant exception.

18 So -- and, again, I think that that
19 drums up a lot of confrontational problems because
20 my defense is obviously different than the other
21 defenses. So -- but, again, in reading *Holmes*,
22 Your Honor, you know, limiting it to facts that are
23 inconsistent with Mr. Smith's guilt, I think is a
24 lot different than Mr. Scott and Mr. Bailey.

25 THE COURT: Okay. All right.

1 Mr. Osborne? Well, wait a minute. I'm sorry, Mr.
2 Johnson.

3 MR. JOHNSON: May I reply? Just
4 briefly, Your Honor. In reply to the State's
5 motion, I would focus on the *Holmes* case that talk
6 about defense has to have a right to be able to
7 question regarding the quality of the investigation
8 and the -- not just credibility of officers, but
9 also the details of the investigation.

10 I would point out, the Solicitors sent
11 information in preparation for the trial, the
12 Solicitors talked about including things like shoe
13 wear or footwear impression evidence and different
14 things and wanting to show that his officers just
15 did a thorough job. So even if it doesn't point
16 towards someone, the Solicitor wants to bring up
17 stuff and say, well, look what a great job they
18 did.

19 But then he wants to have this kind of
20 blanket rule that says we cannot talk about the
21 integrity by saying, well, the investigation by
22 asking him these detail questions about all these
23 people. And I'll point out the fact that none of
24 this is brought up by my investigator. This is all
25 from the State's case. Every topic listed by the

1 Solicitor comes from the State's investigation.
2 None of it is brought up by defense investigator.

3 It's simply their case and their
4 investigation. So for due process and the ability
5 to push integrity of the case, we have to be able
6 to ask these questions. And we -- of course, the
7 officers are free to say, well, I did this and I
8 talked to so and so. And if I ask, well, where was
9 so and so the date of this incident? They can say,
10 gave them an alibi witness. Did you talk to the
11 alibi witness, yes or no? Not going into hearsay.
12 And they can do all that line of questioning.

13 But I think the Solicitor is trying to
14 stop all that and I think that would shift the
15 burden also under this State's motion to say, well,
16 now the defense has this burden prior to trial to
17 show all of these things in order to allow us to
18 have a fair cross examination. So I would ask the
19 Court not to issue that and I would oppose the
20 State's motion. That's all I have, Your Honor.

21 THE COURT: All right. Mr. Osborne?

22 MR. OSBORNE: Briefly. I'm not making
23 this up. I mean, it's in the law. *State v.*
24 *Gregory* and this is where this proper language
25 comes from. But for such testimony -- but before

1 such testimony can be received there must be such
2 proof of connection with it such as train of facts
3 or circumstances as tends clearly to point out such
4 other person as the guilty party. Remote acts.
5 Disconnected and outside the crime itself cannot be
6 separately proved for such a purpose. An orderly
7 and unbiased judicial inquiry as to the guilt or
8 innocence of a defendant on trial does not
9 contemplate that such defendants be permitted by
10 way of defense to indulge into conjectural
11 inferences that some other person might have
12 committed the offense for which he is on trial. Or
13 by fanciful analogy to say that the jury -- that's
14 to say to the jury that someone other than he is
15 more probably guilty.

16 And Ms. Zmroczek just brought up
17 exactly the problem. Mr. Leiendecker is saying,
18 I'm not trying to say that these other people are
19 guilty. Ms. Zmroczek jumps right up, I am. And
20 that's the problem with this evidence. Even if
21 Mr. Leiendecker is not trying to propose that to
22 the jury, she will. And even if she isn't, the
23 jury is going to sit here and hear all of these
24 characters, what else can they be left to think
25 that it is more probable that someone else could

1 have did it.

2 THE COURT: Mr. Osborne, I hate to
3 interrupt you, but how then do they ask the
4 investigators about the extent of their
5 investigation? How do they get into that then?

6 MR. OSBORNE: Without violating
7 hearsay, Judge? It becomes a problem.

8 THE COURT: Yeah.

9 MR. OSBORNE: Now when it comes to
10 these Defendants, all day long. But when you talk
11 about other people who aren't on trial, hearsay is
12 going to rear its ugly head over and over and over
13 again. And Mr. Leiendecker said, well, all you've
14 got to do is object. Well, that bell's rung over
15 and over. You were looking at Donkey Man. You
16 were looking -- and this is Ragu, he's a bad guy.
17 You were looking at him. You we're looking at him.
18 You were looking at him. All I can do is object.
19 Just object 45 times. That's all you've got to do.

20 That's why *Gregory* says that evidence
21 should be proffered first so you get to hear,
22 Judge. Well, I want to hear this inquiry. Let's
23 see what this sounds like. And now this is
24 starting to sound like we're going off into
25 conjecture and off into nonsense and you can cut it

1 off there. That's what we're asking for.

2 I don't know what they know. That's
3 why I said let's proffer the testimony. Maybe they
4 do have evidence that somebody else did that. That
5 would be inconsistent with these guys. And if
6 that's the case, sure, the jury should hear that.
7 But let's proffer that first and let us just object
8 after the bell has rung, that doesn't give them a
9 fair trial.

10 THE COURT: Well, and I understand what
11 you're getting at, but I think they're talking
12 about -- I think *Gregory* is talking about proffer
13 it during the trial. Aren't they talking about
14 doing that?

15 MR. OSBORNE: No. I'm saying proffer
16 it before the trial.

17 THE COURT: No. I --

18 MR. OSBORNE: It's not saying that.
19 You're right. It doesn't explicitly say that.

20 THE COURT: Right.

21 MR. OSBORNE: However, I'm asking for
22 you to proffer it before because my position is
23 this. Simply objecting accomplishes nothing. And
24 I'm not saying do it now. I'm saying that, you
25 know, they've already laid it out, we're going to

1 bring it up through Shumpert, we're going to bring
2 it in through Culpepper. Let's explore that
3 third-party guilt prior to Shumpert and Culpepper
4 testifying through proffer testimony. And who
5 knows, maybe over the next few days they find out
6 somebody else did do it.

7 THE COURT: Okay. All right.
8 Mr. Leiendecker, yes, sir.

9 MR. LEIENDECKER: I love miracles. I
10 don't expect them. So we're not talking about
11 putting someone on the witness stand to say that
12 someone else did it. We're not. That's
13 presentation of third-party guilt. What they're
14 trying to stop is an investigation into the State's
15 investigation. They don't --

16 THE COURT: When you're saying cross
17 examination into the State's investigation --

18 MR. LEIENDECKER: They don't want to be
19 able to have that put under a microscope and
20 examined in front of the jury. I guess, if you
21 carry this a little further, the theory then
22 becomes, we can't talk about fingerprints that
23 we're found at the scene that weren't our clients.
24 Because that might suggest someone else was at the
25 house. We can't talk about footprints that were

1 found that aren't our clients because that would
2 suggest someone else was at the house. We can't
3 talk about DNA that was found at the house, that's
4 not our clients because that would suggest someone
5 else was at the house.

6 And by inference, that would suggest
7 third-party guilt. That is not what *Gregory* or
8 *Holmes* or anything else says. You can't put
9 somebody up on the stand who's going to testify
10 that the Mexican Cartel did it without any
11 foundation. That's not what we're asking to do.

12 THE COURT: You're asking to be able to
13 cross examine them on the investigation?

14 MR. LEIENDECKER: About their
15 investigation.

16 THE COURT: Okay. All right.

17 MR. OSBORNE: And I'm just asking that
18 be proffered.

19 THE COURT: Well, I understand what
20 you're asking for. Okay. First of all, I'm not
21 going to have a separate hearing before then to do
22 that. Okay. You know, because I am -- but when we
23 get ready -- when you get ready to cross examine,
24 when you start getting close to an issue -- of this
25 issue and like that, I'm going to probably excuse

1 the jury and see what kind of questions you're
2 planning to ask so we can flesh it out right then.
3 That's the only way I know how to do it, you know.
4 You tell me another way.

5 MR. LEIENDECKER: (Nodded)

6 THE COURT: I mean, really, I'm not
7 going to have this -- this is enough -- it was
8 enough of a hunt, you know, for the investigators
9 to go through to get to the point where we are. I
10 know it seemed to be a messy investigation to me.
11 Okay. But -- and I think you can -- you are
12 welcome to invite questions -- I'm inviting you to
13 ask questions about the investigation. Okay. But
14 I'm not going to get in a situation where anybody
15 gets into any hearsay testimony about it. Okay.
16 And so when we get to trial so it won't
17 be, you know, just going to be right then, we -- I
18 will let the jury go out, you can -- I'm going to
19 see what kind of questions. We'll do the testimony
20 and then I'll rule then as to what's going to
21 happen. Because I don't know -- I don't know how
22 they're going to answer it and neither do you, you
23 know.
24 So for purposes of this Motion in
25 Limine, you know, I'm not doing anything other than

1 we're going to go to trial and find out what's
2 going to go on and we'll have to do it that way.
3 Okay.

4 Do you want me to note your objection
5 -- anybody want to note an objection to my ruling
6 to preserve it?

7 MR. LEIENDECKER: No.

8 THE COURT: Okay. I noticed that both
9 Mr. Osborne and Mr. Leiendecker are shaking their
10 head. Ms. Zmroczek is smiling. I don't know
11 whether she wants to note an objection or not.

12 MS. ZMROCZEK: Well, because I don't --
13 I mean, right now the ruling is -- I mean, it's not
14 really a ruling.

15 THE COURT: Right. We're going to do
16 it like it's a trial.

17 MS. ZMROCZEK: So I think that, yes, I
18 think that once we get there, Your Honor, we'll see
19 how it goes.

20 THE COURT: Okay. All right. Thank
21 you, ma'am. All right. Severance motions.
22 *Denno/Severance/Bruton* motions. Which --

23 MR. OSBORNE: Your Honor, I just feel
24 like they're so intertwined.

25 THE COURT: I know.

1 MR. OSBORNE: What I thought what would
2 be easiest since there are so many different
3 statements is to just call a witness, deal with the
4 particular statement, see if it's voluntary,
5 whether it passed the first gate and then move to
6 the next.

7 THE COURT: Okay.

8 MR. OSBORNE: And, Your Honor, for the
9 *Denno* portion of the hearing, the State calls
10 Lieutenant Journey. And this is going to be in
11 reference to Bailey's statement to Lieutenant
12 Journey on July 15, 2015 after his arrest.

13 THE COURT: Okay. And before you sit
14 down, Lieutenant Journey, can I get you to raise
15 your right hand.

16 MARTIN JOURNEY,

17 THE COURT: And Lieutenant Journey, do
18 you mind stating your full name for the record?

19 MR. JOURNEY: Martin Palmer Journey.

20 THE COURT: All right. Mr. Osborne, he
21 is your witness.

22 MR. OSBORNE: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. OSBORNE:

24 Q. Good afternoon now, Lieutenant Journey.
25 Where do you currently work?

1 A. Orangeburg County Sheriff's Office.

2 Q. All right. Let's just go ahead and get
3 right into it. Back on July 15th of 2015, were you
4 working then?

5 A. Yes, I was.

6 Q. And --

7 MR. LEIENDECKER: If it please the
8 Court. I don't think we were asking for any *Denno*
9 examination regarding the questioning at the police
10 station or the sheriff's office. There was a form,
11 it was gone over, my client signed it, and then he
12 spoke voluntarily.

13 MR. OSBORNE: Okay. As long as there's
14 a finding on the record that that's the case then
15 we can move past it.

16 MR. LEIENDECKER: We so stipulate.

17 THE COURT: Okay. And that's regarding
18 Mr. Bailey?

19 MR. LEIENDECKER: Right. On July 15th;
20 correct?

21 MR. OSBORNE: So that would be --
22 there's two statements in question, Judge.
23 Statements from -- and then, you know, I'm going to
24 summarize this. These are exhaustive. But after
25 his arrest, Mr. Bailey admitted to Lieutenant

1 Shumpert that the money in his pocket were proceeds
2 from drug sales. He admitted to being a drug
3 dealer. He admitted that the cocaine in the car
4 was his.

5 He was subsequently interviewed by
6 Detective Culpepper and beg the Court's indulgence
7 because there are a couple of statements that
8 Culpepper made -- that Culpepper documented that
9 are not included on the written statement which I
10 was going to ask Culpepper about.

11 MR. LEIENDECKER: Just for the record
12 --

13 THE COURT: We're going to find out
14 what those not included --

15 MR. LEIENDECKER: We'd be interested in
16 that.

17 MR. OSBORNE: It's documented. It's in
18 his report. It's just not in Bailly's written
19 statement. Okay. I'll just read my question and
20 I'll tell you how --

21 THE COURT: Well, we're going to need
22 Mr. Journey up here -- Investigator? Lieutenant?
23 What is it now?

24 MR. JOURNEY: Lieutenant Journey.

25 THE COURT: Yes, sir.

1 MR. OSBORNE: Your Honor, if they're
2 stipulating to all of the statements that was made
3 at the time of arrest with Lieutenant Journey as
4 being voluntary --

5 THE COURT: Well --

6 MR. LEIENDECKER: What we're
7 stipulating is that his Miranda rights we're not
8 violated. We're not stipulating to any of this is
9 admissible in court. Because it may have relevance
10 issues. It may have 404, 403 issues. We're not
11 admitting any of that. And I don't think that a
12 *Denno* hearing is meant for that purpose. It's just
13 meant was the statement voluntarily made.

14 THE COURT: You're admitting that the
15 statement was voluntary?

16 MR. LEIENDECKER: Yes.

17 THE COURT: The statement that was
18 given to Lieutenant Journey on July 15th of 2015
19 was voluntary?

20 MR. LEIENDECKER: Yes.

21 THE COURT: Okay. All right.

22 MR. OSBORNE: Your Honor, if I may be
23 so bold. Then we just pivot and let's go ahead and
24 knock this out now, you can hear what Robert Bailey
25 said on July 15th from his testimony and you can

1 determine whether it's relevant or not.

2 THE COURT: Okay.

3 MR. LEIENDECKER: Your Honor, I'm not
4 ready to do that at a pretrial hearing. I believe
5 that I would like to hear that in the context of
6 the case after I've had an opportunity to fully
7 review my client's statement and determine if there
8 are portions I do or don't want admitted.

9 But part of where the State wants to go
10 with this entire trial deals with drugs, drug
11 dealing, drug activity, and I'm not sure whether
12 that's, you know, in the context of this case going
13 to be admissible or not. I'm not sure that I don't
14 want it to be admissible or not.

15 THE COURT: Oh, I know. Because I
16 would have thought --

17 MR. LEIENDECKER: I'm just not ready at
18 that point in my trial strategy to argue that
19 matter.

20 THE COURT: Okay. Because I thought --
21 and I guess I shouldn't have thought or even
22 assumed anything, but I thought one of the things
23 such as Ms. Zmroczek mentioned was Mr. Wright's
24 drug dealing was going to be an issue in this case?

25 MR. LEIENDECKER: I don't mind

1 Mr. Wright's drug dealing being an issue. I have
2 no problem with that. His attorney would have to
3 object to that.

4 THE COURT: Okay. Well -- so, when are
5 you going to get back on the relevance issue or
6 when are you thinking about that or you're just
7 waiting -- you want to wait until trial?

8 MR. LEIENDECKER: I want to wait until
9 trial unless you tell me otherwise. Because I've
10 been working a lot of things and I have not gone
11 back over those July 15th statements in a year
12 probably.

13 THE COURT: Okay. Well, let me think
14 about that. I'm not going to rule on that right
15 now, but let me think about it. Because I want to
16 try and get as much smoothed out before trial as I
17 could. Because the longer the trial goes on, the
18 more frustrated everybody gets, you know. Okay.
19 All right.

20 MR. OSBORNE: So --

21 THE COURT: Mr. -- I mean, Lieutenant
22 Journey has already been sworn in. Does he have
23 anything else to testify about?

24 MR. OSBORNE: No, Judge. If we're not
25 getting into the content of what he said and then

1 the objection will be relevance and we've already
2 ascertained by stipulation then I guess or by
3 consent that it's voluntary. I think we're good
4 for that *Denno* portion of that hearing.

5 THE COURT: All right. So he can be
6 excused?

7 MR. OSBORNE: He can for now. We will
8 need him again in a minute.

9 THE COURT: Okay. Oh, we are. Did you
10 want to skip ahead to then?

11 MR. OSBORNE: Judge, I prepared law
12 enforcement this would be a long morning. I think
13 for our purposes and for it to be expeditious as
14 possible or keep it simple, we just do them one at
15 a time.

16 THE COURT: All right. Lieutenant
17 Journey, you may step down. And you did a fabulous
18 job testifying. Okay. All right. So who's next?

19 MR. OSBORNE: Well -- all right. So --

20 THE COURT: Or you want to go through
21 the list?

22 MR. OSBORNE: I think if I go kind of
23 in chronological order and I will list it all out
24 for you guys. The next one I was going to do is
25 Culpepper. Culpepper is in training. He should be

1 finished right about now. But it sounds like
2 Bailey is going to consent to it being voluntary.

3 Where we left off was that Bailey was
4 concerned about -- Mr. Leiendecker was concerned
5 about statements that Culpepper said Bailey told
6 him that are not memorialized in Baily's statement.

7 THE COURT: Right.

8 MR. OSBORNE: Yeah, in his statement.
9 There is really only a few. The question would
10 have went something like, did Bailey say anything
11 about the route that he and Ramseses took to follow
12 Christopher to Krystal Hutto's house from the gas
13 station in Vance. Bailey said, yeah, it was an
14 unconventional route with Christopher using back
15 roads. And I do want to reiterate, this is in
16 Culpepper's report. It's just not in Baily's
17 statement.

18 Why did Bailey believe Christopher took
19 an unconventional route? Bailey said because he
20 was skeptical of Ramseses. While Bailey and
21 Ramseses we're at Krystal's house, did Bailey say
22 he observed Christopher doing anything? I think I
23 like this answer. Yes, he said he observed
24 Christopher selling illegal narcotics to several
25 individuals while he was there.

1 THE COURT: Okay. All right. So
2 anything, Mr. Leiendecker?

3 MR. LEIENDECKER: I don't know. I
4 mean, when he gets up there and he makes those
5 statements, I may ask him why he didn't ask him to
6 include those in his written statements and create
7 an argument to the jury. But, you know --

8 THE COURT: I'm not asking you --

9 MR. LEIENDECKER: The officer's
10 obviously able to testify about what he said was
11 heard. And then we're able to cross examine him
12 on, you know, well, why wasn't it recorded? Or why
13 isn't it in his statement? Or why isn't it
14 anywhere else? So that's -- I don't have any
15 objection to him testifying to what he says
16 happened.

17 THE COURT: Okay. All right.

18 MR. OSBORNE: I thought it would be
19 easier than to come back -- or to do Antly Scott
20 next, July 19, 2016 with Culpepper. But, again,
21 let's just skip that one since he's not here. We
22 might have *Bruton* issues with that, so we'll play
23 the clip, if they don't like it, maybe we can
24 redact some of it. When Culpepper comes, I guess,
25 we just kind of double back to that one if that's

1 okay?

2 THE COURT: Okay.

3 MR. OSBORNE: Now we're getting into
4 Luther Smith's statements. The first witness that
5 I intend on calling was Investigator Boyne. And
6 this is in reference to his May 27, 2015 utterance
7 while in Eutawville.

8 MS. ZMROCZEK: And, Your Honor, just a
9 point of -- that I need to make now because I'm
10 going to continue to do it and throughout the
11 trial. So my client's name is Luther Joseph Smith.
12 Okay. Nobody calls him Luther except for the
13 police and the investigators. Now everybody is
14 calling him Luther. His name is Joe. He goes by
15 Joe. It's Joseph. And I'm going to call him Joe
16 and Joseph because that's his name. That's what
17 everybody calls him. That's what he goes by.

18 And so I talk about -- I talked about
19 with the State on Tuesday and they're like, well,
20 that's his given name. I understand, Your Honor,
21 but that's not the name that he goes by. It's Joe.
22 And so I just don't want there to be confusion
23 because I'm going to be calling him Joe because
24 that's what he goes by. That's his name.

25 MR. OSBORNE: His face mask says, "Big

1 Lou."

2 (Laughter)

3 MS. ZMROCZEK: He won't be wearing his
4 face mask during the trial.

5 THE COURT: Well, he can write "Big
6 Joe" on the other cheek. All right. So it's fine
7 with me if you want to call him, you know, if you
8 want to call him Joe. Okay.

9 MS. ZMROCZEK: Okay.

10 THE COURT: And if we want -- if we
11 need to explain that to the jury that will be fine
12 too, I guess. But I guess my question is, is
13 Mr. Smith's statement to Investigator, is it Boyne?

14 MR. OSBORNE: Boyne, yes, sir.

15 THE COURT: On 5/27/15 in Eutawville;
16 is that voluntary or it's not voluntary? Okay. So
17 we need --

18 MS. ZMROCZEK: I challenge all of his
19 statement.

20 THE COURT: All right. That's what I
21 need to know.

22 THE COURT: Okay.

23 MR. OSBORNE: State calls Investigator
24 Boyne.

25 DONALD BOYNE,

1 THE COURT: Huh?

2 MR. OSBORNE: He cannot go.

3 THE COURT: He cannot go. Okay. Stay
4 with us, Lieutenant Journey. All right. Who's
5 next?

6 MR. OSBORNE: All right. So now we're
7 getting into the crux of it. Luther's statement on
8 September 14th of 2016 to Lieutenant Shumpert.

9 THE COURT: Okay.

10 MR. OSBORNE: State calls Lieutenant
11 Shumpert.

12 JAMES SHUMPERT,
13 being first duly sworn, was examined and testified
14 as follows:

15 THE CLERK: State your first and last
16 name, please.

17 MR. SHUMPERT: James Shumpert.

18 THE COURT: All right. Mr. Osborne,
19 he's your witness.

20 DIRECT EXAMINATION BY MR. OSBORNE:

21 Q. Okay. Lieutenant, where do you
22 currently work?

23 A. Orangeburg County Sheriff's Office.

24 Q. Back on September 14th of 2016, did you
25 work at the sheriff's office then?

1 A. Yes, sir.

2 Q. Okay. Did you have the occasion to
3 speak to the Defendant, Luther Smith?

4 A. Yes, sir.

5 Q. And was Luther Smith a suspect at that
6 time for having committed the murders?

7 A. No, sir.

8 Q. How did you go about meeting with
9 Luther at that time?

10 A. On that day, I was at my residence;
11 Lieutenant Journey contacted me. We was going to
12 look for another individual that probably had some
13 information in the case in the lower part of the
14 county which was, I think, Eutawville and Santee.
15 Me and Lieutenant Journey rode down there and we
16 couldn't find the individual that we were looking
17 for. So at that time, I told Lieutenant Journey
18 since we're already out, it was after hours, let's
19 go and speak with Mr. Smith since he may or may not
20 have some information on the individual that we
21 were looking for. So at that time, I arranged for
22 Mr. Smith to be transported from the detention
23 center back to my office which is CID.

24 Q. Okay. And I know we kind of jumped
25 right into this, but the individual that you were

1 looking to speak to originally would have been?

2 A. Derrick Coleman.

3 Q. Okay. And what affiliation, like why
4 would you go looking for Luther -- like why would
5 you start with Derrick and then go with Luther?

6 A. Because I had information that Derrick
7 and Luther were good friends and they used to hang
8 out together and all that other good stuff.

9 Q. Okay. And you said that he was in
10 custody at the time?

11 A. He was.

12 Q. Okay. How far is the detention center
13 from the sheriff's office?

14 A. About a mile. Less than a mile. Right
15 around the corner from my office.

16 Q. Okay. Did you speak to Luther once he
17 arrived at the sheriff's office, the CID office
18 prior to him entering the interview room?

19 A. Yes, I did.

20 Q. And what did you talk to him about?

21 A. I basically asked him did he knew the
22 whereabouts of Derrick Coleman and that's pretty
23 much what I recollect.

24 Q. Okay. Did you explain to him or did he
25 know that this was in reference to the Holly Hill

1 murders?

2 A. Yes.

3 Q. Did you explain that to him?

4 A. Yes, I did.

5 Q. And did he agree to talk to you?

6 A. He did.

7 Q. Based on that interaction, did it seem
8 to you like Luther might have some information that
9 could be useful to the investigation?

10 MS. ZMROCZEK: Objection, Your Honor.
11 Speculation.

12 THE COURT: Well, and I'll note your
13 objection. But I'm -- for purposes of this
14 hearing, I'm going to let you go with it. Okay.

15 Q. Did Luther say anything to you that
16 indicated that you might want to talk to him?

17 A. Correct. Yes, sir.

18 Q. And what did he say?

19 A. Basically, he was talking about, if I
20 assume correct --

21 MS. ZMROCZEK: I'm sorry. I need him
22 to speak up, Your Honor.

23 A. Basically, if my mind serve me
24 correctly, he was giving information about
25 Mr. Coleman and a conversation that he had with

1 Mr. Coleman.

2 Q. Okay. So outside the interview room he
3 was already telling you about a conversation that
4 he had had with Derrick Coleman?

5 A. Yes, sir.

6 Q. Okay. What did you do then?

7 A. At that point, I thought that after
8 listening to Mr. Smith, I decided to take him in
9 the interview room and record, video and audio, on
10 what he wanted to tell us.

11 Q. Okay. Did he know that you were
12 walking into an interview room that was audio and
13 video recorded?

14 A. Yes, he did.

15 Q. Did Luther ask anything from you prior
16 to you both entering the interview room?

17 A. He did.

18 Q. And what did he ask?

19 A. Asked me could I help him out with his
20 probation.

21 Q. Okay. And what did you tell him?

22 MS. ZMROCZEK: Your Honor, obviously,
23 we would object in front of the jury.

24 THE COURT: Right. Right.

25 MR. OSBORNE: And that's why I'm

1 flushing this out now. I don't mind not going down
2 this road.

3 THE COURT: No, but -- and Investigator
4 Shumpert, you understand there are a lot of this
5 that may not go in front of the jury?

6 A. Correct. Yes, sir.

7 THE COURT: Okay. Go ahead.

8 Q. Okay. All right. So no probation so
9 it doesn't matter you told him in reference to the
10 probation then. Okay. Once in the interview room,
11 did you advise him of his Miranda warnings?

12 A. No, I did not.

13 Q. And why not?

14 A. Because he wasn't a suspect in the
15 crime at that time.

16 Q. Okay.

17 A. We didn't suspect him to have any
18 involvement.

19 Q. Okay. But you were still talking to
20 him?

21 A. Correct. Yes, sir.

22 Q. Did you talk to a lot of people in this
23 case?

24 A. Yes, I talked to quite a few people.

25 Q. Was Luther free to go back to the

1 detention center and terminate the interview at
2 anytime if he was through talking to you and didn't
3 want to talk to you anymore?

4 A. Correct. Yes, sir.

5 Q. All right. How long was this first
6 interview with Luther on September 14th of 2016?

7 A. About -- I want to say about 40 minutes
8 or so.

9 Q. Okay. During the interview, did Luther
10 appear to be intoxicated or under the influence of
11 drugs?

12 A. No, he was not.

13 Q. Did Luther appear to have any physical
14 or mental disabilities that would have impaired his
15 ability to understand what was being said to him?

16 A. No, sir.

17 Q. All right. Prior to or during your
18 interview with Luther, did you offer him any
19 breaks, drink, bathroom, or otherwise?

20 A. Yes, sir.

21 Q. Okay. Was he denied food, drink,
22 breaks, or anything like that?

23 A. No, sir.

24 Q. All right. Were there any threats or
25 promises made in exchange for the statement?

1 A. I did tell him that -- about his
2 girlfriend. I told him I would try to help her get
3 out.

4 Q. During this statement?

5 A. Not this statement, but later on.

6 Q. But later on?

7 A. Correct.

8 MR. OSBORNE: Okay. And then, you
9 know, this is the way I'm going to phrase this,
10 Judge.

11 Q. All right. We're going to get into
12 what Luther told you; however, when I'm asking you
13 questions about what Luther said, I want you to
14 respond by saying what Luther said his involvement
15 was, okay?

16 A. Yes, sir.

17 Q. Do not want you to say what he said
18 anyone else may or may not have done.

19 A. Correct.

20 Q. Just Luther.

21 A. Yes, sir.

22 Q. Did Luther Smith tell you where he was
23 on the night of the murders?

24 A. Yes.

25 Q. And where did he say he was?

1 A. He was at his brother house on Galliard
2 Street.

3 Q. Okay. I'll get into the rest of these
4 in a minute.

5 MR. OSBORNE: Your Honor, at this time,
6 I'm going to play State's 339. And these are the
7 clips that I provided to the Defense. This is just
8 the clips that we will be seeking to introduce in
9 this case.

10 THE COURT: Okay.

11 MS. ZMROCZEK: And, Your Honor, I have
12 no objection to the clips, but I will be insisting
13 that the entire recording be put in. And
14 subtracting any, obviously, you know, 403's, those
15 kind of things.

16 THE COURT: Okay.

17 (Playing the video)

18 Q. All right. Who was really that thick
19 or wearing vests?

20 A. Excuse me.

21 Q. Who was in that interview room with
22 you?

23 A. Lieutenant Journey.

24 Q. Okay. All right. So, did Luther Smith
25 after this tell you where he was on the night of

1 the murders?

2 A. Yes, he did.

3 Q. And where did he say he was?

4 A. His brother's house -- at his brother
5 home, Mark Windham.

6 Q. [REDACTED] Galliard?

7 A. Galliard Street, correct.

8 Q. On the night of the murders, did Luther
9 Smith say he heard talk or conversation about a
10 plan to commit a robbery that night?

11 A. Yes, he did.

12 Q. And what was the target of the robbery?

13 A. A motorcycle that supposedly had dope
14 in the tires.

15 Q. And where was this motorcycle that
16 supposedly had cocaine in the tires located?

17 A. At Krystal Hutto's house.

18 Q. In this first interview, did Luther
19 Smith say that he ever went to Krystal Hutto's
20 house in Holly Hill on the night of the murders?

21 A. No.

22 Q. Where did he say he was?

23 A. He said he was at his brother's house.

24 Q. In the trailer?

25 A. In the trailer; correct.

1 Q. All night?

2 A. All night.

3 Q. All right. After hearing discussion
4 about committing a robbery, what did Luther do?

5 A. He said he went to sleep.

6 Q. Okay. Did he sleep throughout the
7 night or was he awoken at some point in the night?

8 A. As my memory serves me, he said he was
9 awoken about 3:30, 4 o'clock in the morning.

10 Q. All right. Being woke up, was there
11 something in the trailer -- that was now in the
12 trailer that wasn't in the trailer when Luther went
13 to sleep?

14 A. Yes.

15 Q. And what was that?

16 A. Located on the table a pile of cocaine.

17 Q. On the morning after the murders, was
18 Luther Smith aware of a phone call that Derrick
19 Coleman received from the sheriff's department?

20 A. Yes, sir.

21 Q. And what was Luther's understanding of
22 this phone call?

23 MS. ZMROCZEK: Objection, Your Honor.

24 THE COURT: Okay. Go ahead, you can
25 answer it.

1 Q. Go ahead.

2 A. I'm sorry.

3 THE COURT: You can answer the
4 question.

5 A. I forgot the question.

6 Q. On the morning after the murders, was
7 Luther Smith aware of a phone call to Derrick
8 Coleman received from the sheriff's department?

9 A. Correct. Yes, sir.

10 Q. Okay. What was the nature of the call?

11 A. We wanted to speak with Derrick and ask
12 him to come in.

13 Q. Okay. And this would have been on the
14 morning of the murders, like I said, the next day?

15 A. Correct.

16 Q. What did Luther Smith say Derrick
17 Coleman's reaction was when he received that call
18 from law enforcement?

19 A. He became agitated and started crying.

20 Q. Did Derrick Coleman meet with the
21 investigators?

22 A. As far as I know, yes, sir.

23 Q. Okay. And did Luther Smith say whether
24 or not he accompanied Derrick when Derrick went to
25 go meet with the sheriff's department?

1 A. He did. He came with him. Yeah, I saw
2 him sitting in the lobby.

3 Q. Okay. Okay. How did your meeting on
4 September 14th of 2016 end with Luther Smith?

5 A. We -- well, actually, he was joking and
6 I was laughing at what he told me.

7 Q. What did he tell you?

8 A. We was talking about hunting and he was
9 talking about if it's brownies down, if it flies it
10 dies. Something to the effect.

11 Q. Okay.

12 MR. OSBORNE: No further questions.

13 THE COURT: All right. Ms. Zmroczek?

14 MS. ZMROCZEK: Thank you.

15 CROSS EXAMINATION BY MS. ZMROCZEK:

16 Q. Lieutenant Shumpert, you said that when
17 you met with Mr. Smith that day that he was already
18 in the detention center?

19 A. Yes, ma'am.

20 Q. He had been arrested previously to
21 that?

22 A. I'm sorry. Say it again, I didn't hear
23 you.

24 Q. He had been arrested previously to
25 that; correct?

1 A. Previously to when I spoken with him?

2 Q. Right.

3 A. Correct. He was arrested. Correct.

4 Q. And he was screened at his bond hearing
5 and got a public defender?

6 A. I don't know nothing about that.

7 Q. So you didn't inquire as to whether or
8 not he had a lawyer before you spoke with him?

9 A. No, I did not.

10 Q. You had never asked him once?

11 A. No.

12 Q. Okay. And you said that you also did
13 not read him any Miranda?

14 A. No, I did not.

15 Q. So you didn't even let him know that
16 anything he said could and would be used against
17 him?

18 A. No, I did not.

19 Q. Okay. Did you ever ask him if he
20 wanted to consult a lawyer before he talked to you?

21 A. No, I did not.

22 Q. What time of the day was this?

23 A. It was night.

24 Q. It was nighttime?

25 A. Correct. Yes, ma'am.

1 Q. Do you remember what time?

2 A. No, ma'am. I believe when Lieutenant
3 Journey came to my house and we rode down country,
4 what you call the Eutawville area, we spent a
5 substantial time looking for Mr. Coleman. All I
6 remember is when we got back up here in the
7 Orangeburg area it was dark. Could have been 10,
8 11, I can't remember the time.

9 Q. Okay. And how long had Mr. Smith been
10 awake that day?

11 A. I have no earthly idea.

12 Q. How far did he go in school?

13 A. I have no earthly idea.

14 Q. Were you aware that he had medical
15 problems with his blood pressure?

16 A. No, ma'am.

17 Q. Okay. You said that y'all were out
18 looking for Mr. Coleman and then you just decided
19 to swing by the jail and pull Joe out to talk to
20 him; right?

21 A. It was just like I said, once me and
22 Lieutenant Journey was riding down country, he told
23 me about the earlier conversation with Mr. Luther.
24 And then once we couldn't find --

25 Q. You mean early in the conversation in

1 March?

2 A. When him and Boyne made contact, I
3 wasn't involved in that. So we went down looking
4 for Derrick Coleman. And once I -- after we had
5 that conversation, I said since we're already out,
6 let's go and talk to Mr. Smith and let's see what
7 more information he can give us.

8 Q. And there was conversation outside the
9 room, but the recording recorded the whole entire
10 conversation that y'all had within the cameras;
11 right?

12 A. I'm not sure. You saying was it
13 outside the room there was no recording --

14 Q. You said this conversation was about 40
15 minutes and all of that's in the tape?

16 A. In the room, yes, that was recorded.
17 Correct. Yes.

18 MS. ZMROCZEK: Your Honor, those are
19 all the questions I have regarding this statement.

20 THE COURT: Okay. Anything on
21 redirect?

22 MR. OSBORNE: No, Your Honor.

23 THE COURT: Okay. And you're proposing
24 to put in the two minute clip?

25 MR. OSBORNE: I'm proposing to put in

1 that clip and that was a free preview to what I
2 intend to ask him during trial.

3 THE COURT: Right. And Ms. Zmroczek
4 said you want to look at the thing, but you might
5 want to put the whole --

6 MS. ZMROCZEK: I want to put the whole
7 thing in. Obviously, we would redact the
8 unnecessary parts. So here's my issue with these
9 voluntariness of these statements, Your Honor. So
10 when we're doing them like step by step by step by
11 step, I'm going to have a bigger argument at the
12 end to show -- to also address.

13 THE COURT: Okay.

14 MS. ZMROCZEK: But I do have obviously
15 an issue that I can raise right now if you want to
16 just consider. And, Your Honor, that deals
17 specifically with two things. One, Mr. Smith had
18 been arrested and provided a public defender for
19 his charges. So he had a lawyer. They didn't even
20 ask about that. They didn't even ask is it okay
21 with his lawyer. They didn't ask him if it was
22 okay with him. Or did -- he has talked with his
23 lawyer.

24 And then, Your Honor, most importantly,
25 they didn't read him his Miranda warnings. They're

1 now relying on these statements to use against him
2 because obviously he says one thing and then
3 they're going to use that against him later when he
4 changes his story. And he wasn't made aware that
5 anything he said at that time would be used against
6 him. So, Your Honor, for those reasons, we ask
7 that this statement in particular be left out of
8 the trial.

9 THE COURT: Okay. Now, right now the
10 only thing that we're talking about is the
11 September 14, 2016 statement or interview, I guess
12 the 40 minute interview?

13 MS. ZMROCZEK: Correct.

14 THE COURT: Okay. Now, as far as I can
15 tell, he made no statements about the murder at
16 all. I mean --

17 MS. ZMROCZEK: He does.

18 THE COURT: During the 40 minutes?

19 MS. ZMROCZEK: Yes. Within that 40
20 minutes he makes lots of statements, yes. About
21 who he was -- about who he saw that day. He asked
22 about -- they talked about Derrick and what
23 Derrick's reaction was when the police came looking
24 for him that day.

25 THE COURT: Okay. I'm sorry.

1 MS. ZMROCZEK: They talk about Jackie
2 Man, Mr. Scott, who is another codefendant in the
3 case.

4 THE COURT: Okay. All right. But
5 right now he was not a suspect in this case?

6 MS. ZMROCZEK: That's what they're
7 saying. But he did have a lawyer.

8 THE COURT: I know, he did have a
9 lawyer and his lawyer was representing him on
10 something else?

11 MS. ZMROCZEK: Right.

12 THE COURT: Okay. Okay. You don't
13 happen to know who the PD was at that time do you?
14 If nobody knows that's okay. I was just curious.

15 MS. ZMROCZEK: And, Your Honor, so
16 since I haven't had an opportunity to ask these
17 very specific questions with my client, before I
18 put him on for that part of the hearing, I would
19 like to be able to talk to him so maybe we can do
20 him after lunch.

21 THE COURT: Well, right now according
22 to the clock on the wall, it's 12:30. Okay. I
23 myself don't like to miss meals, you know. And so
24 --

25 MS. ZMROCZEK: You can clearly tell I

1 don't.

2 THE COURT: All right. So I want to
3 take a break for lunch. And, of course, at this
4 time, I don't see any reason to not have this two
5 minute clip in. Okay.

6 MR. LEIENDECKER: One, I believe at
7 that time related to the drug arrests that
8 Ms. Hinds was the appointed attorney.

9 THE COURT: Okay.

10 MR. LEIENDECKER: I know that
11 ultimately --

12 MS. ZMROCZEK: Your Honor, he says it
13 was Minh Wynman.

14 MR. LEIENDECKER: Minh Wynman was
15 appointed when he was charged and arrested for
16 this. So she may have been from the beginning.
17 But, ultimately, that's why the office had to get
18 off because of all of the overlapping relations
19 with other witnesses.

20 As to this two minute clip, as we're
21 going to deal with all of them ultimately, there's
22 reference in there to other individuals that he
23 went to a meeting with or talked about and they
24 said we're going to get back and talk about that.

25 Anytime that there's any suggestion,

1 comment, or innuendo that other people are involved
2 in this crime and three of us are sitting at the
3 defense table, I think that violates *Bruton*.

4 THE COURT: Okay. All right. And I
5 don't remember that in the conversation there.

6 MR. LEIENDECKER: I made a note.
7 Because the detective himself said it.

8 THE COURT: Okay. And that's a concern
9 for the Court as well.

10 MR. LEIENDECKER: Thank you.

11 THE COURT: All right. So we're going
12 to take a break for lunch. Y'all want to be back,
13 you want to say 2 or earlier than 2?

14 MR. LEIENDECKER: Sure.

15 MS. ZMROCZEK: Yes.

16 THE COURT: So we'll be back at 2
17 o'clock, would that give you an opportunity to talk
18 to Mr. Smith?

19 MS. ZMROCZEK: It will. Thank you.

20 THE COURT: All right. Thank you.

21 (Lunch break)

22 THE COURT: Is the State ready?

23 MR. OSBORNE: We are, Your Honor.

24 THE COURT: Did we leave -- we have
25 done number 5 on your list that was the September

1 14, 2016?

2 MR. OSBORNE: We had finished September
3 14th. I'm not sure if Ms. Zmroczek was going to
4 call Mr. Smith to testify.

5 MS. ZMROCZEK: So, Your Honor -- right.
6 So I guess my question is, do you want -- I need to
7 call Mr. Smith as a witness. But it seems to me
8 that it would be best to just call him after all
9 the officers have testified.

10 THE COURT: Okay.

11 MS. ZMROCZEK: You see what I'm saying.
12 Thank you.

13 MR. OSBORNE: My only suggestion on
14 that is, there may come a time, which I'm not
15 conceding there's going to come a time, because
16 there may come a time where you, Your Honor, rules
17 and says, okay, I don't like that interview, that's
18 out. And if that were to happen, then it seems to
19 me like, so we're all on the same page, we just
20 deal with them one at a time. And then once we're
21 finished with the 14th, we move into the 15th. I
22 don't anticipate it's going to be that long because
23 each interview is separate.

24 THE COURT: In other words, you just
25 want him to come and testify about this one?

1 MR. OSBORNE: That's right. If this is
2 voluntary and this is it then we can move on.

3 THE COURT: Okay. All right. And do
4 you want to call Mr. Smith?

5 MR. OSBORNE: We're still on the 14th,
6 yes, sir.

7 THE COURT: Oh, yes, sir, Mr. Johnson.

8 MR. JOHNSON: I don't want to make it
9 more complicated, Judge. I just had pretrial
10 motions and he said -- seemed like you were going
11 along and ruling on *Denno* with each statement. But
12 then you talked to Mr. Leiendecker about other --

13 THE COURT: Mr. Leiendecker just made
14 mention that the comment on one of those about
15 other people would be a *Bruno* issue -- *Bruton*
16 issue, excuse me.

17 MS. ZMROCZEK: And a *Bruno* issue.

18 THE COURT: Yeah.

19 MR. LEIENDECKER: If we don't get the
20 *Bruton*, we're going to bring *Bruno*.

21 THE COURT: Yeah, that's true. That's
22 true.

23 MR. JOHNSON: I guess my point was -- I
24 guess before lunch you said something about, well,
25 that clip, that seems admissible. And then I

1 thought, well, I've got -- just to address my
2 pretrial motions, I've got one specifically I'm
3 trying to suppress all codefendants' statements
4 based on the relevance and the *Lyle* and the other
5 issues. And so --

6 THE COURT: The only thing I'm ruling
7 on is voluntariness when I'm going through these.
8 He happened to mention that. I said that I could
9 see that that would be a problem. But the only
10 thing I'm ruling on as we go through this is
11 whether these statements are voluntary or not.
12 That's it.

13 MR. JOHNSON: Thank you, Judge.

14 THE COURT: I'm not -- if you come back
15 and say you got some other reason to get it -- to
16 object to it, then we'll deal with that when we get
17 it to. But I was just going through these first of
18 all just are they voluntary or not. Okay.

19 MR. JOHNSON: Yes, sir. I just wanted
20 to address that before we get to trial.

21 THE COURT: I'm just doing baby steps.
22 I'm not jumping up on the porch.

23 MR. LEIENDECKER: We're just looking at
24 *Denno* right now, the *Denno* issues.

25 THE COURT: Right. And so -- I mean,

1 if we got issues about voluntariness that's why I'm
2 taking the testimony. Once we are through with
3 that, we'll go through whatever other issues, we
4 have *Bruton*, Severance issues, all the good stuff.
5 Okay. Denied. Denied. Denied. (Laughter).

6 All right. So, Ms. Zmroczek, are you
7 going to call him for the two minute clip or do you
8 want to --

9 MS. ZMROCZEK: Well, so -- and here's
10 the thing, Judge, it's not just a two minute clip.
11 It's a 40 minute clip.

12 THE COURT: No, I understand that.

13 MS. ZMROCZEK: Yeah. So -- yeah, it's
14 a 40 minute clip and not a two minute clip. And if
15 you would like to see them all, obviously, I have
16 thumb drives that I brought with me so that we
17 could make sure that you get them. The ones that
18 we would give you to rule on the voluntariness are
19 going to be unredacted; right, and not *Bruton*
20 cleaned and all of that --

21 THE COURT: Right. We're going to have
22 to go through -- I realize we'll have to go through
23 them and deal with *Bruton* issues and like that.
24 And then I'm just -- I know we're going to have
25 Severance arguments.

1 MS. ZMROCZEK: Yes.

2 THE COURT: Okay.

3 MS. ZMROCZEK: Okay. I call Mr. Smith.

4 LUTHER SMITH,

5 being first duly sworn, was examined and testified
6 as follows:

7 THE COURT: And, Mr. Smith, can you get
8 up there okay? All right.

9 THE CLERK: Please state your first and
10 last name.

11 THE COURT: Let me see if he can get
12 the mic put up closer to him, okay. And,
13 Mr. Smith, do you mind saying your full name for
14 me?

15 MR. SMITH: Luther Joseph Smith.

16 THE COURT: Okay. And I understand
17 from your attorney that you go by Joe?

18 MR. SMITH: Yes, sir.

19 THE COURT: Okay. All right.

20 DIRECT EXAMINATION BY MS. ZMROCZEK:

21 Q. Joe, I'm just going to have a few
22 questions for you. First of all, tell the Court
23 how old you are?

24 A. I'm 40 years old.

25 Q. Forty. Okay. How far did you go in

1 school?

2 A. Eleventh grade.

3 Q. Okay. Were you in any special classes
4 in school?

5 A. No.

6 Q. Okay. Did you work -- did you ever get
7 your GED?

8 A. Yeah.

9 Q. You got your GED?

10 A. (Nodded)

11 Q. And did you work during in 2015?

12 A. Yeah.

13 Q. Okay. What kind of work?

14 A. I was a commercial fishing on a lake in
15 Santee.

16 Q. A what?

17 A. Commercial fishing on a lake in Santee.

18 Q. Okay. And I want to kind of skip
19 ahead. So we're talking about the September 14,
20 2016 statement, okay. But you spoke to the
21 officers before September 14, 2016; is that
22 correct?

23 A. Yes, ma'am.

24 Q. And so what's the first time that you
25 spoke with the officers?

1 A. When Derrick -- they called Derrick
2 Coleman to come to the office.

3 Q. Okay. And that was on July 15th?

4 A. Yes, ma'am.

5 Q. Of 2015?

6 A. Yes, ma'am.

7 Q. Okay. And so at that time, did you
8 speak with officers?

9 A. Yes, ma'am.

10 Q. Did they ask you questions about this?

11 A. A few.

12 Q. A few. Did they read you any Miranda
13 warnings?

14 A. No, ma'am.

15 Q. Okay. And then they let you go home on
16 the 15th?

17 A. Yes, ma'am.

18 Q. With Derrick?

19 A. Yes, ma'am.

20 Q. And then what happened that night?

21 A. We got arrested.

22 Q. We who?

23 A. Me and Derrick.

24 Q. Okay. You and Derrick got arrested on
25 the 15th or the 16th of 2015?

1 A. That night.

2 Q. That night. And what were y'all
3 arrested for?

4 A. Possession of methamphetamines.

5 Q. Okay. And what happened as a result of
6 that arrest?

7 A. These other officers got Judge Gillens
8 to give me a PR bond.

9 Q. Which officer?

10 A. I think it was Shumpert.

11 Q. Shumpert. Got Judge Gillens to give
12 you a PR bond?

13 A. Yep.

14 Q. And had you seen the officers -- so
15 after that, the next time -- do you recall the next
16 time you saw the officers?

17 A. They came to my house. I'm not sure.

18 Q. How many times did they come to your
19 house?

20 A. Quite a few times.

21 Q. Quite a few times. And then in March
22 when Amanda got arrested --

23 A. Yeah.

24 Q. -- do you recall talking to the police
25 that day?

1 A. Yeah.

2 Q. Okay. And then they let you go home
3 again?

4 A. I was at my house already.

5 Q. Okay. Oh, you were at your house when
6 you talked to them that day?

7 A. Yeah.

8 Q. You never went downtown?

9 A. I don't think it was that day.

10 Q. Okay. And then I went to jump forward
11 to September. Okay.

12 A. All right.

13 Q. And so in September -- now you were in
14 jail already in September when you were -- when
15 they came to talk to you; right?

16 A. They arrested me.

17 Q. Okay. And they arrested you for?

18 A. Culpepper arrested me.

19 Q. What did Culpepper arrest you for?

20 A. For possession of methamphetamines.

21 Q. Okay. And you have an attorney?

22 A. Yeah.

23 Q. Do you remember who it was?

24 A. Minh Wynman.

25 Q. Minh Wynman. She was with the public

1 defender's office?

2 A. Yes, ma'am.

3 Q. Okay. And then when the police came to
4 talk to you the night of September 14th, do you
5 recall what time it was?

6 A. Sometime about 9 or 10 o'clock.

7 Q. Okay. It was later in the evening?

8 A. Yeah, because I rode from Santee to the
9 police department to the jobs and then I went in
10 for a little while and then they called me back
11 out. I think it was like 9 or 10, something like
12 that.

13 Q. Okay. And did they ask you if you had
14 an attorney?

15 A. No.

16 Q. Did they ask you if you wanted to talk
17 to them?

18 A. No -- well, yeah. If I wanted to talk
19 to the police?

20 Q. Right.

21 A. Yeah.

22 Q. Did they read you your Miranda
23 warnings?

24 A. No, ma'am.

25 Q. Okay. What was your understanding of

1 -- what was your understanding of what information
2 they wanted from you?

3 A. They just wanted to know about the
4 crime and...

5 Q. Did you have any firsthand knowledge?

6 A. Not at the moment. I mean --

7 Q. Let me ask the question this way.

8 Firsthand knowledge means were you there when the
9 crime was committed?

10 A. No.

11 Q. Okay. So anything that you knew about
12 the crime, how did you learn about it?

13 A. On the street. Pretty much the street.

14 Q. From the street or from other people?

15 A. Yeah.

16 Q. Okay. Did you know that when you gave
17 that statement on the 14th that they would later
18 come back in different interviews and ask you --
19 and rely on what you said?

20 A. No. I thought it was over with.

21 Q. Okay. Please answer any questions the
22 State may have.

23 THE COURT: Mr. Osborne, any questions
24 of this witness?

25 MR. OSBORNE: Just a couple.

1 CROSS EXAMINATION BY MR. OSBORNE:

2 Q. All right. Good afternoon, Luther.

3 A. Good afternoon.

4 Q. When Ms. Zmroczek asked on July 15th of
5 2015 you were questioned by the sheriff's office at
6 Holly Hill --

7 A. Holly Hill?

8 Q. I'm sorry. About Holly Hill, what
9 questions did they ask you?

10 A. They just asked me if I knew anything
11 about it. If I heard anything about it. Just -- I
12 mean, they wasn't pressuring me about it or
13 nothing. They just asked me simple questions.

14 Q. Okay. And what did you tell them?

15 A. I told them I didn't know nothing.

16 Q. Do you know who questioned you that
17 day?

18 A. Journey and Boyne, I think.

19 Q. Boyne?

20 A. Yeah, I think that's who it was.

21 Q. How long with were you there?

22 A. Thirty -- between 30 and 45 minutes,
23 something like that.

24 Q. Was Derrick with you? Were y'all both
25 in the same room?

1 A. I drove Derrick up there.

2 Q. Okay. So y'all were together when
3 y'all were being questioned?

4 A. Yeah, in the interrogation room at the
5 same time.

6 Q. So you could hear what Derrick was
7 saying?

8 A. Yes, sir.

9 Q. What did Derrick say?

10 A. He said he didn't know anything.

11 Q. Okay. You said you drove him up there?

12 A. Yes, sir.

13 Q. You drove him back home?

14 A. Yes, sir. We never went back home. We
15 went and got locked up.

16 Q. Okay. Is that -- that's when you got
17 locked up for the meth that was on the way there?

18 A. Yes, sir.

19 Q. That was a traffic stop and everything?

20 A. Yes, sir.

21 Q. Okay. So y'all had meth in the car?

22 A. No, we had some in a pipe. The bag was
23 empty.

24 Q. Okay. All right. And you believe that
25 someone got you a PR bond on that possession of

1 meth?

2 A. Yes, sir.

3 Q. Okay. You think it was Shumpert?

4 A. Yes, sir.

5 Q. But you didn't talk to Shumpert --

6 A. I didn't ask him about it.

7 Q. No. No. No. I mean, on the 15th --

8 of July 15th when you were questioned it was Boyne

9 and Culpepper -- or Journey?

10 A. Yeah, I'm pretty sure.

11 Q. Okay.

12 A. It might have been Culpepper, I'm ain't

13 sure. It was a long time ago, man.

14 Q. Okay. You said they had come to your

15 house a few times -- a few different times?

16 A. Yeah.

17 Q. And I believe Ms. Zmroczek said in

18 March, so that would have been of 2016, I guess?

19 A. Yeah.

20 Q. Okay. Do you remember who you spoke to

21 then?

22 A. It was four of them come there.

23 Culpepper, Shumpert, Journey, and Boyne. There was

24 another heavysset officer, I don't know his name.

25 So it was five of them.

1 Q. Black guy? White guy?

2 A. Black guy.

3 Q. Okay. Do you remember what they asked
4 you on that day?

5 A. They just asked me the same questions
6 if I knew anything about it or heard anything on
7 the street about it.

8 Q. Okay. And you told them no?

9 A. Yeah.

10 Q. Okay. Now, you were arrested for
11 possession of meth in September of 2016, I think
12 that's the next thing that --

13 A. That's it. That's when I got -- I been
14 in jail since then.

15 Q. Right. And then on the 14th you were
16 interviewed and that's the interview that we all
17 saw here with --

18 A. I guess that's the one.

19 Q. Okay. And that was with Shumpert? And
20 so he told you he was questioning you about Holly
21 Hill?

22 A. Yeah.

23 Q. Okay. And during that interview, I
24 mean, you did tell him; right, that you were at [REDACTED]
25 Galliard at Mark Windham's trailer on the night of

1 the murders?

2 A. Yes, sir.

3 Q. And you did tell him that you heard
4 talk about a robbery?

5 A. Yes, sir.

6 Q. And you did tell him that the target of
7 the robbery was cocaine in tires?

8 A. Yes, sir.

9 Q. And you did tell him that that cocaine
10 which was in the tires was at Krystal Hutto's
11 house?

12 A. Yes, sir.

13 Q. But you never went?

14 A. I never went.

15 Q. You fell asleep?

16 A. Yeah, I was sleeping.

17 Q. And then you woke up about 3 or 4
18 o'clock in the morning there was a pile of cocaine
19 on the table?

20 A. Yeah.

21 Q. And then you also told him that --
22 well, I mean, is it fair to say this first
23 interview on September 14th there was a lot of
24 joking going on?

25 A. Yeah, a lot.

1 Q. Okay. He didn't threaten you, force
2 you, anything on that September 14th?

3 A. No.

4 Q. Okay. You weren't intoxicated?

5 A. Yeah.

6 Q. On the 14th?

7 A. I was intoxicated every day.

8 Q. You would have been in jail that day?

9 A. That don't matter. 14th I was drunk.
10 Or the day they locked me up I was drunk and high.
11 I was always intoxicated.

12 Q. All right.

13 MR. OSBORNE: No further questions.

14 MS. ZMROCZEK: I have nothing further,
15 Judge.

16 THE COURT: All right. You can step
17 back down. You're probably going to be back again,
18 Mr. Smith. Be careful stepping down, okay. All
19 right.

20 MS. ZMROCZEK: So, Your Honor, the
21 reason I would move to suppress the 2014 statement
22 are like I argued before. The fact that he had an
23 attorney, he wasn't ever asked about the attorney,
24 that he made a statement that they are going to
25 rely upon to use against him to either -- to either

1 discount his statements later on or perhaps if he
2 says at trial that he was not given any warnings
3 that what he said could and would be used against
4 him.

5 Additionally, Your Honor, he was -- he
6 was under arrest. He -- the interrogation went on
7 about 40 minutes and it was late in the evening.
8 And although most of it was recorded, Your Honor,
9 Mr. Smith testified today and as well as in that
10 statement that anything that he learned about what
11 had happened at the site came from other people
12 because he had no firsthand knowledge.

13 THE COURT: But that's what he says
14 during the interview; right?

15 MS. ZMROCZEK: Right.

16 THE COURT: Okay. But he also just
17 testified that he was -- did not feel threatened or
18 forced or anything like that, so. I'm going to
19 find that this segment is voluntary. But I'm going
20 to note your objection to my ruling. Okay.

21 MS. ZMROCZEK: Thank you.

22 THE COURT: Thank you, ma'am.

23 MR. OSBORNE: And, Your Honor, if you
24 want to address the second part now that we're here
25 on this clip. Ms. Zmroczek has indicated that

1 she's going to try or she would like the whole
2 interview played under Rule of Completeness. You
3 know, I hear this a lot with the ruling, I know you
4 know, Your Honor, I mean, that's not really what
5 the case law and the rule says. But the Rule of
6 Completeness case law *State v. Taylor*, 333 S.C. 159
7 says, only that portion of the remainder of a
8 statement which explains or clarifies the
9 previously admitted portion should be introduced.

10 And Luther's statement what we are
11 introducing was very clear. You know, he was at
12 home at [REDACTED] Galliard on the night of the murders.
13 He heard talk about a robbery. There was cocaine
14 in the tires. It was at Krystal Hutto's house.
15 Never went to Krystal Hutto's. Feel asleep. Woke
16 up about 3 or 4. Pile of cocaine on the table.
17 Sheriff's office wanted to talk to Derrick.
18 Derrick started crying. Luther went with him.

19 And that's -- there -- I don't believe
20 there's anything else in that interview over that
21 40 minutes that needs to be introduced to explain
22 that. That's literally all he had to say.

23 THE COURT: Okay. I appreciate that.
24 Ms. Zmroczek?

25 MS. ZMROCZEK: Thank you. And, Your

1 Honor, obviously, I'll pull the other case law for
2 the rule completeness. But it not only goes to
3 show about that statement, but the overall tone of
4 the -- of the interrogation as it were, Your Honor.
5 And what you'll learn and what you'll see is that
6 there were consistently two or three officers
7 feeding Mr. Smith information as they did during
8 this 40 minutes.

9 They -- Shumpert -- one of Shumpert's
10 favorite lines throughout these interrogations is
11 no, no, let me tell you. Or you're wrong. And so,
12 Your Honor, I think the jury needs to be able to
13 see that when they are determining the
14 voluntariness of a statement. I know the Court
15 gets to determine it, but the jury certainly gets
16 to do it and they have to do it within the totality
17 of the circumstances. And every time he goes to
18 say something that Shumpert disagrees with, no, no,
19 you're wrong. Hold up. Think. You know, and the
20 jury needs to see that. Not just read it on
21 transcript. They need to see Shumpert's
22 interactions consistently with Mr. Smith and how we
23 got to all these statements.

24 THE COURT: Okay. All right. Well, I
25 tend to agree with Ms. Zmroczek. I want -- if she

1 wants to show the entire thing so the jury can get
2 a feel for it, I'm fine with that. I'll note your
3 objection to me doing that.

4 MR. OSBORNE: That's where the rubber
5 meets the road. Because when you show the whole
6 thing, you implicate *Bruton*.

7 THE COURT: I'm sorry. What?

8 MR. OSBORNE: When you show the whole
9 video, you implicate *Bruton*.

10 THE COURT: Well -- but now, when she
11 was mentioning that before and we'd have to go
12 through and edit it.

13 MR. OSBORNE: It can't be done.

14 THE COURT: Oh, it can't be done.

15 MR. LEIENDECKER: It can't be done.

16 No, this is why --

17 MS. ZMROCZEK: That's why the Severance
18 motion --

19 MR. LEIENDECKER: From the beginning
20 when we filed the motion and I gave you all the
21 citations. It's not just going to be this clip,
22 there are multiple other clips.

23 MR. OSBORNE: And, Your Honor, Ms.
24 Zmroczek --

25 THE COURT: Wait a minute. Wait a

1 minute.

2 MR. OSBORNE: I wasn't finished.

3 THE COURT: Okay. I'm sorry. Mr.
4 Leiendecker jumped up.

5 MR. LEIENDECKER: It can't be
6 *Bruton*-ized and that's why the original prosecutor
7 in this case said he just wasn't going to use them.

8 THE COURT: Okay. So -- okay.

9 MR. OSBORNE: So this is --

10 MR. LEIENDECKER: But it can be solved
11 by Severance.

12 THE COURT: Okay. He was going to tell
13 me how it could be solved. I always want to hear
14 how it's going to be solved. Mr. Leiendecker,
15 please, you have the floor.

16 MR. LEIENDECKER: These are nonissues
17 when the defendants are severed from each other.
18 Because Mr. Smith's attorney has the opportunity
19 then to show all of the leading and suggestive
20 techniques that were used to get her client to an
21 ultimate false confession, I assume is where
22 they're headed.

23 THE COURT: Well, I can just modify my
24 ruling and avoid that.

25 MR. LEIENDECKER: You can just grant

1 the Severance and avoid that, yes, sir.

2 THE COURT: No. No. No. No. That's
3 not what I was talking about. Okay. So that's why
4 Mr. Osborne was feeding me that other stuff so I
5 could try and avoid this; right?

6 MR. OSBORNE: Well, what I was thinking
7 was, if that's where we're going, let's just deal
8 with it now, you know. And, Judge, if I may just
9 add my two cents into this.

10 THE COURT: Please. Go for a nickle.

11 MR. OSBORNE: Ms. Zmroczek is creating
12 her on constitutional crisis here. She can cross
13 examine Lieutenant Shumpert the way she wants to do
14 it. But what she can't do is use that as an excuse
15 to implicate *Bruton*. Everything that she just
16 mentioned she can 100 percent do. You suggested,
17 Lieutenant Shumpert, did you not, that there was
18 talk about a robbery being committed that night.

19 Everything that we are -- everything
20 that we seek to introduce, she can certainly cross
21 examine Shumpert on that. She can also cross
22 examine Shumpert on anything innocent. You
23 promised that you would do this. You promised that
24 you would do that. Any threats. Any
25 misrepresentation. She can do all of that. But

1 what she -- and if she wants to, she can also say,
2 you suggested that Jackie Man was there. You
3 suggested that Pocket was there. What you don't
4 get to do then is then say that he agreed with it.
5 Because that's hearsay. Because we're not
6 introducing that statement.

7 If she wants to cross examine him on
8 it, that's fine, she can do that. But what she
9 doesn't then get to do is then play his portion of
10 the statement where he implicated them.

11 MS. ZMROCZEK: But the reason that I
12 need to do -- to play his portion of the statement
13 is because what -- cross examining all day long
14 doesn't -- there's a reason that we video and audio
15 record statements because you can see the tone, you
16 can see the body language. You -- especially when
17 we get to the next statement you can see Shumpert
18 taking bloody pictures and shoving them in his
19 face. And this is all happening day after day.
20 This 14th, 15th, 20th. And, so, Your Honor, it's a
21 pattern and I'm not trying to create a
22 constitutional crisis; however, I am trying to
23 avoid one and that is one of due process where I
24 can constitutionally and fully defend my client's
25 -- and protect his rights.

1 Because when you -- when -- there's a
2 reason that they only want to introduce tiny little
3 clips because the behavior, I wouldn't even need to
4 have my expert down here. I'm going to if these
5 are let in. But I think the jury -- I don't think,
6 I know that that's something when the jury you give
7 the charge on voluntariness of statements and those
8 are all things that they have to consider.

9 So me just cross examining when they
10 can actually see what happened, I think is
11 certainly a viable constitutional stance and not a
12 crisis. It only becomes a crisis if I can't do it.

13 THE COURT: Explain something to me.
14 How can we have a two minute clip and not be able
15 to edit the entire thing in some manner?

16 MR. OSBORNE: I mean, we can -- I guess
17 the question becomes, how long do you want it to
18 be? Because let's say that it's 40 minutes and we
19 make it 30. Well, where's the other 10? If it's
20 20, then, you know, that becomes the issue. So --
21 and then what Ms. Zmroczek is saying, she can't
22 effectively cross examine without playing the clip.
23 That's hearsay. She doesn't get to play that. So
24 she doesn't get to play that, but she can cross
25 examine him.

1 And I would say this, if Lieutenant
2 Shumpert denies saying any of that, then she
3 absolutely gets to play it then. But what she
4 doesn't get to do is then play her own client's
5 statements for the simple purpose and the only
6 purpose to implicate *Bruton/Severance*. Because if
7 you end up ruling that way, the only thing I would
8 say is this. If you end up ruling that way, then
9 basically you can never introduce a redacted
10 statement in a codefendant trial. Because there
11 will never be a defense attorney who will get up
12 here and say it was all cool. They didn't
13 interrogate. They didn't coerce him. They didn't
14 do anything wrong. It was all good. Play it.

15 They're always going to attack the
16 coerciveness of the interrogation. So therefore
17 you can -- and then they're going to want the whole
18 interviewed played. And so you can truly never
19 have a trial under those scenarios.

20 The Rule of Completeness, she can
21 attacked each one of these statements. But you
22 don't have to play the whole thing to get the
23 context of these statements.

24 THE COURT: Thank you, Mr. Osborne. Go
25 ahead, Mr. Leiendecker.

1 MR. LEIENDECKER: In March of 2019 when
2 I filed my Motion For Severance and the Court at
3 that time held it in abeyance. It was for all
4 these reasons and all the citations that were given
5 to the Court of the times that my client was
6 mentioned or suggestions about them or they or
7 whatever's.

8 But the State itself not only plays a
9 small two minute clip, but then in his sample
10 testimony demonstrates that he wants to talk about
11 drugs in the motorcycle tires. That he wants to
12 ask the witness about a meeting, a clandestine
13 meeting to plan a robbery. These are all things
14 that are contained in that video clip. And if the
15 State is allowed to talk about them without showing
16 the video clip and it's just not fair or proper.
17 They're not just getting in that Luther said he was
18 home that night. They're eliciting other
19 testimony. And the jury has the right to see that
20 all of that information that they're eliciting
21 really came from Shumpert.

22 And this is why this has been a
23 boondoggle in it and a problem from the beginning.
24 It's not a problem if I'm not sitting in a
25 courtroom and a table beside other people that are

1 part of we and they. But it is a problem when my
2 client gave no such statement, my client provided
3 no such evidence, my client wasn't a party to any
4 of the discussions that included it. But that's
5 when it becomes a problem and that's not creating a
6 constitutional crisis. The Severance avoids the
7 constitutional crisis.

8 MR. OSBORNE: Judge, and the only thing
9 for the record I will say we did provide -- you
10 have all of the -- every single second of them. I
11 think when you go to like, no. When you go -- or
12 when you have watched them, Lieutenant Shumpert
13 doesn't give any of that information to Luther.
14 Luther volunteers that information. That can't be
15 said about follow-up interviews. But in reference
16 to that interview, every single statement Luther
17 said that first.

18 MR. LEIENDECKER: The problem with
19 showing that or not showing that video and one of
20 the reasons someone is going to want to show that
21 video is, in September of 2016, he says Luther
22 volunteered that information. In a later
23 interview, December maybe of that same year, that
24 same information is put out in an interview where I
25 believe it was Journey and Shumpert were there and

1 Shumpert says, that's a lie. That's never what
2 happened. There was never any drugs in the
3 motorcycles. That was just made up. Luther made
4 that up. So they're eliciting testimony that their
5 own witness later recants. Now, how do we get to
6 that?

7 MR. OSBORNE: Cross examination.

8 MR. LEIENDECKER: Yeah. Through video.
9 A demonstration of the conduct. That's why we've
10 got this, Your Honor.

11 MR. JOHNSON: Your Honor, we arguing
12 severed -- motion to sever at this time?

13 THE COURT: Well, they're mentioning it
14 now, you know. I was thinking we were just doing
15 what I said we were going to do as to whether or
16 not it was voluntary or not.

17 MR. JOHNSON: I don't want to keep
18 torturing you --

19 THE COURT: No. No. No. I'm assuming
20 that you want to join in the request for Severance?

21 MR. JOHNSON: Well, I filed a motion
22 and -- I filed a motion, I don't want to be silent
23 on this issue because on this particular statement
24 as you get into the remaining part of the
25 statement, it not only mentions my client, it says

1 he planned it. It says Jackie Man came up with
2 this repeatedly.

3 And as Mr. Leiendecker said, of course,
4 there's this later on where he starts bringing back
5 -- recanting, coming back, flipping back on these
6 statements. But it specifically goes after my
7 client as the ringleader, as the planner of this
8 crime. I just want to point that out in the motion
9 to sever. And also my other motion to suppress all
10 statements if I could. Thank you, Judge.

11 THE COURT: I feel like I'll hear this
12 plenty. All right. Here's what I'm going to do at
13 this stage. As I said before, whether the
14 statement was voluntary or not, the two minute clip
15 appears to be voluntary. Okay. That's it. Okay.
16 I will decide what I'm going to do -- I'm probably
17 going to have to look at the video and see what I
18 think about it. And that might have some effect on
19 some of the other motions that y'all have.

20 But just to remind y'all, before we
21 broke for lunch, we were doing voluntariness of the
22 statement. Okay. I'm just going to try and keep
23 it at that.

24 MR. LEIENDECKER: The State brought it
25 up.

1 THE COURT: I know. All right. Are we
2 ready to go to September 15th?

3 MR. OSBORNE: Yes, Your Honor. State
4 calls Lieutenant Shumpert.

5 JAMES SHUMPERT,
6 having already been sworn, testified as follows:

7 THE COURT: And remember, you're still
8 under oath.

9 MR. SHUMPERT: Yes, sir.

10 THE COURT: And this is number 6, I
11 think on your list that we're on. Mr. Smith's
12 September 15/16, 2016 statement at OCS. It says
13 you don't plan to elicit any testimony regarding
14 what he said after the second clip?

15 MR. OSBORNE: Yeah, this one is very
16 short.

17 THE COURT: Well, you've got a 30
18 seconds and then 9 minutes; right? Or am I missing
19 something?

20 MR. OSBORNE: You're probably right,
21 Judge. I need to pull it out.

22 THE COURT: I'm just reading what you
23 wrote.

24 MR. OSBORNE: That certainly sounds
25 correct. All right.

1 DIRECT EXAMINATION BY MR. OSBORNE:

2 Q. Lieutenant, moving into September 15th,
3 did you have the occasion to speak to Luther again?

4 A. Yes, sir.

5 Q. Why did you bring him back in to
6 interview him again?

7 A. After our previous conversation, we
8 spoken to his girlfriend and we believe that he
9 knew more than what he was indicating at the time.

10 MS. ZMROCZEK: Again, objection, Your
11 Honor.

12 THE COURT: I'll note your objection.
13 He's not going to be able to testify to that in
14 trial, you understand that; correct?

15 MR. SHUMPERT: Yes, sir.

16 THE COURT: Okay.

17 MR. OSBORNE: All right. Your Honor,
18 for purposes of the record, this is State's 341.

19 THE COURT: State's 341?

20 MR. OSBORNE: Yep.

21 Q. And how long was this entire interview?

22 A. I want to say about an hour or so.
23 Two, I can't remember.

24 Q. And I think we're going to see this,
25 but --

1 MR. OSBORNE: Well, you know, we'll
2 just play it. This is clip one of two.

3 (Playing the video)

4 Q. Just looking at Mr. Smith entered the
5 interview room; is that correct?

6 A. Yes, that's him.

7 MR. OSBORNE: All right. Now clip two.

8 (Playing the video)

9 Q. Who is that?

10 A. Investigator Culpepper.

11 (Playing the video)

12 Q. All right. So why was Luther advised
13 of his Miranda warnings at the beginning of this
14 interview?

15 A. Because we believe that he had more
16 involvement than what he actually said he was.

17 Q. All right. During this interview, did
18 Luther appear to be intoxicated or under the
19 influence of drugs?

20 A. No.

21 Q. Did Luther appear to have any physical
22 or mental disability that would have impaired his
23 ability to understand what was being said to him?

24 A. No.

25 Q. Prior to or during your interview with

1 Luther, did you offer any bathroom breaks, drinks,
2 anything like that?

3 A. Yes, sir.

4 Q. Was Luther denied access to telephone?
5 Food?

6 A. No.

7 Q. Were there any threats or promises made
8 in exchange for his statement?

9 A. The only thing I told him was that if
10 you cooperate I would help his girlfriend get out
11 of jail.

12 Q. And you said this was about an hour?

13 A. Well, thinking back on it and looking
14 at it, I think it was like 20 minutes. It was
15 somewhere around there like different parts of it.

16 Q. All right. In relation to this
17 investigation, who was Samantha Buxton?

18 A. That's Mark Windham's girlfriend.

19 Q. Okay. And who is Mark Windham?

20 A. That's Luther's brother.

21 Q. Did Luther indicate during this
22 interview whether Samantha was, you know, after
23 this, whether Samantha was at the trailer that
24 night?

25 A. Correct. He said she was there.

1 Q. Okay. All right.

2 MR. OSBORNE: No further questions.

3 THE COURT: Ms. Zmroczek?

4 MS. ZMROCZEK: Thank you, Your Honor.

5 CROSS EXAMINATION BY MS. ZMROCZEK:

6 Q. So, Investigator Shumpert, I want to
7 ask you. So when he asked you about promises;
8 right, he said -- you said, I talked to Amanda this
9 morning. Amanda is his girlfriend; right?

10 A. Correct.

11 Q. And you told him that Amanda was okay
12 because clearly he was worried about her?

13 A. Correct.

14 Q. Okay. And then you said like I said,
15 we talked to her this morning that ought to put
16 your mind at ease a little bit?

17 A. If that's what it says; correct.

18 Q. Right. And then -- then you start
19 engaging in patterns of -- that you learned in the
20 Reid interrogation method; correct?

21 A. I was doing my job; correct.

22 Q. Using the Reid interrogation method?

23 A. Using the what?

24 Q. Reid interrogation method.

25 A. I don't know what you call it. I was

1 interviewing him and then interrogating him;
2 correct.

3 Q. Okay. And what kind of training did
4 you have in interviewing?

5 A. Took some courses at the South Carolina
6 Criminal Justice Academy Interrogation
7 Interviewing. But that was early on in my career.

8 Q. Early on in your career?

9 A. Correct.

10 Q. And you had no updated training since
11 then?

12 A. I'd have to go back and look. I can't
13 remember. Not recently.

14 Q. Okay. You start trying to play towards
15 his emotions; right?

16 A. No. I was building off his emotion
17 because I noticed that he became visibly upset
18 after I said to him, we talked to Amanda and you
19 know what she said. So he just started becoming
20 emotional.

21 Q. Right. So you were pitting Amanda
22 against him; right?

23 A. No, I was not pitting anybody against
24 anything. I told him -- he told me to go talk to
25 Amanda and that's what I did, so that's not

1 pitting. I did what he asked me to do.

2 Q. Okay. But then you start -- when I
3 talk about play on the emotions, you start taking
4 about the kids. The kids. The kids. You knew he
5 was a single father; right?

6 A. No, that wasn't the reason why I said
7 that.

8 Q. Okay. Why did you say that?

9 A. He told me to go talk to Amanda. Based
10 on that conversation that's what led to speaking
11 about kids.

12 Q. Okay. You then try to start telling
13 him that -- that it will help him to get rid of
14 this baggage that's eating him away; right?

15 A. I said you were carrying this baggage
16 because he became emotional and started crying. At
17 that point, I didn't have no idea why he was
18 crying. I was just relaying the conversation I had
19 with Ms. Howard, his girlfriend.

20 Q. Right. But she didn't say anything
21 about kids?

22 A. She did.

23 Q. Okay. So she and I'll get back to her
24 I guess at another point. Did she say that before
25 or after you brought the psychologist in to talk to

1 her?

2 A. Before.

3 Q. Okay.

4 A. I believe. I can't remember. I
5 believe it was before.

6 Q. Okay. But you promise that if he told
7 you, you said -- so you kept telling him that she
8 loves him a lot; right?

9 A. Yes.

10 Q. Okay. And that -- and then you start
11 to talk about trying to save the kids and then you
12 say that you will get her out of jail if he talks
13 to you?

14 A. I will try.

15 Q. Okay. Did you get her out of jail?

16 A. No, I did not.

17 Q. Okay. And he -- Mr. Osborne asked you
18 if he had any mental concerns; right?

19 A. Correct.

20 Q. And, in fact, when -- when you bring --
21 when the tissues are brought back in and he's
22 asking for a cigarette -- or excuse me. And you're
23 telling him I can get you a cigarette so you can
24 smoke and relax. In the back of my mind you knew
25 this day was coming. And he says, I mean, in the

1 back of my mind what I said to you is surreal to
2 me. It be like I really wasn't part of it.

3 A. No, that is not what he said to me. He
4 said it was surreal to him it was almost like he
5 was there.

6 Q. Almost like he was there?

7 A. Correct.

8 Q. Right. Almost like he was there?

9 A. That's what I said.

10 Q. Okay. And then he goes on to tell you
11 that -- then he goes on to tell you he doesn't know
12 anything. That everything he learned again came
13 from codefendants?

14 A. I can't remember that. I believe what
15 the conversation we had led us further into the
16 investigation.

17 Q. Okay. And, in fact, he goes on to say
18 he doesn't know -- he asked you for his medication
19 if it would help you because his mind was so messed
20 up he feels like he was there because he felt like
21 he wanted to be there to help the babies?

22 A. Ma'am, I don't recall nothing about no
23 medication.

24 Q. Okay.

25 MS. ZMROCZEK: And, Your Honor, again,

1 I think that's why we offered to put in the whole
2 thing. And you said that you gave him the full
3 clips as well?

4 MR. OSBORNE: No. What I said was, you
5 can now impeach him with that information. So I
6 have that clip cued up to impeach him.

7 MS. ZMROCZEK: Right. Right. Right.
8 Which obviously, you know, I can do, Your Honor.
9 I'm trying not to drag -- I'm trying not to drag
10 this out. But, you know, as I'm reading --

11 THE COURT: You know, Ms. Zmroczek, I'm
12 getting paid the same amount whether it's drug out
13 or not. You do what you want to do. (Laughter)

14 MS. ZMROCZEK: Thank you.

15 THE COURT: And I'm here.

16 Q. And so you would agree that the
17 recordings are what they are; right?

18 A. Yes.

19 Q. Okay. And so the information -- so if
20 you don't recall him saying that about medication,
21 but if it shows up on the recording, then you just
22 -- you just don't happen to recall it right now?

23 A. I mean, you talking about like six,
24 seven years later.

25 Q. Right. Right.

1 A. But I don't recall no medication.

2 Q. But you knew we had a trial coming up;
3 right?

4 A. Yeah, I knew we had a trial coming up.

5 Q. So you prepared and gotten ready?

6 A. The best that I could, yes.

7 Q. Okay. And so did that mean going back
8 and reading the transcripts or watching all the
9 videos?

10 A. That don't mean I'm still going to
11 remember about no medication.

12 Q. Huh?

13 A. That still doesn't mean I'm going to
14 remember about no medication.

15 Q. Okay. And -- but you do remember him
16 telling you everything that he learned came from
17 Derrick Coleman; right?

18 A. And his girlfriend Amanda Howard.

19 Q. And his girlfriend Amanda?

20 A. Right.

21 Q. But she doesn't there?

22 A. I think she was locked up, I believe.

23 Q. Right. But the information that he had
24 came from her, but she's not arrested as a part of
25 this crime?

1 A. No.

2 Q. Because she was not at the crime?

3 A. No. He told me to go talk to her,
4 speak to her. And based on the information, again,
5 what I got from her, that's why I felt necessary to
6 reinterview Mr. Smith.

7 Q. Okay. And he was clearly upset. Do
8 you know if he was upset because you -- because he
9 was upset about Amanda still being in jail?

10 A. No. I think he became upset when I
11 said I spoke to Amanda like you told me to. You
12 could imagine what she told me. And then he became
13 visibly upset and start crying.

14 Q. But you didn't tell him what she told
15 you -- her?

16 A. I said about the kids.

17 Q. Okay.

18 A. I mean, I know hearsay, but that's what
19 she told me and I relayed it to him.

20 Q. Okay. And this goes on for quite some
21 time where you keep trying to get him to tell you
22 more information; right?

23 A. I'm trying to get him to tell me the
24 truth.

25 Q. Right. And you would agree that later

1 on you get to decide what you believe he says is
2 true and not true; right? You make that
3 determination yourself?

4 A. No. What --

5 Q. You --

6 A. You going to let me answer?

7 Q. Please.

8 A. Okay. Thank you. What happened was,
9 the information that I had, I was trying to
10 corroborate the information and ask him the
11 information that what he sent me to, to talk to his
12 girlfriend. I went back to reinterview him to see
13 if any of this information was true or remotely
14 true. Once I relayed to him what his girlfriend
15 had told me, he became visibly upset. So I hope I
16 answered the question.

17 Q. Not really, but that's okay. How many
18 times did he ask for it and was given cigarette
19 breaks?

20 A. Ma'am, I can't remember. Every time --
21 Mr. Smith, if he wanted a break, he could have
22 gotten a break. He asked for a cigarette break, he
23 got a break. You even saw me bring him in a cup of
24 coffee. So we did not deny him anything that he
25 asked for.

1 Q. Right. In fact, they're not allowed to
2 have cigarettes in the jail; correct?

3 A. We weren't in the jail.

4 Q. I understand. But he was in the jail?

5 A. No, he was in my office.

6 Q. I understand. But he was in the jail
7 when he was not in your office. So the only way he
8 could have cigarettes is if he was talking to you
9 in your office?

10 A. If that's what he wanted, we give all
11 people that come to talk with us, speak with us,
12 they want a cigarette break whether they're
13 incarcerated or not, we give them a cigarette
14 break.

15 Q. Right. So that's a benefit, a reward?

16 A. No, it's a request and we respond to
17 the request.

18 Q. Okay. Then why don't you just give
19 them out to everybody in the jail?

20 A. Because I didn't go through the jail, I
21 was in my office.

22 Q. Okay. You asked him -- you mentioned
23 corroboration, you got his cell phone number that
24 day; right?

25 A. I can't recall.

1 Q. Okay.

2 A. If you ask me anything about the cell
3 phone, as far as I knew, Mr. Smith told me that his
4 cell phone was stolen. So I don't recall about no
5 cell phone.

6 Q. So if we watch the clip and he actually
7 -- you asked him what his cell phone number was and
8 he gives it to you that's just another thing you
9 don't remember right now; right?

10 A. Correct.

11 Q. Okay. Thank you.

12 MS. ZMROCZEK: I have no further
13 questions, Your Honor.

14 THE COURT: Anything on redirect?

15 MR. OSBORNE: Just one question.

16 REDIRECT EXAMINATION BY MR. OSBORNE:

17 Q. Other -- okay. So what we just saw
18 right there, other than Luther saying that Samantha
19 was in the trailer that night, does his story
20 change significantly at all from this to the first
21 interview on the 14th or is it basically the same?

22 A. Basically the same.

23 Q. All right.

24 MR. OSBORNE: No further questions.

25 THE COURT: Anything on --

1 MS. ZMROCZEK: Nothing further.

2 THE COURT: All right. All right. He
3 was Mirandized and answered the questions, so to me
4 the clip that I've seen is -- or clips that I've
5 seen are voluntary. I'm not addressing anything
6 else. Okay. All right.

7 MR. OSBORNE: All right. Moving on to
8 September 20, 2016.

9 JAMES SHUMPERT,
10 having already been sworn, testified as follows:
11 DIRECT EXAMINATION BY MR. OSBORNE:

12 Q. All right. Lieutenant, on September
13 20th, did you have the occasion to speak to Luther
14 again, 2016?

15 A. Yes.

16 Q. And how long was that interview about?

17 A. About an hour.

18 Q. And was Luther advised of his Miranda
19 warnings prior to meeting with him on that day?

20 A. Yes.

21 Q. Did Luther appear to be intoxicated or
22 under the influence of drugs during this meeting?

23 A. No, sir.

24 Q. Did Luther appear to have any physical
25 or mental disability during this meeting that would

1 have impaired his ability to understand what you
2 said to him?

3 A. No, sir.

4 Q. Prior to or during, did you offer him
5 bathroom breaks or otherwise?

6 A. Yes, sir.

7 Q. And was Luther denied access to
8 telephone, food, or drinks?

9 A. No.

10 Q. Any threats or promises in exchange for
11 his statement?

12 A. The only thing I said -- like I stated
13 earlier, the only thing I said I would do for him
14 was try to help to get his girlfriend out of jail.
15 But after that, no other promise or anything.

16 Q. Nothing on this interview on the 20th?

17 A. No.

18 MR. OSBORNE: This one is going to be
19 State's 343. Two clips. The first one is about
20 four minutes. I'm not sure about the second one.

21 (Playing the video)

22 Q. Who is that?

23 A. John Stokes.

24 (Playing the video)

25 MR. OSBORNE: All right. Now playing

1 clip two.

2 (Playing the video)

3 Q. All right. Why did you want to
4 interview Luther again?

5 A. Because we spoke with his mother and
6 from that conversation it led us back to
7 reinterview him again.

8 Q. Okay. And you mentioned the name Mark
9 Windham before, Luther's brother, did Luther after
10 this say where Mark was on the night of the
11 murders?

12 A. Yes.

13 Q. And where did he say he was?

14 A. In the detention center.

15 MR. OSBORNE: Your Honor, I think on
16 the email and to Defense counsel, I had mentioned
17 that I -- clip 3 was up in the air. We think -- we
18 anticipate Daniel Lee Ross will testify, so we will
19 likely be seeking to introduce this clip as well.

20 MS. ZMROCZEK: Who testifying?

21 MR. OSBORNE: Lee Ross.

22 MS. ZMROCZEK: Oh, yeah. Right.

23 (Playing the video)

24 MS. ZMROCZEK: Your Honor, obviously,
25 during trial, I would object to him telling him

1 relaying what Lee Smith testified to. But like you
2 said, if he's going to call him then -- these just
3 can't come in until he testifies.

4 MR. OSBORNE: Yeah, that's why I was on
5 the fence. I wouldn't seek to play that unless I
6 had Lee testify.

7 THE COURT: That was clip 3?

8 MR. OSBORNE: That was clip 3.

9 Honestly, then it would be irrelevant.

10 Q. During this interview, does Luther
11 Smith say he went to Krystal Hutto's house?

12 A. I'm sorry. Say again.

13 Q. During this interview, does Luther
14 Smith say that he went to Krystal Hutto's house?

15 A. No.

16 Q. Well, not on the night of the murders
17 now.

18 A. Oh, okay. I'm thinking you still on
19 the murder night.

20 Q. So just in general, did he say that he
21 went to Krystal Hutto's house in general?

22 A. Yes, he did.

23 Q. All right.

24 A. But not on the night of the murders.

25 Q. Okay. That's what I'm getting at. In

1 all fairness to clarify and tell the whole story,
2 what was Luther's statement in reference to when he
3 said that he did go to Krystal Hutto's house during
4 his September 20th interview?

5 A. He told me that they were at his
6 brother's trailer, Mark Windham's trailer, and he
7 thought they were going to the strip club. And --

8 Q. I'm talking about the day before when
9 he went to Krystal Hutto's house. Why did he say
10 he went to Krystal Hutto's house?

11 A. Oh. He said they went there to take
12 the motorcycle. A little dirt bike. I keep saying
13 motorcycle, but the little dirt bike, 50cc dirt
14 bike.

15 Q. Okay. So Luther Smith was saying that
16 he had participated in the vehicle swap?

17 A. Correct. Yes, sir.

18 Q. And that would have been, again, to
19 make sure we're abundantly clear, the day before
20 the murders during the day?

21 A. Right. Correct. Yes, sir.

22 Q. And during that interaction or during
23 that time, did he see the dirt bike that was
24 allegedly part of the vehicle swap?

25 A. Correct. Yes. He described it.

1 Q. All right. And how did he describe it?

2 A. I believe he said it was like blue and
3 white dirt bike 50 something cc, something like
4 that.

5 Q. Yamaha?

6 A. Yamaha; correct.

7 Q. And where was that Yamaha when Luther
8 saw it?

9 A. On the side of the house.

10 Q. All right.

11 MR. OSBORNE: No further questions.

12 THE COURT: Ms. Zmroczek?

13 CROSS EXAMINATION BY MS. ZMROCZEK:

14 Q. Obviously, the interviews get longer as
15 each day goes on; right?

16 A. Well, I think a couple of them was like
17 an hour, yes, you can say that.

18 Q. Okay. And you say he described the
19 motorcycle as being blue and white, but it was
20 actually red and white; right?

21 A. No.

22 Q. It wasn't?

23 A. Well --

24 Q. You don't know?

25 A. There was another motorcycle that was

1 red, but it wasn't the one he was telling me about.

2 Q. Okay. All right. But you have
3 pictures of these motorcycles; right?

4 A. I don't have pictures. Maybe crime
5 scene has them. I didn't take no pictures.

6 Q. Okay. Do you know what color the bikes
7 are that we're talking about?

8 A. It was several bikes, like I said,
9 involved that day. And the one he described to me
10 was a blue and white Yamaha 50cc. That's all I can
11 tell you.

12 Q. Right. And, again, you continued
13 questioning him by telling him that other people
14 have already told you stuff. And so like Daniel
15 Lee had already told y'all that he had told Derrick
16 what happened; right?

17 A. No.

18 Q. Okay. So that just came out of the
19 blue?

20 A. No, I said -- if you look at the video,
21 I said that Mr. Ross -- you said Mr. Ross told us
22 that -- I told Luther, but when I asked him about
23 it, he said he didn't tell him nothing.

24 Q. Right.

25 A. I ain't used the verbiage that he used,

1 but he said he didn't tell them nothing. But I
2 told him that Mr. Ross said that he told us -- he
3 broke down and started crying and he wanted to know
4 what was wrong with him.

5 Q. Okay. And so -- and, again, he gets
6 cigarette breaks on the 20th again; right?

7 A. He asked John Stokes for a cigarette
8 break.

9 Q. And he got one?

10 A. Excuse me.

11 Q. And he got one?

12 A. I can't remember.

13 Q. Okay.

14 MS. ZMROCZEK: I have no further
15 questions, Your Honor.

16 THE COURT: Okay.

17 RECROSS EXAMINATION BY MR. OSBORNE:

18 Q. I mean, you weren't part of the whole
19 investigation I guess into the vehicle swap and all
20 that stuff?

21 A. No, I was not.

22 Q. All right.

23 MR. OSBORNE: No further questions.

24 THE COURT: Anything on recross? Ms.

25 Zmroczek?

1 MS. ZMROCZEK: Nothing further.

2 THE COURT: All right. Let me ask you
3 a question. Clip 3, there was a statement that it
4 would not be shown unless who testified?

5 MR. OSBORNE: Daniel Lee Ross.

6 THE COURT: Okay. As it stands now,
7 you're really only showing clips 1 and 2?

8 MR. OSBORNE: No. And articulate
9 there. When I sent out the text message saying I
10 was on the fence with 3, I did not know whether we
11 were going to be able to subpoena Daniel Lee Ross.
12 We have subpoenaed Daniel Lee Ross, so we
13 anticipate he's going to testify. My position
14 where I'm at right now, if Daniel Lee Ross
15 testifies and we intend to introduce three. If he
16 doesn't, I can't argue it's relevant then we
17 wouldn't introduce it.

18 THE COURT: Okay.

19 MS. ZMROCZEK: And then again, I would
20 seek to introduce the remainder of this and we can
21 argue all that later.

22 THE COURT: Yeah. As it stands now,
23 you know, he was Mirandized. It's voluntary. But
24 the other issues that we still have, we will take
25 up. Okay.

1 Are we moving to September 26, 2016 and
2 it's Lieutenant Journey again?

3 MR. OSBORNE: Well, I think I can just
4 move right into September 30, 2016.

5 THE COURT: Okay. That will be good.

6 MS. ZMROCZEK: Your Honor, there's a
7 September 26th statement though that I would move
8 to put in.

9 THE COURT: Okay.

10 MR. OSBORNE: You're right. I'm sorry.
11 We can do Journey then. That's fine.

12 THE COURT: Okay. All right.
13 Lieutenant Journey. You can step down because I
14 know you don't want to sit up here while he's here.

15 MR. SHUMPERT: No, sir.

16 Lieutenant JOURNEY,
17 having already been sworn, testified as follows:

18 THE COURT: All right. Lieutenant
19 Journey, you are back on the witness stand. You
20 are still under oath.

21 MR. JOURNEY: Yes, sir.

22 THE COURT: Okay. All right.

23 DIRECT EXAMINATION BY MR. OSBORNE:

24 Q. On September 26th, Lieutenant, did you
25 have the occasion to meet with Luther Smith?

1 A. Yes.

2 Q. And how did that come about?

3 A. If I recall, it was requested that we
4 come and get him and he wanted to talk with us.

5 Q. So Luther himself wanted to talk to
6 you?

7 A. Yes.

8 Q. And, well, what did you do then?

9 A. I went to the jail --

10 Q. Can you lean up --

11 A. I'm sorry. I went to the jail and
12 retrieved him and brought him over to our office.

13 Q. Okay. During this meeting, did Luther
14 appear to be intoxicated or under the influence of
15 drugs?

16 A. No, sir.

17 Q. Did he appear to have any physical or
18 mental disability that would have impaired his
19 ability to understand what was being said to him?

20 A. No, sir.

21 Q. Prior to or during the interview with
22 the Defendant, did you offer any breaks, bathroom
23 or otherwise?

24 A. I don't -- we always do offer breaks.
25 If they need to have a break or water or a

1 cigarette.

2 Q. Threats? Promises?

3 A. No threats or promises.

4 Q. How long did the whole thing take?

5 A. I don't think it took that long. We
6 weren't there too long with him.

7 Q. About seven or eight minutes?

8 A. Yes, sir.

9 Q. All right. What did Luther have to
10 say?

11 A. Basically, he was telling us that --
12 because he was in jail in the detention center, he
13 heard rumors about Christopher Wright. And
14 Christopher Write had made comments in the jail
15 that the reason he's there is because the sheriff's
16 department thinks he has something to do or
17 involvement with this -- these murders.

18 Q. So he's just basically relaying
19 something that Christopher Wright told him while he
20 was in jail?

21 A. Correct.

22 MR. OSBORNE: No further questions,
23 Your Honor. Just for clarification, we're not
24 seeking to introduce this.

25 THE COURT: Okay.

1 MS. ZMROCZEK: Your Honor, we would be
2 seeking --

3 THE COURT: Ms. Zmroczek, any
4 questions?

5 MS. ZMROCZEK: Yes, we would be seeking
6 to introduce this statement.

7 CROSS EXAMINATION BY MS. ZMROCZEK:

8 Q. On September 26th when you met with
9 Mr. Smith, you read him his Miranda rights; right?

10 A. I'd say I don't recall whether I read
11 them or someone else read them. I would assume
12 it's on tape.

13 Q. Have you seen the transcripts and the
14 videos of these?

15 A. I have seen the videos. It's been a
16 few months ago, but I've seen the videos.

17 Q. Okay. And when you have somebody sign
18 Miranda, you use a form; right?

19 A. Correct.

20 MS. ZMROCZEK: I'll mark this for
21 Court's ID, Your Honor.

22 THE COURT: Okay. It will be Court's
23 2.

24 (WHEREUPON, Court's Exhibit Number 2
25 was marked for ID)

1 Q. So, I'm showing you what's been marked
2 as Court's 2, do you recognize that form?

3 A. Yes, ma'am. It's the Miranda rights of
4 the Orangeburg County Sheriff's Office.

5 Q. And what's the date?

6 A. The date is September 26, 2016.

7 Q. So that's the day we're talking about
8 here; right?

9 A. Correct.

10 Q. Okay. Thank you.

11 A. 2:38 p.m.

12 Q. Right. That would be when you would
13 have gotten him from the jail?

14 A. That would be correct.

15 Q. Okay. And so -- so he gives you some
16 more information that he is hearing; right?

17 A. Excuse me.

18 Q. Mr. Smith gives you some information
19 that he heard Mr. Wright -- he overheard Mr. Wright
20 talk about in the jail; correct?

21 A. Correct.

22 Q. And then you go and you ask him further
23 questions about -- about what happened that day and
24 that involving his codefendants; right?

25 A. I don't recall at this time. I'd have

1 to see the video again to recall that.

2 Q. But you know for sure that he had any
3 breaks he wanted, he was given water or cigarettes,
4 and he signed his Miranda; right?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. ZMROCEK: Your Honor, those are
8 all the questions. I would argue that that
9 statement is also voluntary.

10 THE COURT: You're arguing the
11 statement is voluntary?

12 MS. ZMROCEK: Yes.

13 THE COURT: Oh, gosh, since you're
14 arguing that, I don't know, I've got to think about
15 it. No. All right. You're arguing it's not
16 voluntary?

17 MR. OSBORNE: I'll consent. No, I'm
18 not arguing that. We would argue that all that is
19 hearsay, but I know that's for trial.

20 THE COURT: All right. I agree with
21 you, Ms. Zmroczek.

22 MS. ZMROCEK: Thank you.

23 THE COURT: Okay. Thank you, ma'am.
24 It is voluntary. Okay. You don't need Mr. --
25 Lieutenant Journey anymore?

1 MR. OSBORNE: No, I think we may be
2 finished with Lieutenant Journey.

3 THE COURT: All right. Lieutenant
4 Journey, be safe. All right. Who's next?

5 MR. OSBORNE: All right. So now we're
6 on September 30th with Lieutenant Shumpert.

7 JAMES SHUMPERT,
8 having already been sworn, testified as follows:

9 THE COURT: All right. And you're
10 still under oath, you understand that?

11 MR. SHUMPERT: Yes, sir.

12 THE COURT: All right. Thank you, sir.
13 He's your witness.

14 DIRECT EXAMINATION BY MR. OSBORNE:

15 Q. Did you have the occasion to go back
16 and interview Luther again on September 30, 2016?

17 A. Yes, sir.

18 Q. And why did you go back and interview
19 him again?

20 A. September 30th, we went back to speak
21 with Luther because of -- I just got a brain laps.

22 THE COURT: Because what? Oh, you
23 talking to yourself?

24 A. Yeah, I'm talking to myself. Yes.

25 THE COURT: All right.

1 Q. Had you did some research on Mark
2 Windham?

3 A. Exactly. That's -- I'm trying to think
4 of the individual, but we had gotten information
5 that Luther told us that his brother was
6 incarcerated. But we found out that wasn't true.
7 But then went back to ask him about the whereabouts
8 of his brother.

9 Q. On the night of the murders?

10 A. Correct.

11 Q. Okay. Did you also speak to two other
12 individuals on that day, Samantha Buxton and Mark
13 Windham?

14 A. We did.

15 Q. Okay. All right. So how long was this
16 interview with Luther on September 30th?

17 A. I want to say hour, hour and a half,
18 maybe. Or two.

19 Q. Okay. During the interview, did Luther
20 appear intoxicated or under the influence of drugs?

21 A. No, sir.

22 Q. Did Luther appear to have any physical
23 or mental disability that would have impaired his
24 ability to understand what was being said to him?

25 A. No, sir.

1 Q. Prior to or during the interview with
2 Luther, did you offer any breaks, drink, bathroom,
3 otherwise?

4 A. Yes, sir.

5 Q. Was the Defendant denied access to a
6 telephone?

7 A. No.

8 Q. Food? Drink?

9 A. No.

10 Q. Any threats or promises?

11 A. No.

12 MR. OSBORNE: Your Honor, this would be
13 340 -- State's 348.

14 (Playing the video)

15 MS. ZMROCZEK: Your Honor?

16 THE COURT: Can you stop it for one
17 second?

18 MS. ZMROCZEK: Obviously, so this clip
19 shows my client's brother and my client. And so
20 unless they intend to call Mr. Windham, I'm going
21 to have confrontational issues with that -- with
22 this clip.

23 MR. OSBORNE: I don't think he says
24 anything.

25 THE COURT: Well, of course you --

1 MS. ZMROCZEK: He does earlier in the
2 -- I mean --

3 THE COURT: He doesn't say anything in
4 these clips, but if we watch the whole thing he
5 does?

6 MS. ZMROCZEK: Right.

7 THE COURT: And if that whole thing
8 comes in we've got issues?

9 MS. ZMROCZEK: Right.

10 THE COURT: Okay. All right. We got
11 it.

12 (Playing the video)

13 Q. All right. So what did he say about
14 Cricket in reference to Cricket?

15 A. He was trying to use Cricket as an
16 alibi.

17 Q. And Cricket is?

18 A. I forgot her real name, but she used
19 to, I believe, date Mr. Smith.

20 MR. OSBORNE: Okay. Clip two.

21 (Playing the video)

22 Q. So if I'm hearing this correctly now
23 he's saying that he wasn't in the trailer on the
24 night of the murders?

25 A. Correct.

1 Q. But did Luther say he was still aware
2 that there was a plan to steal motorcycles?

3 A. Yes.

4 Q. And that would be the same story about
5 the motorcycles that allegedly had dope in it?

6 A. Correct. Yes, sir.

7 Q. At Krystal's house?

8 A. Yes, sir.

9 Q. Now, do you decide to maybe change
10 tactics a little bit?

11 A. Yes, sir.

12 Q. And why did you do this?

13 A. Hopefully, to get him to tell the truth
14 of what happened.

15 MR. OSBORNE: I'm going to show clip
16 three.

17 (Playing the video)

18 THE COURT: What happened to the sound?

19 MR. OSBORNE: This is what redaction
20 looks like.

21 THE COURT: Huh?

22 MR. OSBORNE: Redacting.

23 MS. ZMROCZEK: See, and this is part of
24 the issue, Your Honor, is that -- yeah, we're
25 getting into *Bruton* stuff.

1 (Playing the video)

2 Q. Did -- during this interview, did
3 Luther go back and once again admit to being in
4 Mark's trailer?

5 A. Yes.

6 Q. On the night of the murders?

7 A. Correct.

8 Q. During this interview, did Luther admit
9 to anything else?

10 A. No.

11 Q. Did he admit to being in Derrick
12 Coleman's truck on the night of the murders?

13 A. Yes.

14 Q. When it was driven, I think, to Krystal
15 Hutto's house?

16 A. Correct. Yes, sir.

17 Q. And during this interview, did he admit
18 to getting out of the truck?

19 A. No.

20 Q. Okay. And so let's go ahead and
21 complete what he said. He said that -- what did he
22 say? Did he say that he was intoxicated?

23 A. He said that he was intoxicated, but he
24 got into the vehicle, he was unconscious. He
25 passed out or something in the vehicle.

1 Q. Okay. Where did they go -- where did
2 he go after he left Krystal Hutto's house?

3 A. To Indian Bluff, I believe. Red Bank
4 or Indian Bluff, something like that.

5 Q. Okay. And where after that?

6 A. Back to Mark Windham's house.

7 Q. All right. Now, in all fairness at
8 this point, did Luther Smith say that he got into
9 the truck intending to go to Krystal Hutto's home
10 to steal a bike with cocaine in the tires?

11 A. Excuse me.

12 Q. In all fairness, at this point, did
13 Luther Smith say he got into the truck intending to
14 go to Krystal Hutto's home to steal a dirt bike?

15 A. No. He thought he was going to the
16 strip club at first, but they ended up at Krystal
17 Hutto's house. But he claimed to be knocked out,
18 asleep the whole time riding with Derrick.

19 Q. Okay. So his story on September 13th
20 -- or 30th, when I got into Luther saying when he
21 got into the truck that he just thought they were
22 going to a strip club?

23 A. Correct.

24 MR. OSBORNE: Okay. Playing clip four.

25 (Playing the video)

1 Q. All right. Let me just -- those were
2 five photographs that you put up on the wall?

3 A. I believe four. Maybe five, but I
4 believe --

5 Q. All photographs of the victims?

6 A. Correct. Yes, sir.

7 Q. After putting up those photographs or
8 showing them to Luther, I mean, did his story
9 change?

10 A. No.

11 MR. OSBORNE: No further questions.

12 THE COURT: Ms. Zmroczek?

13 MS. ZMROCZEK: Your Honor, I'm going to
14 have these marked.

15 MR. OSBORNE: I mean, do we have to
16 show him that?

17 MS. ZMROCZEK: Yeah.

18 MR. OSBORNE: Okay.

19 THE COURT: Are you showing them to me
20 right now?

21 MS. ZMROCZEK: Just to you. I'm not
22 going to put them up anywhere.

23 MR. OSBORNE: Oh, I mean, if you're
24 showing them to the Judge, sure.

25 MS. ZMROCZEK: Yeah.

1 (WHEREUPON, Court's Exhibit Numbers 3
2 through 7 were marked and entered)

3 CROSS EXAMINATION BY MS. ZMROCZEK:

4 Q. Investigator Shumpert, I'm going to
5 show you what's been marked for the purposes of
6 this hearing Court's 3 through 7. Do you recognize
7 those pictures?

8 A. Yes, ma'am.

9 Q. Are those the pictures that you showed
10 to Mr. Smith during this interview?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. ZMROCZEK: Your Honor, I'm just
14 going to hand them up to you.

15 THE COURT: Okay. Thank you, ma'am.

16 Q. And we talked about Investigator -- or
17 excuse me, Assistant Solicitor Osborne said that
18 you changed tactics; right? So now you're trying
19 to appeal to his emotions to make him feel bad for
20 these poor people that got shot; right?

21 A. Well, what I was doing there was trying
22 to get him to tell me the truth.

23 Q. But you don't know what the truth is
24 you weren't there; right?

25 A. I wasn't there.

1 Q. Right. And so in order for -- what you
2 do to seek the truth, it's not just what you want
3 to hear, it's what they say and then you compare it
4 with other information that you have, hopefully
5 information that's just not what people say, but
6 like phone records or those kind of things; right?
7 That's how you verify what he's saying is true;
8 right?

9 A. Yes.

10 Q. Okay. And, in fact, he -- he did
11 change his story at this point. Now he says he's
12 in the truck going to the strip club; right?

13 A. He said he thought he was going to the
14 strip club; correct.

15 Q. Right. And then in the middle of his
16 -- of your questioning, he says, wait a minute. He
17 asked you, wait, what day of the week was this?
18 Didn't he ask you that?

19 A. I believe he did.

20 Q. Because the strip club that he was
21 talking about is only open certain days of the
22 week; right?

23 A. I don't know. I don't go to strip
24 clubs. I don't know.

25 Q. You don't know that right?

1 A. No.

2 Q. And that would be important to know if
3 you're trying to verify somebody's story; right?

4 A. Well, I mean, if he would have went to
5 the strip club, but he eventually told us he didn't
6 go.

7 Q. Right.

8 A. So there wasn't no need to verify that.

9 Q. Okay. So, in fact, after he asked you
10 what day it was, you say to him, we are trying to
11 figure out a way to get you free?

12 A. No.

13 Q. You did not say that?

14 A. I don't remember recall saying nothing
15 like that.

16 Q. Okay. That is fine. Don't recall
17 saying that. You don't recall telling him that he
18 could play this game all day, but it's not going to
19 fly?

20 A. That's probably something like I would
21 say; correct.

22 Q. Okay. And then a little bit later on
23 in the clips that we see that's when you change
24 tactics and you put these pictures down right in
25 front of him; right?

1 A. I did. Yes.

2 Q. And you made him look at those awful
3 scene pictures; right?

4 A. No.

5 Q. You didn't make him look, you just put
6 them down --

7 A. I put them down. I didn't say look at
8 these. Look at this. I just told him this is what
9 we dealing with.

10 Q. You didn't say this is what they did to
11 those kids as you put this picture in front of him?

12 A. Yeah, but I didn't say Luther look. I
13 said this is what we're dealing with.

14 Q. Okay. And then you proceed to tell him
15 that he got tricked and duped and that they played
16 on him being high and being drunk?

17 A. I said he got played and duped.

18 Q. Right.

19 A. Right.

20 Q. And so you didn't say that they played
21 on him being high or drunk?

22 A. I probably did. I can't recall that.

23 Q. All right. And then you go on to talk
24 about the adults who were dealing drugs and the
25 kids didn't deserve that; right?

1 A. I said the kids didn't deserve that;
2 correct.

3 Q. Right. And you said the adults were
4 dealing drugs. We just heard that in the clip.

5 A. Yes. Yes.

6 Q. Which adults were you talking about?

7 A. The whole situation. The totality of
8 the circumstances of the story that was given about
9 the drugs in the tires and the adults that was
10 involved that -- in the click.

11 Q. Meaning Ms. Hutto and Mr. Wright and
12 Mr. Butler?

13 A. And Mr. Smith and Mr. Scott and
14 Mr. Bailey.

15 Q. So you had information that Mr. Smith
16 was dealing drugs?

17 A. No. The whole information we had was
18 that the reason this incident took place is because
19 robbery of drugs that was supposed to be in the
20 motorcycle.

21 Q. Okay. And who came up with that
22 motorcycles, that was all came from Mr. Smith?

23 A. I don't know who came up with the
24 story, but Mr. Smith told me that -- well, he
25 described the motorcycle. He described going over

1 there earlier that day. At first he said he didn't
2 go. Went. And then he said he did went. And then
3 he said the color and described the location of the
4 motorcycle. I mean, I didn't know none of that.

5 Q. Okay. Later on after your -- so
6 there's a portion of the second clip that is muted
7 out because he's talking about his codefendants;
8 correct?

9 A. Ma'am, I don't know what took place.
10 If it's muted, I can't remember.

11 Q. Okay. That's all right. Do you later
12 on go on to say that -- then you start to bring
13 religion into it and you try to tell him that his
14 -- you try to tell him that his momma told you that
15 he was a good person and he went to church and to
16 let it free, set his soul free for the kids; right?

17 A. Correct.

18 Q. Okay. Because you're trying to make
19 him feel bad so that he will say something; right?

20 A. No.

21 Q. Okay. Just trying to get to the truth?

22 A. There you go.

23 Q. Okay. And so this interview is a
24 little bit different because you've got his brother
25 in for part of it, you have Ms. Buxton in for a

1 part of it, and you have both of them in the room
2 going back and forth at each other; right?

3 A. No.

4 Q. Okay. Why --

5 A. The --

6 Q. Go ahead.

7 A. The reason why we went back is because
8 Luther told us or Joseph, whatever you want to call
9 him, told us that his brother was in the detention
10 center. Once we found out that wasn't true, one of
11 them was lying. So during interrogation sometimes
12 you pit the other person against the other person
13 to find out who's telling the truth. That's why we
14 brung over --

15 Q. It's a --

16 A. Are you going to let me finish?

17 Q. Sure.

18 A. That was the reason why we brung over
19 his brother to find out which one of them was
20 telling the truth.

21 Q. Okay.

22 A. And then we spoke with Samantha on that
23 same day because he used Samantha as an alibi.

24 Q. Okay. Let me ask you this. If
25 somebody said something that was incorrect, does

1 that automatically mean it's a lie?

2 A. No.

3 Q. It could just be a mistake; right?

4 A. It could be, yes.

5 Q. And, in fact, you're asking Mr. Smith
6 on September 30, 2016, so 14 months after this
7 happened where he was on a particular night and
8 where his brother was on a particular night; right?

9 A. Yes.

10 Q. So it could be that he was just
11 mistaken and not lying; right?

12 A. I don't know what his thought process
13 was. When I first asked him, he said that he was
14 in the trailer on the couch and he fell asleep.
15 Later on throughout the investigation, we talked
16 with Mr. Windham, we found out that he was not
17 telling the truth. We checked the jail records.
18 Mr. Windham was not locked up at the time. The
19 same story that Mr. Luther gave me on that day was
20 the same thing that his brother did. Like sleeping
21 on the couch. All of them asleep on the couch.
22 Being awake. The same thing that he told me is the
23 same thing that Mr. Windham done in the trailer
24 that night. So that's why we figured out he was
25 not telling the truth.

1 Q. As opposed to being confused?

2 A. No, not telling the truth.

3 Q. Okay. So then you take these pictures
4 and after you have them in his face then you hang
5 them up on the wall for the remainder of the time
6 period; right?

7 A. Yes.

8 Q. And clearly they're upsetting pictures;
9 right?

10 A. Most definitely.

11 Q. Okay. And that was your goal was to
12 make him upset?

13 A. No.

14 Q. Okay. So then you go on to ask him
15 about if he's ever been so intoxicated he can't
16 remember anything and he agrees with you; right?

17 A. He said something to the effect that he
18 blacked out.

19 Q. Quite a few times in his life; right?

20 A. No. He said something to the effect
21 you black out. He didn't say he blacked out. He
22 says you black out.

23 Q. Okay. All right. And then you tell
24 him right at the end of that clip -- well, at the
25 end of that clip it stops with them kids and

1 everything is going to come down off that wall when
2 we get the whole truth; right? That's what -- that
3 was the last part of the clip?

4 A. I believe that was correct. I believe
5 that was --

6 Q. And if we watch the next line it says,
7 and let me tell you exactly what I think happened
8 and you correct me if I'm wrong; right?

9 A. Yes, I think it is.

10 Q. So you perceive to put the narrative
11 out there again and this is --

12 A. No.

13 Q. May I finish?

14 A. Yes.

15 Q. Thank you. So this is something that
16 we have a lot of different interviews that you
17 participated in and would you agree with me that
18 often times you correct the people or tell them to
19 think hard or you tell them nope, I know you
20 weren't at home, Derrick, because Ron Davis told me
21 so. Do you tell them your version of the facts?

22 A. No, ma'am.

23 Q. You don't?

24 A. We are investigators. Sometimes we get
25 information from other people. We try to

1 corroborate that information. If we think that the
2 information may be a little bit credible, we go to
3 the person that we first spoke with to see if it
4 could be corroboration there. And we let them know
5 sometimes we give them information of what we know.
6 And if it seem like it's incorrect, we tell them
7 stop -- well, I tell them to stop. This is what I
8 know and I share with them what I know. And it
9 don't line up with the facts they're telling me.

10 Q. But what you know comes from people --
11 from other people. You don't know because you
12 weren't there?

13 A. No. But you told me I was the one that
14 came up with the narrative. And I'm telling you
15 that's not true. From my investigation, I go with
16 fact. That's what an investigation is.

17 Q. Okay. And then you go on to ask him
18 more details about the crime and tell him more
19 details about the crime; right?

20 A. I ask him more details; correct.

21 Q. Okay. And then if he couldn't
22 remember, would you ever try to refresh his
23 recollection?

24 A. I only interrogated Mr. Smith and give
25 him the information that was given to us not to try

1 to lead him to say what I need him to say. Because
2 I don't know what happened and like you say, I
3 wasn't there.

4 Q. Okay. So while we're talking about
5 these -- we're on September 30th at this point;
6 right?

7 A. Yes.

8 Q. And so Orangeburg County had the
9 opportunity to and did have a policy to record
10 anytime you had conversations with people; right?

11 A. I'm not familiar with that policy.
12 Because during that time, we only had one interview
13 at the time. And like I said, I don't know if you
14 talking about specific incident or are you talking
15 about this incident. This incident was recorded.
16 But when you speak to people, you speak to people
17 in the parking lot, beside the road, in your car,
18 in your vehicle. But even in our building if it's
19 in -- I'm sorry. If we're interviewing them, we
20 might speak to them in the conference room. But if
21 you come to a accusatory setting or interrogation
22 then it will be done in the interview room.

23 Q. So --

24 MS. ZMROCZEK: Those are all the
25 questions I have. Thank you, Your Honor.

1 THE COURT: Okay. Anything on
2 redirect?

3 MR. OSBORNE: No, Your Honor.

4 THE COURT: Okay. And I got some
5 questions about this one. Did we show anything
6 about him being Mirandized in this?

7 MR. OSBORNE: Yes. This was at -- this
8 is when Mr. Windham was sitting right there and
9 Lieutenant Shumpert.

10 THE COURT: Okay. In the room when he
11 was signing the stuff?

12 MR. OSBORNE: Yes, sir.

13 THE COURT: Okay. All right. Well, if
14 he was Mirandized then I'm going to make the
15 decision that it was voluntary. We're going to
16 take a break. We've been doing this for a while
17 and we'll take about a ten minute break and you may
18 step down.

19 (WHEREUPON, there was a short break)

20 THE COURT: Is the State ready to
21 proceed?

22 MR. OSBORNE: We are, Your Honor.
23 State calls Lieutenant Shumpert. We'll be talking
24 about the October 4, 2016 interview.

25 THE COURT: That's correct. And then

1 we're going to move into arguments.

2 JAMES SHUMPERT,

3 having already been sworn, testified as follows:

4 THE COURT: Okay. You're still under
5 oath, you understand?

6 MR. SHUMPERT: Yes, sir.

7 THE COURT: Okay. Thank you, sir.

8 DIRECT EXAMINATION BY MR. OSBORNE:

9 Q. Okay. Lieutenant, did you have the
10 occasion to meet with Luther Smith again on October
11 4th of 2016?

12 A. Yes, sir.

13 Q. And why did you meet with him again?

14 A. His mother had reached out to us and
15 stated that he wanted to speak with us.

16 Q. And was Luther advised of his Miranda
17 warnings?

18 A. Yes, sir.

19 Q. Do you remember who that was that time?

20 A. I believe it was Travis Wright.

21 Q. Okay. And how long was this interview
22 with Luther?

23 A. I can't remember. Two hours, I
24 believe.

25 Q. Okay. During that interview, did

1 Luther appear to be intoxicated or under the
2 influence of drugs?

3 A. No, sir.

4 Q. Did Luther appear to have any physical
5 or mental disability that would have impaired his
6 ability to understand what was being said to him?

7 A. No, sir.

8 Q. Prior to or during the interview with
9 Luther, did you offer any breaks, drink, bathroom,
10 or otherwise?

11 A. Yes, sir.

12 Q. And was he denied access to telephone,
13 food, or drinks?

14 A. No, sir.

15 Q. Were there any threats or promises made
16 in exchange for his statement?

17 A. No, sir.

18 Q. Okay. If I can play clips 1 and 2.

19 THE COURT: This is State's what?

20 MR. OSBORNE: I'm sorry. State's 353.

21 THE COURT: Thank you, sir.

22 (Playing the video)

23 Q. That was Travis Wright -- Investigator
24 Wright?

25 A. Yes, it was.

1 MR. OSBORNE: Okay. Playing clip 2.

2 (Playing the video)

3 Q. Who was the investigator that was in
4 there with you?

5 A. Investigator Craig Davis.

6 Q. Okay. And he's deceased?

7 A. Yes, he is.

8 Q. Now, I can see that you got up and
9 started to leave when Luther said that you had
10 cursed him. Did you ever during all your
11 interviews with him say one curse word to Luther at
12 all?

13 A. No, sir.

14 (Playing the video)

15 Q. What does Investigator Davis say right
16 there at the end?

17 A. He haven't heard the story yet.

18 Q. So let's go through it?

19 A. Yes.

20 Q. All right. Like Luther's earlier
21 interviews, does he say there was talk in the
22 trailer on the night of the murders about stealing
23 a dirt bike and a motorcycle bike with dope in it?

24 A. Yes, sir.

25 Q. And where was the bike again?

1 A. At Krystal Hutto's house.

2 Q. And does Luther agree to go?

3 A. Yes.

4 Q. What does he agree to go for the
5 intention of stealing the dirt bike?

6 A. No.

7 Q. And so this is basically the same as
8 his September 30th statement?

9 A. Correct.

10 Q. And once again, is there talk in the
11 trailer about going to the strip club?

12 A. Yes.

13 Q. And does Luther agree to go to -- for
14 that plan to go to the strip club?

15 A. Correct. Yes, sir.

16 Q. Does he make it to the strip club?

17 A. No.

18 Q. And where does he end up?

19 A. Krystal Hutto's house.

20 Q. So, so far it's basically the same as
21 the September 30th statement?

22 A. Correct. Yes, sir.

23 Q. But this time there is a change?

24 A. It is.

25 Q. Does Luther admit to getting out of the

1 truck while at Krystal Hutto's house?

2 A. Yes, sir.

3 Q. Did he see Jerome Butler get shot?

4 A. Yes.

5 Q. And where did he say Jerome Butler was
6 when Jerome got shot?

7 A. Jerome's outside sitting in the
8 vehicle. He was exiting the vehicle when he got
9 shot.

10 Q. Did he know Jerome?

11 A. No, he said he didn't.

12 Q. Was Jerome the first or last victim to
13 be shot?

14 A. The first.

15 Q. Did he say how entry was made into
16 Krystal's home?

17 A. Yes.

18 Q. How?

19 A. Someone kicked in the back door. He
20 witnessed someone kicking in the back door.

21 MS. ZMROCZEK: Objection, Your Honor,
22 you know.

23 A. Well, if you look at the house it's
24 really at the back, but they call it the side door.

25 Q. After he entered the home, did he see

1 Krystal?

2 A. Yes.

3 Q. And where was Krystal when he first saw
4 her?

5 A. In the hallway.

6 Q. Did Luther say that he shot Krystal?

7 A. No.

8 Q. All right. In fact, did Luther say
9 that he shot anyone?

10 A. Correct. He said he didn't shot no
11 one.

12 Q. Okay. Did he see the kids in the home?

13 A. Yes.

14 Q. And what did he say -- Luther said when
15 he saw the kids?

16 A. He said he saw the kids peek and then
17 he said, man, don't shoot those kids.

18 Q. Did Luther say that he made entry into
19 the kids' room or that entry was made into the
20 kids' room?

21 A. Entry was made into the kids' room.

22 Q. How?

23 A. By shoulder.

24 Q. And what way, like forced open?

25 A. Forced opened the door. The door was

1 locked or something to that effect.

2 Q. Did he say anything about the door jam
3 to the kids' room?

4 A. Yeah, it was broken from the forced
5 entry into the room.

6 Q. Okay. So other than the side exterior
7 door being kicked in and the kids' bedroom door
8 being shouldered in, did Luther say that any other
9 doors in Krystal's home had been forced in?

10 A. No.

11 Q. Okay. And, again, I think you've
12 already said, but just to be fair, does Luther
13 Smith admit to shooting anyone?

14 A. No. He said he didn't shoot no one.

15 Q. In all these interviews, does he ever
16 say he shot anyone?

17 A. No.

18 Q. And where does he go after leaving
19 Krystal Hutto's home?

20 A. Indian Bluff. The land of -- whatever
21 you call it, Indian Bluff.

22 Q. Okay. And after this interview with
23 you, Investigator Davis, and Luther, did you ask
24 Luther to provide a written statement?

25 A. Yes, I did.

1 Q. And he provided that who, Investigator
2 Culpepper?

3 A. I believe he did, yes, sir.

4 Q. It was that all audio and video
5 recorded?

6 A. Yes. Correct.

7 MR. OSBORNE: All right. No further
8 question.

9 THE COURT: Ms. Zmroczek?

10 MS. ZMROCZEK: Thank you, Your Honor.

11 CROSS EXAMINATION BY MS. ZMROCZEK:

12 Q. So on October 4th -- so before I ask
13 that question, let me -- so you -- it's your
14 testimony that you received a call from -- in fact,
15 you stated multiple calls from Mr. Smith's mother?

16 A. Multiple?

17 Q. That's what you stated on the --

18 A. I said I spoke to his mother that
19 morning.

20 Q. Okay. Okay. Did you -- do you recall
21 saying that you've spoken to her multiple times?

22 A. I think I did say that.

23 Q. Okay. And you took notes in this case
24 anytime that you would make a documentation or
25 someone would call with a piece of information or

1 if you assigned a task to somebody or anytime you
2 had notes you would keep them in your logs; right?

3 A. All my notes is in the case file,
4 correct. Yes.

5 Q. Right. Right. And that would include
6 important information like a suspect's mother
7 called us today. That would be important to put in
8 your notes; right?

9 A. It's on video.

10 Q. Right. I understand that. But it's
11 also important to put in your notes; right?

12 A. Maybe.

13 Q. Okay. And so he comes in there and
14 he's like, yeah, trying to recant; right?

15 A. I'm sorry. Who come in trying to
16 recant?

17 Q. Mr. Smith says, I don't know what
18 happened. I wasn't there.

19 A. Correct.

20 Q. And you say, no, sir, you are in way
21 too deep. You tell him that he's going away for
22 the rest of his life?

23 A. No.

24 Q. Okay. When you said life or death,
25 what did that mean?

1 A. That was Mr. Davis said that. I didn't
2 say that.

3 Q. Okay. So when you're sitting there
4 watching Mr. Davis telling Mr. Smith that it's life
5 or death, what does that mean to you?

6 A. You asking me to speculate? I don't
7 know why he said it. He told him that.

8 Q. All right. So I'll ask that to
9 Mr. Davis.

10 A. Mr. Davis is deceased.

11 Q. Right. So we can't ask that to Mr.
12 Davis, so that's a problem. So you have -- but you
13 sit there and you tell him, no, you told me all
14 this stuff, now you can't take it back you're in
15 too deep. You told that to Mr. Smith; right?

16 A. Well, I said he was getting in too
17 deep, correct. Yes.

18 Q. Okay. And he, Mr. Smith, asked you
19 what do you want me to say; right?

20 A. Yes, he did.

21 Q. Okay. Because he is then -- and he
22 says whatever -- I'll say whatever I need to, will
23 get me out of jail; right? He's asking you if he's
24 going to get out of jail if he says what y'all are
25 asking him to say?

1 A. You have to replay that. I don't think
2 that's the way it went down.

3 Q. Okay.

4 A. He asked me, what do you want me to
5 say? Say whatever you want to say. I said, no, I
6 don't want you to say whatever you want me to hear.
7 I want you to tell me the truth. That's what I saw
8 on the video.

9 Q. Okay. And so is it your testimony that
10 you never -- that you never told him that he had
11 already given so many statements that there was no
12 turning back that he was flying over Europe?

13 A. Europe?

14 Q. Yeah. Do you remember telling him
15 that?

16 A. I don't recall that.

17 Q. Okay. And you would agree that at
18 least you were sitting there while Davis was
19 saying, you're going to be sitting there for the
20 rest of your life?

21 A. Yes, I was there.

22 Q. Okay. So implying that he was going to
23 do the rest of his life in jail if he didn't help
24 himself or say --

25 A. Again, I didn't say that.

1 Q. Right. But -- okay. So then he does a
2 handwritten statement; right?

3 A. I believe he did a handwritten
4 statement with Investigator Culpepper at the time.

5 Q. Okay. And then he also did a drawing;
6 right?

7 A. I'm not familiar with the drawing.

8 MR. OSBORNE: He's not familiar with
9 the drawing.

10 MS. ZMROCZEK: I'll mark it and see if
11 it refreshes his recollection.

12 (WHEREUPON, Court's Exhibit Number 8
13 was marked for identification)

14 Q. I'm going to show you what's been
15 marked as Court's Exhibit 8 and see if you
16 recognize what that is.

17 A. No, ma'am.

18 Q. No independent recollection?

19 A. No, I don't remember this.

20 Q. Okay.

21 MS. ZMROCZEK: I'm just going to leave
22 this as a Court's Exhibit, Your Honor.

23 THE COURT: Okay.

24 Q. You would agree that there's a date on
25 the paper though; right, even though you don't

1 recognize the paper?

2 A. Correct. Yes, ma'am.

3 Q. 10/4; right?

4 A. '16. 2016.

5 Q. Right. Same day that we're talking
6 about here?

7 A. Correct. Yes, ma'am.

8 Q. Okay. All right. And so you sit there
9 and you go through -- you sit there and watch as
10 Mr. Smith goes through and tells Mr. Davis another
11 version of the story; right?

12 A. Yes.

13 Q. Okay. And then he writes that version
14 down?

15 A. Yes.

16 Q. Okay. And it's different than the ones
17 before?

18 A. I will say he add more to it than what
19 he said earlier. There is a little difference than
20 what he said earlier; correct.

21 Q. Okay. And then subsequent, I think two
22 days after this interview, you take him out to the
23 scene?

24 A. I don't know how many days later, but I
25 did take him back to the scene.

1 Q. Okay. When you say, "back," had you
2 taken him out there before?

3 A. No.

4 Q. Okay. So -- but you took him out there
5 sometime after this?

6 A. Yes, after the interview. Correct.

7 MS. ZMROCZEK: No further questions,
8 Your Honor.

9 THE COURT: Anything on redirect?

10 MR. OSBORNE: No, Your Honor.

11 THE COURT: All right. Okay. He was
12 given his Miranda warnings, so, you know, I'm going
13 to stay with it being voluntary. This is the last
14 one I'm doing about this today. As I mentioned
15 earlier, what I want to hear is -- oh, you can step
16 down Lieutenant Shumpert. Thank you, sir.
17 Appreciate it. You'll be back in another day to
18 finish it up.

19 MR. SHUMPERT: Yes, sir.

20 THE COURT: All right. Before we end
21 today, I wanted to hear your Severance motions and
22 your *Bruton* motions. Okay. So -- and I guess,
23 Mr. Leiendecker, since you're right in front of me
24 and I can go to my right or if you would like to
25 pass it on to somebody else first. But since

1 you're the oldest, I'll let you go first.

2 (Laughter)

3 MR. LEIENDECKER: Your Honor, first as
4 to the *Bruton* issues contained in the statements
5 that we've heard already and the ones that we're
6 going to hear and in the ones that relate to the
7 Defendant Antly Scott which I think the State also
8 has some of those clips. I have marked -- that's a
9 lie. I have had marked in those redacted
10 transcripts places that I have objections
11 concerning the use of pronouns or the use of other
12 things that I think when you're sitting in a
13 courtroom trying a case with other people are
14 prejudiced under the *Bruton* standards.

15 What I have done in the break that the
16 Court had is, I've talked to Mr. Osborne and the
17 State about these places that I have marked and
18 I've tried to have them marked even with the times
19 on the clips and I think we're close on those. And
20 what I would offer to the Court and I've already
21 discussed with the State is, I will get all of
22 those copied with the times with the pronouns and
23 other objectionable words marked including I've got
24 some hearsay that's contained in there marked and I
25 will send those to the State as soon as tomorrow or

1 the beginning of next week. Mr. Osborne will
2 review those and it could be that by the time we
3 come back before the Court that we will have worked
4 those issues out. Relative to the clips that we've
5 been -- that we have been and are going to be
6 shown. Okay.

7 THE COURT: Sure.

8 MR. LEIENDECKER: So I could make lots
9 of arguments about the problems I see with the
10 clips. But if the Court would indulge an old
11 attorney, I think maybe I can solve the problem
12 without the necessity of the Court's ruling.

13 THE COURT: That would be great.

14 MR. LEIENDECKER: Okay.

15 THE COURT: Do you want to copy me with
16 that?

17 MR. LEIENDECKER: Yes. I mean, that's
18 probably a good idea. I hadn't really thought of
19 it, you know. Yeah.

20 THE COURT: I mean, I would just like
21 to see if --

22 MR. LEIENDECKER: Yeah. In fact, I
23 will copy everyone with it. I mean, I hadn't gone
24 that far, but that's an excellent idea just like
25 when I sent my memorandum and reply, I'll send it

1 to the same group of people, Chelsea and David and
2 everyone on the Defense side as well.

3 THE COURT: All right. That will be
4 great. Thank you, sir. So that means we move to
5 Severance; is that correct?

6 MR. LEIENDECKER: It does mean we move
7 to Severance. On March 19, 2019, I filed my motion
8 for Severance with the Court. I stand by the law
9 contained therein and I discussed the videos and at
10 that time I discussed the videos in toto because we
11 hadn't had any kind of agreement or redactions or
12 anything else to that affect. And I asked the
13 Court to sever this because it was these statements
14 and these statements alone that link my client to
15 this incident.

16 There are no physical forms of
17 evidence. No latent fingerprints, no touch DNA, no
18 blood DNA that matches Mr. Bailey. There are no
19 prints be they footprints, footwear impressions, or
20 anything else that match him. In fact, the pistol
21 recovered at the time of Mr. Bailey's arrest that
22 he identified as his was a 9mm which is not a gun
23 that was even used in the commission of this crime.

24 Since then there have been redactions
25 done. In fact, at one point the State wasn't going

1 to put any of these statements in. But as the
2 Court has already heard in discussion, there is a
3 lot of trial strategy reasons that at least
4 Mr. Luther Smith through his counsel will want to
5 introduce substantial portions of the interviews
6 that were done by the State through Orangeburg
7 County Sheriff's Department relative to her client.

8 And, obvious, I will not speak for her,
9 but the point of that seems to be to demonstrate
10 the evolution of the story that includes Luther
11 Smith in this trial. And the suggestion that those
12 ideas were not only not his, but that were provided
13 and planted to him by the State.

14 That's -- if I was trying the case,
15 that's a very valid thought of a way to defend this
16 case. But it puts me right back where I was on
17 March 19, 2019 when I filed this memorandum. It
18 puts me in a place where I can't get a fair trial
19 if I'm sitting in a trial with those clips. And so
20 I ask for Severance. I cited that this Severance
21 should be granted where there's a serious risk that
22 a joint trial will compromise the specific trial
23 rights of the codefendant or prevent the jury from
24 making a reliable judgement about the codefendant's
25 guilty. There's always an inference when you sit

1 in a courtroom with two or three other defendants
2 that if they prove one defendant guilty you get
3 splashed with the paint of that defendant.

4 But this is much more than that, Your
5 Honor. This is much more than an inconvenience of
6 having to try to distance yourself from
7 codefendants. In *Zarfino verses The United States*
8 and also in *State V. Dennis*, the State should
9 carefully consider all available remedies before
10 deciding to try codefendants jointly. This case
11 has been out here a long time. But there is a
12 legitimate alternative and that is to sever these
13 trials and not try Mr. Bailey with the
14 codefendants.

15 Trial judges need to carefully consider
16 the problems which may arise from a joint trial
17 such as the redacted statements and they must
18 assure the protection of the defendant's
19 Constitutional rights of those witnesses that have
20 things or that have things said about him.
21 Judicial economy, state resources, and all those
22 factors including the inconvenience of the trial
23 the difficulties on all the parties involved should
24 not take precedent over the protection of a
25 defendant's Constitutional rights.

1 These statements that are going to be
2 introduced are so replete with references to
3 Bailey, that any attempt to redact them with
4 deletions or long pauses or neutral phrases will
5 result in leaving the jury, I believe, with the
6 inescapable conclusion that Bailey is one of the
7 persons, one of them, one of they, one of we, that
8 is referred to. Additionally, the nontestifying
9 codefendant's statements would be hearsay and would
10 be damaging.

11 Bailey's right to trial would otherwise
12 be violated. His Constitutional protections
13 against confrontation and other things would be
14 violated and I would ask the Court to sever the
15 case so that we don't have to deal with those
16 issues.

17 THE COURT: Mr. Leiendecker, may I ask
18 you a question?

19 MR. LEIENDECKER: Sure.

20 THE COURT: If the clips are not
21 involved in the case, you don't have a problem with
22 it; right?

23 MR. LEIENDECKER: If the clips --

24 THE COURT: If there are no clips? If
25 there are no video clips?

1 MR. LEIENDECKER: Well, I don't have a
2 strong Severance motion absent those clips which
3 make reference to other people's them's and they's
4 being involved.

5 THE COURT: Right. Okay.

6 MR. LEIENDECKER: But the State started
7 out with we're going to put the clips in, went to
8 we're not going to put the clips in, and now says
9 we're going to put this redacted form of the clips
10 in. And I do have problems with the redacted forms
11 of the clips just the ones we've seen now. With
12 the Antly Scott's, I have even more problem with
13 those. And, you know, I'm not saying that they
14 can't get better cleaned up, but when there's long
15 pauses, when there are those kind of redaction
16 glitches, I find them uncomfortable watching them.
17 And I wonder what a jury thinks when they hear
18 them. What did they say? What were they saying?
19 And, again, it's not being splashed with the paint,
20 the reality is these other people all said things
21 about the involvement of my client. I don't
22 believe they said anything truthful about the
23 involvement of my client. But at least the one
24 Defendant, if he's going to say something about my
25 client, Mr. Coleman is going to be on the witness

1 stand.

2 So because of those factors, I believe
3 that the Court should err on the side of caution to
4 the protection of the Constitutional rights of
5 Robert Bailey and order that his case be severed
6 from the other Defendants.

7 THE COURT: Thank you, Mr. Leiendecker.
8 Mr. Johnson?

9 MR. JOHNSON: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 MR. JOHNSON: Talk about a few other
12 things -- excuse me, Judge. When it comes to the
13 *Bruton*, obviously, it just gets worse with my
14 client in the clips. And as it goes into the ones
15 in October that we have the final ones and the
16 video where we haven't even looked at them yet
17 during *Denno*. And from the very first statement
18 where Mr. Smith is talking about codefendants, he
19 starts naming my client as the one who plans it.
20 And says Mr. Scott is the ringleader who planned
21 it. And it keeps going back to that and it just
22 goes worse and worse as they go on in the video and
23 the statements he says my client kicks the door, my
24 client shoots, and then he says Mr. Bailey shoots.

25 In addition to all that with

1 redactions, I also wanted to point out -- I wanted
2 to make clear, if the Solicitor is intending on
3 using written statements. Because I thought he
4 indicated in an email that he was. And there are
5 some written statements, this one from October 4th
6 very clearly starts doing the exact same thing,
7 talking about my client and involvement with
8 planning the robbery and doing all those things.

9 So in addition to the clips, if these
10 written statements are to be used by the State,
11 that creates the same issue in addition to my other
12 objections regarding hearsay, relevance, and all
13 that, a separate objection, it gets into *Bruton* and
14 it gets into Severance. Because you've got the
15 written statements, you've got the video recorded
16 statement walkthrough with Mr. Smith, you've got
17 all the interviews and clips of Mr. Smith, and as
18 the Public Defender mentioned, there's just
19 constant references to them or us or we, I wasn't
20 with them. So those would have to be redacted.
21 There's of course a ton of hearsay in there that
22 would have be redacted. And to avoid misleading
23 confusing the jury, it would seem impossible with
24 these videos especially as you get on to the latter
25 half of the longer interviews.

1 So under motion to sever, of course,
2 cite the confrontation clause, the due process
3 rights, the right of my client to confront
4 witnesses, and inability to do that where you're
5 sitting here with a codefendant, you may or may not
6 testify. And then, of course, if the State wants
7 to redact then, of course, we've got Mr. Zmroczek
8 doing her job and wanting to bring in these entire
9 statements that simply outline -- at least two of
10 them are just constant Antly Scott did it. Antly
11 Scott did this. Antly Scott did that. And it's
12 just even worse with my client.

13 So as far as the motion to sever the
14 *Bruton* issues, I don't think you can fix that with
15 redactions. If the written statements are coming
16 in, if the State's arguing that, I thought they
17 were, then that just makes it worse. I don't know
18 how you would do that, try to redact that out. So
19 based on the case law and my motion, Your Honor,
20 that's my argument. I just think that it creates
21 an impossible situation, I'd ask that Your Honor
22 sever the cases. That's all I have.

23 THE COURT: Okay. Thank you. Ms.
24 Zmroczek?

25 MS. ZMROCZEK: Thank you. Briefly,

1 Your Honor. So one of my -- obviously, my defense
2 is completely different from these two defenses.
3 There are these back to back to back to back
4 interviews that go on long and when you watch the
5 entire clips, you see why I have to argue against
6 the veracity and voluntariness of these statements.

7 You will see as you watch the complete
8 clips that anytime my client says something that
9 they don't -- that isn't want to be heard by the
10 police, they stop him, they give him trigger words
11 like, yep, you need to think. And Mr. Osborne
12 seems to think that I don't have the right to put
13 all of this in and that's absolutely -- you can't
14 as the State say -- have Investigator Shumpert say
15 Luther Smith said this. Luther Smith said this.
16 Luther Smith said a lot of things. You can't just
17 pick and choose what you want them to say. They
18 get to see all the things that he said and did.

19 Because, Your Honor, the next clip --
20 the next video is two days later where they take
21 him to the crime scene and my client can't point
22 out one thing. Just like that -- the drawing that
23 Mr. Shumpert can't remember, but it's right there
24 dated 10/4 puts the decedent Ms. Hutto in the wrong
25 place. They have -- and all of that obviously goes

1 to my defense, Your Honor.

2 The -- in addition, there are these
3 weaving threats from Davis and from Shumpert and
4 from other people you're going to get life, you
5 know, you need to be the first on the bus.
6 Meaning, you know, just tell us what you know. And
7 not only -- not only, Your Honor, is it important
8 for the jury to be able to understand the complete
9 presentation as to whether or not these statements
10 are voluntary or not, they also -- I will continue
11 to do is point out how many things are not
12 corroborated or are wrong; right.

13 And so in my -- so first thing is,
14 Investigator Shumpert is up there saying -- I'm
15 literally reading from the transcripts that were
16 provided to us by the State, and I said, did you
17 say this? And he's like, nope, I don't remember
18 that. So necessarily I'm just going to have to
19 keep, you know, going back and refreshing his
20 recollection. And, you know, and a lot of it
21 revolves around, you know, what he says that he
22 learns from Derrick about the codefendants.

23 Your Honor has heard the Severance
24 motions from the other two codefendants and I echo
25 those same things. Again, it's not as easy as, oh,

1 well, let's just not talk about them then we don't
2 create a *Bruton* issue. But then I lose the
3 constitutional due process to challenge those
4 statements and to challenge and to present my
5 defense which is completely different from the two
6 codefendants.

7 And just as a last aside, Your Honor,
8 we've been in the courtroom all day and just I
9 don't know that we could try -- I mean, I would
10 need to sit with my client, with my team at a whole
11 table by myself so I can see, you know, the
12 evidence. I have great concerns about just the
13 logistics of it all as well.

14 THE COURT: Well, let me ease your mind
15 of that. We can work that out.

16 MS. ZMROCZEK: Okay. Good. But, you
17 know, but more importantly, Your Honor, you know,
18 after speaking with my client and I think that once
19 you have an opportunity to view all the clips as a
20 whole and even if you didn't even just in cross
21 examining Shumpert who had no independent
22 recollection of every single clip that I asked him,
23 I think it's going to require that those get
24 played. And in doing so, you know, requires me to
25 properly defend my client and at the same time, it

1 creates this confrontation problem.

2 THE COURT: And, Ms. Zmroczek, before
3 you sit down. Not having the clips would hurt your
4 defense?

5 MS. ZMROCZEK: Yes.

6 THE COURT: Okay. All right. Because
7 of the arguments you're making about it?

8 MS. ZMROCZEK: Right.

9 THE COURT: Okay. Whereas not having
10 the clips helps them?

11 MS. ZMROCZEK: Sure.

12 THE COURT: Is that correct?

13 MS. ZMROCZEK: I mean, I don't know if
14 it helps them or not. I mean, the State, you know,
15 if -- if State says, oh, we don't need the clips,
16 we'll just put the investigators up then we run
17 into the same problem. Because we've already got
18 testimony that I'm going to have to impeach him
19 with or, you know, refresh his recollection. And
20 so, I don't know if it necessarily helps them or
21 not. I don't look at it from that point of view.
22 Sorry.

23 MR. LEIENDECKER: And, Your Honor, just
24 to try to add to that answer. There are certain
25 parts of the clips which I sort of referred to when

1 I stood here that relate to Mr. Coleman that in
2 fact we may want cross examination about and we may
3 wind up wanting to play just to again show the
4 similar tactics that were used to develop the story
5 from Mr. Coleman by the State as well.

6 But Mr. Coleman is here and he's on the
7 witness stand so that's not the same issue.

8 MS. ZMROCZEK: But it kind of is
9 though. Because -- so the first time that they
10 interrogate, interview, whatever they want to call
11 it --

12 MR. LEIENDECKER: Right.

13 MS. ZMROCZEK: -- Mr. Coleman, he's in
14 Alabama and even though there's no recording of it
15 and no notes of it, the only way you would know
16 that is if you watch the interview of Mr. Coleman
17 in Alabama, they get my client out of jail. And
18 they get him on the phone and he's telling Coleman
19 just tell them what they want to hear. So it's
20 more of the same. And so obviously that, you know,
21 that to me is also going to be a big issue.

22 Because you've got Smith talking to
23 Coleman, it's all video recorded. You have
24 Shumpert saying we believe Smith he's telling the
25 truth and I know they can, you know, ruse or have,

1 you know, whatever they want to do, but the point
2 is, I still get to and I think I'm required to ask
3 about it. Because when you look at all of the
4 stories that are told, my client's not there
5 according to Mr. Coleman, according to anybody
6 until all of a sudden he has one of the best
7 lawyers in town and then he's there. And so that
8 is going to be what is the crux of my argument in
9 this case.

10 THE COURT: Okay. Thank you, ma'am.
11 All right. Mr. Osborne?

12 MR. OSBORNE: If I heard all of that
13 correctly, it seems like there are three reasons
14 for that they're arguing for Severance. The one
15 is, you know -- well, let me just say that, you
16 know, unless I heard something wrong on those
17 clips, you never heard Luther Smith say the name
18 Jackie Man or Pocket or Robert Bailey or Antly
19 Scott. We don't plan on introducing any written
20 statements that will implicate Robert Bailey,
21 Jackie Man, Antly Scott, or Pocket. That you saw
22 -- and if you had been -- I can talk to you about
23 this, my exhibit list isn't necessarily talking
24 about everything that's going into evidence. You
25 know, some of that stuff is just going to be ID.

1 But we're not planning on introducing any of that.
2 So there is nothing in the clips or anything that
3 we're planning on introducing that will implicate
4 *Bruton*. Nothing.

5 And, you know, Your Honor, the only
6 reason why I made the clips in first place and if
7 you notice, the clips aren't really Luther talking.
8 The clips are all Lieutenant Shumpert talking.
9 Because this would give them an opportunity to show
10 hey, look, this is course of -- you know, this is
11 whatever they want to argue there it is. They
12 don't want the videos being played and they don't
13 like the clips, I'm fine with not introducing them.
14 But I still want to ask him about what Luther Smith
15 said.

16 So really that goes to the first issue
17 of redactions. I appreciate Mr. Leiendecker. I'll
18 take a look at his suggestions. I don't think I'll
19 have any problem with especially with pronouns, but
20 I'll take a look at that. I appreciate that.

21 The second issue, compromise a specific
22 trial right. What I think I'm hearing here is Ms.
23 Zmroczek feels that her specific trial right is
24 effective cross examination. Well, you don't have
25 the right to elicit hearsay. You don't have the

1 right through cross examination to break the rules.
2 That's not how that works.

3 We are introducing Luther Smith's
4 statement under 801(d)(2) an admission by a party
5 opponent. It is not hearsay because the statement
6 is being offered against a party. And it's the
7 party's own statement. That's how we get to
8 introduce it. There's no hearsay exception that
9 allows Ms. Zmroczek to introduce Luther's own
10 statement. I mean, you know, for example, I'm sure
11 Mr. Smith told his mom he didn't do it. Well, you
12 don't get mom on the stand and say, what did Luther
13 say he did? That's hearsay. Nor do you get to
14 then ask Shumpert what did Luther Smith say.

15 Unless, and that brings us to the last
16 one, the Rule of Completeness. Unless I introduce
17 something through Shumpert that Luther Smith said
18 that needs to be clarified. All right. So where
19 does that kind of rule come from? I think it's
20 *Cabrera*. And in *Cabrera* under the Rule of
21 Completeness, *Cabrera*, I think it was his wife. He
22 shot his wife in the head. They bring him in. The
23 defendant says, yep, I shot her, I killed her.
24 That's all the State introduced.

25 Well, *Cabrera* is representing himself

1 if I read the case right and he's like, well, wait
2 a minute now, I wrote a statement. And in my
3 statement, I said to the detective that I shot her
4 in the head because she took the gun out of my
5 holster. She took the gun. Well, the State didn't
6 want to play that. Well, the trial judge says,
7 *Cabrera* you want that in, you have to take the
8 stand. Well the appellate court says wait a minute
9 that's not right.

10 You know, the whole statement --
11 *Cabrera's* whole statement was, yeah, I killed her.
12 I don't know how she got the gun out of my holster.
13 So the only way to effectively relay the statement
14 accurately would have been to play the whole thing.
15 Okay. And not force him to get on the stand
16 because he said that earlier.

17 I will provide to the Defense because I
18 know we did this kind of quick, every date and what
19 admissions I'm seeking to introduce through every
20 date. If they need to introduce another portion of
21 Luther Smith to complete that admission, I'll
22 entertain that. And I think that would help if
23 they need that part of it. But what they're trying
24 to say really though is under Rule of Completeness,
25 I'm not trying to talk about completing Luther's

1 story. I'm trying to show how coercive he was.
2 You can do that. Cross examine him. And if he
3 doesn't remember, impeach him. Don't refresh his
4 memory, impeach him.

5 As far as Severance goes, Your Honor,
6 you know, yeah, there's judicial economy, but more
7 so than that. I mean, this case really epitomizes
8 why these type of cases need to be tried together.
9 This family does not need to go through this three
10 times. And it's not just the family that's here,
11 it's that eight-year old boy. That's it, Your
12 Honor.

13 THE COURT: Okay. All right.

14 MS. ZMROCZEK: And just very briefly,
15 Your Honor. He says that he -- Mr. Osborne said
16 that I can't introduce X, Y, and Z unless I put my
17 client up, that's just not true. I have an expert
18 coming in under false confessions and experts can
19 rely on hearsay. So when he gives his opinion, he
20 will be relying on that information and the Rule
21 702 and 703 allow him to do that. So, they do. I
22 mean --

23 MR. OSBORNE: I have a lot to say
24 obviously about that expert's testimony and his
25 ability to testify.

1 MS. ZMROCZEK: Right. And, I mean, and
2 obviously that will come. But, additionally, Your
3 Honor, you know, we've already shown that we're
4 going to have -- I'm going to have to show portions
5 of those clips and complete the sentences and
6 complete the things that Mr. Smith said. Because
7 it wasn't just what he said. This was -- these
8 were multiple minutes sometimes hour long
9 conversations where the story develops to what --
10 and then they bring in what they want said at the
11 end when many different things were said in the
12 beginning. And so I have to be able to attack
13 that.

14 THE COURT: All right. Okay. All
15 right. Mr. Leiendecker, you going to send those
16 statements to everybody?

17 MR. LEIENDECKER: I'm going to send
18 what I have. I want to be able to go over -- I've
19 got them all tagged which aren't going to work well
20 in the copier, so I need to go over them and find a
21 way to redline them or some other way to mark them,
22 but, yes. Like I said, I'll send those as soon as
23 is --

24 THE COURT: Ash gets through doing
25 them.

1 MR. LEIENDECKER: Possibly.

2 THE COURT: Okay.

3 MR. LEIENDECKER: I can't count on Ash
4 to do it.

5 THE COURT: Okay. All right. Thank
6 y'all. We'll take a break and we'll -- I'll get
7 together with y'all about when we're going to get
8 back together. Okay. Thank y'all.

9 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the 27th of January, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 15, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF ORANGEBURG) GENERAL SESSIONS
4 THE STATE,) CASE NO. 2018-GS-38-1285,
5) 1286, 1287, 1288, 1289, 1292,
6 Plaintiffs,) 2018-GS-38-1301, 1302, 1303,
7 Vs.) 1304, 1305, 1306, 2017-GS-
8 ROBERT BAILEY, ANTLY) 38-166, 167, 168, 169, 170,
9 Scott and LUTHER SMITH) 171
10) FEBRUARY 3, 2022
11 Defendants.) ORANGEBURG, SOUTH CAROLINA
12
13 HONORABLE EDGAR W. DICKSON, JUDGE
14 A P P E A R A N C E S :
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16 CHELSEA A. GLOVER, ESQUIRE
Attorneys for the Plaintiffs
17 BY: MARK A. LEIENDECKER, ESQUIRE
18 ASHLEY D. CHISHOLM, ESQUIRE
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20 RICHARD E. LACKEY, ESQUIRE
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23 KATHERINE A. SPIRES,
24 REGISTERED PROFESSIONAL REPORTER
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
EVERETT CULPEPPER				
Mr. Osborne	22/43			
Ms. Zmroczek		27		
Mr. Johnson		47		
Certificate of Reporter		165		

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1 MR. OSBORNE: So where we left off, if
2 I'm correct, with Lieutenant Shumpert, it was with
3 his October 4, 2016 -- Luther Smith's October 4,
4 2016 statement. So we got through the
5 voluntariness of that. We still have a little bit
6 of unresolved issue with that in regards to
7 Culpepper's written statement from him. But while
8 we still had Shumpert, I thought we could keep
9 going.

10 After looking at the submitted
11 objections from Mr. Johnson and Mr. Leiendecker
12 regarding Luther's October 6th, October 21st,
13 October 31st, and November 14th statements, I won't
14 be seeking to introduce any of those statements in
15 my case in chief.

16 The reason why I asked for a
17 voluntariness ruling on those statements, to be
18 perfectly frank, is because I understood that there
19 might be a false confession expert testifying. And
20 so I would use those statements to demonstrate
21 that, you know. It's just voluntariness going on
22 all over the place in regards to Luther's
23 statements.

24 So I thought -- I mean, if they're
25 stipulating that these statements are voluntary,

1 then there's no reason I don't believe to have
2 testimony establishing that they're voluntary.
3 Miranda was given on each one. I don't plan on --
4 again, we don't need a *Bruton* or redaction comment
5 because I don't plan on introducing any of these
6 statements in my case in chief.

7 THE COURT: Okay. So that's 10/6 -- I
8 mean, October 6th, October 21st, and November 4th
9 were the three?

10 MR. OSBORNE: And then October 21st.
11 So October 6th, October 21st, October 31st, and
12 November 4th.

13 THE COURT: You're not planning to
14 introduce unless we have to get into -- if they
15 stipulate to voluntariness?

16 MS. ZMROCZEK: Your Honor, here's the
17 problem is that, I mean, I'm challenging that it's
18 a false confession. I don't think that I can also
19 then stipulate that they were voluntary.

20 THE COURT: Aren't you -- and I'm just
21 asking. It seemed to me like what you're trying to
22 show these clips or have these clips get shown to
23 show how many times he was brought before them --

24 MS. ZMROCZEK: No. No. No. I mean,
25 yes, partially. Partially, yes. But not only

1 that, Your Honor, what I go -- when you watch all
2 of the clips in total, what you see is he's being
3 fed information. And then the next time when he
4 comes back, he uses that information that was fed
5 to him. And so -- and so that's kind of how it
6 builds throughout all of these -- throughout all of
7 these items.

8 And, you know, obviously, we read the
9 Court's email and the ruling with regards to
10 *Oglesby*, and, Your Honor, I'm just not quite sure
11 that that's what it says.

12 In fact, I've reached out to, like I
13 said, appellate defense people that are way much
14 smarter than I am and they seem to agree that the
15 plain meaning of the statute is that the entire
16 thing does come in.

17 THE COURT: Did you have a case or
18 anything?

19 MS. ZMROCZEK: Well, I printed *Oglesby*,
20 Your Honor. But also -- which I know that your
21 clerk says that she has. But also cited in there,
22 Your Honor, is *Cabrera Pena* which is a 2004 case
23 and they all -- they all, like I said, reiterate
24 the same thing. So *Oglesby* was a case where the
25 defense was actually trying to keep a statement

1 from being published to the jury, Your Honor.

2 And in looking at that, I have my notes
3 written down just so it's easier -- yeah. In
4 reading that, the whole recording says -- the
5 defense was trying to exclude the whole recording
6 because parts of it were inaudible. But the plain
7 language of 106 applies in the case just like it
8 does here. *State V. Cabrera Pena* which is a 2004
9 case says, also the defendant is entitled to have
10 his entire statement entered.

11 And I know that you haven't ruled on
12 the severance motion, but this kind of goes hand in
13 hand with the severance motion for Mr. Smith that
14 is. Because, Your Honor, his, you know, ability to
15 put on a full and fair defense including
16 challenging these statements by an expert requires
17 that the statements be presented to the jury and
18 then they listen to the expert testimony and then
19 they can decide.

20 THE COURT: Right. I mean, regardless
21 of what I rule on this, you still get to argue that
22 in front of the jury.

23 MS. ZMROCZEK: But in order to do so, I
24 have to bring in the statements that were made
25 which I think then really messes up or implicates

1 these two.

2 MR. LEIENDECKER: Which circles us back
3 around to *Bruton*.

4 THE COURT: No. No. I mean, I
5 understand.

6 MR. LEIENDECKER: And the Court's
7 suggestion that she should only be allowed to
8 introduce things that don't implicate *Bruton* cuts
9 the defense off at the knees. And if it doesn't
10 cut her off at the knees, leaves me in a trial
11 where *Bruton* is replete in everything. And that's
12 the issue of severance. And I agree with
13 everything that counsel says regarding *Oglesby* and
14 Rule 106.

15 I'm not even -- the one portion of
16 *Oglesby* that the State pulls out, I don't even
17 think properly reflects Rule 106. 106 is a rule of
18 inclusion, not exclusion.

19 THE COURT: No, I understand that. And
20 when I read 106, the original reading of 106 which
21 says, any part that in fairness be considered
22 contemporaneously with it seems to be very open
23 ended. I agree.

24 MR. LEIENDECKER: It's very open ended.
25 And any part that not only explains it, but

1 explains the defense that the defendant is putting
2 on should be fair game.

3 THE COURT: Yeah, and I agree with
4 that. But if they're only putting in part of it, I
5 think *Oglesby* does limit it to anything to clarify
6 the part of the statement that they want to put in.
7 And then --

8 MR. LEIENDECKER: I don't believe based
9 on the other case law and I don't believe -- and if
10 that's how it's interpreted, I think -- I think
11 that court was wrong or that's wrong.

12 THE COURT: Well, I'm fine with, if you
13 can show me some other case law because I just got
14 through reading *Cabrera* or however you say his
15 name, and I read *McDonald* which is the last one
16 that is in it. And Judge -- Justice Kittredge in
17 that told me he didn't like pronouns and another
18 guy and all that kind of stuff. But I never really
19 heard what he liked, you know what I mean?

20 MR. LEIENDECKER: Well, I'm with his
21 don't likes, obviously.

22 THE COURT: I'm with the don't likes
23 too, yeah.

24 MR. LEIENDECKER: And my point is that
25 leaving us altogether and starting this trial is a

1 recipe for us starting this trial all over again.

2 THE COURT: You mean years done the
3 road on --

4 MR. LEIENDECKER: I am not trying to
5 make you feel good that it will happen when you're
6 not here.

7 THE COURT: I'm sorry. Ignore the
8 smile on my face.

9 MR. LEIENDECKER: That's a selfish way
10 to look at it. But, you know, if we stretch it out
11 long enough I won't be here either. However, I'm
12 talking about having the trial stopped, a mistrial
13 granted on *Bruton* issues and then a month or so
14 later, the same judge having to start up a separate
15 trial.

16 THE COURT: Okay.

17 MR. OSBORNE: I mean, I'll be repeating
18 what I said. But it's basically, the
19 contemporaneous part, I went and did a little dive
20 on that in the last try because what was pretty
21 interesting about that is, I thought that what it
22 said was, all right, I got a witness up here. I
23 introduce a part of the statement. Okay. Well,
24 judge rules, okay, you got to play the whole part.
25 Well, then I say, well, no, they can play the whole

1 part. They got to introduce it. That's not the
2 contemporaneous part. The contemporaneous part
3 says I have to do it. I have to introduce the rest
4 of it because that doesn't force them to put up a
5 case. Because now I can force them to put up a
6 case, I can get last close. That's the
7 contemporaneous part.

8 But the rule of completeness like you
9 said and like I said before, the *Cabrera Pena* and
10 *Oglesby*, both and *Jackson* I think was the other
11 one, it all stands for, and this is what I went
12 through last night, late at night, putting in all
13 of the admissions that -- all of them that we plan
14 on seeking to introduce.

15 If they need to play a portion of
16 Luther Smith's statement to help explain any one of
17 those admissions, so that I'm not misleading the
18 jury, they get to do that. That's why I give it to
19 them. But they don't get to just press play and we
20 get to watch all this other stuff. That's hearsay.
21 I get to introduce it, not them.

22 MS. ZMROCZEK: Right. And that's where
23 I think that's where the disconnect is. Is that
24 the -- so the argument that we're making is what is
25 said to him and what he, you know, vomits back is

1 it's a progression. You know, we've got like a 45
2 minute interview and then like an hour and 12
3 minute interview and they get longer and longer and
4 they're giving him more information. And, for
5 example, I think for the next thing that he was
6 going to put up was the walkthrough of the --
7 sorry.

8 THE COURT: You're fine.

9 MS. ZMROCZEK: Was just the walkthrough
10 of the crime scene, I don't know what he intends on
11 putting up, but I intend on putting up the whole
12 thing. Because my guy gets not one thing right in
13 the crime scene and so that goes also to what the
14 false confessions expert is going to say. It goes
15 to just his believability, credibility as, you
16 know, as a witness at that time --

17 THE COURT: He's not planning on using
18 the walkthrough.

19 MS. ZMROCZEK: What's that?

20 THE COURT: He's not planning on using
21 the crime scene walkthrough.

22 MS. ZMROCZEK: Right. Right. But I
23 am.

24 MR. OSBORNE: That's hearsay.

25 THE COURT: But that would be for you

1 to call as a witness.

2 MS. ZMROCZEK: Right.

3 THE COURT: Okay. So I don't
4 understand -- maybe I'm still missing something.

5 MR. JOHNSON: Your Honor, can I just
6 put -- just so I can add this to the record.

7 THE COURT: Okay.

8 MR. JOHNSON: A lot of that statement
9 and those statements focus so much, there's so much
10 mention of Mr. Scott, my client, I'm just going to
11 chime in and go along with this argument. Because
12 a lot of that talks about my client.

13 THE COURT: I agree. And I think if
14 y'all introduce it, it's going to have to be
15 cleaned up. I mean, if you want to do the crime
16 scene walkthrough, okay, if you want to do that
17 clip or two hour segment or whatever it was, that's
18 got to be cleaned up. I'm not saying just because
19 she's introducing it that your client's are going
20 to get to be named, they're not.

21 MR. OSBORNE: And just so I understand,
22 he gets -- she would -- well, she would get to
23 introduce the portions of Luther's statement that
24 explain or clarify the portions of Luther's
25 statement that I'm seeking to introduce under the

1 rule of the pleadings?

2 THE COURT: Right. And she gets to do
3 that at the time that you do it if there's anything
4 like that.

5 MR. OSBORNE: And in addition to that,
6 and just so we're all on the same page too, the
7 evolution of these interviews and as they go on,
8 that's perfect fire for cross examination. Like I
9 said the other day, she can ask Lieutenant Shumpert
10 you said this, you said that, that's all perfectly
11 fine. But what she doesn't get to do is then say,
12 and Luther said this.

13 Because unless that explains a portion
14 of an admission that we're seeking to introduce,
15 and again, just doubling back what I said, she
16 doesn't get to call Luther's momma up here and then
17 say, you know, I asked him if he did and he said he
18 didn't do it. That's hearsay. That doesn't get to
19 deal with Lieutenant Shumpert either.

20 THE COURT: But she can -- she can
21 still ask for the clip to come in in her case.

22 MR. OSBORNE: Oh, no, that's hearsay.
23 We are a party -- we are a party opponent. That's
24 how we -- there's a hearsay exception to that.
25 Well, it's non-hearsay. We get to introduce that.

1 She doesn't get to put in any portion of her
2 client's out of court statement unless it is
3 offered to fully explain an admission in which I
4 brought in. And that's under the rule of
5 completeness. There's an avenue, there's an
6 avenue. He takes the stand. But not an out of
7 court statement.

8 THE COURT: Well, I mean, her -- part
9 of her defense is that she's saying, as I
10 understand it, that these were forced confessions.
11 He's going to have to testify.

12 MR. OSBORNE: Well, that's a different
13 -- nobody is suggesting, obviously, I'm not
14 suggesting that he can't take the stand and
15 testify. In regards to calling an expert witness,
16 I mean, we can address that now. I mean, I have a
17 whole lot to say about that, you know, but that's
18 another issue. Calling an expert up here to
19 testify to a material issue at fact.

20 I mean, I'll just go ahead and give you
21 a preview. If they're allowed to call an expert to
22 that, then we're allowed to call an expert to that.
23 Their expert can say they think it's false
24 confession, our expert can say, no, jury, I think
25 it's a real confession. And that's a circus.

1 That's why that's stuff is not allowed.

2 THE COURT: Okay. Well, if she --
3 she's already said she's going to call an expert.

4 MR. OSBORNE: And I'm going to make a
5 motion to preclude his testimony. And I have case
6 law that supports that. An expert does not get the
7 ability to come on the stand and say, ladies and
8 gentlemen, in my expert opinion, this is a false
9 confession. That is a material issue of fact in
10 this case and I'll cite the cases to you. Experts
11 don't get to do that.

12 THE COURT: No, I understand that, but
13 he can testify what are the elements of --

14 MR. OSBORNE: What are the precursors.
15 What are the signs. Okay.

16 THE COURT: Right. It's up to them to
17 determine whether or not it's --

18 MR. OSBORNE: There's some pretty good
19 case law that say you can't do that. And here's
20 what it is. You can call an expert. There's some
21 case law in circuits that say they're not allowing
22 experts to do exactly what you just said. However,
23 I tend to not believe that. I think you can call
24 an expert and this is -- I'm just going to tell
25 you, to me, this seems unobjectionable. Lieutenant

1 Shumpert, you said, blah, blah, blah. Then you
2 call your expert who is blind. Who hasn't seen a
3 thing. Tell me the precursors to a false
4 confession. Check. Check. Check. Check. Then
5 argue in closing it's a false confession.

6 But what you don't get to do is call an
7 expert up here who has seen the entire case file.
8 Ladies and gentlemen, I've seen evidence that you
9 don't get to see and in my expert opinion that's
10 false. Well, then that's a circus because then my
11 expert comes up there and says, I've seen
12 everything and I think it is. Experts do not get
13 to testify to the material issue at fact. That's
14 for the jury. We have to call blind experts, they
15 could call blind experts.

16 THE COURT: Okay. Well, what I would
17 like to see so I can have something to do in my
18 evenings is read the case law if you don't mind.
19 If y'all got that, that would be really helpful
20 though. You're helping me make a decision here on
21 some other issues, you know.

22 MR. OSBORNE: I was afraid of that.

23 THE COURT: Yeah. Yeah. Yeah. I
24 mean, I can feel it a little bit right now. So let
25 me -- well, if Mr. Smith is not part of --

1 Mr. Smith, yeah. Luther Joseph Smith is not a part
2 of this trial coming up on Monday, then I don't
3 have all these issues, do I?

4 MS. ZMROCZEK: That's correct.

5 MR. OSBORNE: We would go forward.
6 Well, so if that's the position, we can go forward
7 two times. I'll go ahead and throw this out there.
8 And I thought looking at the way they're piled over
9 here, I get it. So if it's a space issue and we
10 need to go forward two times, then here's what I
11 would suggest. I would suggest that, one, Luther
12 is in the trial. We're going forward with Luther
13 on this trial.

14 THE COURT: Okay.

15 MR. OSBORNE: But what I would ask is
16 keep all three in until Monday morning. And then
17 on Monday morning, we will pick between Luther and
18 Bailey or Luther and Scott. And the reason why --
19 and I'm not playing games. I'm just going to be
20 straight with you and the Defense. The reason why
21 we need to do that without getting into all the
22 details is that we need witnesses or a witness to
23 go forward with one of these other two. And we are
24 unsure whether we're going to be able to secure
25 them. And I don't want to cut bait on one when we

1 have them on Monday.

2 So what I would ask is just tell them
3 to get ready over the weekend and then on Monday
4 morning if we don't have a particular witness,
5 we'll cut with one and then we'll go with Luther
6 and the other.

7 THE COURT: Okay. But you don't know
8 which one?

9 MR. OSBORNE: I'm not playing games and
10 I know we can talk about the ex parte, I know
11 you've seen that, you know where we're at. Yes,
12 sir.

13 THE COURT: Okay. You can't do it
14 sooner than Monday? Like Sunday? Saturday?

15 MR. OSBORNE: I can't because quite
16 honestly it's such a fluid situation that just this
17 morning we received some like disturbing
18 information that might preclude us from going
19 forward with one of them.

20 MR. LEIENDECKER: Are you suggesting
21 that you don't have witnesses secured yet and that
22 no matter what happens, you might decide on Monday
23 that one of the Defendants isn't going to be tried?

24 MR. OSBORNE: In this trial just like
25 any other criminal case. Yeah. I've had several

1 criminal cases where witnesses will tell me they're
2 going to be here and then they don't show up. Then
3 we have to ask for a continuance and if we've met
4 the elements to meet the continuance request, you
5 grant it. If not, then you ask for a motion to
6 dismiss.

7 MR. LEIENDECKER: Which obviously I
8 will.

9 THE COURT: Which I can anticipate
10 hearing.

11 MR. LEIENDECKER: Yes, sir. Just gives
12 me something else to work on over the weekend. And
13 suggest -- and suggest why the Court took the
14 docket away from solicitors.

15 THE COURT: All right. Okay. Well --

16 MR. OSBORNE: And the bright side is we
17 get through with all the pretrials with all three.

18 THE COURT: We'll, be ready to go
19 somewhere down the road. Okay. Well, going back
20 to I guess where we were before we kind of got off
21 a little bit. Ms. Zmroczek?

22 MS. ZMROCZEK: Yes.

23 THE COURT: The Luther's October 6th,
24 October 21st, and November 4th interviews and the
25 November 31st interviews are ones that the State is

1 not planning to introduce. Okay?

2 MS. ZMROCZEK: Okay.

3 THE COURT: Now, I know you can't
4 stipulate to them being voluntary.

5 MS. ZMROCZEK: Right. I just don't
6 think we need to waste time -- Court's time now
7 dealing with these.

8 THE COURT: Right. That's what I was
9 going to suggest. Because -- so can we just kind
10 of put that aside and move on knowing that if he
11 was Mirandized, the likelihood is that I'm going to
12 say, well, he was warned?

13 MS. ZMROCZEK: (Nodded)

14 THE COURT: Okay. All right. So we
15 can then move on to, what?

16 MR. OSBORNE: Culpepper from the last
17 part of the October 4th interview. And, I mean,
18 maybe that might help clarify some things too.
19 We're not seeking on introducing that written
20 statement. I'm just using that written statement
21 for ID purposes only, but I do plan on eliciting
22 some admissions through Investigator Culpepper from
23 what Luther said during that encounter.

24 THE COURT: Okay. And, Ms. Zmroczek,
25 can we go with the same theory --

1 MS. ZMROCZEK: I think that that's
2 going to be all the same issue, Your Honor.

3 THE COURT: All right. So where are we
4 now?

5 MR. OSBORNE: Well, that -- I do seek
6 to introduce and since she would be, if I
7 understand correctly, she is challenging
8 voluntariness of that. So it's probably best just
9 to get that on the record real quick.

10 Culpepper's interaction with
11 Luther Smith on November 4th which you've already
12 seen a clip regarding the Miranda given on that
13 day. So we can literally just go right into the --

14 MR. LEIENDECKER: October 4th.

15 MR. OSBORNE: Yes, I'm sorry. October
16 4th.

17 THE COURT: Yeah, I just wanted to make
18 sure. Okay.

19 MR. OSBORNE: State calls Investigator
20 Culpepper.

21 EVERETT CULPEPPER,
22 being first duly sworn, was examined and testified
23 as follows:

24 THE CLERK: You may be seated. Please
25 state your first and last name for the record.

1 MR. CULPEPPER: Everett Culpepper.

2 DIRECT EXAMINATION BY MR. OSBORNE:

3 Q. All right. Good morning, Investigator.

4 A. Good morning.

5 Q. While I'm finding this, where do you
6 currently work?

7 A. I'm at the Holly Hill Police
8 Department.

9 Q. Okay. Back on October 4th of 2016,
10 where did you work?

11 A. I worked the Orangeburg County
12 Sheriff's Office in criminal investigations
13 division.

14 Q. Okay. Were you part of an interview
15 with Luther Smith on October 4th of 2016?

16 A. Yes.

17 Q. And by the time that -- were you in the
18 beginning part of the interview or were you -- did
19 you enter toward the end of the interview?

20 A. I believe it was more toward the end of
21 the interview.

22 Q. Okay. So he had already been advised
23 of his Miranda and all that?

24 A. Yes.

25 Q. Was your portion or your interaction

1 with the defendant audio and video recorded?

2 A. Yes.

3 Q. And -- okay. So what did you do? Like
4 what was your role whenever you walked in to speak
5 with Luther Smith?

6 A. It was a question and answer session.
7 I would write down the questions and let Mr. Smith
8 provide his answers.

9 Q. Okay. How long was that interaction
10 with you and him on that day?

11 A. I would say maybe an hour, a little
12 longer.

13 Q. Okay. During the interview, did the
14 Defendant appear to be intoxicated or under the
15 influence of drugs?

16 A. Not at all.

17 Q. Did the Defendant appear to have any
18 physical or mental disability that would have
19 impaired his ability to understand what was being
20 said to him?

21 A. No.

22 Q. Prior to or during your interview with
23 the Defendant, did you offer any breaks, bathroom
24 or otherwise?

25 A. Of course.

1 Q. And was the Defendant denied access to
2 breaks or bathroom?

3 A. Absolutely not.

4 Q. Did you threaten him or promise him in
5 any way in exchange for his statement?

6 A. No, sir.

7 Q. All right.

8 MR. OSBORNE: Your Honor, may I
9 approach?

10 THE COURT: You may.

11 Q. For ID purposes only, I'm showing you
12 State's 355. Do you recognize that?

13 A. Yes, sir.

14 Q. And what is that?

15 A. That is a witness affidavit from the
16 Orangeburg County Sheriff's Office.

17 Q. And what is the entire document?

18 A. It's a written statement by Luther
19 Smith.

20 Q. Okay. So that would be the interaction
21 that we talked about?

22 A. Yes, sir.

23 Q. And are those his signatures on the
24 documents?

25 A. Yes, sir.

1 Q. Now, did he write the answers or did
2 you write them for him as he was talking?

3 A. If I recall, I wrote the questions and
4 Mr. Smith wrote the answers.

5 Q. Okay. All right. During this question
6 and answer session, does Luther say he was at
7 Krystal Hutto's house --

8 MS. ZMROCZEK: Objection, Your Honor.
9 Leading.

10 THE COURT: And I'll note your
11 objection. I'm going to let you go forward with
12 it. This isn't going to be what's heard before the
13 jury anyway. I mean -- go ahead.

14 Q. During your interaction with Luther
15 Smith, does Luther say that he was at Krystal
16 Hutto's house when the victims were shot, yes or
17 no?

18 A. Yes.

19 Q. He does. How did he say he got there?

20 A. He was given a ride, he rode with
21 Derrick Coleman.

22 Q. And why did he say he went to Krystal
23 Hutto's house?

24 A. To get motorcycles and illegal drugs.
25 Mostly the drugs.

1 Q. Say the last part again?

2 A. Mostly the narcotics that were supposed
3 to be at the house.

4 Q. Oh, where did Luther say the truck was
5 parked when he went to Krystal Hutto's home on the
6 night of the murders?

7 A. He said it was down the street from the
8 residence.

9 Q. Does Luther say he had a gun on the
10 night of the murders?

11 A. No, he did not have a gun.

12 Q. Did Luther say he shot anyone?

13 A. No, he did not say he shot anyone.

14 Q. How many guns did Luther say were used
15 to commit the murders?

16 A. Two.

17 Q. Two different guns?

18 A. Two different ones, yes.

19 Q. And what type of guns were used?

20 A. One was a revolver and one was a
21 semiautomatic.

22 Q. Where did he go after they left
23 Krystal's home -- after he left Krystal's home?

24 A. Indian Bluff.

25 Q. And who drove?

1 A. Coleman started driving and then I
2 believe Mr. Smith took over shortly thereafter.

3 Q. Okay.

4 MR. OSBORNE: No further questions.

5 THE COURT: Anything on cross? Yes,
6 ma'am.

7 MS. ZMROCZEK: Thank you, Your Honor.

8 CROSS EXAMINATION BY MS. ZMROCZEK:

9 Q. All right. Just going off of the very
10 limited question and answer, those weren't all the
11 questions and answers that you asked him; right?

12 A. No, ma'am.

13 Q. Okay. And, in fact, you were trying to
14 ascertain for your mind what happened that night;
15 right?

16 A. Yes, ma'am.

17 Q. Okay. And so you asked him, the first
18 question that you wrote down, who planned to go
19 back to Krystal's house; right?

20 A. If that is what's on the paper, yes,
21 ma'am. It's been a while.

22 Q. And he answered that; right?

23 A. If he answered it, it's on the paper.
24 I can't remember.

25 Q. Do you have it in front of you?

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

2 Q. I'm showing you again what was marked
3 for ID, State's 355. The first couple of pages are
4 written statement and then you do the question and
5 answer; right?

6 A. Yes, ma'am.

7 Q. And you asked -- first question you
8 asked, who planned to go back to Krystal's house;
9 right?

10 A. Uh-huh.

11 Q. He responded to you?

12 A. Yes.

13 Q. And what did he say?

14 A. He wrote down, my guess would be Jackie
15 Man.

16 Q. Okay. My guess would be Jackie Man.
17 So then you started to ask him as you went through
18 the questions about what's the purpose?

19 A. Yes, ma'am.

20 Q. He asked you -- he, Mr. Osborne, asked
21 you who was in the truck?

22 A. Yes.

23 Q. Right?

24 A. I asked Smith that, yeah.

25 Q. And he gave the answer too?

1 A. Yes. He said Derrick Coleman and Antly
2 Scott or Jackie Man.

3 Q. Okay. And then you asked him more
4 questions about who was the first to get out, what
5 was his answer?

6 A. He wrote down Antly Scott, Jackie Man.

7 Q. Okay. Who if anyone was at Krystal's
8 house when they arrived?

9 MR. OSBORNE: Your Honor, just so we're
10 all on the same page. Obviously I'm making
11 numerous objections. All of these are hearsay.
12 She's trying to create a mistrial --

13 THE COURT: No, I understand.

14 MS. ZMROCZEK: Right. Right. And I'm
15 not trying to create a mistrial, Your Honor, but
16 you can't get in a portion that he did X, Y, and Z
17 when you asked him all of these things to develop
18 what happened that night. And that's just kind of
19 a preview of the problems that I think we're going
20 to run into. It's not me creating a mistrial.

21 THE COURT: I understand. It's not
22 hurting my feelings for y'all to go over this. And
23 this is just motion in limine, so I'm listening so
24 I can find out in what manner this case is going to
25 be tried.

1 MS. ZMROCZEK: Thank you.

2 THE COURT: With all those
3 stipulations, let's move on. Okay.

4 MS. ZMROCZEK: Thank you.

5 THE COURT: Thank you.

6 Q. And so he asked -- you asked him
7 specifically who if anyone else was at Krystal's
8 house when he got there; right?

9 A. Yes, ma'am.

10 Q. And what was his response?

11 A. He said Pocket and an unknown person.

12 Q. Okay. He -- you then go on to ask him
13 specifically who shot which people; correct?

14 A. Yes, ma'am.

15 Q. And he identifies who as shooting
16 Mr. Butler?

17 A. Yes, ma'am.

18 Q. Who? I'm sorry.

19 A. He said Antly Scott.

20 Q. Antly Scott. And then you ask him
21 about shooting Krystal. Who does he tell you
22 shoots Krystal?

23 A. What page is this? Yes. He said that
24 Pocket shot Krystal.

25 Q. Okay. You go on to ask him specific

1 questions about where people were hiding; right?

2 A. Uh-huh.

3 Q. And was he able to give you exact
4 answers?

5 A. He give me his answer.

6 Q. Okay. So when he said -- you asked him
7 specifically where D.N. was hiding; right?

8 A. I believe the question was did -- where
9 were the girls and the boy, exactly what I wrote
10 down.

11 Q. Okay. And then the next question was
12 where was the boy hiding; right?

13 A. Uh-huh.

14 Q. And his response?

15 A. Not sure.

16 MS. SPIRES: Say, yes or no, please.
17 On the question before.

18 A. Yes.

19 Q. You go on to ask him on the -- you
20 asked him several questions about who shot each of
21 the people. I think you lay it out on the next
22 page.

23 A. Right.

24 Q. Yes. Okay. And he identifies who he
25 believes shot each of the people; right?

1 A. Well, I don't say he believed them, he
2 was there he saw it.

3 Q. Okay. So when he says who shot the boy
4 on the top of that page, his answer is what?

5 A. Which page are you on?

6 Q. Here you go.

7 A. He wrote down I believe it was Jackie
8 Man, Antly Scott.

9 Q. Okay. So he does say what he believes;
10 right?

11 A. Uh-huh.

12 Q. And then you ask him more specific
13 questions about in what order first to last the
14 victims were shot; right?

15 A. Yes, ma'am.

16 Q. And how does he outline that?

17 A. It says a man, Krystal, the girls, and
18 the boy.

19 Q. Okay. And then you ask again who shot
20 the man?

21 A. Right.

22 Q. Who does he say?

23 A. Antly Scott.

24 Q. And who shot Krystal?

25 A. Pocket.

1 Q. Who shot the girls?

2 A. Pocket.

3 Q. Who shot the boy?

4 A. Not positive, but I believe it was
5 Antly Scott.

6 Q. Okay. You then go on to ask him what
7 he did after everyone was shot inside the house;
8 right?

9 A. Yes.

10 Q. And then on the next page you talk --
11 he asked you specifically about leaving and you
12 said he left with Derrick. But actually you asked
13 him did anyone -- did anyone leave with you and
14 what was his response?

15 A. He said, yes, Derrick and Jackie Man.

16 Q. Okay. So it wasn't just Derrick's
17 truck and Derrick and Mr. Smith, it was -- he says
18 Derrick and Jackie Man?

19 A. Yes, ma'am.

20 Q. Okay. The Solicitor asked you about
21 guns. Can you tell -- so you said he described one
22 as a semiautomatic and the other was a revolver?

23 A. Yes, ma'am.

24 Q. Okay. Did he ever give you the
25 caliber?

1 A. Not that I recall.

2 Q. Okay. And this question and answer
3 goes on for several more pages; right, because
4 you're trying to get an understanding of what he
5 knows and what he remembers from that night; right?

6 A. Yes, ma'am.

7 Q. And in order to do that, he tells you
8 what he thinks or what he remembers and in doing
9 so, identifies Jackie Man or Antly Scott and
10 Pocket, who is Mr. Bailey; correct?

11 A. Yes, ma'am.

12 MS. ZMROCZEK: Those are all the
13 questions I have.

14 THE COURT: All right. Mr. Johnson, do
15 you have any questions of this witness?

16 MR. JOHNSON: No, Your Honor.

17 THE COURT: Mr. Leiendecker?

18 MR. LEIENDECKER: I don't have any
19 questions. I have things to put on the record
20 regarding his testimony that the State elicited
21 when we're ready for that.

22 THE COURT: Okay.

23 MR. LEIENDECKER: Obviously, everything
24 that just happened is --

25 THE COURT: Yeah, you're objecting to

1 --

2 MR. LEIENDECKER: I object to, yes.
3 Which is why I talked severance. I didn't want to
4 go into all that.

5 THE COURT: I understand. I
6 understand. And by allowing them to finish that
7 before you told me, does not jeopardize your
8 position on that. Okay. But I appreciate you
9 pointing it out to the Court, you know.

10 MR. LEIENDECKER: Are you ready for
11 argument regarding it? Not ready, will you
12 entertain?

13 THE COURT: Let me find out if there is
14 anything on redirect from the State. Anything from
15 redirect?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: Okay. All right.
18 Mr. Leiendecker, I'll be happy to hear from you.

19 MR. LEIENDECKER: The State when it got
20 to the end of the questions it was asking
21 Investigator Culpepper elicited --

22 THE COURT: If he's through, can I ask
23 him to stand down? Is that all right?

24 MR. OSBORNE: Yes.

25 THE COURT: Thank you. Are we through

1 with him for this morning?

2 MR. OSBORNE: Yes.

3 MS. ZMROCZEK: Yeah.

4 THE COURT: Okay. Thank you, sir.
5 Appreciate it.

6 MR. LEIENDECKER: Elicited things that
7 Luther had told him about the night in question.
8 And some of those things were Luther was there.
9 Luther got out of a vehicle parked down the street.
10 Luther saw other people there, which I find
11 objectionable. Luther --

12 THE COURT: And, Mr. Leiendecker, I'm
13 not meaning to cut you off. Are you pointing out
14 to me the times that other people were mentioned
15 some of which are your Defendant that you believe
16 should not go in?

17 MR. LEIENDECKER: Right. And,
18 specifically, he was asked, did Luther shoot anyone
19 and the answer was, no, Luther didn't shoot anyone.
20 All right. Automatically, at least that portion of
21 the confession means other people were there.
22 Because we know five people were shot that night.
23 He then asks the question about guns and he says
24 there were two other guns, but Luther didn't carry
25 a gun. Luther didn't shoot anyone. Again, that

1 violates *Bruton* because it implies other people
2 were there. And I might be naive, but I think the
3 jury sitting wherever it is they sit now.

4 THE COURT: Back there.

5 MR. LEIENDECKER: Yes. Is going to
6 look at two other guns. Luther didn't use a gun
7 and they're going to count one, no gun; two, three
8 guns.

9 THE COURT: And you find that
10 objectionable?

11 MR. LEIENDECKER: I find it a basis for
12 my mistrial motion, yes, sir, Your Honor.

13 THE COURT: Well, which goes back to --
14 if I read these opinions correctly, and I have been
15 corrected already today about not being able to do
16 that, but I don't see that they allowed anything
17 other than they were talking about using neutral
18 pronouns and like that. You had to be careful
19 using that. It didn't say anything about changing
20 the structure of some of the other questions.
21 Though I do understand your argument because that's
22 a concern.

23 MR. LEIENDECKER: I'm not asking to
24 change the structure of the questions. I'm asking
25 that those questions elicited violations of *Bruton*.

1 THE COURT: Right. Right.

2 MR. LEIENDECKER: The answers. Not the
3 questions, the answers.

4 THE COURT: And I'm glad you said that.
5 How much leeway does the Court have in redacting
6 any of those statements? How much leeway?

7 MR. LEIENDECKER: You have absolutely
8 no leeway with someone sitting on the witness
9 stand.

10 THE COURT: No. No. I understand
11 that, but let's assume just -- that we're looking
12 at that statement.

13 MR. LEIENDECKER: In its written form.

14 THE COURT: In its written form which
15 is easier for me to visualize and correct.

16 MR. LEIENDECKER: You have absolute
17 discretion.

18 THE COURT: Huh?

19 MR. LEIENDECKER: You have the ability
20 to redact any or all of it that violates *Bruton*.

21 THE COURT: Okay. I can leave out
22 whole sentences and things like that?

23 MR. LEIENDECKER: You can leave out the
24 whole statement.

25 THE COURT: Okay. All right.

1 MR. LEIENDECKER: *Bruton* is
2 exclusionary. 106 is inclusionary.

3 MS. ZMROCZEK: And I guess that's my --
4 to piggyback off of his argument. To put what the
5 State wants to put in which is, you know, yet he
6 was there, he got into a car. That's not what he
7 said. That doesn't fully explain his answer which
8 is why I think that I have to be able to no. No,
9 you know. You know, he said two other people were
10 shot, you know. Well, what he says is, I think or
11 probably. It's very misleading the way that it's
12 just presented that Luther was there. He got in
13 Derrick's truck. You're leaving out the whole
14 other part of the story which he's, you know, been
15 told over and over and over and is getting it right
16 every time they tell him something new and so
17 that's where my concern is.

18 THE COURT: Okay. Thank you, ma'am.
19 All right. Yes, sir.

20 MR. OSBORNE: I'll just read one quote
21 and I think this kind of summarizes it all. This
22 is coming from *State V. Evans*, 316 S.C. 303. And
23 it says to require the State to totally redact
24 anything that could be viewed in combination with
25 other evidence as a reference or illusion to the

1 Defendant would, "undually handcuffed the
2 government's ability to introduce evidence
3 admissible confessions and statements against a
4 declarant in a joint trial."

5 THE COURT: Which case are you citing?

6 MR. OSBORNE: *State V. Evans*, 316 S.C.
7 303. And that's basically what's happening or what
8 they're requesting. But I will just address some
9 -- I never asked Investigator Culpepper who planned
10 it. If I did asked who planned it, then I think
11 that's a legitimate question to explain that. I
12 asked how he -- all right. Let me just make sure
13 that I'm not misspeaking here. Does Luther say how
14 he got there? Derrick drove him in a truck. It
15 doesn't mean that there were other people in the
16 truck.

17 In fact, I have done the mental
18 gymnastic on this and realized that two guns were
19 used, Luther and Derrick are there. A jury could
20 believe that Luther pulled the trigger and Derrick
21 pulled the trigger and Luther's simply lying.
22 Because if Luther believed that Antly was there,
23 Luther saw Antly and Pocket there, then why aren't
24 we eliciting that testimony and we're not.

25 So that's just sort of the dance that

1 we're playing. I could go on and on. I never
2 asked any of these sort of questions about D.N.
3 or the girls or the boys or anything like that.
4 And Luther saw other people there. Well, Luther's
5 saying he didn't shoot, somebody had to do it.

6 THE COURT: Okay. Go ahead.

7 MR. LEIENDECKER: Your Honor, again,
8 the issue or concept in a joint trial which
9 obviously *State V. Evans* addresses is the fact that
10 there are a bunch of snares and pitfalls with that.
11 And if the other two people or the other person was
12 Mr. Coleman, then why isn't he sitting up here?
13 Why isn't he going to be here when we try this
14 case? Why is he going to come to the witness
15 stand? Obviously the jury's not foolish. They're
16 going to understand the State's theory of the case
17 is these three people were involved.

18 THE COURT: Listen, I understand that
19 this case has problems with *Bruton*. I understand
20 that. And depending on who goes to trial, you
21 know, we're going to have to clarify some things.
22 Okay. And what I'm going to try -- what I intend
23 to do is keep out references to your clients that
24 he says.

25 Now, and I'm -- I will consider, you

1 know, what you said about, you know, two guns. I
2 think that's a -- it's an argument that I think is
3 well thought out and one that I'm going to
4 consider, but I'm not going to rule on it right
5 now. Okay. Okay.

6 MR. OSBORNE: Your Honor, if you want,
7 I guess -- I think we're through with *Denno*.

8 THE COURT: Do y'all have anything else
9 we need to --

10 MR. JOHNSON: My client was -- the
11 statement from my client was never read at the
12 *Denno* hearing.

13 MR. OSBORNE: That's exactly -- I'm
14 sorry. Culpepper is still here. We have one
15 statement from Antly Scott. Thank you,
16 Mr. Johnson. And I have -- I have taken
17 Mr. Leiendecker's suggestion and reclipped it. I'm
18 going to give them the clips, but they can watch it
19 right here and see if I indicate *Bruton*, so we just
20 have one statement for Antly Scott and Culpepper
21 would do that one. It's going to be at the top of
22 the list and it's Antly Scott's interview on July
23 19th of 2016.

24 THE COURT: All right. And,
25 Investigator Culpepper, you're still under oath, so

1 THE COURT: And that's all we're doing
2 right now. Because I realize we've got issues with
3 everything else, so you're not giving up those
4 arguments.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Okay.

7 MR. JOHNSON: It's just my line of
8 questioning obviously relates to my arguments
9 regarding relevance and prejudicial nature when
10 they discuss in there about previous arrests or
11 drug purchases and other crimes and the relevance
12 of the prejudicial nature of it. And as far as
13 voluntariness, I'll just rest on the questioning
14 and allow the Court to have that as marked.

15 THE COURT: All right. Well, he
16 appeared to be under no threats or intimidation.
17 He was free to leave. He appeared relaxed and
18 engaged in the conversation, so it's a voluntary
19 discussion.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: All the other arguments are
22 still outstanding.

23 MR. JOHNSON: Yes, sir.

24 THE COURT: Okay. Where do we go next?

25 MR. OSBORNE: Seems like the best thing

1 to do at this point, Judge, maybe to just so we
2 wrapping up all these Defendants' statements
3 address the redaction issues.

4 I sent -- I tried to consolidate
5 Mr. Johnson and Mr. Leiendecker's objections into
6 one document and email that to everyone. I think
7 we can roll through it pretty quickly. There's
8 only a couple of little issues in here. Before we
9 went through the trouble of redacting, blacking out
10 and everything, if we can get a ruling regarding
11 what comes in and what doesn't and all on the same
12 page, assuming, assuming that it comes in then we
13 can go back and redact these and give copies to the
14 Defense.

15 THE COURT: Okay. Well, this is what
16 you sent me right here.

17 MR. OSBORNE: On the attachment.
18 There's an attachment. It's 1 of 22 pages,
19 interview of Antly Scott by Detectives Culpepper
20 and Thrower, July 19th of 2016.

21 THE COURT: And it's lined out like
22 you're not going to use those; right?

23 MR. OSBORNE: No. Well, this one right
24 here we've already addressed. And that was what we
25 just played. We reclipped that one so we move

1 right along. And then page 2 deals with Luther
2 Smith. All right. That's good.

3 The next page, Luther Smith's interview
4 on 9/15 of 2016. All right. So we've got
5 highlighted in blue were the hearsay objections.
6 Shumpert's comments and I'm on page 3 now of 22.
7 And, you know, I mean, our position would be
8 Shumpert's comment of, I understand how you got
9 forced into that, I really do. She loves you a
10 lot. She even told me about the story when you all
11 was in the house and Samantha -- our position would
12 be, you know, we're not introducing that for the
13 truth of the matter, so therefore, it wouldn't be
14 hearsay.

15 The next blue line is she even told me
16 how this thing was eating you alive. Yeah, I mean,
17 I guess that could be hearsay. I don't have any
18 issues with getting rid of that second one right
19 there. She even told me how this thing was eating
20 you alive. We certainly are saying it's eating him
21 alive. So redact that.

22 And then, I mean, I'm going to fight
23 some of these you all's, but I won't fight this
24 one. So we'll just pick it up with plan to get the
25 bite, but you don't know how it was going to be

1 like that. And then the first one, the first one,
2 I understand, we will just say that's not hearsay.

3 THE COURT: The first one she loves
4 you, you say is not hearsay?

5 MR. OSBORNE: I understand how she got
6 how you got -- yes, sir.

7 THE COURT: All right. And --

8 MS. ZMROCZEK: Obviously, Your Honor,
9 we would object that is hearsay. I mean, it's she
10 said this and I can't confront her as to what he
11 said or didn't say. If they put her up and then
12 they want to bring that in through her then I think
13 that's a different matter.

14 THE COURT: Well, when you get into she
15 even told me about the story --

16 MR. OSBORNE: You're right. Sorry, I
17 stopped reading. I'm going to keep reading these
18 things. Let me keep reading. Like, well,
19 certainly, I'm not trying she loved him, but that
20 second part, yeah, I would be trying to say she
21 even told me the story about when y'all was in the
22 house. Yeah. All right. We'll redact all of
23 that. Sorry.

24 THE COURT: Now, and I would agree that
25 it would start there. Okay. She loves you could

1 be an observation, you know.

2 MR. OSBORNE: Okay. And you know what,
3 Judge, and what I'll end up doing --

4 MR. LEIENDECKER: Certainly feels on
5 relevance.

6 THE COURT: Well, I --

7 MR. OSBORNE: I don't -- you know, the
8 fact that people love them, if they don't want the
9 jury to hear that, I'll take all of that out and
10 then we'll just start with, I know you want -- I
11 know you want to, you tried to save those kids.
12 And then I'll reclip that and I'll give that to
13 them tomorrow. I'll try to get that to them
14 tomorrow and we can take another look at it. And
15 what Mr. Leiendecker said before, if it sounds
16 goofy, chopped up and everything, I'll just trying
17 to elicit --

18 THE COURT: I mean, my reading over
19 some of this, it might be, I don't want to say much
20 ado about nothing, but it seems to me like I don't
21 know why some of this is going in.

22 MR. OSBORNE: I'll tell you why.

23 THE COURT: Oh, good. Good, I'd like
24 to know.

25 MR. OSBORNE: I'll share with you my

1 thought on it, okay. My thought on is when you
2 start asking Shumpert you said this, you said that,
3 it sounds bad. But when you watch it and maybe
4 it's because of my prior life, it doesn't seem that
5 bad to me. So that's why I was like going to play
6 some of those clips because he knows what I'm
7 playing. I'm not playing Luther talking, I'm
8 playing the interrogation. So that was my thought.

9 THE COURT: Okay. All right. Well, I
10 understand now a little better. Thank you. So
11 then we go to the Luther Smith interview of 9/20?

12 MR. OSBORNE: 2016. All right. So
13 Scott's objection there at the end, these lines all
14 deal with Daniel Lee Ross. If Ross backs out and
15 doesn't testify, then, yeah, I don't believe any of
16 that was relevant. It's relevant to us to just
17 establish the fact that he did have a conversation
18 with Daniel Lee Ross which we anticipate he's going
19 to testify to.

20 THE COURT: Okay. Any issues with
21 that? Nobody's raising their hand or standing up,
22 so.

23 MS. ZMROCZEK: I mean, I think it's all
24 kind of -- like he said, it depends on if he's
25 going to --

1 THE COURT: Right. It does. So then
2 we move to what?

3 MR. OSBORNE: All right. So Luther
4 Smith September 26th of 2016. Don't plan on
5 introducing this. This is just the interview in
6 which Luther basically says that Christopher Wright
7 is talking and we're in the jail together.

8 THE COURT: Okay.

9 MR. OSBORNE: September 30th is the
10 next one. So I looked at this and I think I even
11 talked to Mr. Leiendecker about this one. So clip
12 one is fine. Clip two, Mr. Leiendecker's
13 requesting "them" be taken out. So the whole quote
14 is, I mean, I just confessed to you all that I
15 didn't go with them to take the motorcycles. I did
16 not go to Krystal Hutto's house period. I won't
17 say I did. I mean, someone went to Krystal Hutto's
18 house. Derrick Coleman is going to testify that he
19 went to Krystal Hutto's house. To me, the "them"
20 doesn't implicate *Bruton* because it does not
21 obviously point to the Defendant. In fact, there's
22 going to be testimony that Bailey didn't go. Or at
23 least that's what Derrick's going to say. Wasn't
24 in the trailer in other words.

25 So moving on. Again, some days -- I

1 don't see how that implicates *Bruton*. But the rest
2 of it, I agree. So where I put stopped, I was just
3 going to clip it there and then not play any of the
4 rest of it. And I don't think there was an
5 objection to clip four. I was kind of losing track
6 of Mr. Johnson's objection, but I think clip four
7 was fine.

8 THE COURT: And y'all speak up.
9 Anything?

10 MS. ZMROCZEK: Again, Your Honor, I
11 think it's all going to be situational at this
12 point. Because it's just going to depend on like
13 the Court's rulings and then how it pans out in
14 trial and who I put up and, you know.

15 THE COURT: I mean, I think right now
16 we are getting kind of into just a situational of
17 who testifies and like that. So I don't know -- do
18 you want to keep on going over this? Or, I mean,
19 you provided them with this or tell me how you want
20 it?

21 MR. JOHNSON: Your Honor, was he just
22 referring to when he mentioned my objection, he's
23 going off of 9/30?

24 MR. OSBORNE: Yes.

25 MR. JOHNSON: Correct? Is this the

1 page 112?

2 MR. OSBORNE: Yes.

3 MR. JOHNSON: Okay. Because the one
4 added in was -- that sounds like what he just
5 referenced, lines 5 through 6.

6 MR. OSBORNE: Okay. Was that on clip
7 four? He didn't go with them mf'ers. I'm telling
8 you I didn't go. I know I didn't go.

9 MR. JOHNSON: Was that cut out?

10 MR. OSBORNE: Well, that's what you had
11 on yours. If that's clip four, I mean, again, I
12 would say he was saying that he didn't go, doesn't
13 indicate *Bruton*. He's not saying I didn't go with
14 Antly Scott or Bailey.

15 And honestly, Judge, the last one is
16 October 4th. That's the last one. Because the
17 other ones we wouldn't be seeking to introduce.
18 And in that one I've already told Mr. Leiendecker
19 and I will share with the Court, Mr. Leiendecker
20 wanted Derrick just about -- he got a lawyer and is
21 pretty much telling me all what happened. We'll
22 cut it out.

23 Derrick Coleman, when I walked up to
24 Derrick yesterday, Derrick said you're the man that
25 came to Alabama to try to help me. He said, man,

1 don't worry about it. Don't worry about it. Let
2 me go talk to my lawyer. Let me talk to my lawyer
3 and I'm going to tell him. Going to tell
4 everything. I'm going to tell everything. Cut it
5 out.

6 THE COURT: You're cutting all of that
7 out?

8 MR. OSBORNE: Yes, sir. Derrick said
9 he thought somebody was dead. It was all after we
10 met. Derrick is going to testify. That's what
11 Derrick says Derrick is going to testify, I mean.

12 THE COURT: He is planning on
13 testifying; correct?

14 MR. OSBORNE: Yes, sir.

15 MR. LEIENDECKER: But you don't want
16 your Smith statements to bolster what Derrick's
17 saying.

18 MR. OSBORNE: That they had a
19 conversation.

20 MR. LEIENDECKER: Right. But not the
21 context of that conversation. I mean, Derrick will
22 give you that on the witness stand. I don't think
23 you can use -- you can use Luther's hearsay of what
24 Derrick said to him as well as Derrick.

25 MR. OSBORNE: I don't care, I'll cut

1 that out.

2 THE COURT: Okay.

3 MR. OSBORNE: And then on page 9.

4 Shumpert says, I knew something you said and your
5 girlfriend said when I bumped into her. I wanted
6 to save those kids. I love kids. I will try to
7 save those kids. Your girlfriend Amanda turned
8 around and said the exact same thing when she came
9 in here. Luther loves children. He told me he
10 tried to save the kids. He tried to save the kids
11 and all this other stuff. Okay. I'll cut all that
12 out. And then I just don't feel the they and they
13 and you all on page 9 implicate *Bruton*.

14 THE COURT: Shumpert's thing?

15 MR. OSBORNE: Yes, Your Honor. But,
16 you know, if you're getting a heartache, Judge, I
17 don't -- that's not helping the development there.
18 I can cut Shumpert's statements. I'll cut all that
19 and then we just get right down to Davis.

20 THE COURT: All right.

21 MR. OSBORNE: And I do kind of -- I
22 would like to get that statement in because Davis,
23 juxtaposing Lieutenant Shumpert is a very calm
24 individual.

25 MS. ZMROCZEK: So the problem with

1 Davis, Your Honor, is that I understand that he is
2 deceased; right?

3 MR. OSBORNE: (Nodded.

4 THE COURT: Can you step -- I hate to
5 ask you to do that.

6 MS. ZMROCZEK: No. No. No. You're
7 fine.

8 THE COURT: That's better. I can hear
9 you better. Thank you, ma'am.

10 MS. ZMROCZEK: The problem -- so the
11 problem with Davis is that he's deceased; right?
12 So I can't ask him or cross examine anything. And
13 I think that this came up last week when I said
14 what about this drawing and what about, you know,
15 and then they put a clip in with Davis asking or
16 saying things to Mr. Smith. And Shumpert was like,
17 I don't know anything about that. That was Davis.
18 And I can't ask Davis because he's obviously not
19 here. So I don't know that anything that Davis
20 says can be put in.

21 MR. OSBORNE: Your Honor, so I just
22 read a case on this and it came out this year. So
23 it *State V. Meleke Da'Shawn Stewart*. It's
24 appellate case number 2018-001916. And that case
25 dealt with this exact same issue. So in that case,

1 the State introduced a statement by the Defendant,
2 but did not have the interrogator. Now he was
3 unavailable. That was found to be -- did not
4 violate *Crawford*. Did not violate confrontation.
5 And what the Court said is interrogator's absence
6 -- well, this is my summary. It's not a quote.
7 Interrogator's absence did not violate the
8 confrontation clause. First, interrogator was not
9 a witness "bearing testimony" against the Defendant
10 as defined in *Crawford*. The interrogator was not
11 making statements against the defendant as the
12 subject of the interrogation. The interrogator was
13 simply conducting the interrogation.

14 Second, an interrogating officer's
15 questions or statements made during an
16 interrogation cannot be testimonial as defined in
17 *Crawford* because the nature of the interrogation is
18 inquisitive, not declaratory. "Testimony," in
19 turn, is typically a solemn declaration or
20 affirmation made for the purpose of establishing or
21 proving some fact.

22 And, lastly, the Confrontation Clause
23 functions to bar the product of police in
24 interrogation that asserts incriminating facts
25 against a defendant. The product of that person's

1 interrogation and Stewart's responses to the
2 questions is not testimony. Nor is the
3 interrogator's questions or answers.

4 THE COURT: And the only thing you're
5 trying to get in is that what we need Luther that
6 this is what we need. And you just run it down
7 from beginning to end what happened from the time
8 you all was together and made the decision to go
9 over there whatever was done?

10 MR. OSBORNE: Well, in all fairness, I
11 think Davis in that clip does say a little bit more
12 than that. You know, I think he says something
13 like let me break it down to you what Lieutenant
14 Shumpert is saying. He's doing an interrogation at
15 that point. But, again, that's not, you know, it
16 just doesn't implicate *Crawford*. It's not
17 testimony.

18 THE COURT: Okay. And the only --
19 okay. All right. Any response to that?

20 MR. LEIENDECKER: But y'all does
21 implicate *Bruton*.

22 THE COURT: I mean, I do have what
23 happened --

24 MR. LEIENDECKER: The only all y'all's
25 in the courtroom will be sitting at our table.

1 MR. JOHNSON: Your Honor, can I just
2 put something on the record about --

3 THE COURT: Sure. Sure. That's what
4 we're here for.

5 MR. JOHNSON: We reference the -- well,
6 I'm going to go ahead and file the list -- the two
7 lists that I emailed as far as objections and I
8 want to make it clear I was joining in
9 Mr. Leiendecker's objections regarding the clips
10 and the specific passages he was objecting to. In
11 addition to that, the two emails that I sent, one
12 regarding Luther Smith transcripts and the
13 additional objections to interview my client
14 Mr. Scott. So I just want to make it clear that I
15 was joining in Mr. Leiendecker's objections as well
16 these additional objections that I will be filing.

17 THE COURT: Right. For your client.

18 MR. JOHNSON: Thank you, Judge.

19 THE COURT: Okay. Thank you. Okay.

20 And, Mr. Leiendecker, you're objecting to the you
21 all; right, in that portion of it?

22 MR. LEIENDECKER: Yes, Your Honor. And
23 that's what I sent to the State.

24 THE COURT: Okay. And --

25 MR. LEIENDECKER: And it's highlighted

1 in red, I think, in there.

2 THE COURT: Huh?

3 MR. LEIENDECKER: It's highlighted in
4 red in their summary of the objections.

5 THE COURT: Okay.

6 MR. LEIENDECKER: It might not be a
7 pronoun in all parts of the country, but y'all is
8 certainly a pronoun understood in our part of the
9 country.

10 THE COURT: Well, just out of
11 curiosity, when you're reading that sentence, what
12 happened from the time you -- and if you left out
13 all was together and, and then just read, what
14 happened from the time you made the decision to go
15 over there and whatever was done? Why would that
16 -- that would not be objectionable, would it,
17 Mr. Leiendecker?

18 MR. LEIENDECKER: From the time you
19 made the decision to go over there and do whatever
20 what was done?

21 THE COURT: Whatever happened from the
22 time you made the decision to go over there and do
23 whatever was done would be what it would be read or
24 used.

25 MR. LEIENDECKER: That's not

1 objectionable.

2 THE COURT: Okay.

3 MR. LEIENDECKER: That taking the all
4 off of it means we're just referring to that
5 individual.

6 THE COURT: Correct.

7 MR. LEIENDECKER: Yes, sir.

8 THE COURT: Okay. All right. And it
9 reads so much better as. As an English major I
10 still want it to flow. Okay. All right.

11 MR. OSBORNE: Judge, I think we're
12 good. The only thing and I might have just missed
13 it. On November -- sorry, go back to September
14 30th, on page 6, the three they's there. And did
15 you want me to try to take those out? Or --

16 THE COURT: September 30th?

17 MR. OSBORNE: Page 6. Right before
18 stopped. This is what they did to those kids.
19 This is what they did to Krystal. This is what
20 they did to the man sitting in the car. And,
21 obviously, someone killed them and at this point
22 Luther isn't admitting that he had anything to do
23 with it, so he's trying to figure out who they are.

24 THE COURT: That kind of goes along
25 with your request for a forced confession if it

1 stays in. Okay.

2 MS. ZMROCZEK: Exactly my point. And I
3 put those picture in, I think, as Court's exhibits
4 last time, Your Honor. Because in the video it
5 shows him taking those pictures that are in
6 evidence and putting them right in front of him and
7 --

8 THE COURT: No, I remember the video
9 and like that, but I appreciate you giving me a
10 preview of what you're going to do when they're on
11 the stand. I'm not inclined -- y'all want they out
12 because you think it implies your defendants.

13 MS. ZMROCZEK: Uh-huh.

14 THE COURT: Okay. I'm trying to figure
15 out another way to do that.

16 MR. OSBORNE: Judge, can I offer an
17 alternative solution?

18 THE COURT: I always like alternatives.

19 MR. OSBORNE: The only reason why -- I
20 mean, honestly, the only reason I'm sitting here
21 objecting is because I just don't know if I can --
22 if that man can technically do it. But he says he
23 thinks there's a program in which he can kind of
24 really dig down into the words and then black out
25 the words it happened so fast that I think it's

1 going to go pretty smoothly. Let us just try to do
2 it and then we can readdress it and we'll try to do
3 that.

4 THE COURT: Okay.

5 MR. LEIENDECKER: Or in the alternative
6 without jumping through some kind of electronic
7 gymnastics. If it picked up -- if it was wrong,
8 but those kids you got tricked, you got duped, you
9 got tricked because they're taking about -- they're
10 wanting to discuss Luther. And at this point,
11 they're willing to say Luther was there but fooled.
12 That they did this, that they did that is totally
13 unnecessary because it suggests that someone other
14 than Luther sitting in the courtroom did this.

15 THE COURT: So you go from it was wrong
16 to you got duped.

17 MR. OSBORNE: I'll provide two
18 different things then we'll see which they like
19 better.

20 THE COURT: Okay. Well, actually --
21 yeah. I like it. But I'll be glad to listen to
22 both of them and just kind of see. Okay.

23 MR. OSBORNE: Judge, moving right
24 along. We're making good progress. I think we're
25 on 5 of 33.

1 THE COURT: Do y'all mind let's taking
2 a break for lunch? Would that hurt anybody's
3 feelings?

4 MR. LEIENDECKER: No, sir.

5 THE COURT: All right. If y'all would
6 be back about we'll say 1:30?

7 MR. LEIENDECKER: ish?

8 THE COURT: ish. Okay. Well, since
9 Mr. Leiendecker's on Central time I'll say 2
10 o'clock. Two o'clock. Okay. Thank you.

11 (Lunch break.

12 THE COURT: And, Mr. Osborne, just out
13 of curiosity, where do you believe we are now?

14 MR. OSBORNE: I believe we are on
15 number 5, the Defendants' motions to suppress any
16 *Lyle* evidence in this case. And just -- I've given
17 them a list, given the Defense attorneys a list and
18 the basic gist of the *Lyle*. Evidence that we would
19 be seeking to introduce this concerns drug usage
20 and I've listed as best I can say what I expect
21 each witness to testify to regarding specific drug
22 usage from each Defendant.

23 I can go through the whole list, but
24 the basic gist is Pocket also known as Robert
25 Bailey uses marijuana, sells marijuana. Antly

1 Scott, I mean, based on -- I think some of the
2 testimony was he uses coke, he uses meth, same as
3 Luther. And it goes on and on.

4 And, you know, I think the evidence is
5 going to clearly establish that the motive for the
6 home invasion was a drug rip and they go through
7 the house. There's going to be ample evidence. He
8 might lie, but the victims' father Christopher
9 Wright did sell drugs at that time. And in fact,
10 pled to several trafficking charges. And I think,
11 I need to double check, because I think he has
12 pending drug charges.

13 So to us, you know, and I can go into
14 the legal arguments on it, but to us it's res
15 gestae to presentment of our case and it goes to
16 motive.

17 THE COURT: Okay. Who wants to go
18 first?

19 MS. ZMROCZEK: Well, Your Honor, I
20 mean, I think that it's probably unavoidable. I
21 think that -- I think there is some mention of
22 probation that I think for at least Mr. Smith needs
23 to be redacted and left out of anything, but his
24 drug use. I mean, my client didn't sell, so my
25 client's drug use, I think, it's inevitably going

1 to come in.

2 But, Your Honor, on the flip side of
3 that, there are -- there is *Lyle* that we intend to
4 bring out about their witnesses as well. And so I
5 think that also involving drugs, drug use, drug
6 business, that, I mean, I think what's good for the
7 goose is good for the gander. I think it's
8 pervasive throughout this case.

9 So, you know, just when I, you know,
10 start talking about Christopher Wright or Derrick
11 Coleman, or Krystal Hutto, I think that it falls
12 under the same auspices as it does for what they
13 want to bring in for Mr. Smith.

14 THE COURT: All right. I mean, this
15 case seems to be drug dealing on both sides;
16 correct?

17 MS. ZMROCZEK: Or using.

18 THE COURT: Or use. Yeah. Okay.
19 Mr. Johnson, except for your client; right -- no.
20 (Laughter)

21 MR. JOHNSON: Well, Your Honor, I just
22 stand on my motion objected to remove those
23 portions of the videos and written statements and
24 everything related to the talking about buying
25 drugs, they're talking about using drugs, and under

1 Lyle and also that passage that I listed about
2 smoking a blunt. I think that was listed in there
3 as well. And the -- any information regarding the
4 pending cases with my client and codefendants, I'd
5 just...

6 THE COURT: Well -- but, I mean, aren't
7 they complaining -- aren't y'all complaining that
8 -- I'm guessing y'all are going to -- we're going
9 to say that Wright was selling drugs; right?

10 MR. JOHNSON: That's my understanding
11 that that's going to come up; right.

12 THE COURT: Yeah. And they went there
13 -- you know, if there's going to be any argument,
14 they went there for a drug deal. Okay. They went
15 there to buy flowers and maybe get some marijuana.
16 Okay. No, but, I mean -- okay. So anything else?

17 MR. JOHNSON: No, sir.

18 THE COURT: Okay. All right.

19 Mr. Leiendecker?

20 MR. LEIENDECKER: I agree with counsel
21 and with some of the characterization from the
22 bench that this is about drugs. I mean, these
23 people were about drugs. The only -- not only, one
24 of the problems I have with what the State has at
25 least listed is their intention to suggest that my

1 client was involved in the sell or distribution of
2 cocaine. I don't think there's any record or
3 evidence that he was doing that.

4 He did -- he was arrested with cocaine
5 in his possession. But if their witness is only
6 Ms. Buxton suggests that and the others, there are
7 other multiple witnesses of theirs that say they
8 don't think he did deal with cocaine, that he was a
9 marijuana dealer. And so I would object to that
10 characterization of him as a cocaine dealer under
11 *Lyle*.

12 THE COURT: And I don't know.

13 MR. OSBORNE: Okay. I will -- all
14 right. As they know, Buxton is a live wire. We're
15 trying to get her hear from Texas. We're trying to
16 do the -- I don't even know what that's called.
17 We're trying to get her sent here from Texas. I
18 would just ask, I will make a note of that, I
19 haven't done her questions yet. I would just ask
20 to lead her a little bit on that part of it and I
21 will advise her again that -- because most of that
22 was speculation, I think, on her part.

23 So I will get the Pocket being a
24 cocaine dealer out from Buxton and that's the only
25 one I anticipate saying that. And I will say

1 though in reference to the postarrest on July 15th,
2 you know, he does say to Journey that the cocaine
3 that was found in the car that he -- that that was
4 his and that he sold it. So I assume he means
5 outside of that statement.

6 MR. LEIENDECKER: I wouldn't even like
7 that statement.

8 THE COURT: Well --

9 MR. LEIENDECKER: You know, I'll have a
10 403 argument on that.

11 THE COURT: Okay.

12 MS. ZMROCZEK: And just with regard to
13 Buxton, Your Honor, I think later on you will see I
14 have a motion reliability/check the crazy for lack
15 of a better term. And I think that because one of
16 the -- in fact, one of the most recent statements
17 that they gave us about Buxton was that she -- when
18 he talked -- when, he, Mr. Osborne, and if I'm
19 misstating it, obviously correct me, but the way
20 that I remember reading it was that he talked to
21 her on the phone because she is incarcerated in
22 Texas for assault on a police officer amongst other
23 things. But that she was incoherent, laughed, and
24 was like completely out of her mind. So,
25 obviously, I think that if she does -- if she is

1 transported, does come, I think that at that point
2 before she gets in front of the jury, we're going
3 to have to have some sort of hearing about her
4 mental status. And I didn't mischaracterize it,
5 did I?

6 MR. OSBORNE: Not at all. And I would
7 just follow that up with I have not got to her
8 questions yet and once I do, I was going to give
9 you a summary. And just for your edification,
10 absolutely correct the first time we talked to her
11 and I don't know the date right now, it was
12 literally rainbows and unicorns.

13 So I thought that we would do a zoom
14 with her from Texas. This was my plan. To do a
15 zoom with her from Texas, you determine if you
16 thought she was competent, incompetent. If you
17 thought she was competent, then I would impeach
18 her. If she was incompetent, then we just weren't
19 going to bring her, okay. That was my game plan.

20 But then when we spoke to her, it was
21 like a different person. I don't know, maybe not
22 being on the street, drugs, I'll send the summary
23 to you all, I will give you a sneak peek, it's
24 basically the same thing she told the police
25 before.

1 THE COURT: Okay. Mr. Johnson -- I'm
2 sorry. First, Ms. Zmroczek, are you through?

3 MS. ZMROCZEK: Nodded.

4 MR. JOHNSON: Just to sort of echo what
5 Mr. Leiendecker said. I think the evidence they
6 had was about my client drug use not dealing as
7 well.

8 MR. OSBORNE: That's correct.

9 MR. JOHNSON: I object to any of the
10 testimony about it being a drug deal. That's what
11 I'm adding in.

12 THE COURT: Okay. All right. What's
13 next?

14 MR. OSBORNE: Motion to authenticate
15 business records.

16 THE COURT: That was something y'all
17 were talking about last week; right? Didn't y'all
18 mention that something last week about it?

19 MR. OSBORNE: I think we mentioned it
20 over --

21 THE COURT: Never mind. Just go ahead.
22 Pretend I didn't say anything.

23 MR. OSBORNE: Okay. So we sent notice
24 to the Defense of our intent to introduce or I
25 shouldn't say introduce, use the correct

1 terminology, to authenticate business records
2 without the necessity of calling in the custodian
3 of records.

4 The records that we sent notice for
5 were the 9-1-1 dispatch records to include the
6 9-1-1 event report, the 9-1-1 call made by
7 Christopher Wright, DMV records, and really, all
8 we're trying to do here are show photographs, DMV
9 photographs of Lionell McFadden, Jimmy Devoe, Lewis
10 Dukes, Anna Weatherford, Derrick Coleman, and
11 Amanda Weldon.

12 We also have some phone records that we
13 were seeking to authenticate. Derrick Coleman's
14 cell phone. That's Verizon record 803-410-4097.
15 Derrick Coleman's home phone which is 803-410-3863.
16 Sarah Branham's call detail records which are
17 803-381-7782. And T-mobile Sprint call detail
18 records for Cuz June which is 609-858-8402. And I
19 do have those motions and notices if we would like
20 to make them Court exhibits.

21 THE COURT: Okay. You want to make
22 those Court's -- Court's 9. And that's the phone.

23 MR. OSBORNE: Those are actually the
24 notices that I sent to Defense counsel of our
25 intent to authenticate those records. Without the

1 necessity of extrinsic evidence.

2 THE COURT: All right. And, Mr.
3 Leiendecker, do you want me to start with you and
4 are there any issues about that?

5 MR. LEIENDECKER: Your Honor, I --
6 starting from the bottom up. I have issues with
7 the phone records. Because those records not only
8 from a custodial standpoint, but from the custodian
9 that may come to provide them can also provide
10 extrinsic evidence about how those records are
11 kept, how those records are recovered, and how
12 those records are kept for periods of time to then
13 become unavailable and that may be important
14 evidence in this case. So I would object to just
15 letting them in on the business records without the
16 custodian here.

17 THE COURT: Okay.

18 MR. LEIENDECKER: As to the DMV records
19 and the 9-1-1 records, I will allow other people to
20 address those if they have concerns.

21 THE COURT: Let me ask you something.
22 Do I need -- can we do those -- I guess we couldn't
23 do those by Webex, could we? Because the jury's
24 got to hear them.

25 MR. LEIENDECKER: Yes.

1 THE COURT: Okay. All right. Oh, Ms.
2 Zmroczek, yeah.

3 MS. ZMROCZEK: Your Honor, I join in
4 Mr. Leiendecker's motion on the phone records
5 especially due to what he said about them only
6 being available for a certain period of time.
7 Because, obviously, you know, my client's phone
8 records were never secured. And that's something
9 that, you know, an officer won't be able to testify
10 whereas a custodian will be able to say how long,
11 you know, records are kept, what's the procedure to
12 request them, et cetera, et cetera.

13 As far as the 9-1-1 call. Actually,
14 Your Honor, I was moving to include that as well.
15 But -- in its entirety. So I have no problem with
16 the 9-1-1 call. And the DMV, again, I don't see
17 what the relevance is, but I guess we'll get to
18 that point. I understand that those are business
19 records. And I -- obviously, I don't know what the
20 relevance is, but I don't object to the form that
21 they were provided to us for the DMV records.
22 Sorry.

23 THE COURT: Okay. And, Mr. Johnson?

24 MR. JOHNSON: I just -- based on what I
25 have in my motion, Your Honor. Rule 802, 402, and

1 403.

2 THE COURT: Okay. All right.

3 MR. OSBORNE: Would you like me to
4 elaborate a little bit more?

5 THE COURT: Yeah, if you don't mind.

6 MR. OSBORNE: All right. What we are
7 seeking to introduce is -- what we're simply
8 seeking to do is to utilize this statute 19-5-520.
9 And to put it in layman terms, what that statute
10 allows a prosecutor to do is to basically say that
11 the CD that we have contains call detail records.
12 Okay. They were obtained from a phone company.
13 And the -- and what basically what allows us to do
14 is just to say that those records are Verizon, are
15 T-Mobile, are AT&T records, whatever it is
16 respectively.

17 The argument that I hear
18 Mr. Leiendecker and I think Ms. Zmroczek making is
19 that, well, we want to talk to a custodian to say,
20 well, how long are your records normally kept? So
21 how long does it take before these records
22 disappear? Well, that's not the point to the
23 statute. The statute talks about whether these
24 records are what we purport them to be. That's why
25 we have signed affidavits from custodians who are

1 saying these are our records. These are
2 authenticated. They have not been tampered,
3 altered, or damaged in any way. That's what each
4 one of these sworn affidavits do.

5 The type of cross examination that
6 they're trying to elicit doesn't have anything to
7 do with authenticating the records that we're
8 seeking to authenticate. It's something else.
9 They would seek to ask and I suppose how long does
10 it take for those records to disappear. That's not
11 -- that doesn't go to the statute. The statute
12 simply says, are these records authentic. Are they
13 what we say they are.

14 THE COURT: Anybody want to respond to
15 that? Mr. Leiendecker?

16 MR. LEIENDECKER: If Your Honor were to
17 accept the State's argument and I believe that is
18 what the statute says, but the statute doesn't
19 prohibit what has been suggested by Defense
20 counsel. And at this point, if the Court were to
21 rule that the phone custodians do not have to
22 appear, then that means we will need to get
23 subpoenas to the phone custodians and we will need
24 to ask for a motion for a continuance because we
25 will not have that prepared or served or those

1 people available or the ability to have them travel
2 here by Monday.

3 THE COURT: Well, you're not going to
4 use them on Monday anyway, are they?

5 MR. LEIENDECKER: Don't know when I'll
6 need them. Because when they put the records on, I
7 may, you know, I don't know.

8 MR. OSBORNE: I will consent to zoom.
9 He won't need to fly.

10 MR. LEIENDECKER: I'm not consenting to
11 zoom, I want the jury to see them.

12 MR. OSBORNE: It's your witness.

13 THE COURT: Okay. Well --

14 MR. LEIENDECKER: The State should
15 provide them. The State doesn't get to pick a
16 statute that says they're business records,
17 therefore, you don't have a right to do any of
18 these other things. The State --

19 THE COURT: No, they're not saying you
20 don't have the right --

21 MR. LEIENDECKER: The State's very,
22 very narrow in all that. And I'd say these are
23 their witnesses and they should be provided.

24 THE COURT: Okay. Well, just so you'll
25 know, I'm inclined to let these in for just the

1 fact that they are the records. Okay. Now, if you
2 need to get a custodian here, I'll be glad to sign
3 anything you need to try and get them here as
4 quickly as you want them to. Okay.

5 MR. LEIENDECKER: Well, I have no
6 promise or guarantee that I can do that, and,
7 therefore, I will be at the end of this interposing
8 a motion for continuance.

9 THE COURT: No. No, I understand. But
10 let's --

11 MR. LEIENDECKER: I'm trying to avoid,
12 you know, as many problems as I can and one of them
13 is coming back for PCR's following my retirement.

14 THE COURT: Or mine. Okay. No.
15 Mr. Leiendecker, let's first find out if they will
16 be unavailable to get here. So I -- if you want
17 them subpoenaed, I'll subpoena them. I'll do
18 whatever I can to get them there. Okay. But --
19 and I'll read over the statute. This is a motion
20 in limine. After I read the statute, I may change
21 my mind and come back to your way of thinking.
22 Okay. All right. Go ahead.

23 MR. OSBORNE: All right. Judge, the
24 next thing we have are some Rule 5 issues. And
25 just sort of going in order right here. And I

1 might have some of this wrong, but I think
2 Mr. Johnson asked for a copy of the Defendant's
3 statements. I think we've already provided all the
4 statements that we have from the Defendants.

5 There's also been a request for a copy
6 of the Defendant's NCIC. I believe that's already
7 been provided. If you don't have the NCIC or
8 criminal history on the Defendant, just let us
9 know. I mean, obviously, we'll get that to you.

10 THE COURT: Do we need -- do you have
11 -- you got a copy --

12 MR. JOHNSON: I'll double check that,
13 Your Honor. But I wanted to ask just related to
14 that, has he sent rap sheets on all the witnesses,
15 all the State's witnesses?

16 MR. OSBORNE: No. We have -- okay. We
17 have them and we have them redacted. The NCIC
18 regulations say that we need to retain custody of
19 them. So my intention was to give them to y'all,
20 let you all review them on Monday and then just
21 give them back to us once you take the notes that
22 you need, but we have them all.

23 MR. JOHNSON: So he's saying he can't
24 give us copies of rap sheets on witnesses?

25 MR. OSBORNE: No, I can, I just need

1 them back. So we were going to give them all to
2 y'all on Monday.

3 THE COURT: You want them before
4 Monday?

5 MR. JOHNSON: Well, I just thought we
6 were going to get physical copies of rap sheets of
7 witnesses --

8 MR. OSBORNE: We are giving them to
9 them on Monday morning.

10 THE COURT: Okay. I guess what he's
11 looking at and I don't really understand is, if you
12 give him copies of a rap sheet, he's got to give
13 them back after the trial?

14 MR. OSBORNE: I mean, for -- my
15 understanding and I could be wrong, but it took --
16 for us to receive NCIC certification, we have
17 designated individuals who can run rap sheets and
18 we're supposed to retain copies of those rap
19 sheets. That's the way I understood it. I might
20 be wrong.

21 MR. JOHNSON: That's the first time
22 I've heard anyone tell me I couldn't have a rap
23 sheet on witnesses, Your Honor.

24 MR. LEIENDECKER: That's not the way
25 we've ever tried cases before including with this

1 solicitor's office.

2 MR. JOHNSON: I don't know.

3 MR. OSBORNE: All right. I mean --

4 MR. JOHNSON: Does he want me to
5 handwrite all -- copy all the --

6 THE COURT: No. We will take care of
7 the fact that we will get you the rap sheets.
8 Okay. And then we will worry about --

9 MR. OSBORNE: I'm sure they're not
10 asking me to break the rules.

11 THE COURT: Yeah, they're not asking
12 you to break the rules.

13 MR. LEIENDECKER: And the problem has
14 always been solved by the Court ordering the
15 Solicitor to turn them over.

16 MR. OSBORNE: Okay.

17 THE COURT: Okay.

18 MR. JOHNSON: Judge, do you mind if I
19 ask something unrelated real quick about
20 scheduling? I hate to jump off the topic real
21 quick.

22 THE COURT: Okay.

23 MR. JOHNSON: But Judge McCaslin was
24 asking me about tomorrow and I just wanted to let
25 her -- did you indicate we're not going into

1 tomorrow?

2 THE COURT: I'm not going to do this
3 tomorrow.

4 MR. JOHNSON: Thank you, Judge.

5 THE COURT: You know, I think we've all
6 suffered long enough. Okay. By the time we finish
7 this. Though we might be taking it up Monday, you
8 know.

9 MS. ZMROCZEK: Your Honor, there are
10 several other, I think, Rule 5 stuff.

11 MR. OSBORNE: I was still going through
12 it.

13 MS. ZMROCZEK: Okay.

14 MR. OSBORNE: Maybe I'll cover it,
15 maybe not. Names and addresses of the witnesses.
16 We haven't -- it's my understanding that and I'm
17 still learning this Circuit, I don't think anything
18 has been redacted. I think we provided the names
19 and addresses here. It's a little different.

20 CV reports for --

21 THE COURT: Well, is the answer, you
22 have already given them the names and addresses of
23 all the witnesses?

24 MR. JOHNSON: I don't recall any
25 redactions on those statements, so it's fine.

1 THE COURT: Okay.

2 MR. OSBORNE: CV reports or CV's of our
3 experts and reports. We've already given the
4 reports. I think there's only one CV that's left
5 from a pathologist. Working on it, Dr. Ross.

6 THE COURT: That Dr. Ross from
7 Newberry?

8 MR. OSBORNE: Yes.

9 THE COURT: That does all of them?

10 MR. OSBORNE: Yes.

11 MS. ZMROCZEK: She's no longer with
12 Newberry, but, yeah.

13 THE COURT: Oh, she's no longer --

14 MS. ZMROCZEK: No. She's actually
15 doing autopsies at the beach now.

16 THE COURT: At the beach?

17 MS. ZMROCZEK: In Charleston. Not at
18 the beach.

19 (Off the record)

20 THE COURT: But you --

21 MS. ZMROCZEK: I'm in contact with her,
22 so.

23 THE COURT: Are y'all worried about her
24 CV?

25 MR. LEIENDECKER: No.

1 MS. ZMROCZEK: No.

2 MR. LEIENDECKER: I'd like it if it
3 comes, but, no.

4 THE COURT: Okay. I just wanted to --

5 MR. LEIENDECKER: I've heard of her.

6 THE COURT: I figured -- yeah, I
7 figured y'all had all gone through this enough, I
8 didn't know long y'all wanted to -- okay.

9 MR. OSBORNE: The last issue that --
10 well, we had the protective order motion, I guess I
11 can get to that in a second. The last issue and I
12 wanted -- that I had for Rule 5 and I wanted to put
13 this all on the record.

14 Yesterday -- and I'm providing this to
15 the Defense now. Yesterday, Mr. Leiendecker sent
16 an email to us -- to me, and said, there was a cell
17 tower -- well, here, I'll give this to Your Honor
18 too. There was a court order that was obtained by
19 US Marshal Task Force Officer Leonard Cain. And he
20 obtained that court order on January 7th of 2016.
21 The court order was an attempt to download cell
22 tower data. Okay.

23 And, Your Honor, just in case you're
24 not aware, when you place a phone call using a cell
25 phone, it hits a cell tower. That cell tower

1 itself collects data. It collects the date, the
2 time, and the number that was called. This order
3 by Investigator Cain that was signed was attempting
4 to collect cell tower data from a couple specific
5 towers. And the main one being the crime scene
6 from the night of the murder.

7 He had requested it through AT&T,
8 Sprint, Nextel, T-Mobile and Verizon. He did so
9 under a federal court order. And he used US
10 Marshal Hine to do that. The order was sent in
11 discovery. Okay. I don't know, I wasn't here
12 during that time, but after talking to
13 Mr. Leiendecker, I believe and I think this was in
14 front of Your Honor, the sheriff's office was put,
15 for lack of a better term, through the ringer
16 regarding discovery. Mr. Leiendecker advised me
17 that the sheriff's office was told that you need to
18 give everything over and if you don't give it over,
19 you could be held in contempt.

20 It's my belief that Investigator Cain,
21 you know, probably got a little nervous and gave
22 that court order to the State. He should not have
23 done that. That court order was sealed. It is a
24 federal court order. There are regulations on
25 that. It should not have come to my office. In an

1 abundance of caution, my office then sent that
2 order in discovery. Just the order.

3 So Mr. Leiendecker yesterday sent that
4 order to me and we were aware of the order. And he
5 sent the order to me and he said, look, you know, I
6 just want to make sure y'all don't have any cell
7 tower data for this order. So I had Investigator
8 Haupt contact Investigator Cain and say, you know,
9 we've made numerous requests, just double checking,
10 you don't have any cell tower data in reference to
11 this order.

12 Cain then said, you know, I really
13 don't have any recollection of it. Let me double
14 check. He goes back through his emails. He then
15 says that he had communication with Marshal Hine
16 regarding that tip. And that's why I put the tip
17 in there. And the tip basically says -- the tips
18 are, overheard family of the victim saying that the
19 father of the girl killed, owed some people money
20 for drugs.

21 The tipster says they came from New
22 Jersey looking for father and killed everyone
23 because he wasn't home. As a result of that tip,
24 Investigator Cain contacted Hine and said, can you
25 take a look at the cell tower data and see if you

1 happen to see any New Jersey numbers in the data.
2 That's the Excel spreadsheet there and that's tiny.
3 I'll email that to everyone so you can see it
4 bigger.

5 Cain got that Excel spreadsheet. And
6 as you can see, there's no usage at the timeframe
7 of the murder, but that's what he got. He never
8 got the cell tower data.

9 THE COURT: So where are we?

10 MR. OSBORNE: Where are we? I'm
11 getting there.

12 THE COURT: Oh, okay. I'm enjoying the
13 story.

14 MR. OSBORNE: It was a very long day
15 for me yesterday. I learned a lot. So I ended up
16 calling -- well, who I ended up talking to was
17 Meredith Mills. She's the associate general
18 counsel for the US Marshals in DC. Ms. Mills was
19 not very happy at all with Cain sharing this
20 information. Not only the order, but this, this
21 spreadsheet.

22 She said that what should have been a
23 proper procedure in this case is that when the feds
24 obtained the information and preserved it, that the
25 sheriff's office should have then obtained a search

1 warrant if they were planning on using that
2 information in their case in chief. That never
3 happened.

4 So we don't have that information.
5 Whether the US Marshals has that information or not
6 is unclear. But what I can tell you is that she
7 said that there are two eRegulations. And
8 basically here's what she's saying. And I -- she's
9 saying this. The US Marshals obtained this
10 information through a court order. And what they
11 use that information for is fugitive -- is looking
12 down fugitives. Searching for fugitives. It's not
13 in criminal investigations.

14 If the sheriff's office wanted to use
15 that information in a criminal investigation, they
16 should have obtained a -- do a search warrant and
17 since they didn't do that, it can't be used in a
18 criminal investigation. It's my understanding that
19 she even put out a nationwide email to everyone
20 explaining what happened in this case saying that
21 this is an example of what should not be turned
22 over.

23 So where we're at right now which is
24 what I would assume where we're at is that there's
25 going to be like, you know, probably an allegation

1 of a *Brady* or Rule 5 violation. Evidence favorable
2 to the Defense.

3 Well, you know, *Arizona v. Youngblood*,
4 that's 488 US 51. And it basically says,
5 potentially useful material to the Defense is not a
6 violation of due process. These are cell tower
7 data. I've never heard of it -- well, I should
8 say, I've heard of it one time in 27 years. This
9 detective has never done it. It's just not
10 something that's commonly used.

11 And the big one is evidence in the
12 State's possession, custody or control. We don't
13 have it. Evidence material to defendant's guilt or
14 punishment. We do not have an absolute duty to
15 preserve potentially useful evidence that might
16 exonerate a defendant. However, I do think it is
17 perfect fire for cross examination which I think is
18 where they're at.

19 THE COURT: Who wants to go first? Mr.
20 Leiendecker?

21 MR. LEIENDECKER: Officer Whitley says
22 that the State must turn over evidence. It doesn't
23 say that the State can ignore evidence or not go
24 after evidence because it's hard, because it's
25 difficult. And the reality of this is that these

1 requests for this tower dump were signed by a First
2 Circuit, circuit court judge. Judge Murphy in
3 2017. They weren't federal. They weren't federal
4 search warrant. They weren't a federal sought
5 discovery.

6 And what the sheriff's office chose to
7 do with that in attempting to obtain these records,
8 I have no idea. And it's certainly know that there
9 were at least multiple warrants, not just one
10 warrant, multiple warrants. So it's kind of funny
11 that they got multiple warrants for one tip. I
12 don't find that credible or any explanation for why
13 they didn't get a tower dump from these same
14 custodial record keepers that they don't want to
15 bring to verify the documents.

16 Those tower dumps could be and are
17 obtained directly from the cell phone companies
18 that own and operate those towers. We've seen them
19 in multiple homicide cases including recent cases
20 tried in Calhoun County where it not only showed
21 all of the calls in the dump, but it showed the pie
22 chart showing directions and all that kind of
23 stuff. That's what those subpoenas were signed for
24 by the judge and that's what's not been provided.
25 This is a red herring.

1 THE COURT: Okay.

2 MS. ZMROCZEK: Additionally, Your
3 Honor, what they were trying to do is they were --
4 they, the Marshals, and, again, like he said, it
5 was signed by a state court judge. What they were
6 trying to do is figure out what numbers were
7 bouncing off of there -- what numbers were using
8 that tower during that time period so that they
9 could go and use that as an investigative tool.
10 That's absolutely what they were doing in this
11 case.

12 The fact that we now get turned over a
13 Crime Stoppers tip when I know it's going to come
14 up later on down the line, but I've been asking for
15 Crime Stoppers, you know, and this is the only one
16 we get. But, yeah, that information, Your Honor,
17 would show what phones were bouncing off when and
18 who was calling whom.

19 One thing that's very concerning
20 especially with the State trying to keep out all of
21 this third party guilt is that there were two phone
22 calls made, one from Krystal Hutto's phone and one
23 from Shamekia Sanders's phone, I believe. Both to
24 Christopher Wright at around 1:28. And so -- or
25 1:23 and 1:25. When you're looking at a timeline,

1 Your Honor, to establish these, those phone records
2 come in handy especially when they don't show, for
3 example, my client's phone bouncing off of there.

4 And so, they can hide behind the
5 federal, but this was not done federally. This was
6 a state order order. It was signed by Judge Murphy
7 from the First Circuit.

8 THE COURT: And I appreciate that.
9 You're just saying this is a red herring, we don't
10 need to think about it? I don't need to do --

11 MR. LEIENDECKER: No. I'm saying it's
12 a red herring that that's not what they were
13 seeking and that's not a tower dump. What I'm
14 saying is, what they were seeking was something
15 much more voluminous. They say they were pursuing
16 it pursuant to a Crime Stoppers tip which I think
17 if the record is checked, discovery and otherwise,
18 we have asked for Crime Stoppers and been told by
19 the sheriff's office there were none. There were
20 no Crime Stopper tips. That was the answer we got
21 from them.

22 And now when we ask for something
23 completely different, we see a Crime Stoppers tip.
24 I was shocked because I was told by Orangeburg
25 County Sheriff's Department there weren't any.

1 They didn't exist. How many others are there? I'm
2 interested now because it's convenient. I'm not
3 saying that's a red herring, I'm saying that's not
4 what they were asking for and now they're showing
5 us something different.

6 THE COURT: Okay. Jump on, Mr.
7 Johnson.

8 MR. JOHNSON: Your Honor, I join in
9 that and also ask the *Brady* violation, I ask for a
10 continuance of trial to allow us to go have this
11 information.

12 THE COURT: To allow for what?

13 MR. JOHNSON: Go after this
14 information. The Solicitor said it may be in the
15 possession of US Marshals. He said this tower dump
16 and all this other information, he used some vague
17 language to say this information may be out there.
18 And if they haven't -- they don't have it and now
19 we realize there may be other Crime Stopper tip
20 information out there, I move for a continuance of
21 the trial unless they've got the ability to get it
22 to us before trial.

23 MS. ZMROCZEK: Then the last thing,
24 Your Honor, is that just according -- and, again,
25 this is why we have court reporters, but what I

1 heard is that based on this tip they then did a
2 tower dump. But this tip is received April 5,
3 2016, the tower dump was done way before that.

4 MR. LEIENDECKER: The tower dumps were
5 requested and the order signed on February 5, 2016.

6 MS. ZMROCZEK: So that's certainly not
7 as a result of this Crime Stoppers tip.

8 MR. LEIENDECKER: And were to be sent
9 to AT&T, Sprint, Nextel, T-Mobile, Verizon Wireless
10 regarding July 14, 2015 through July 15, 2015.
11 That was my definition of a red herring. This
12 isn't what was asked for. This isn't what was
13 requested. And this response now brought by the
14 State demonstrates that --

15 THE COURT: Before you put that up, I
16 wanted to ask you. You said Judge Murphy's order
17 was February 5, 2000 --

18 MR. LEIENDECKER: No. January 5, 2016
19 asking for records in a tower dump from all of the
20 mobile providers July 14, 2015 at 1 p.m. through
21 July 15 -- 14th through the 15th at 10 a.m. What
22 the Orangeburg County Sheriff's Department has
23 provided is nonresponsive to what those subpoenas
24 were for.

25 THE COURT: Well, it looks to me like

1 the times on this go from 1 o'clock essentially on
2 July 14, 2015 to -- well, 9:30 on July 15, 2015.
3 Isn't that the period you were requesting?

4 MR. LEIENDECKER: Yep. There is no way
5 that this is all the numbers that bounced off that
6 tower from 1 p.m. to 10 a.m. the next day. These
7 are the New Jersey numbers only. And these give us
8 absolutely nothing.

9 MR. OSBORNE: And, Judge, just so, you
10 know, again to clarify. The sheriff's office never
11 came into custody or control of the cell tower
12 information. They never did. When the request
13 wasn't made with a state order, I know a state
14 judge signed it, but it says this matter comes
15 before the court pursuant to an application of a
16 Title 18. That's a US Federal code statute,
17 Section 2703. I looked it up, it's, you know, the
18 wiretap title stuff.

19 So they made that request in January of
20 2016. The sheriff's office never got it. It went
21 to the Marshals, Hine. Hine doesn't give that
22 over. And what he did give over, the TFO, the task
23 force officer, Investigator Cain, wasn't supposed
24 to give it away. He was supposed to keep it.
25 Those federal regulations clearly indicate they

1 were not happy about it.

2 THE COURT: No, I understand that. But
3 my question is, Judge Murphy signed an order for
4 them to get this -- to get that -- this kind of
5 information. Why wasn't that done?

6 MR. OSBORNE: It was done. And then it
7 went to the US Marshals. It's no different than,
8 you know, if the Marshals are a separate entity.
9 They're a US government --

10 THE COURT: I understand. We're here
11 for the federal government, we're here to help.

12 MR. OSBORNE: Yeah. Right. And, you
13 know, I'm sure the federal government, they got all
14 kind of information, you know.

15 THE COURT: I'm sure they do.

16 MR. OSBORNE: They're not going to give
17 it. I happen to believe they're probably listening
18 to us right now. And if we want to get that
19 information then you got to go about the proper
20 channels. The information that the US Government
21 obtained that was under two eRegulations. That was
22 under court order, that is dealing with fugitive
23 warrants. Okay.

24 If Investigator Cain wanted to get that
25 information -- if the sheriff's office wanted to

1 get that, they could have tried. I don't know how
2 you would articulate the PC, but they could have
3 tried to get a search warrant to get the cell tower
4 data. They did not.

5 Now, you know, that's fine for cross
6 examination, but that's no different than any other
7 avenue that any other investigation or investigator
8 didn't go through to obtain. They never had it.
9 Now this spreadsheet, just to get the times right,
10 the only reason why Cain even remembered it because
11 I brought it back, I said, look before I email back
12 to this Defense and tell them we don't have this,
13 double check.

14 Well, I'm sure Investigator Haupt had
15 that conversation, but he said, okay, let me go
16 back and look. When he got this tip which they
17 provided to us for the first time, he then
18 contacted Hine and said, can you run New Jersey
19 numbers through the cell tower dump that you have.
20 And he did and that's why the spreadsheet was
21 generated.

22 THE COURT: No, I understand.

23 MR. OSBORNE: Oh, okay.

24 THE COURT: No, I do understand that.

25 I guess I've got sort of two problems here. Number

1 one is, obviously the feds had this information and
2 they were able to go through it and just gave the
3 New Jersey numbers. Okay. But that makes me think
4 that there were other numbers like Mr. Leiendecker
5 said, they had to go through those numbers for that
6 time period, they could have, should have provided
7 them.

8 MR. OSBORNE: Could have and should
9 have are two different things.

10 THE COURT: Well, I understand that.

11 MR. OSBORNE: They should have -- I'm
12 sorry.

13 THE COURT: Oh, no, go ahead. You
14 finish, it's more fun to --

15 MR. OSBORNE: Well, I interrupted you
16 and I lose it. The should have part of it I think
17 would have been the procedure they should have gone
18 through to get it.

19 THE COURT: Right.

20 MR. OSBORNE: And they didn't do that,
21 you know. So that's where you get into the
22 regulations and the law enforcement privilege. And
23 this is what Meredith Mills was saying. We have
24 law enforcement privilege. She said your
25 investigator should have never given anything to

1 you. In fact, your investigator shouldn't even be
2 talking to you right now without our permission.

3 THE COURT: Listen, I'm fine that the
4 federal officials said that nobody should be
5 talking to anybody about this. What I'm not fine
6 with is there is information or was information out
7 there that could have been timely provided and
8 researched so that we'd have the numbers to check
9 about who was using this cell tower. I mean, it
10 seems to me.

11 MR. OSBORNE: Okay. So and that goes
12 back to any criminal case.

13 THE COURT: No, I understand. If they
14 don't follow-up. I understand if you don't
15 follow-up you have the right to do, you know, you
16 cross examine them, say you didn't do this, you
17 didn't do that, you didn't follow-up on this lead,
18 you know, and this information was available.

19 MR. OSBORNE: It's always going to be
20 available. Nextel, AT&T, Sprint, Verizon, that
21 information is always at their disposal.

22 THE COURT: Can I get this information
23 now?

24 MR. OSBORNE: What I have been told by
25 Ms. Mills is, if we file a subpoena for that

1 information, that information -- that subpoena goes
2 to her and she won't give an answer until she gets
3 the subpoena, but she says I will decline it.

4 THE COURT: She will --

5 MR. OSBORNE: Deny it.

6 THE COURT: She will deny the subpoena?

7 So I've got to go --

8 MR. OSBORNE: And she said that she,
9 her words not mine, I will inform your task force
10 officer too, these regulations are above contempt
11 power. That's what she said. And I said, so
12 you're telling me that if we send a court order, it
13 will be denied. She said I'm not going to tell you
14 that I'm denying it until I get it, but I'm denying
15 it.

16 THE COURT: So I need to get a federal
17 judge to encourage her to do this?

18 MR. LEIENDECKER: Yes.

19 MR. OSBORNE: Well, if you can get a
20 federal judge to circumvent two eRegulations --

21 THE COURT: I'm not trying to
22 circumvent anything. What bothers me is we have an
23 order from Judge Murphy that tells the sheriff's
24 office to get this information. Isn't that what
25 the order said?

1 MR. OSBORNE: Well --

2 THE COURT: No, go ahead.

3 MR. OSBORNE: To US Marshal Hine.

4 That's who the information is supposed to go to and
5 it did. And per the regulation, if they want it
6 from Hine and if they want to use it in a criminal
7 investigation, they need to follow their own proper
8 procedures. And this information is available for
9 every criminal case, every single one, you know.

10 THE COURT: But we don't have it here.

11 MR. OSBORNE: What's that?

12 THE COURT: But we don't have it here.

13 MR. LEIENDECKER: I assume they mean --

14 MR. OSBORNE: Well, we don't know if
15 Verizon has this information now, maybe they do.

16 MR. LEIENDECKER: I assume "they" means
17 the Orangeburg County Sheriff's Department?

18 MR. OSBORNE: Yes.

19 MR. LEIENDECKER: Because we can't get
20 it obviously.

21 MR. OSBORNE: No -- I mean, well, they
22 have subpoena power too.

23 MR. LEIENDECKER: And we go right back
24 to -- we ask about this, we were told on more than
25 a few occasions, we don't have it. We were even

1 told yesterday or the day before, I don't think we
2 have that and we got kind of an Abbott and
3 Costello. Cain gave it to Hine and Hine said he
4 gave everything he had to Cain and Cain hasn't
5 given us anything, therefore, we must not have got
6 anything.

7 And then today, with further research,
8 which I appreciate, we find a series of New Jersey
9 phone numbers which relate to a tip in April.
10 Three months after the subpoena was issued for the
11 records. Therefore, there is no way the subpoena
12 was issued to check a tip filed three months later.

13 MR. OSBORNE: That's not what I said.
14 Just so we're on the same page. That is not what I
15 said.

16 MR. LEIENDECKER: The subpoena was
17 issued for all the records. And now, the sheriff's
18 department through the State's attorney is telling
19 us on the eve of trial, oh, we needed to use
20 something else to get it and we didn't get it.
21 That's a *Kyles* violation.

22 MR. OSBORNE: That is no different than
23 any single criminal investigation. The information
24 that they are looking for exists all the time. It
25 always exists. All you need to do is to get a

1 search warrant for it and obtain it. And if they
2 don't do it then they can be cross examined on what
3 they didn't do. You are aware, Detective, that
4 cell towers maintain information use?

5 MR. LEIENDECKER: I appreciate --

6 THE COURT: Whoa. Whoa. Let him
7 finish. Okay. Sorry.

8 MR. OSBORNE: You could have obtained a
9 search warrant, could you not? And you could have
10 gotten that information; correct? All of those are
11 perfect cross -- for any criminal case. And the
12 fact that -- I mean, let's be honest, this court
13 order right here is a different standard. Okay.
14 It's not probable cause. It's a court order under
15 that regulation.

16 That regulation does not contemplate
17 being able to use information that is obtained
18 private information we already know this that needs
19 to be obtained if going to be used criminal through
20 probable cause, not through this court order.

21 THE COURT: No. I --

22 MR. LEIENDECKER: In *Kyles v. Whitely*,
23 the issue was an eyewitness. An eyewitness that
24 was or wasn't revealed and the reality that the
25 state never followed up and checked that the

1 statement given by the eyewitness was impossible
2 because of prospective. Where the witness said
3 they stood and what they said they saw was
4 physically impossible. Here --

5 THE COURT: I think that was *My Cousin*
6 *Vinny*. (Laughter)

7 MR. LEIENDECKER: Yes. Here, the State
8 -- that related to tires and positraction.

9 THE COURT: Right. No, there was a
10 viewing issue in there too.

11 MR. LEIENDECKER: Right. Well, that
12 was an eyesight issue.

13 THE COURT: Well, no. No, there was
14 another one with the trees and looking through --

15 MR. LEIENDECKER: And grits. I don't
16 -- I hope nobody really gets sidetracked at this
17 point.

18 THE COURT: I'm sorry.

19 MR. LEIENDECKER: In this case, they
20 were seeking information, that information which
21 could or should exist may verify that none of the
22 cell phones that are related to any of the
23 Defendants were pinging off these towers which were
24 in proximity at the time. And for the State to
25 suggest that that's not important and shouldn't be

1 investigated, for the Orangeburg County Sheriff's
2 Office to suggest that they shouldn't have
3 investigated that is amazing.

4 And, if in fact, we need subpoenas and
5 if those subpoenas have to be jump --

6 THE COURT: I believe you said a search
7 warrant.

8 MR. LEIENDECKER: Search warrants. If
9 those search warrants have to jump through a number
10 of hoops, then until we receive the reply regarding
11 those numbers, we cannot try this case fairly.

12 MR. OSBORNE: So, Judge, the only thing
13 I would retort to that is this. The Defense is
14 well versed on cell tower data. They know it
15 exists. We know it exists. Everyone knows it
16 exists. The sheriff's office did not obtain that
17 cell tower data. They could have gotten that cell
18 tower data back in 2016. They didn't. They're
19 under no obligation to do that now. I'm not
20 suggesting that they are.

21 MS. ZMROCZEK: And I couldn't have,
22 Your Honor.

23 THE COURT: Well, that's -- I want to
24 see Judge Murphy's order. I want to see what she
25 said.

1 MR. OSBORNE: Can I email it to you?

2 THE COURT: Oh, sure. Yes, if you
3 don't mind. Let me just see what she says.
4 Because I took it as do it, you know. And I don't
5 know who was supposed to do it. But it didn't seem
6 to be kind of a suggestion or anything like that.

7 MR. OSBORNE: And by all appearances it
8 does appear as though they complied.

9 THE COURT: Who complied?

10 MR. OSBORNE: The phone companies.
11 That was the order, to the phone companies to give
12 it to US Marshals and they did. But that's to US
13 Marshals, that is not the sheriff's office.

14 THE COURT: No, I understand. But
15 that's why I want to see Judge Murphy's order.

16 MR. OSBORNE: Okay.

17 THE COURT: If you don't mind. Thanks.

18 MR. OSBORNE: I have it right here,
19 Judge. And Judge, and I would just direct your
20 attention to the very top. United States Marshal
21 Service Taught Assistance Request Form.

22 THE COURT: Okay.

23 MR. LEIENDECKER: And if you -- in
24 reading it, Your Honor, it clearly directs to be
25 turned over to the agents of the state.

1 MS. ZMROCZEK: Your Honor, while we're
2 looking at that, may I use the restroom?

3 THE COURT: Y'all just relax for a
4 second.

5 (Off the record)

6 THE COURT: Okay. I think that -- I
7 just don't understand why we don't have the cell
8 phone information, you know. I read Judge Murphy's
9 order. I know they use the federal, you know,
10 Title 18 thing. I don't think it was her intent in
11 signing that order or the three orders actually
12 that that they wanted the US Marshals office to get
13 that information and keep it, you know. That would
14 defeat the whole purpose of this thing. But one of
15 the things I want to do is you said I have to do a
16 search warrant for this information?

17 MR. OSBORNE: To the phone companies.

18 THE COURT: To the phone company.
19 Okay. I know that the sheriff's office brings me
20 search warrants from the, you know, every -- at
21 least every other day, you know. And so, I'm
22 looking at somebody in the sheriff's office that I
23 know, so, I want a search warrant for these three
24 towers. Okay. I want it as fast as I can get it.
25 Now, and I'm going to -- I'm not saying anything

1 about the trial yet, you know, I don't think
2 there's any possibility that we can get them that
3 fast, but I want the search warrants done if I can
4 -- as close to now as they can be done. Okay.

5 Now, I understand and I think you make
6 an excellent point, that these Defense attorneys
7 could use the fact that this wasn't done in cross
8 examination about how, you know, they didn't do
9 anything. The sheriff's department didn't
10 follow-up on it. But by the same token, it could
11 produce evidence that could really help the
12 Defendants or really hurt the Defendants and that's
13 the evidence I want to see, you know. And that's
14 the reason I want to do it.

15 And I'm going to decide whether I'm
16 going to continue this or not. But I think y'all
17 can tell by the way I'm going right now, I'm
18 probably not inclined to do it unless y'all can
19 give me some good reason for going forward. But I
20 haven't ruled on that.

21 MR. OSBORNE: So let me just make sure,
22 just a couple of things.

23 THE COURT: Yeah.

24 MR. OSBORNE: All right. So one --

25 THE COURT: But before you do that, let

1 me tell you. When -- I'm not -- if I continue
2 this, I'm not continuing it as going to drop off.
3 I'm going to -- this case is going to be tried as
4 soon as I get those -- is there anything else out
5 there?

6 MR. OSBORNE: Well, I can't tell you --

7 THE COURT: I know, and listen, I
8 appreciate y'all finding this, you know. We got a
9 problem -- well -- no. No. No.

10 MR. LEIENDECKER: Can you ask the
11 sheriff's office for those?

12 THE COURT: No. I know. This with a
13 murder with four people and all the press it got
14 and we got one Crime Stoppers thing?

15 MR. OSBORNE: Well --

16 THE COURT: And, Mr. Osborne, I am not
17 blaming you at all, you know. I have had meetings
18 and I thought about two years ago, two years ago, I
19 thought we had gotten all the information that
20 there was in this case. I mean, I really did. I
21 was hopeful, you know.

22 MR. OSBORNE: Well, I have a SUV full
23 of about eight banker boxes full of information on
24 this case.

25 THE COURT: Yeah. And listen I'm not

1 -- I want you to know I'm not -- I think
2 frustration probably is a better word for where I
3 am right now, you know. Because one of the things
4 that I wanted to do was -- I didn't want the new
5 judge to have to come in and deal with this, so. I
6 still don't want that. Go ahead.

7 MR. OSBORNE: If I may?

8 THE COURT: Yes, sir.

9 MR. OSBORNE: So a couple of things.
10 All right. First of all, like I've asked around,
11 you know. You know my background and everything
12 and I've asked other people in law enforcement how
13 many times have you actually did a search warrant
14 for cell tower information. And, you know, to a
15 man over and over and over again, the answer is
16 zero. And I just want to say this because I -- to
17 tell you where I'm headed with this.

18 THE COURT: Okay.

19 MR. OSBORNE: And to a man, the answer
20 is always zero. I have heard of it one time, okay.
21 And the one time that we had it and I'm going to
22 explain to how cell tower information I think can
23 be useful in an investigation and then just -- I'm
24 going to -- I'm not going to take long.

25 THE COURT: Okay.

1 MR. OSBORNE: So we had an
2 investigation in which these guys were out there
3 and they were robbing one grocery store after
4 another. There was 20 in total. And in that case,
5 we did search warrants and how we were able to
6 articulate the search warrants, we were able to say
7 that we believe that by comparing the dumps to one,
8 two, three, all the way to 20 that we might find
9 numbers and commonality and then develop a suspect.
10 We were desperate. And that's the only time I've
11 ever even seen it done. Didn't help. We got it
12 another way. We caught them in the act.

13 But anyway, I say that to say, this is
14 such a long shot that even the Defense, you know,
15 presumably knew that the cell tower information
16 existed when their clients were arrested never made
17 the request. Because they know it's just -- I
18 don't want to say frivolous, but it's just not
19 useful. Because if you know the phone number,
20 you're not going to the tower, you're going to the
21 phone company and you're getting the call detail
22 records. That's how you get it.

23 So in this case, this is just another
24 example of what we see in every criminal case where
25 defense attorneys, like we talked about, they cross

1 examine, you never got it. You never got it.

2 So I want to make sure that I
3 understand, if the search warrant is articulated,
4 if we get that out, and the phone company say, it's
5 gone, we don't have it, then we're done and then
6 we're moving ahead with the trial. Okay.

7 MR. LEIENDECKER: The federal
8 government has these records. So that search
9 warrant should go to the federal government as
10 well.

11 THE COURT: I don't see why they won't
12 give us the information.

13 MR. LEIENDECKER: Well, I'm just
14 saying, we don't know until we send them a search
15 warrant. So it shouldn't just be the phone
16 companies, it should be the person who actually has
17 those records that we know of too --

18 THE COURT: Well, I think -- yeah, go
19 ahead.

20 MR. LEIENDECKER: -- also.

21 THE COURT: Oh, yeah. I don't -- the
22 lady that you were talking to --

23 MR. LEIENDECKER: We're not ready for
24 trial until the federal government until all of the
25 machinations refuse to turn it over.

1 THE COURT: No, what they're saying --
2 what Mr. Leiendecker is saying is, we believe the
3 federal government already has this information,
4 but they won't give it to us right now.

5 MR. OSBORNE: Right.

6 THE COURT: Okay.

7 MR. LEIENDECKER: Without a search
8 warrant.

9 THE COURT: Without a search warrant.
10 They won't give it to us with a search warrant.

11 MR. OSBORNE: No. No. No. Search
12 warrant phone companies subpoena federal government
13 which they're saying we're going to deny.

14 THE COURT: Oh, yeah.

15 MR. OSBORNE: So, I mean, we can do
16 that.

17 THE COURT: No. No. No. My thought
18 was to get somebody to call or I might call a
19 federal judge and just find out what can I do or
20 what can they do to help me, you know.

21 MR. LEIENDECKER: Well, we have to do
22 that and have them say, no, before we get a federal
23 judge to help probably. But we don't know until we
24 send it.

25 THE COURT: Okay. Well, do me a

1 subpoena and I'll send it to them.

2 MR. LEIENDECKER: The State you said
3 was preparing those.

4 THE COURT: No. I said the search
5 warrants for the phone the State is going to do.
6 Okay.

7 MR. LEIENDECKER: You're asking me to
8 do a subpoena based on warrants that were drafted
9 by the Orangeburg County Sheriff's Office,
10 countersigned by a judge for the Orangeburg County
11 Sheriff's Office. I don't think that's the way to
12 go. I think the person who requested that data
13 carries a lot more weight if they're the ones who
14 send the subpoena.

15 MR. OSBORNE: And the only thing I
16 would add to this is that where we're headed and we
17 all know about discovery, but Ms. Zmroczek hasn't
18 even chimed in that she's going to have, I'm more
19 than certain, a long laundry list of requests that
20 she's going to want the sheriff's office to do as
21 well. And so we are literally going -- we are in
22 armed for the defense. Go interview this person.
23 Go interview that person. Go do that.

24 THE COURT: No. No. Here's what's
25 happened. Is two years ago we said we want all the

1 information, all the information. Two years ago
2 this information apparently was available
3 somewhere; right?

4 MR. OSBORNE: Crime Stopper tips?

5 THE COURT: Yeah.

6 MR. OSBORNE: Well, if I had to guess
7 --

8 THE COURT: What you got?

9 MR. OSBORNE: Confidential, do not
10 include in the case file. I'm not saying that this
11 is where the rational was, but I think that might
12 be where the rational was. The Crime Stoppers,
13 they were -- they are under the impression and I'm
14 not saying that they are correct or they are wrong,
15 honestly, I haven't done a lot of research on Crime
16 Stopper tips. But they are under the impression
17 that because it says do not include in the case
18 file, this is confidential, that Crime Stoppers, I
19 mean, their own slogan, confidential, we're not
20 going to give you up. That's their own slogan
21 they're not going to give people up.

22 So their thought is, we want to
23 encourage people to come forward and give us
24 information. We do not want to give up these Crime
25 Stopper tips because no one is going to be giving

1 tips. And that's the thought process.

2 THE COURT: Oh, no. No. No.

3 MR. LEIENDECKER: It doesn't give
4 anybody up. And it was sent to the Orangeburg
5 County Sheriff's Office so they had it and they
6 have told us flat out they don't have any. So call
7 that what you may. We want to see all of them.

8 THE COURT: Well, I mean, good point,
9 Mr. Leiendecker. It does say, deliver to the
10 Orangeburg County Sheriff's Office.

11 MR. LEIENDECKER: And they didn't give
12 it to us.

13 MR. JOHNSON: Judge, did you sign an
14 order for the sheriff's department to turn that
15 over, all Crime Stopper tips?

16 THE COURT: I don't remember signing
17 anything like that.

18 MR. JOHNSON: No. I said would you
19 sign an order regarding all Crime Stopper tips from
20 the Orangeburg County Sheriff's Department?

21 THE COURT: Send it to me and let me
22 look at it and let me decide. Right now I'm
23 frustrated, so I don't want to sign anything or
24 really do anything until I'm not frustrated. Okay.
25 Because I had already gotten it in my mind I was --

1 we were going to try this case Monday in some
2 fashion, you know.

3 MR. OSBORNE: Well, and, you know,
4 again, you know, I can get in touch with Ms. Mills,
5 okay. And then I can -- I'll call her and I will
6 talk to her. All right. So it sounds like I need
7 to try to get the phone records for the Defense
8 through the feds who is saying that they are not
9 going to give it to us, but I will get in touch
10 with Ms. Mills and confirm that. Via court order
11 or whatever.

12 THE COURT: Yeah.

13 MR. OSBORNE: Then we'll take the extra
14 step and then get search warrants for the Defense
15 and then I will have Mr., you know, Lieutenant --

16 THE COURT: And I appreciate you saying
17 search warrants for the Defense. Okay. I do
18 appreciate you saying that. But actually what it
19 is, it's this information that was requested in
20 January of 2016.

21 MR. OSBORNE: Then we're in spoliation
22 land then. And spoliation, we're talking about
23 evidence that could have been obtained and that
24 wasn't obtained, so now we're in spoliation. So
25 then you have to show bad faith. And there is no

1 evidence here that they're -- because we don't know
2 what the evidence is.

3 THE COURT: No, we don't.

4 MR. OSBORNE: So there's no bad faith
5 so we're not in spoliation.

6 THE COURT: Well, right now, I don't
7 think so, you know. You know, as I said, I'm just
8 frustrated. But I appreciate you bringing this to
9 my attention. I really do, you know. Because
10 that's what we're here for, you know.

11 MR. OSBORNE: Well, one thing and I
12 know the Defense will agree to this, I mean, we
13 have been an open book. We've been an open book
14 this entire time. I find out something, we give it
15 to them, you know. I mean, off the record.

16 (Off the record comment)

17 THE COURT: Mr. Osborne, let me commend
18 you and everybody and Ms. Glover, you know, I
19 appreciate, you know, I have been doing this for
20 about 12, 13 years, nobody has ever gone through
21 the trouble to try and get this together for me
22 like this, like you've gone through. Say these
23 clips, everything, I appreciate that, you know.
24 You're working the file. You're doing what I as a
25 judge appreciated. I think whether they agree with

1 what you're doing or not, I think the Defense
2 counsel appreciates that. So I want to make it
3 clear, I'm just trying to -- I know we're not
4 supposed to say to a jury to find out the truth,
5 but from my standpoint, I want to find out the
6 truth because it's important, you know. Yes,
7 ma'am, Ms. Zmroczek?

8 MS. ZMROCZEK: Just briefly, Judge. So
9 there are some other Rule 5 stuff that I still
10 haven't received. Your Honor, I need the FBI
11 behavioral profile report that was being read by
12 Matt Brown. I think the State said they were going
13 to get that to me.

14 THE COURT: Now, what was that? FBI --

15 MS. ZMROCZEK: So Matt Brown who works
16 for -- he's a special agent with SLED was in an
17 interview of Shyheim Lippman who was arrested with
18 Mr. Bailey on July 15th in the vehicle. And so
19 they're interrogating him and Matt Brown at 1:27 --
20 an hour and 27 minutes into the investigation
21 starts reading from this report that was generated
22 by SLED about this case and I -- we didn't have
23 that report.

24 THE COURT: And, Mr. Osborne, do you
25 know what she's talking about?

1 MR. OSBORNE: No. I've never seen that
2 report before. I imagine it exists because the
3 sheriff read some of that report off the press
4 release. We have requested the report. It's a
5 behavioral science report that deals with the
6 possibility that, you know -- or, I guess, they
7 sort of looked at the crime scene, they looked at
8 it and they developed a profile of who could have
9 done this. We have requested the report through
10 Matt Brown.

11 Honestly, I don't know that it was
12 documented anywhere. It was like on a press
13 release and I think Matt might have talked about it
14 in an interview at one time.

15 MS. ZMROCZEK: Oh, he was flipping
16 through some of it, so maybe he was -- I don't
17 know. But he was flipping through a report.

18 THE COURT: Do I need to sign an order
19 --

20 MS. ZMROCZEK: So I requested that a
21 while back.

22 THE COURT: Yeah. But, I mean, we
23 think SLED has it or could have it?

24 MR. OSBORNE: I have no idea, Judge.
25 We've asked, we haven't heard anything back.

1 THE COURT: Okay.

2 MS. ZMROCZEK: Then, Your Honor, so I'm
3 looking at case supplemental reports and this was
4 done by Investigator Culpepper. And it says,
5 Investigator Culpepper requested a copy of all
6 telephone calls from the Orangeburg County
7 Detention Center made by Smith and Wright. In
8 period, customer obtained the physical phone dumps
9 from the phones located at the location.

10 So, Your Honor, I have been inquiring
11 about jail phone calls. It goes later on to say
12 that Investigator Culpepper later on in his report
13 says he received a -- Investigator Culpepper
14 received a copy of recorded phone calls made by
15 Wright, Christopher Wright, to T'Carra Woods from
16 the Orangeburg County Detention Center. The CD
17 contained approximately six hours of phone calls.

18 The phone calls that have been provided
19 to us, Your Honor, I think are six or seven phone
20 calls, that don't even total an hour. So I had
21 inquired about the remaining six hours or five
22 hours of phone calls as documented in Culpepper's
23 report.

24 They just resent me the six phone calls
25 that I already have, but what I was inquiring about

1 was the six hours that's in his report.

2 THE COURT: Okay. And, you know, I'm
3 -- the only thing I can say is, I don't know if
4 somebody just wrote the wrong thing down or
5 anything like that, but I guess -- you said
6 Culpepper wrote that report?

7 MS. ZMROCZEK: Yes.

8 THE COURT: Okay.

9 MR. OSBORNE: And I have talked to
10 Culpepper, he says that what he secured, we have
11 it. He has given it to us.

12 THE COURT: That's it. Okay. All
13 right.

14 MS. ZMROCZEK: Thank you. That's fine,
15 Your Honor. And then later on in Investigator
16 Culpepper's report it says, Investigator Culpepper
17 received a CD containing approximately four hours
18 of recorded calls in regards to Brandon Dickson.
19 And then it says customer reviewed Dickson --

20 THE COURT: You said --

21 MS. ZMROCZEK: So Dickson is a person
22 who was in jail with Christopher Wright.
23 Christopher Wright tells Dickson, hey, call my girl
24 and tell her to go get some drugs to give to
25 somebody. She does that. He, Dickson calls Ms.

1 Woods, she goes and gets some drugs and give them
2 to whomever. And it was -- according to
3 Culpepper's notes on a CD with lots of other phone
4 calls. And then it says, during the phone calls
5 from Dickson to his mother, Dickson states he has
6 information on two cases. So clearly these phone
7 calls were listened to.

8 And then recently we got an email I
9 think that said that that CD doesn't exist. So I
10 guess I need to know, was it lost? Was it
11 destroyed? Is this not true or do we -- or did we
12 just lose it.

13 THE COURT: Well, I think that's one of
14 those things that if they -- I'm confident if they
15 got it they will produce it. But that might one of
16 those things that you get to just unfortunately
17 have to -- that might be one of those cross
18 examination issues.

19 MR. OSBORNE: Yes. And I think, Judge,
20 during cross examination she might find that they
21 can listen to the jail calls without capturing the
22 jail calls. They can monitor jail calls from their
23 computers.

24 THE COURT: No, I'm sure they can. But
25 I think the problem is the way that was read it

1 sounds like Culpepper indicated on that that there
2 was a CD.

3 MR. OSBORNE: And that could be and
4 we've had extensive conversations with him.

5 THE COURT: Okay. All right.

6 MS. ZMROCZEK: And then I think the
7 only other things, the coroner's report, still have
8 not received any information from the coroner.
9 March 23, 2016 of my client's arrest.

10 THE COURT: From the county coroner?

11 MS. ZMROCZEK: I'm sorry.

12 THE COURT: The county coroner?

13 MS. ZMROCZEK: I've never -- you don't
14 have any coroner reports. We don't have any
15 coroner -- yeah, county coroner.

16 MR. OSBORNE: I don't either. And this
17 is exactly what I was talking about. I mean, I can
18 go on these and work --

19 THE COURT: No. No. I mean, y'all can
20 contact the coroner, you know. I mean, if they
21 don't have it, they didn't have to turn it over.
22 But if you want it, you can get it. Okay.

23 MS. ZMROCZEK: Certainly.

24 THE COURT: That's why I was asking if
25 it was the county coroner, you know.

1 MR. LEIENDECKER: The coroner is now
2 not an agent of the state? I'm just asking.
3 Because the Solicitor is supposed to provide those
4 documents from the agents of the state. Whether he
5 has them in his possession or not when requested,
6 he's supposed to go get them.

7 THE COURT: Yeah. Well, okay. We got
8 a -- wait a minute, Mr. Leiendecker, just give me a
9 second. Okay. We got an autopsy report; right?

10 MR. LEIENDECKER: I do, yes.

11 THE COURT: All right. So, I guess --
12 never mind. We got an autopsy report. Okay. Go
13 ahead. Anything else? Anything else with the Rule
14 5?

15 MS. ZMROCZEK: I mean, I think we'll
16 probably just run into the same arguments over and
17 over.

18 THE COURT: Okay. All right.

19 MR. JOHNSON: Your Honor, on my issue
20 with the rap sheets, did you say that they're going
21 to email us, you're going to order them to email us
22 rap sheets?

23 THE COURT: Well, I don't know about
24 email, they're going to provide you the rap sheets.

25 MR. JOHNSON: And not take them back?

1 They're going to give them to us?

2 THE COURT: Well, the ones I've always
3 seen they've been printed. That's why I don't --
4 you know.

5 MR. OSBORNE: I mean, it's not -- like
6 I said, this is obviously, you know, my third trial
7 here in this circuit --

8 THE COURT: We generally go under the
9 -- I imagine the same law that's in Charleston.
10 But I know -- I am aware of a federal court
11 decision that said Charleston has it's own laws
12 from the 1900s.

13 MR. OSBORNE: That's what I'm used to
14 practicing under. (Laughter) And on those rules,
15 like I said, we will -- we'll provide those. The
16 Defendant's have a right to NCIC's, you know, from
17 their own NCIC's and other defendants. Witnesses,
18 different ball game, but we'll go ahead and redact
19 it and then give that to them.

20 THE COURT: Okay.

21 MR. LEIENDECKER: Your Honor, what the
22 description of showing the rap sheets and having
23 you write them, that's been a practice in our
24 circuit, but it's always been a practice with the
25 jurors. If a juror has a rap sheet. They've never

1 provided those to us, but they've shown them to us.

2 MR. OSBORNE: I mean, we can keep
3 talking about it, I'm going to give it to them.

4 THE COURT: Okay. That's what I was
5 thinking, you know.

6 MR. LEIENDECKER: Well, I didn't know
7 we were talking about jurors. I'm sorry if I zoned
8 out.

9 THE COURT: No, I thought we were
10 talking about witnesses.

11 MR. OSBORNE: I thought witnesses.

12 MR. LEIENDECKER: I'm saying that what
13 you described with witnesses is what we do with
14 jurors. And that we would, you know, I'm not
15 asking for a copy of it, but if a juror has a rap
16 sheet, we obviously want to see that and be able to
17 take notes.

18 THE COURT: Oh, yeah. And see if you
19 want to pick them.

20 MR. LEIENDECKER: See if I want to pick
21 them, yes, sir.

22 THE COURT: Right. Are y'all about
23 tired or y'all want to go over some more.

24 MR. OSBORNE: I'm ready, let's keep
25 going.

1 THE COURT: All right. What's next?

2 MR. OSBORNE: Next -- well -- so, Your
3 Honor, I know that, you know, I made an ex parte
4 communication with you regarding a motion for a
5 protective order material. I have an addition to
6 that regarding a supplemental witness interview.
7 Per Rule 5, I have this and I'm ready to give this
8 over to the Court so this can be sealed for
9 appellate purposes.

10 THE COURT: Okay. I'm glad you told
11 them we were doing it, you know.

12 MR. OSBORNE: You know, and Rule 5
13 itself seems to contemplate -- well, does
14 contemplate that witness summaries will be turned
15 over to the Defense after the witness testifies
16 unless and in this case Mr. Leiendecker requested
17 witness summaries before they testify. Well, then
18 we're supposed to have a hearing then, you know,
19 and then you -- I wasn't even fighting them with
20 that. I've given them all the witness summaries
21 with the exception of those. After they testify, I
22 then would give that to them.

23 THE COURT: Okay. All right. You were
24 just stretching your legs.

25 MS. ZMROCZEK: I mean, yeah, as long as

1 we get to see them at some point.

2 THE COURT: Okay. Next?

3 MR. OSBORNE: One second. All right.

4 Next we have *Giglio/Brady*. Your Honor --

5 MR. LEIENDECKER: I'm sorry. Would the
6 State entertain or consider since we're going to be
7 pushing some of these off anyway to skipping that
8 and moving forward on some of those that I'm sure
9 we can get disposed of in a much quicker manner
10 today. And if we reserve *Giglio/Brady* for the day
11 of the trial or after the selection of the jury.

12 MR. OSBORNE: Okay.

13 MR. LEIENDECKER: If that's all right.
14 I mean, if that helps.

15 MR. OSBORNE: Okay. I don't object to
16 that obviously. Motion to suppress the 9-1-1. I
17 think this came from Scott. The victims' father
18 arrived on scene, you know, how distraught he is.
19 I guess that's for interpretation. But
20 nevertheless, he does call the police, calls 9-1-1.
21 You know, we would be seeking to introduce that as
22 a business record exception and also coupled with
23 an excited utterance. And we do expect him to
24 testify to authenticate saying that's his voice.

25 THE COURT: And he's going to testify?

1 Okay.

2 MR. OSBORNE: If he doesn't, then we
3 wouldn't introduce it.

4 THE COURT: Okay.

5 MR. JOHNSON: Your Honor, does that
6 information or testimony come in today about
7 timing?

8 THE COURT: I'm sorry.

9 MR. JOHNSON: About the timing of the
10 call to make an excited utterance if that's their
11 position?

12 THE COURT: Well, the timing would have
13 some affect on whether it's an excited utterance or
14 not. But I don't know -- I don't have that
15 information in front of me.

16 MR. OSBORNE: We would elicit that I
17 guess through testimony.

18 THE COURT: But my general thought is
19 9-1-1 is usually an excited utterance.

20 MR. JOHNSON: Well, I'm just saying,
21 you know, I had one case where there was a call
22 and, you know, multiple calls and one stretched
23 out, you know, beyond the timing. So I am just
24 saying, you want to reserve ruling on this motion
25 until the witness testifies at trial and I can

1 cross if there's some information about timing; is
2 that what you want to do?

3 THE COURT: The only thing to me with
4 motions in limine, we're talking about general, you
5 know, because it can change. But generally
6 speaking, 9-1-1 I believe is an excited utterance.
7 But now it's going to matter the time, the length,
8 you know, sometimes the very first, if it's an hour
9 long 9-1-1, we might have another issue with things
10 toward the end of it, you know, so.

11 MR. OSBORNE: Nine minutes.

12 MR. JOHNSON: And obviously the timing
13 when it was made as far as I saw this blank number
14 of minutes or an hour ago, you know, obviously.

15 THE COURT: Oh, yeah.

16 MR. JOHNSON: But you want to wait to
17 rule on that at the trial?

18 THE COURT: Yeah. But, I mean, that's
19 kind of the general way I'm looking at it, so.

20 MR. JOHNSON: Thank you, Judge.

21 THE COURT: Assuming I can get it tried
22 when I'm alive. Okay.

23 MR. OSBORNE: *Biggers* motion, number
24 10, we don't have any out-of-court identifications
25 that we'd be seeking to admit.

1 THE COURT: So none of those? Okay.

2 MR. JOHNSON: Judge, I thought the
3 Solicitor indicated there is an issue with *Biggers*,
4 but he's saying there's not. Is there an issue
5 with some information he is -- under his motion to
6 hide this information from us and seal it, is there
7 a *Biggers* issue there; is that what he's -- no?

8 MR. OSBORNE: Well, whatever comes out
9 of that will be -- I will discuss that. Okay. And
10 then that will definitely be addressed and I will
11 let them know and they will know. And I think --

12 THE COURT: You mean before this
13 conversation you're saying there's no *Biggers*
14 issues?

15 MR. OSBORNE: Right.

16 THE COURT: Okay. All right.

17 MR. JOHNSON: Okay.

18 MR. OSBORNE: Just to clarify it, maybe
19 I wasn't -- try to clarify. I am not seeking an
20 in-court ID in regards to Scott. Okay. With those
21 witnesses.

22 MR. JOHNSON: Okay. And, Judge --

23 MR. OSBORNE: Or Smith.

24 MR. JOHNSON: Okay.

25 MR. LEIENDECKER: Or --

1 MS. ZMROCZEK: Will there be any
2 in-court identification of my client?

3 MR. OSBORNE: Well --

4 MS. ZMROCZEK: By a witness?

5 MR. OSBORNE: To the crime?

6 MS. ZMROCZEK: Uh-huh.

7 MR. OSBORNE: (Nodded)

8 THE COURT: Okay.

9 MS. SPIRES: Is that a no?

10 MR. OSBORNE: No.

11 MR. JOHNSON: So if there's no photo
12 ID, no lineup or identification then I would ask
13 there was an identification I think by Smith of a
14 photograph of a firearm, but Solicitor's indicated
15 they're not using that?

16 MR. OSBORNE: That was a lineup, we're
17 not using that.

18 MR. JOHNSON: Okay. Well, that
19 resolves it.

20 THE COURT: Okay.

21 MR. OSBORNE: Suppression of jail
22 calls, number 11, Judge. We don't have any jail
23 calls.

24 MR. JOHNSON: And, Judge, in that
25 motion, that includes all communications, text

1 messaging, video recording of meetings, you know,
2 emails?

3 THE COURT: Anything from the jail is
4 what you're saying?

5 MR. JOHNSON: Anything. Yes, sir.

6 MR. OSBORNE: Not that I know of,
7 Judge. Unless something is brought to my
8 attention.

9 THE COURT: I like the way you answered
10 that. Thank you so much for doing it that way.

11 MR. OSBORNE: Yes, sir.

12 THE COURT: I'm going to put none known
13 at this time.

14 MR. OSBORNE: Now we have -- and I've
15 already provided this to the Defense showing, you
16 know, one of our jailhouse informants was with
17 Luther Smith. I mean, we've given that to them.
18 Nothing that y'all don't know about.

19 THE COURT: Okay.

20 MR. JOHNSON: They just said that was
21 -- I thought there was an indication they had a
22 jail call recorded you were going to use. Maybe
23 that was like a year ago.

24 MR. OSBORNE: Not that I know of.

25 MR. JOHNSON: I thought there was an

1 email maybe it's changed, I don't know.

2 MR. OSBORNE: No, he's talking about
3 our chambers meeting in Calhoun where I told him to
4 tell his client to stop talking about dealing drugs
5 on the phone because we keep hearing it. But we're
6 not going to use that.

7 MR. JOHNSON: Not going to use any
8 jails. Okay.

9 MR. OSBORNE: Motion to reveal the
10 deal.

11 THE COURT: What deal?

12 MR. OSBORNE: That would be with
13 Derrick Coleman our corroborator.

14 THE COURT: Oh, okay.

15 MS. ZMROCZEK: Not only with Derrick
16 Coleman actually, Your Honor. There are several
17 codefendants in this case. There's Derrick
18 Coleman, Chris Wright, Washington -- I mean,
19 T'Carra Woods, several people were charged with
20 obstruction of justice which related to this case,
21 so I think that makes them all codefendants.

22 So, yeah, I think, you know, at some
23 point when we figure out who they're going to call
24 we probably need to address those just like right
25 before they come up.

1 THE COURT: Okay.

2 MS. ZMROCZEK: Because I know the
3 answer now, there's no deals, you know.

4 THE COURT: Yeah.

5 MR. OSBORNE: So Derrick Stone,
6 corroborator. When we spoke to Derrick Stone while
7 he was in prison, Derrick was under the impression
8 that he was getting released in February. So try
9 to use correct language. Derrick said, all right,
10 what do you want from me? And then I said, I want
11 you to come and testify. And then he said, what
12 are you going to do for me? And I said, well,
13 Derrick, and Investigator Haupt was standing right
14 there, and I said, Derrick, when you get off that
15 stand, I'm going to look you right in the eye and
16 I'm going to say, thank you. That's what I'll do
17 for you. And then he said, all right. They killed
18 kids, I'll testify.

19 Derrick found out later on and then he
20 was served with warrants apparently Georgetown
21 decided we're going to wait until Derrick almost
22 gets out of jail, pop him with new warrants. So
23 Derrick called me and said, I got new warrants. I
24 said, who's your attorney? I called his attorney
25 Josh Edgeworth, I think, he has not returned my

1 call.

2 THE COURT: I thought that that
3 practice had ended?

4 MR. OSBORNE: It should. That's not
5 right.

6 MS. ZMROCZEK: No.

7 MR. OSBORNE: I mean, honestly, that's
8 not right.

9 THE COURT: Okay. Well --

10 MS. ZMROCZEK: That practice has not
11 ended, I can assure you.

12 THE COURT: Well, you know. That is
13 not a good practice. They need -- if you got
14 somebody in custody, you serve all the warrants on
15 them, you get everything done, and that's it.

16 MR. OSBORNE: Daniel Lee Ross, he's
17 another corroborator. Daniel has pending charges.
18 Honestly, I don't know exactly what they are. We
19 met with him one time with his attorney, Ms.
20 Littlejohn. I told Daniel, the best that I can do
21 for you is relay to whoever your prosecutor is,
22 your level of cooperation in this case.

23 Derrick Coleman. Derrick in front of
24 his attorney Mr. Gasser, I don't know what was said
25 before this, so I asked him point blank, I said,

1 anybody promise you anything and he said, no. And
2 I don't want to misquote, but Mr. Gasser said
3 something like -- something like we're -- nobody's
4 promised us anything. We're on a wing and a prayer
5 or something like that. We're just hoping for
6 something. All right. And I said, I get it,
7 you're hoping for -- so you're hoping that I'm
8 going to relay to the judge your level of
9 cooperation, this, that, and the other.

10 Christopher Wright. Nothing. When we
11 spoke to Christopher, I didn't know he had pending
12 charges. I don't think -- maybe he had, I don't
13 know. That never come up. We found out later.
14 We've made no promises. If there's been anything
15 that we've told them, if they had pending charges
16 just that, we'll relay to the prosecutor your
17 cooperation, that's it.

18 MS. ZMROCEK: And, Your Honor, with
19 regard to Mr. Coleman, he just said something that
20 I know is going to be an issue, so I wanted it laid
21 out up front. Your Honor, because actually
22 Attorney Gasser does appear in some of the videos
23 and things like that, I would object to anything
24 about, you know, you did this in front of your
25 attorney, trying to give it some sort of, you know,

1 more credibility because it was with his attorney,
2 you know. Like as he just said, oh, I spoke with
3 him again in front of his attorney, you know. And
4 he looked at his attorney and he said, there's no
5 deals, things like that. I'm very -- I have
6 concerns with bolstering his testimony because he
7 has a very fine attorney, Mr. Gasser, you know. I
8 just don't think that that has any -- that
9 information does not need to be in front of a jury.
10 That he spoke with him -- that he cooperated with
11 his attorney, if that makes sense.

12 THE COURT: Well -- but doesn't that
13 also just tell them that there is -- I mean, it
14 tells them there's no deal.

15 MS. ZMROCZEK: Right. Right. Right.
16 Right. I mean, I'm not talking about -- yeah. I
17 just meant in general.

18 THE COURT: Okay. Well, you know --

19 MS. ZMROCZEK: I just want to be aware
20 of it if it comes up.

21 THE COURT: Okay. Well, we can deal
22 with it, but I don't know how many people on the
23 jury know Mr. Gasser, you know, but, you know, you
24 know.

25 MR. OSBORNE: I mean, I haven't seen my

1 questions lately for Derrick, but I think I'm
2 almost certain I did plan on asking him, it does
3 become relevant.

4 Motion to quash indictments.

5 Mr. Pascoe did those indictments. They look good
6 to me.

7 THE COURT: Oh, you don't want to take
8 exception with what he did?

9 MR. OSBORNE: No, they look fine with
10 me.

11 THE COURT: Okay. Go ahead.

12 MS. ZMROCZEK: Thank you. So, Your
13 Honor, as you know, I have to raise any challenge
14 to the indictments before a jury is sworn.

15 THE COURT: Yes, ma'am.

16 MS. ZMROCZEK: And so here's my
17 concern, Your Honor, is that the indictments that I
18 have say that Luther Smith in Orangeburg County on
19 July 15th did kill Krystal Hutto by shooting her in
20 the head. Okay. It doesn't mention, you know,
21 accessory or -- excuse me, hand of one, hand of
22 all, accomplice liability, it doesn't mention that.
23 It says he shot her.

24 And then, Your Honor, what's a little
25 bit more concerning and I think that we probably

1 need to take a little bit of testimony from
2 Culpepper if he's here which is the arrest warrants
3 that I received say that there's a dead person so
4 that corroborates that she was killed. That my
5 client confessed and that it was corroborated by
6 another confession is what the arrest warrant says.
7 So I guess I need to flesh some of that out.

8 THE COURT: Well, I don't mind, but the
9 arrest warrant's not going into evidence; right?
10 The indictment's not going into evidence. And,
11 generally I always tell them at the very beginning
12 the indictments are not evidence. I mean, they
13 just -- it's just like we're here, this is what
14 starts the case. So -- and I generally don't read
15 the indictments. I will say he's charged with
16 murder or whatever, you know. But, I mean, I'm not
17 saying we don't have to go over them if you want
18 to. But, I mean, from my standpoint I keep it --

19 MS. ZMROCZEK: I think we probably need
20 to flesh out just with -- I mean, I know the arrest
21 warrants aren't going in, but obviously that was
22 the basis for him to go in front of a grand jury
23 however many years later and say that. So I guess
24 that's all the information I need to flesh out --

25 THE COURT: Okay. I mean -- well, I

1 don't --

2 MS. ZMROCZEK: -- as to what he says on
3 the arrest warrant that, you know, he confessed and
4 it was corroborated I guess who the corroboration
5 was.

6 MR. OSBORNE: Well, I mean, that feels
7 like a probable cause hearing.

8 THE COURT: Huh?

9 MR. OSBORNE: That sounds like a
10 probable cause hearing.

11 THE COURT: Yeah. If we need one -- if
12 we need a probable cause hearing we can do it. Is
13 that what you're saying?

14 MR. OSBORNE: No. I'm saying that
15 ship's sailed. They've already been indicted.

16 THE COURT: Okay.

17 MS. ZMROCZEK: And that's something I
18 can save for cross examination, Your Honor, if
19 that's...

20 THE COURT: I'm glad y'all are picking
21 up on that cross examination thing, you know.

22 MR. OSBORNE: Okay. 14, motion to --

23 THE COURT: That makes it much more
24 entertaining for me. Go ahead, I'm sorry. Okay.
25 Which one?

1 MR. OSBORNE: Number 14. I was just
2 unclear. It says motion to dismiss or in the
3 alternative have spoliation charge.

4 MS. ZMROCZEK: And I think, Your Honor,
5 probably once we get some of these other evidence
6 answered -- questions answered, we can come back to
7 that.

8 THE COURT: Yeah, well, we can talk
9 about it. Okay. We can.

10 MS. ZMROCZEK: I mean, obviously, I
11 understand that the motion to dismiss is an extreme
12 remedy. But obviously we're leaning towards the
13 spoliation charges then.

14 THE COURT: If I were you, I probably
15 would be too. Okay.

16 MR. OSBORNE: 15, motion for expanded
17 voir dire.

18 THE COURT: Now, just so you will know,
19 I don't know what y'all are planning to ask or voir
20 dire, but y'all send it to me, send it to the
21 State, we will talk about it. I don't do --

22 MS. ZMROCZEK: I already emailed it,
23 I'll just give you a copy too.

24 THE COURT: Okay. Just so you'll know,
25 I don't ask favorite colors. I actually had

1 somebody in a criminal case that graduated from a
2 prestigious law school not in state. I opened this
3 booklet of 100 pages and it's -- one of the
4 questions was, what is your favorite color?

5 MS. ZMROCZEK: I assure you, mine
6 doesn't say that.

7 THE COURT: I know.

8 MS. ZMROCZEK: And I did have issues
9 with some of the State's voir dire, but I think we
10 can -- I don't know if you want to address --

11 THE COURT: No, I saw the State's voir
12 dire and there were issues with that?

13 MS. ZMROCZEK: I did have issues. If
14 you have a copy of it in front of you, Judge.

15 THE COURT: I don't and we can take it
16 up as we get closer to the trial. Okay. But I'm
17 glad to have yours to go by, Ms. Zmroczek. I
18 appreciate that. The State's was -- State's
19 requested voir dire, six questions which I -- the
20 brevity of it kind of caught me by surprise, you
21 know. Oh, was it the first question --

22 MS. ZMROCZEK: It was the first
23 question.

24 THE COURT: Actually --

25 MS. ZMROCZEK: That was one of them.

1 THE COURT: -- that question has come
2 up before in cases in that county that has their
3 own laws, you know. And so I actually -- and we'll
4 talk about it. I kind of liked the question. You
5 know, I know it's strange, but it's sort of like
6 the *Pluto* defense.

7 MS. ZMROCZEK: Well, it also might be
8 burden shifting, so.

9 THE COURT: Burden shifting? I do want
10 to hear that argument on that at a time. Okay. It
11 will be -- that will be a fun conversation. That
12 will. Okay.

13 MR. OSBORNE: Number 16, motion to
14 introduce identification of codefendants.

15 MS. ZMROCZEK: Well, so if -- so I
16 guess my concern was if they're not having any
17 in-court identification, then I guess it doesn't --
18 this kind of all came up because -- so one of the
19 witnesses, the eight year old, gave, you know, some
20 statements. And then they have these two drawings
21 from another state -- from another witness. And
22 those two statements -- or those two drawings are
23 used heavily by Shumpert in the interrogation of --
24 like a codefendant Shyheim Lippman, for example,
25 who was also charged with obstruction of justice

1 even though that was dismissed without probable
2 cause.

3 But, yes, so they take these two
4 pictures and they show it to Shyheim and they say,
5 doesn't that look like you, you know. And doesn't
6 this one look like Pocket. And so my concern is
7 that if they have people who are identifying
8 suspects that aren't my client, then of course I
9 want to put that out there which I know could cause
10 trouble for my codefendants. But I guess if
11 they're not going to do a *Biggers* hearing, Your
12 Honor, I guess, you know, if they're not going to
13 have anybody identify anybody, it may not be an
14 issue.

15 THE COURT: That's what last I heard.
16 So, is that still --

17 MR. OSBORNE: That's still true.

18 THE COURT: Okay. And so, Mr. Osborne
19 has not changed his position in 15 minutes. Okay.

20 MR. OSBORNE: Based on what I know.
21 17.

22 MR. LEIENDECKER: Based on what I've
23 received.

24 MR. OSBORNE: That's more accurate.
25 Number 17, motion to sequester.

1 THE COURT: Sequester who?

2 MS. ZMROCZEK: Just the -- mostly the
3 lay witnesses and officers.

4 THE COURT: Oh, yeah. I mean, we're
5 going to have a limit on how many people in here
6 anyway because we're probably at that -- we're
7 probably at that level anyway right now.

8 MR. OSBORNE: The only person I
9 anticipate, obviously, my investigator and
10 Lieutenant Shumpert, the case agent.

11 THE COURT: Yeah. Okay.

12 MR. OSBORNE: Motion to remove
13 shackles.

14 THE COURT: No.

15 MR. OSBORNE: Motion to disallow
16 inflammatory terms, children.

17 MS. ZMROCZEK: Well, so, Your Honor,
18 one thing that you'll see once you have the grand
19 opportunity to watch all of these, at least
20 Mr. Smith's interrogation, but they do this with
21 everybody is of the kids! The kids! They, you
22 know, they killed the kids! The kids!

23 THE COURT: I know that there was that
24 portion of the clips we -- but I thought we cut
25 that out.

1 MR. OSBORNE: I think that's gone.

2 THE COURT: Huh?

3 MR. OSBORNE: I think that's gone.

4 MR. LEIENDECKER: I believe so.

5 THE COURT: Okay. If not, we can -- we
6 can dig that up. Okay. I was curious. I was
7 thinking they were using inflammatory terms about
8 children. I wanted to make sure I knew what was
9 going out. Okay.

10 MR. OSBORNE: I'm sure she wasn't
11 talking about the witnesses, but we're actually
12 going to have the dad testify. I mean, they are
13 children.

14 THE COURT: Okay. All right.

15 MR. OSBORNE: Reliability hearing on a
16 State's witness.

17 THE COURT: On a list of State's -- you
18 mean, you want to rely on the list?

19 MS. ZMROCZEK: So, Your Honor, this is
20 something that I've been doing in the federal. I
21 think it's probably premature at this point. We'll
22 probably have to wait to see who they call and if
23 there's an issue then we can --

24 THE COURT: Okay. We've already taken
25 up motion for Crime Stopper information, I guess.

1 Mr. Osborne, it looks like 21 we've already
2 discussed getting Crime Stopper information.

3 MR. OSBORNE: 22, motion to require all
4 chain witnesses.

5 MR. LEIENDECKER: Can you verify that?
6 The Crime Stopper thing.

7 THE COURT: Well, I thought we were
8 asking --

9 MR. LEIENDECKER: I heard you ask him a
10 question, but I didn't hear a reply.

11 THE COURT: Oh, no. Number 21 on the
12 motion list has motion for Crime Stopper
13 information. And we have already discussed the
14 Crime Stopper information and we wanted them to
15 double check one more time.

16 MR. LEIENDECKER: I understand. Thank
17 you.

18 THE COURT: Okay.

19 MR. OSBORNE: I think Lieutenant
20 Shumpert is in charge of the Crime Stopper. And I
21 will get that back with him about that.

22 Motion to require all chain witnesses.
23 We're not going to have all chain witnesses. I
24 think we're going to more than establish a chain.
25 We're not going -- if I'm wrong, I don't think I'm

1 going to miss two chains. I think we're or two
2 links I should say.

3 Motion to reveal all CI's or SOY's.

4 You know, I have asked -- so this is one of those
5 things like, you know, I asked the Defense a long
6 time ago, if you want anything, just ask me and
7 I'll ask for it and we'll see what happens.

8 Mr. Johnson asked me for -- specifically for the CI
9 who provided the information or SOY provided the
10 information of Mexican Cartels. Mr. Leiendecker
11 informed me whenever I replied back, apparently
12 there was a hearing on this and everything else. I
13 found it out. So -- then I gave that information
14 over to them.

15 I told Ms. Zmroczek, many of them
16 apparently, you know, according to Investigator
17 Culpepper, go talk to somebody. They will give
18 them information and they wouldn't document it.
19 Maybe some they do. So I said just tell me which
20 ones you're looking for I'll ask specifically.

21 MS. ZMROCZEK: And I went ahead and
22 printed off the pages for him.

23 MR. OSBORNE: Well, thank you for doing
24 that.

25 MS. ZMROCZEK: You're welcome.

1 MR. OSBORNE: I will asked Investigator
2 Culpepper who these people are.

3 THE COURT: Okay. All right.

4 MR. OSBORNE: Number 24, motion to
5 exclude testimony. I think this is the competency
6 issue. We don't plan on calling Amanda Howard.
7 And I did a little bit of research on this too. It
8 seems like *State v. China*, says that if there is a
9 reason for a competency hearing, that, you know,
10 the Defense is entitled to one, so we're not going
11 to fight that.

12 What I propose would be to, you know,
13 before we call the witness just have a quick
14 competency hearing outside the presence of the
15 jury.

16 THE COURT: Okay. Is that all right?

17 MS. ZMROCZEK: I think that that's
18 fine.

19 THE COURT: Okay.

20 MR. OSBORNE: Motion -- number 25,
21 motion to exclude nonqualified witnesses from
22 expert testimony. I don't plan on asking witnesses
23 their opinion on matters. Mr. Leiendecker brought
24 this up to me in a phone call about witnesses
25 testifying to their beliefs or their thoughts on

1 things.

2 You know, I talked to him, I even sent
3 an email to the officer saying, no one cares what
4 you believe, just -- let's just stick to the facts,
5 you know. So hopefully that will take care of
6 that. I mean, who knows. If it doesn't, they get
7 nervous, just got to object, I guess.

8 THE COURT: Well, it also depends
9 sometimes on the way the questions are asked.

10 MR. OSBORNE: Yes, sir.

11 THE COURT: You know, but I have, you
12 know, I have advised the jurors to disregard
13 beliefs or anything like that when it would come
14 up. Go ahead, Mr. Leiendecker?

15 MR. LEIENDECKER: And my observation in
16 the phone conversation with the State was that not
17 only were state witnesses talking about I have a
18 hunch, I had a feeling, I had a belief, but they
19 were, you know, also mentioning other people
20 potential, you know, *Bruton* issue. They this, we
21 that, whatever. And all I asked the State to do
22 and the Court probably would be the one to do it,
23 was before we begin this, those witnesses that
24 intend to testify about these matters, that the
25 Court would on the record caution them about this.

1 And that we not caution them in front of the jury
2 so that it suggests to the jury that there's
3 something we're hiding from them.

4 THE COURT: That's fine. I'll be glad
5 to do that. Okay. And that also means more breaks
6 for the jury which I think they might or may not
7 enjoy. Kind of depends on how it goes. Okay.

8 MR. LEIENDECKER: Yes, sir.

9 MS. ZMROCZEK: And we withdraw 26 and
10 27, Your Honor. I think that those have been
11 provided to us.

12 THE COURT: Okay.

13 MR. OSBORNE: And, Your Honor, one
14 thing I forgot while we were talking about Rule 5
15 is reciprocal Rule 5. I haven't been provided
16 anything. I've requested, you know, and I can read
17 the Rule, but we all know the Rule. I've gotten
18 two CV's, one from an excerpt from Mr. Leiendecker,
19 one from Ms. Zmroczek, but I haven't received any
20 sort of paper documents or anything like that that
21 they plan to introduce in their case in chief, so I
22 would just make that request on the record.

23 MS. ZMROCZEK: We don't have any
24 reports, obviously.

25 MR. OSBORNE: Well, it's not just

1 reports, obviously. It's photographs, tangible
2 objects, you know.

3 MR. LEIENDECKER: I don't at this time
4 have that --

5 MS. ZMROCZEK: I don't at this time.

6 MR. LEIENDECKER: -- but I will be
7 meeting with my expert if he intends to provide any
8 exhibits. But there are no created exhibits.

9 THE COURT: At this time they have not
10 been provided.

11 MR. LEIENDECKER: I'm not aware and
12 have not been provided anything, therefore, to give
13 to the State.

14 MS. ZMROCZEK: Well, but here's the
15 thing, Your Honor. I don't know what the State's
16 going to put up, so, you know, I don't -- once I,
17 you know, once I see their case if, you know, we
18 have things indirect response to that, of course
19 we'll turn it over as soon as we get it.

20 MR. LEIENDECKER: I do trust my expert
21 ultimately to provide me everything that he has.

22 MS. ZMROCZEK: I do too.

23 MR. OSBORNE: I just love when that
24 spotlight moves.

25 THE COURT: Oh, yeah.

1 MR. OSBORNE: Motion to object to use
2 of transcripts.

3 MS. ZMROCZEK: In the feds a lot of
4 times they -- when they play the clips or whatever,
5 they have transcripts to go along with them.

6 THE COURT: That's a cool thing.

7 MS. ZMROCZEK: Sometimes it is if
8 they're correct. I don't know if the State intends
9 on doing that. If they do, I just need to be able
10 to make sure that they're accurate.

11 THE COURT: If they're going to use the
12 transcript, you want to see it ahead of time?

13 MS. ZMROCZEK: Yes.

14 MR. LEIENDECKER: Your Honor, I'm not
15 sure, but this is maybe the second time that this
16 has come up and everybody may not be aware because
17 we all haven't been here from the beginning. But
18 the transcripts were actually created by contract
19 with court reporters and the public defender's
20 office. And so --

21 THE COURT: That was very nice of them.

22 MR. LEIENDECKER: So the State didn't
23 actually create them although they've been provided
24 to the State. And if and when there is a question
25 about using them, I also have them under court seal

1 and will be able to provide them and we will be
2 able to unseal them if we determine that we're not
3 clear about what's said or we want to be more
4 clear. So I'm not --

5 THE COURT: That is very good.

6 MR. LEIENDECKER: I'm not sure that I
7 ever told Ms. Zmroczek that.

8 MS. ZMROCZEK: He did not, but thank
9 you.

10 THE COURT: Thank you for doing that.
11 Okay.

12 MR. OSBORNE: Okay.

13 THE COURT: So now we move to the next
14 page?

15 MR. OSBORNE: Yes, sir. 29, motion to
16 limit photographs. I just, you know, everyone now
17 has all of the photographs that we have. If I get
18 another one, I'll send it out, but that's the bulk
19 of it, obviously. Again, what I was planning on
20 doing just for the record, I don't think I have any
21 photographs, certainly none of any graphic nature
22 until I get to Captain Carter, if I've established
23 a relevancy then it's a different conversation. It
24 feels like right now we're kind of in a vacuum and
25 we don't know if it's going to be relevant to be

1 perfectly frank. But I wouldn't seek to be
2 introducing anything. My suggestion again would be
3 before Captain Carter testifies, that's where the
4 bulk of it comes, maybe then address those
5 photographs.

6 THE COURT: Okay. All right.

7 MR. OSBORNE: Motion to introduce
8 videos pursuant to rule --

9 MS. ZMROCZEK: I think we've been over
10 that ad nauseam.

11 THE COURT: Yeah, we've beaten that.

12 MR. OSBORNE: Number 31, we don't plan
13 on referencing polygraph examinations at all.

14 MS. ZMROCZEK: Oh, but I am still
15 missing one from the October one. It was on the
16 list that I sent you.

17 MR. OSBORNE: If we have a video, but
18 there's a whatever the examiner's report was, we
19 don't have, but we do --

20 MS. ZMROCZEK: You have the video from
21 the 4th?

22 MR. OSBORNE: From the 4th?

23 MS. ZMROCZEK: Uh-huh. If you can just
24 check on that.

25 MR. OSBORNE: Yeah.

1 THE COURT: Okay.

2 MR. OSBORNE: Motion to view the scene.

3 MS. ZMROCZEK: That, again, I think --
4 I think it's all going to depend on how the trial
5 goes, Your Honor.

6 THE COURT: Okay. Yeah, I mean --
7 you're talking about the rule of completeness
8 number 30 that we've been talking about? Is that
9 what y'all --

10 MS. ZMROCZEK: Oh, we're on 32.

11 THE COURT: Oh, y'all are already on
12 32? Okay. All right. Well --

13 MR. LEIENDECKER: And you granted 30
14 and 32.

15 THE COURT: No, I didn't.

16 MR. LEIENDECKER: No. (Laughter)

17 THE COURT: All right. So 32, motion
18 for a crime scene view?

19 MS. ZMROCZEK: And that may not --
20 depending on how the evidence turns out.

21 THE COURT: Okay.

22 MR. OSBORNE: Lastly --

23 MS. ZMROCZEK: And then I guess
24 stipulations obviously we can get to that point.

25 THE COURT: Oh, I would love for y'all

1 to make stipulations.

2 MR. OSBORNE: I'm all ears.

3 MS. ZMROCZEK: I just didn't -- and,
4 again, I'm different than my codefendants, so.

5 MR. LEIENDECKER: I don't anticipate
6 stipulating to anything other than, I'm tired.

7 MR. OSBORNE: Judge, you know, not
8 complaining, but they told us that from the
9 beginning that there would be no stipulations so
10 we've been proceeding as if there wasn't and that's
11 sort of where we're at.

12 THE COURT: All right. Just give me
13 overnight to think about what I'm going to do about
14 continuing the case or not. I realize I want to
15 get the search warrants and like that. I realize
16 at this time I think they're important and I don't
17 think cross examination, you know, just let me
18 think of it overnight and then I'll come back and
19 tell y'all -- I'll send y'all an email in the
20 morning what we want to do. Okay.

21 MR. OSBORNE: And just to bring you up
22 to speed of what we're doing. My investigator is
23 calling, you know, Meredith Mills now with the US
24 Marshal lawyer. Seeing what she needs and what's
25 going to happen. Really understanding and flushing

1 that out and whether they even have the records in
2 the first place. And then we're also doing the
3 expedited search warrant request to try to see if
4 the phone companies still have that information.

5 THE COURT: Okay. All right. Other
6 than that, we're pretty much through?

7 MR. OSBORNE: I think we're finished.

8 THE COURT: Okay. All right. Thank
9 y'all. Appreciate it.

10 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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COUNTY OF ORANGEBURG

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

State of South Carolina,

vs.

ANTLY SCOTT,

Defendant

MOTION TO SEVER TRIALSInd. 2018GS3801301
2018GS3801306, 2018GS3801305
2018GS3801304, 2018GS3801302
2018GS3801303

Now comes the Defendant, Antly Scott, by and through undersigned counsel, respectfully moving this Honorable Court to sever trial of his case from the trial of any co-defendant. The Defendant makes this motion based upon fundamental Due Process, the 5th, 6th, and 14th Amendments to the Constitution of the United States, and Article I, Sec. 3 and 14 of the Constitution of South Carolina, as well as the following arguments below.

FACTS

The Defendant is accused of participating in the killing of four people, and wounding a fifth on July 15, 2015. After more than a year, multiple people were arrested in connection with the incident including the Defendant. Notably, several co-defendants have made multiple statements to law enforcement during the investigation implicating not only themselves, but others as well. Further, although the Defendant understood that the State did not intend to try the codefendants together when this trial was originally scheduled, the Defendant subsequently has been notified by the state that it now intends to try him along with co-defendants in this case.

LAW/ANALYSIS

The Defendant cannot obtain a fair trial if his case is tried with his co-defendants, as there is a serious risk that his right to confrontation and cross-examination of his co-defendant accuser will be compromised. The United States Supreme Court has held that severance should be granted when there is a serious risk that a joint trial would compromise a specific trial

right of a codefendant or prevent the jury from making a reliable judgment about a co-defendant's guilt. *Zafiro v. United States*, 506 U.S. 534 (1993); see also *State v. Dennis*, 337 S.C. 275, 282, 281, 523 S.E.2d 173, 176 (1999).

"The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses." *State v. Holder*, 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009); See U.S. Const. amends. VI and XIV. In *Crawford v. Washington*, 541 U.S. 36, 50-51 (2004), the United States Supreme Court held that testimonial Out-of-court statements are not admissible under the Confrontation Clause unless the witness is unavailable and the defendant had prior opportunity to cross-examine the witness. Moreover, in *Bruton v. United States*, 391 U.S. 123, 126-137 (1968), the Court held an example of a specific trial right that may be prejudiced due to a joint trial is the constitutional right to cross examination when a co-defendant's confession expressly implicates another co-defendant, but the confessor fails to testify during the trial. Specifically, a non-testifying co-defendant's confession that inculpatates another defendant is inadmissible at their joint trial, even if the jury is instructed that the confession can only be used as evidence against the confessor, because of the substantial risk that the jury would look to the incriminating extrajudicial statements in determining the other's guilt. *Id.*

CONCLUSION

For the foregoing reasons, the Defendant Antly Scott respectfully requests that this Court issue and order severing his trial from those of his co-defendants.

Respectfully submitted,

January 9, 2022
Orangeburg, South Carolina



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STATE OF SOUTH CAROLINA)
) IN THE COURT OF
COUNTY OF ORANGEBURG) GENERAL SESSIONS

THE STATE,)CASE NO. 2018-GS-38-1285, 1286, 1287
Plaintiffs,)1288, 1289, 1292, 2018-GS-38-1301,
Vs.)1302, 1303, 1304, 1305, 1306, 2017-GS-
ROBERT BAILEY, ANTLY SCOTT,)38-166, 167, 168, 169, 170, 171
and LUTHER SMITH,) FEBRUARY 7-23, 2022
Defendants.) ORANGEBURG, SOUTH CAROLINA

HONORABLE EDGAR W. DICKSON, JUDGE

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KATHERINE A. SPIRES, REGISTERED PROFESSIONAL REPORTER

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1 THE COURT: All right. Ladies and
2 gentlemen, y'all who were not chosen, I'm sorry
3 that you didn't get a chance to serve on the jury.
4 You are excused from jury service this week. If
5 they need excuses is there somebody --

6 THE CLERK: I'm going to the back.

7 THE COURT: Okay. If you need an
8 excuse, the clerk's going to go in the back.
9 Yojuana will be in the back and she will give you
10 your excuses. Okay. Thank you for being willing
11 to serve. You are excused. Stay safe. Okay.
12 Thank you.

13 (WHEREUPON, the ones not selected left
14 the courtroom)

15 THE COURT: All right. Ladies and
16 gentlemen, listen, I appreciate y'all being willing
17 to serve on the jury. And as you can probably tell
18 from the number of names we called out -- when we
19 were calling the jury in because I told you that
20 there was a real likelihood the case could go over
21 into next week. We have some matters tomorrow that
22 we have to take up out of the presence of the jury.
23 And because of that I don't want y'all to come in
24 and just sit around because there are other things
25 that y'all could be doing during the day. Okay.

1 So what I'm going to ask you to do,
2 there are two things that you need to remember.
3 Number one, I will ask you to come to court 9:30 on
4 Wednesday. So not Tuesday, but come 9:30 on
5 Wednesday. All right. Now, just to double check
6 and make sure that time is right, Tuesday evening
7 after 6 o'clock, I need for you to call the number
8 that you were given, there's a number that you were
9 given to check with things. If you need to call
10 the clerk's office or anything like that, after 6
11 o'clock Tuesday, I want you to call and that will
12 confirm and tell you whether you still need to come
13 in Wednesday at 9:30 or not. Does everybody
14 understand that? Got any questions you want to ask
15 me?

16 No questions.

17 Okay. Now, other than that, listen to
18 Ms. D because she's going to tell you where to go
19 and how to get to the courthouse and all those kind
20 of good things. I will see you Wednesday morning.

21 Ladies and gentlemen, I was just
22 reminded and let me go over a couple of things.
23 Number one, you can't talk to anybody about this
24 case. That means you can't even talk among
25 yourselves about this case and I will explain to

1 you as we go through the trial, I will remind you
2 every time we take a break that you cannot talk
3 among yourselves about this case. And if you can't
4 talk among yourselves about this case, you
5 certainly can't talk to anyone else about this
6 case. And if anyone approaches you and wants to
7 talk about this case, I need for y'all to get their
8 name, a description or something like that so I can
9 take care of that on my own.

10 Additionally, you will remember there
11 was some questions that I asked during this
12 questioning process whether anybody had read
13 anything or seen anything about the case and like
14 that. This case is one that there will probably be
15 articles in the paper about it and things like
16 that. You cannot read those articles. You cannot
17 go online and check online if there's anything
18 about this case online.

19 You can't have any Facebook or any kind
20 of social interaction about this case. As long as
21 the case is going up until the time that a verdict
22 is decided, you cannot do any investigation of this
23 case. Everything you're going to need to know
24 about this case, the attorneys will present in
25 court. That is the only evidence you can consider

1 is what evidence is presented in court.

2 So number -- I want to remind you,
3 don't do any investigation. You know, the easiest
4 thing I do when I'm trying to remember something
5 when my wife and I are watching a movie or
6 something like that and say, who is that or what
7 are you doing, you go Google, you go on your
8 smartphone and you try and find out information.
9 You cannot do that at all in this case. Not at
10 all. Anything about this case -- or their
11 attorneys. You can't look up anything about the
12 attorneys either.

13 But having said that, I appreciate your
14 service. I will see y'all at 9:30 Wednesday
15 morning. If anything comes up, anybody tries to
16 contact you and start talking to you about this
17 case, if you will find a way to let me know about
18 it, I'll take care of it. Okay.

19 And, again, thank y'all for serving. I
20 cannot tell you how much I appreciate y'all being
21 willing to do this and I will see you at 9:30
22 Wednesday morning. Y'all have a good evening.
23 Okay. Thank you.

24 (WHEREUPON, court was adjourned)

25

1 (February 9, 2022)

2 THE COURT: Mr. Osborne,
3 Mr. Leiendecker, Ms. Zmroczek, Mr. Johnson,
4 everybody ready?

5 MR. OSBORNE: Yes.

6 MR. LEIENDECKER: Yes, Your Honor.

7 MS. ZMROCZEK: Yes.

8 MR. JOHNSON: Yes, Your Honor.

9 THE COURT: All right. Mr. Osborne, I
10 think we were trying to do the last motions before
11 the jury comes in?

12 MR. OSBORNE: Yes, Your Honor. It's a
13 -- I received a request from Ms. Zmroczek asking
14 for all *Giglio* and *Brady* material in reference to
15 deputies in this case. I submitted a list, an
16 email to the Defense counsel and that date was on
17 November 23rd of 2021, and I listed all of the
18 deputies that I had intended on calling or may be
19 called in this case. And then I said that I would
20 be requesting from the sheriff's office all *Giglio*
21 information pertaining to those deputies. I was
22 provided a list.

23 So what I did was I went through the
24 list and anything that was on a deputy that I felt
25 was clearly *Giglio*, I listed the deputy and then I

1 listed the *Giglio* information pertaining to that
2 deputy. However, there is a list of other things
3 that were in these deputies' jackets that I didn't
4 feel was relevant or *Giglio*. So I did not assign
5 those allegations to the deputies. What I did was,
6 I let them know what the allegations were. You
7 know, and it's -- I mean, most of them are
8 duplicative. If the Defenses' position is that
9 every single one of these is relevant, I guess we
10 could argue the relevance. If you feel that it is
11 relevant, you know, then we could -- I can give
12 them the unaltered list that has those allegations
13 assigned to each deputy.

14 THE COURT: Okay.

15 MR. OSBORNE: So I thought the easiest
16 way to do it would be -- you know, for example,
17 just to give you an idea. The straight one off the
18 first one is a wage levy from the State of South
19 Carolina from December of 2013. It's regarding
20 student loan payments. I mean, obviously, our
21 position is that that's not relevant. I mean, all
22 that would do -- it doesn't go to honesty. I think
23 we've all at one time or another probably been
24 behind on our student loan payments. I have
25 \$150,000 worth of student loans right now that I

1 don't know how I'm going to pay. Obviously, I
2 would say that that right there is not relevant and
3 shouldn't be in this case.

4 THE COURT: I thought that was the
5 reason you were working for the solicitor's office,
6 maybe get something back on that. (Laughter)

7 MR. OSBORNE: Right. A couple of
8 hundred years it should be paid off.

9 THE COURT: Okay. All right.

10 MR. OSBORNE: I feel like the quickest
11 way to do it would be just to have the Defense look
12 at the list, talk about which ones they want me to
13 tell them is assigned to a deputy and then hash out
14 and argue those specific ones. Because some of
15 them are obviously not relevant.

16 THE COURT: Okay. Mr. Leiendecker,
17 have you seen the list?

18 MR. LEIENDECKER: Pardon?

19 THE COURT: Have you seen the list he's
20 talking about?

21 MR. LEIENDECKER: Kind of. Sorta.

22 MR. OSBORNE: It's on the email that
23 was dated January 10th of 2021.

24 MR. LEIENDECKER: I have the list under
25 the individual officers.

1 THE COURT: You want me to run copies
2 of that?

3 MR. LEIENDECKER: I don't have that in
4 front of me. I apologize.

5 THE COURT: Okay. Can we run copies --

6 MR. LEIENDECKER: I'm sure I have it.

7 THE COURT: We'll run copies.

8 MR. LEIENDECKER: I mean, I just pulled
9 something else out. I didn't know what we were
10 working off of.

11 THE COURT: Okay. While they're doing
12 that, do y'all have any issues -- Mr. Leiendecker,
13 after you had an opportunity to finish looking at
14 that list, I just want to kind of know what your
15 position is.

16 MR. LEIENDECKER: Yes, Your Honor.

17 MS. ZMROCZEK: So, Judge, I think after
18 reading the ones that are not associated with a
19 person, it's at least my position that obviously I
20 don't think that the wage levies have -- I don't
21 think that those are appropriate. But I do think
22 that the suspensions, the corrective action, the --
23 anything -- anything that violates a policy of the
24 sheriff's department, I think is the definition of
25 *Giglio*. I think that they --

1 THE COURT: You want to know what was
2 the cause -- what was behind that?

3 MS. ZMROCZEK: I'm sorry.

4 THE COURT: You wish to know what was
5 behind the suspension?

6 MS. ZMROCZEK: Or at least to whom they
7 were because I think these are unidentified; right?

8 MR. OSBORNE: Right.

9 MS. ZMROCZEK: So these are all
10 unidentified. So, yeah, I think that we need to
11 probably identify the ones that aren't financial
12 obligation wise and then maybe I guess address them
13 from there. Do you agree?

14 MR. LEIENDECKER: Yes.

15 THE COURT: Is that easy enough to do?

16 MR. OSBORNE: I think that's the best
17 way to do it.

18 THE COURT: Okay. All right.

19 MR. OSBORNE: All right. So the first
20 one we have a two day suspension for failure to
21 appear in a CDV court. I mean, obviously, we don't
22 have any allegations in this case that a deputy
23 failed to appear in court. So I would say that's
24 not relevant.

25 MS. ZMROCZEK: Well, it's not

1 necessarily the relevance. I think the point of it
2 is this, Your Honor, it's not that somebody didn't
3 show up in court, but I think -- so attending court
4 is part of your duties as the Orangeburg County
5 Sheriff's Department. And one of the things
6 obviously that I think that you garnished or
7 gleaned from what we've been arguing is that one of
8 our bigger issues here is that we're insinuating or
9 arguing that officers again did not follow the
10 policies and procedures in investigations and
11 things like that. So if there's a pattern of not
12 following patterns -- or not following policies and
13 procedures, for example, not showing up to court as
14 required by, you know, your policy, then I do think
15 that those are relevant.

16 I mean, I agree that we don't have an
17 issue where somebody didn't show up to court here,
18 but I think that's pretty narrow. I think the
19 bigger issue is officers not doing what they are
20 required to do by their job which I think is the
21 overall theme in what we're arguing.

22 MR. LEIENDECKER: And certainly do have
23 issues of officers not doing things they were
24 required to do like providing discovery even to the
25 State when it was requested and the Court

1 ultimately had to intervene. The same as being
2 required to show up in court and not showing up in
3 court.

4 MR. OSBORNE: Just quick retort. The
5 only thing I would say to that is that policies and
6 procedures manual by the sheriff's office say that
7 their deputies will abide by all laws, rules,
8 regulations, obligations. By that standard, there
9 isn't a single thing on here that then by their
10 admission wouldn't then be admissible. Don't you
11 have an objection to pay your student loans? Yeah.
12 In 2015, isn't it true you did not pay your student
13 loans? Yeah. In 2015, isn't it true you did not
14 pay your student loans? Don't you have an
15 objection not to speed? Have you ever sped,
16 deputy? You certainly have, therefore, you've
17 broken the law. It's absurd. So every single one
18 of these that deal with failing to appear in court
19 and all that, it's completely irrelevant.

20 THE COURT: Okay. Does anybody have a
21 copy that I can look at?

22 MR. OSBORNE: Yes.

23 THE COURT: All right. The decision
24 from the high judge after listening to lengthy
25 arguments by counsel, and I'm going through your

1 list, Mr. Osborne. I'm going to start -- I'm just
2 going to start going through ones that I'd like for
3 you to go ahead and provide them just out of
4 abundance of caution in this case.

5 The two day suspension for failure to
6 appear in CDV court in 2015.

7 Two day suspension for taking the
8 victim's property home.

9 Taking victim's property home, car keys
10 were in his pocket.

11 A two day suspension for failure to
12 show up for a scheduled interview with a victim.

13 Corrective action warning for failure
14 to initiate protocol for an armed robbery.

15 Corrective action consultation for not
16 closing a finished case.

17 A two day suspension for failure to
18 appear at a preliminary hearing.

19 And a corrective action warning for
20 failure to contact a victim.

21 Corrective action written warning for
22 failure to stand in for subordinate order employee
23 at court proceedings.

24 A commendation for armed robbery
25 follow-up.

1 Suspension for altering a date on a
2 doctor's excuse for full duty.

3 Corrective action, written warning for
4 failure to appear in court.

5 Corrective action for failure to report
6 to work.

7 And, suspension for failure to report
8 to work.

9 And, a suspension for failure to report
10 to work.

11 Those are the ones. I'll note your
12 objection to my ruling if you want to do that.

13 MR. OSBORNE: Yes, Your Honor.

14 THE COURT: Okay. That is noted on the
15 record. Mr. Leiendecker, any objection to my
16 rulings?

17 MR. LEIENDECKER: One second, Your
18 Honor. Your Honor is not asking the State to
19 release information regarding the officer who was
20 dismissed?

21 THE COURT: Uh-huh.

22 MR. LEIENDECKER: Released from duty?

23 THE COURT: Which one was that?

24 MR. OSBORNE: Okay. That's oddly
25 worded. Just for your information that's why I

1 wanted it out. Because it's confusing. He was
2 released from duty with the pleasure of the
3 sheriff. So, in other words, when you retire, it's
4 my understanding that the sheriff has to release
5 you from duty so that he can hire you back and
6 that's exactly what happened. It's just
7 misleading. That's why I put it on there.

8 MR. LEIENDECKER: It wouldn't be bad to
9 see that.

10 THE COURT: Huh?

11 MR. LEIENDECKER: We're not going to
12 use to commendation either probably.

13 THE COURT: No, but I figured it needed
14 to be in there.

15 MR. LEIENDECKER: Yeah.

16 MR. OSBORNE: Good for the goose.

17 MR. LEIENDECKER: I agree. And the
18 other one, the only other one I had a question
19 about was employee suspended for inappropriate
20 workplace behavior in 2016.

21 THE COURT: Wasn't the subheading the
22 explanation for that?

23 MR. OSBORNE: I'm sorry. Where are we
24 at?

25 THE COURT: Fourth one from the bottom.

1 MR. LEIENDECKER: Third or fourth --
2 third from the bottom.

3 THE COURT: It says suspension for
4 inappropriate workplace behavior. I thought is the
5 -- what you put under it the reason for that?

6 MR. OSBORNE: That's correct. Yes,
7 Your Honor.

8 THE COURT: Okay. That's the way I
9 read it.

10 MR. OSBORNE: That's correct.

11 THE COURT: That's the reason I'm not
12 getting into it. I don't think it has any
13 relevance. But you can note your objection to it.

14 MR. LEIENDECKER: I do note my
15 objection to that.

16 THE COURT: Okay. Good. And, of
17 course, as with Mr. Osborne's objection, it is
18 overruled as is yours. Okay. Ms. Zmroczek?

19 MS. ZMROCZEK: I would agree. I would
20 take the same position.

21 THE COURT: Okay. And I will take the
22 same position likewise. Okay. And, Mr. Johnson?

23 MR. JOHNSON: Same position, Your
24 Honor.

25 THE COURT: All right. Okay. Then

1 everybody's got something to complain about. All
2 right. Thank you. What's next?

3 MR. OSBORNE: Next on the same topic
4 and these right here I thought were a little bit --
5 okay. So I thought that they probably under the
6 definition of *Giglio* which really, honestly, hasn't
7 been clearly defined by the courts at least not
8 that I've been able to find. But these right here
9 could be *Giglio*. So I let them know the deputies
10 that were associated with these complaints. But I
11 have highlighted them because I don't feel they're
12 relevant nor should they come out in the trial.

13 The first one I can just kind of go
14 through them. There's only a few.

15 THE COURT: Okay. That will be good.
16 And, you know, it sure would have been nice to have
17 a copy.

18 MR. LEIENDECKER: Your Honor, before we
19 move on, the Court's ruling on the first list of
20 anonymous actions.

21 THE COURT: Yes. He's going to provide
22 you with the information with which --

23 MR. LEIENDECKER: Provide us with the
24 information and the name of the individual?

25 THE COURT: Right. That's what he said

1 he was going to do.

2 MR. OSBORNE: With which one --

3 THE COURT: The list that we just went
4 over you said you had --

5 MR. OSBORNE: Oh, yes. I'm going to --
6 I'll line them up with the deputies and then
7 re-email that list with those. And then if these
8 are, you know --

9 THE COURT: With the exceptions of the
10 ones that I'm not getting in. Okay.

11 MR. OSBORNE: May I approach, Judge?

12 THE COURT: Yes, sir. It just makes it
13 easier on me.

14 MR. OSBORNE: Yes, sir.

15 THE COURT: All right. Okay.

16 MR. OSBORNE: Okay. So they're
17 highlighted because, you know, I'm arguing that
18 they're irrelevant. The first one, Lataya Dickie.
19 So we basically have sort of two allegations. The
20 first one just summarizing, Ms. Dickie got into an
21 argument with her supervisor -- male supervisor.
22 The supervisor alleged that Ms. Dickie assaulted
23 him during this argument. She was let go for
24 insubordination. No evidence that she lied. She
25 was truthful during, you know, her interview.

1 THE COURT: Okay. All right. And then
2 another thing while -- she was with State Transport
3 Police?

4 MR. OSBORNE: Still with the State
5 Transport Police. You know, she was escorting and
6 it was part of an escort. It was an off duty
7 detail. The driver paid Ms. Dickie in cash. The
8 driver said that if she would take a check, he
9 would give her \$20 to pay for cashing the check.
10 So, in other words, basically, Ms. -- the
11 individual wanted to pay with a check and not cash,
12 but if he was willing -- but Ms. Dickie wanted
13 cash. And if the driver was -- if Ms. Dickie was
14 willing to accept the check instead of cash, then
15 Ms. Dickie, you know, would accept the check for a
16 \$20 fee. These off duty details you're like your
17 own -- it's your own business at this point. They
18 call it 1099. So she negotiated her own salary,
19 apparently the state police didn't like that.

20 THE COURT: Okay. And then the third
21 one was corrective action, written warning for
22 failure to follow evidence policy?

23 MR. OSBORNE: Right. Based on your
24 earlier rulings, I wouldn't challenge that one.

25 THE COURT: Okay. All right. So you

1 want to go through each one of these by --

2 MR. LEIENDECKER: I don't object. The
3 only one I wanted included was the third, the
4 bullet fragment evidence issue.

5 THE COURT: All right.

6 MS. ZMROCZEK: I agree, Your Honor. I
7 think that the third one is appropriate.

8 MR. JOHNSON: In agreement, Judge.

9 MS. ZMROCZEK: And, Judge, just for --
10 I know that he -- Mr. Osborne said it's maybe not
11 necessarily clear. Obviously, I think it's like
12 any other impeachment issue, we don't go into the
13 details to say you violated a policy on --

14 THE COURT: Have y'all had a chance to
15 talk about this list?

16 MR. OSBORNE: Well, I mean, I emailed
17 that to them in January stating what I was planning
18 on objecting to. I haven't heard anything back.

19 MS. ZMROCZEK: But I just meant
20 procedurally --

21 THE COURT: No, I understand. What I
22 was trying to suggest, would it be easier for y'all
23 to look over the -- for y'all to look over the list
24 and talk about it and then if you can't resolve --
25 it will not be easier that way? Okay. Mr.

1 Leiendecker --

2 MR. LEIENDECKER: The only reason I say
3 that, Judge, there really isn't that much.

4 MS. ZMROCZEK: Yeah, it's not that
5 much.

6 THE COURT: Okay. All right.

7 MR. LEIENDECKER: There's a lot of
8 pages that say nothing in the file. Nothing in the
9 file.

10 THE COURT: Okay.

11 MS. ZMROCZEK: Right. Right. Right.

12 THE COURT: Well, then we're moving on
13 to Travis Wright then.

14 MR. OSBORNE: He was -- it's corrective
15 action. He was a new deputy at the time. A lot of
16 pending calls at the county so he asked the jail
17 what they needed. And they required an incident
18 report for admitting that he was at fault.

19 Basically, what he had did was, he got into an
20 accident and sat on the report. He didn't complete
21 the report, but he did notify his supervisor. He
22 was new. He didn't realize that he was supposed to
23 do a report.

24 THE COURT: Okay. Mr. Leiendecker?

25 MR. LEIENDECKER: No issue with that

1 being *Giglio* and being used -- I mean, not using.

2 THE COURT: Ms. Zmroczek?

3 MS. ZMROCZEK: I concur.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: I agree, Judge.

6 THE COURT: Okay. Thank you.

7 MR. OSBORNE: Let's skip ahead to
8 Carter, it is super simple. Carter was a captain.

9 He was in charge of the evidence room. He says
10 that he believes he left -- he inadvertently left
11 the outer evidence room door unsecured, but the
12 inner cage was secure. No evidence was tampered.
13 That cage was not compromised in any way.

14 THE COURT: Okay. Mr. Leiendecker?

15 MR. LEIENDECKER: I'm not there.

16 MR. OSBORNE: It's the last page.

17 THE COURT: Oh, it's the last page.
18 The one you highlighted.

19 MR. OSBORNE: Gerald Carter.

20 MR. LEIENDECKER: He's the evidence
21 custodian and a written correction was put in his
22 file regarding his inattention to evidence in the
23 possession of the county, so I believe it is
24 *Giglio*.

25 THE COURT: All right. I will -- Ms.

1 Zmroczek, what do you think?

2 MS. ZMROCZEK: I do agree, Your Honor,
3 especially because he, you know, the evidence
4 collection I think is going to be at issue in this
5 case as well.

6 THE COURT: Okay. This is from 2005;
7 right?

8 MS. ZMROCZEK: Yes.

9 THE COURT: Okay. All right. And,
10 Mr. Johnson?

11 MR. JOHNSON: I agree, Judge. It's
12 obviously coming up in this case.

13 THE COURT: Okay. I pulled the case
14 up, it says, "When the reliability of a given
15 witness may well be determinative of guilt or
16 innocence. Nondisclosure of evidence affecting
17 credibility falls within this general rule." Tell
18 me how credibility gets into this one?

19 MR. LEIENDECKER: Your Honor, the
20 credibility is a rather broad definition and I
21 don't believe that *Giglio* was read in a very narrow
22 way. It talks about the procedural skill, the
23 acumen, the work done by the individual officers
24 and when they are disciplined for it, it becomes a
25 subject. In this case, an evidence custodian left

1 the door into the evidence room open.

2 He says that the inner cage was secure,
3 no evidence was tampered with. But someone could
4 have gotten in. We don't know if they went in and
5 tried to see if they could get in. We don't know
6 if we went in and they had the ability to pick a
7 lock. But what we do know is that and evidence
8 custodian who may be here to testify about things
9 has already shown a mistake in relation to securing
10 and maintaining evidence.

11 MS. ZMROCZEK: And I think coupled with
12 that, Your Honor, is that -- one thing that we've
13 already been arguing is for a spoliation charge on
14 several items that were listed in their incident
15 reports. For example, Culpepper says that he had
16 six hours of jail recordings for one and four hours
17 of jail recordings for another where that person
18 calls one of the fiancées of Mr. Wright and
19 instructs her to go and get drugs out of the house
20 so that he can pay for an attorney. And he does
21 that and that jail phone call was in the file and
22 now it's missing. And so I do think that that
23 becomes relevant.

24 THE COURT: Okay. All right.

25 Mr. Johnson?

1 MR. JOHNSON: I agree with that
2 argument, Your Honor. I have to say that this
3 going to come up obviously all over this case.

4 THE COURT: Well, I understand we've
5 had problems with the evidence in the case, but
6 y'all can cross examine them about that specific
7 thing of evidence. How does that go -- reading
8 else -- reading also from the case, here the
9 government's case depended almost entirely on
10 Taliento's testimony which is -- I would not think
11 is going to be the case of Mr. Gerald Carter's
12 testimony, number one.

13 Without it there could have been no
14 indictment and no evidence to carry the case to the
15 jury. Which I don't think is an issue. Taliento's
16 credibility as a witness was, therefore, an
17 important issue in the case and evidence of any
18 understanding or agreement as to a future
19 prosecution would be relevant to his credibility
20 and the jury was entitled to know it. So tell me
21 how that matches up with that.

22 MR. LEIENDECKER: Your Honor, I just
23 keep reiterating what I said and I'm not going to
24 keep going back over it because I know I'm boring
25 the Court as well as myself.

1 THE COURT: No. No.

2 MR. LEIENDECKER: Taliento was a key
3 witness in that. It doesn't say that somebody
4 who's not a key witness isn't subject to *Giglio*
5 examination. If we follow your interpretation, all
6 the rulings you gave before should be reversed and
7 none of it should come in.

8 THE COURT: No, I'm saying if it has to
9 deal with credibility. How --

10 MR. LEIENDECKER: This deals with
11 credibility of an officer in charge of evidence.
12 That's what I've said and that's what I stand by.

13 THE COURT: Okay. All right. Anything
14 from the State?

15 MR. OSBORNE: No, Your Honor. I mean,
16 well, I'm going to say one thing. Just one quick
17 --

18 THE COURT: I can't believe you would
19 not take that opportunity. (Laughter)

20 MR. OSBORNE: No. Well, that goes to
21 speculation and that goes to -- that's not what the
22 investigation show. The investigation that was
23 conducted by the sheriff's office showed that the
24 evidence wasn't damaged, tampered, or altered in
25 any way. Because the outside door, just because

1 that wasn't secured, to get to the evidence you had
2 to get to the inner cage which was locked. If
3 there was evidence that had been tampered, altered,
4 damaged in any way, that would have been reported
5 in the report, which it wasn't. That's not what
6 the investigation showed.

7 THE COURT: Okay. Well, let me ask you
8 a question. You actually have the report in this
9 or not? This is just a summary?

10 MR. OSBORNE: This is just a summary.
11 I cannot say for sure whether I have the actual
12 report.

13 THE COURT: Okay. Well, if you --
14 okay. Well --

15 MR. OSBORNE: I do have -- we can find
16 out.

17 THE COURT: Find out about that and
18 I'll decide -- let me see what the report says,
19 okay?

20 MR. OSBORNE: Yes, sir.

21 THE COURT: All right. Who's next?

22 MR. OSBORNE: Lieutenant Shumpert. The
23 gist of this allegation was that Lieutenant
24 Shumpert was involved in this investigation where
25 they were going into illegal video poker machines.

1 During the investigation they got enough evidence
2 to seize these machines. Lieutenant Shumpert's
3 shoulder was injured and these machines are pretty
4 weighted anyway's, he ended up getting two
5 individuals to assist him in lifting these machines
6 up into the truck so that they could be seized.

7 He ended up paying these individuals
8 with proceeds from the machines that he later
9 replaced. And it wasn't much. I think it was like
10 50 bucks each. Everything was documented. There
11 was nothing that was stolen. Nothing that was
12 taken. Everything went back.

13 THE COURT: All right.
14 Mr. Leiendecker, are you going to be seemingly
15 first all the time.

16 MR. LEIENDECKER: Interesting.
17 Absolutely it should come in. He received a
18 suspension for evidence seizer and handling
19 procedures and it just happened this year -- this
20 last year.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Yeah.

23 THE COURT: I'm inclined to let it in,
24 you know. Okay. What else we got?

25 MR. OSBORNE: Culpepper, he's the last

1 one.

2 THE COURT: Okay.

3 MR. OSBORNE: He was terminated after a
4 DUI arrest in 2013. Then he was rehired after he
5 was found not guilty from that DUI.

6 MR. LEIENDECKER: We wouldn't seek to
7 deal with that on *Giglio*.

8 THE COURT: Okay. All right. Let me
9 find out from Ms. Zmroczek and Mr. Johnson.

10 MS. ZMROCZEK: That's correct, Your
11 Honor.

12 MR. JOHNSON: Agreement, Judge.

13 THE COURT: All right. The next one,
14 suspension for failure to bond -- I guess it was to
15 give a defendant a bond hearing within 24 hours.

16 THE COURT: Okay.

17 MR. LEIENDECKER: We would ask to deal
18 with -- or address that, Your Honor. Because
19 somehow, I don't know what happened here, but if
20 someone's put in the jail, they're going to get a
21 bond unless they're not put in the jail and held
22 somewhere else or arrested or whatever. But
23 failing -- it's failing to follow a policy and
24 procedure of the sheriff's office.

25 THE COURT: Yeah. Do we have anymore

1 information on that?

2 MR. OSBORNE: I can get a better
3 summary on that too, Judge.

4 THE COURT: Okay. If you can just
5 provide that to them so we can find out. Okay.

6 MR. OSBORNE: And the last one was the
7 reason why Culpepper was terminated. It was for
8 unnecessary use of force. There were no charges
9 brought as a result of that, but the Orangeburg
10 County Sheriff's Office felt it best to terminate
11 him after viewing the video.

12 MS. ZMROCZEK: And, Your Honor, not to
13 cut Mr. Leiendecker off, but I just think with the
14 allegations especially as far as what I'm raising
15 with the issues of what we're alleging are false
16 confessions, coercion, things like that, absolutely
17 think that this is germane to his credibility.

18 He was certainly involved in the
19 questioning of a lot of these witnesses including
20 especially my client. And so I absolutely believe
21 that that's appropriate to explore.

22 MR. LEIENDECKER: Your Honor, I agree
23 with that. And I believe the sheriff's office made
24 a rather quick and decisive decision with this
25 especially in light of the *Chauvin* case in the

1 State of Minnesota. Maybe one of the differences
2 here is there was no video evidence of the force
3 that was used in the kneeling on the individual.
4 But it certainly...

5 THE COURT: All right. And,
6 Mr. Johnson?

7 MR. JOHNSON: Given the officer's
8 involvement in the case, we agree with that
9 argument, Judge.

10 THE COURT: All right. I'm inclined to
11 let them go into that. It's a kind of a gray area
12 for me. But I'm, you know, I'm going to let it in.
13 I'm going to let that -- but if I can see -- I want
14 to just know about the bond thing. I don't know
15 that that's -- but I'd like to see the report if
16 you can get it. I mean, I don't know when he's --
17 when you're going to call him as a witness. But
18 unless there's something in there that shows me
19 there was some -- it was more than a mistake, then
20 I'll deal with it. Otherwise, I'm not inclined to
21 let it in. But I would like to see some more
22 information about it.

23 Anything else on this list that we got
24 to go over?

25 MR. OSBORNE: No, we're through with

1 *Giglio*, Judge. And the only thing that I would
2 just add to that -- and, see, this is why I put it
3 on there. Because I thought that that might be the
4 comparison. You know, Culpepper and Chauvin.
5 Those are just two entirely different things. You
6 know, they have an expert that testified in the
7 *Chauvin* case. And then putting the sheriff's
8 office on trial for something -- for a horrific act
9 that another officer did just isn't fair.

10 THE COURT: Well, we're not going to
11 have any comments about that. I mean, I understand
12 you made the comments here, but you're not going to
13 make the comments in front --

14 MR. LEIENDECKER: I'm talking about why
15 it's relevant, not how it would be handled in cross
16 examination. The only question I have that it's
17 unclear to me is there are three -- on the
18 summaries given to us, three officers that there's
19 no comment about. No comment about whether there
20 was or wasn't anything. That's Boyne, Carrigg or
21 Craig, and Cain.

22 MR. OSBORNE: Well, if they don't --
23 the reason why I left it like that is because it is
24 possible that they had something that was listed on
25 the anonymous list. And so if one of the ones that

1 the Judge ruled is admissible, marry's up to one of
2 those to where there's nothing there, I'll insert
3 that and email that to you. If not, then no
4 problem.

5 MR. LEIENDECKER: I'm just saying,
6 those I understand why they're listed the way they
7 are. Because they obviously have something on the
8 anonymous list.

9 MR. OSBORNE: And it may not be
10 negative.

11 MR. LEIENDECKER: Right.

12 MS. ZMROCZEK: I agree, Your Honor.

13 THE COURT: Okay. So we're going to do
14 it that way. Okay.

15 MS. ZMROCZEK: And then I think the
16 only other issue that I don't think necessarily
17 deals with *Giglio*, but kind of on the same -- along
18 the same lines is the -- so we did receive Monday a
19 copy of all the rap sheets. I was a little bit
20 confused and so I wanted to address this maybe
21 ahead of time. And maybe I can just ask
22 Mr. Osborne. But, for example, so Derrick Coleman,
23 his rap sheet had one thing, a DUI from Alabama in
24 September when he was actually arrested for this
25 case. But I know, because I have the incident

1 reports that were provided to me in discovery that
2 he received several drug arrests here and then also
3 he has pending murder -- the four murder charges
4 and none of that appeared on Coleman's. It also
5 didn't appear on my client's and I was just
6 confused as to how that happened.

7 MR. OSBORNE: I don't know.

8 MS. ZMROCZEK: You understand what I'm
9 saying? Because like, you gave me Antly Scott's
10 and Robert Bailey's and they had all the pending
11 charges as usual, but then -- but Smith didn't and
12 Coleman had nothing and I know that he has stuff
13 because we have the incident reports. So I guess
14 we just need to -- I don't know that we have to
15 take up a ton of time, but maybe -- so right before
16 a witness comes up that we do have a rap sheet just
17 to verify. You know, there are a ton of
18 shoplifting's which are obviously crimes of
19 dishonesty. I mean, there are tons of receiving
20 stolen goods. So I do -- I think maybe we can have
21 a little powwow about the witnesses and then save
22 the Court some time.

23 THE COURT: I love powwows.

24 MS. ZMROCZEK: I do too.

25 MR. OSBORNE: That's the first I'm

1 hearing about it, Judge. Honestly, I haven't
2 looked at any --

3 MS. ZMROCZEK: Well, I just got to look
4 at them last night. I had 40,000 pages of phone
5 records.

6 THE COURT: The nice thing is we do
7 have time.

8 MS. ZMROCZEK: And so -- and then the
9 only other thing is that we just want to make sure
10 that we have the most updated CV's for their
11 experts that include testimony. Specifically, we
12 have some information that even as fairly as two
13 weeks ago the cast agent, the FBI cast agent
14 testified in a case and we just want to make sure
15 that all of those cases are listed where they've
16 been qualified as experts.

17 THE COURT: Do you think the officer
18 has updated his CV, is that what you want to make
19 sure?

20 MS. ZMROCZEK: Is he an officer?

21 THE COURT: I thought you said an FBI
22 --

23 MS. ZMROCZEK: Or the expert, yes.

24 THE COURT: Okay.

25 MS. ZMROCZEK: I just wanted to make

1 sure we have the updated CV's.

2 THE COURT: Well, I mean, you can also
3 when he --

4 MS. ZMROCZEK: Just ask him.

5 THE COURT: Just ask him.

6 MS. ZMROCZEK: Yeah. Yeah.

7 MR. LEIENDECKER: Sure.

8 THE COURT: That might be the only
9 thing that we can do. Okay. And what else? You
10 stretching your legs?

11 MR. LEIENDECKER: Yes, sir.

12 THE COURT: All right. What else do we
13 have, Mr. Osborne?

14 MR. OSBORNE: Nothing, Your Honor.

15 THE COURT: Mr. Leiendecker, what else
16 you got?

17 MR. LEIENDECKER: Nothing.

18 THE COURT: Oh, okay. And you said
19 that so nicely. I appreciate that. Okay. Ms.
20 Zmroczek?

21 MS. ZMROCZEK: Nothing, Your Honor. I
22 think that we've gone through our whole list. I
23 just -- I do have to remind myself that this is all
24 just pretrial, so once it starts again, we'll have
25 to renew --

1 THE COURT: Oh, yeah, I know. Yeah.
2 But in hopes that we'll remember to preserve the
3 objections along the way and if not, any objection
4 -- just for the record, any objection that y'all
5 have made so far, my take is it's preserved so you
6 can argue it later on both sides. Okay. And,
7 Mr. Johnson?

8 MR. JOHNSON: Your Honor, I didn't know
9 where you wanted to move on to. But did you want
10 me to run through -- are we moving to another
11 motion at this time or are you saying -- asking --

12 THE COURT: No. I was wondering if we
13 had anything else to do. Do you have a motion you
14 want to take up?

15 MR. JOHNSON: Well, I guess I wanted to
16 go through my motions, so just kind of for the
17 record make sure. We went through *Giglio*. The
18 9-1-1 call, my understanding, the State's indicated
19 that's something and I think Your Honor indicated
20 wanted to address that at the time that they
21 introduced it and take some testimony --

22 THE COURT: Right.

23 MR. JOHNSON: -- outside the presence
24 of the Court -- or the jury.

25 THE COURT: Right. But I'll let you

1 know at that time that I am inclined to let a 9-1-1
2 in if it's, you know, meets kind of the requisite
3 they called immediately, not the day later, you
4 know. Okay.

5 MR. JOHNSON: Yes, sir. And the one
6 regarding *Lyle* evidence and evidence of other
7 crimes, are you allowing in -- I guess I wasn't
8 quite sure. You were talking about the clips and
9 the -- what were you also allowing in evidence of
10 certain crimes of arrests for all the codefendants?
11 I'm just trying to figure out what you're letting
12 in.

13 THE COURT: The only thing that we went
14 over was the clips and I think -- haven't we
15 cleared up the *Bruton* issues in the clips? Or is
16 there still --

17 MR. JOHNSON: That's not clear on mine.
18 I was given a copy of a CD this morning with mine,
19 so I haven't had time to go over it. There is so
20 far objectionable stuff in there that I've seen
21 already related to *Lyle* and my other objections.

22 THE COURT: Well, then do you want -- I
23 don't know who you plan on calling, do we have time
24 to do that later or do we need to do it now?

25 MR. OSBORNE: It would come in through

1 Culpepper, but correct me if I'm wrong,
2 Mr. Johnson, the only thing that's left on that, we
3 did the testimony before and the only thing that I
4 remember coming out of that was some Antly Scott
5 comments about knowing Pocket. So -- and that's
6 what we've covered. We redacted that. Mr. Johnson
7 said what he did not want, and this is just a
8 summary, what he did not want was Mr. Scott saying
9 in the interview, and just refresh your memory, the
10 reason why they interviewed Mr. Scott was because
11 they -- Culpepper received information that
12 Mr. Scott was telling people that a man by the name
13 of Pa-Poo, an older gentleman, had texted him
14 saying I'm going to kill you like I did to the
15 people in Holly Hill.

16 THE COURT: Right.

17 MR. OSBORNE: That explains why he's
18 even in the interview room in the first place.
19 During the interview, Culpepper asked Mr. Scott,
20 what about this text from Pa-Poo? He says, Pa-Poo
21 texted me saying, I'm going to kill you just like I
22 did the people in Holly Hill. So, Mr. Johnson's
23 position if I understand it correctly is that text
24 is hearsay. Well, our position is clearly that
25 we're not introducing that for the truth of the

1 matter, we're introducing that to explain why
2 Culpepper is even talking to Mr. Scott in the first
3 place. And we are certainly not at all suggesting
4 that Pa-Poo killed the people in Holly Hill. That
5 only just explains why he's even talking to them in
6 the first place.

7 THE COURT: Okay. One of the issues
8 that y'all want to make is that there are all these
9 other leads that should have been followed up on;
10 correct?

11 MS. ZMROCZEK: Your Honor, may we have
12 a moment to powwow?

13 THE COURT: Why don't y'all powwow.
14 Okay. Because -- do y'all need to go -- y'all want
15 to go powwow in the hall or y'all can step back in
16 the office if you want to.

17 MR. JOHNSON: Judge, once again, I'm
18 limited to the first clip, there's three clips, I
19 have not had time to review the other two.

20 THE COURT: Do you want to look at
21 those and then --

22 MR. JOHNSON: I will be happy to, I
23 have it here. I just didn't have time.

24 THE COURT: Okay. No, we'll back and
25 revisit that.

1 MR. JOHNSON: Regarding the first clip
2 though, if you want me to put it on the record.

3 THE COURT: Right.

4 MR. JOHNSON: The objection is
5 basically I'm going to drop the objection as far as
6 that discussion about Pa-Poo. But I'm objecting --
7 there's a mention of a warrant on there that's, I
8 believe, a DNR ticket and that's not relevant.
9 It's evidence of other crimes he's not on trial
10 for. And there's a mention of this warrant.

11 MR. OSBORNE: I certainly have no
12 problem taking that out. I thought they might want
13 that in. But I have no problem taking that out.

14 THE COURT: Well, apparently he doesn't
15 want it in.

16 MR. OSBORNE: Music to my ears. I'll
17 take it out.

18 MS. ZMROCZEK: Just the warrant part;
19 right?

20 MR. OSBORNE: Well, I have to take out
21 the context that followed the warrant and I think
22 Culpepper said something like this, you didn't
23 think I could handle that warrant for you? So I'll
24 just take that out too.

25 THE COURT: Yeah. I mean, it will all

1 go.

2 MR. OSBORNE: We'll take it out.

3 THE COURT: All right.

4 MR. JOHNSON: Like I said, I haven't
5 watched the other two clips.

6 THE COURT: Oh, yeah, and you watch the
7 other two and then we'll come back and we'll drive
8 off that bridge when we get to it.

9 Anything else, Mr. Johnson?

10 MR. JOHNSON: Well, as I just go
11 through it, objection to phone records that
12 obviously, I guess, Your Honor would rule on that
13 as far as whether or not that's going to be
14 objectionable as we go through it. If they lay the
15 proper foundation it doesn't fall under hearsay, I
16 assume Your Honor is going to rule on that as we go
17 through the trial?

18 THE COURT: Yeah, I will. Right now --
19 go ahead.

20 MR. JOHNSON: Crime scene photographs
21 video. Is that something that you want to wait and
22 then Solicitor hasn't given me a list of crime
23 scene photos that he intends on using.

24 MR. OSBORNE: Again, the game plan on
25 that I thought would be best is this afternoon we

1 hope to take testimony that will establish the
2 relevancy of those photographs tomorrow. If
3 everything works out okay, if we get through it and
4 then first thing tomorrow we were going to call
5 Captain Carter. We can have like a quick little
6 discussion on what relevance specific photographs
7 have. Everyone has them. And we could hash that
8 out before Captain Carter actually takes the stand.

9 THE COURT: All right.

10 MR. JOHNSON: Is he going to have -- I
11 just want to be prepared. Is he going to have
12 printed out copies he can show us this is the one
13 that's referenced or do we need to have these --

14 MR. OSBORNE: I gave y'all the
15 digitals. So I thought it would be easier just to
16 flip it digitally.

17 MR. JOHNSON: It's got the identifying
18 numbers so we'll handle it like that.

19 MR. OSBORNE: Right.

20 MR. JOHNSON: Okay. I just wanted to
21 make that clear that's how we're going to handle
22 it.

23 THE COURT: Okay. Sounds good.

24 MR. JOHNSON: The issue with the
25 Solicitor sealing, asking that -- I asked about in

1 addition to D.N. [REDACTED], I inquired about Amari
2 Nelson, Diamonique Nelson, asking about statements,
3 information, anything, and the Solicitor requested
4 that be sealed and I don't know if it includes
5 those other people, I don't know. But I'm asking
6 to -- I guess we have to resolve what is going to
7 be sealed, what is going to be released to us.

8 THE COURT: All right.

9 MR. OSBORNE: All right. So the
10 witnesses that we filed a protective motion on,
11 after their testimony, I have already have the
12 packet put together of their summaries. After they
13 testify, I'm going to provide each of the
14 Defendants a summary of what that witness had to
15 say. And that's actually what Rule 5 contemplates.

16 MS. ZMROCZEK: And that's fine, Your
17 Honor. We just know that that's obviously going to
18 slow us down.

19 THE COURT: Well, after that, we'll
20 take a break, y'all will have time to go over it.
21 I'm not -- we're not -- we don't have to finish
22 this case this week, apparently.

23 MS. ZMROCZEK: Sometime this month is
24 my goal.

25 THE COURT: All right. But, you know,

1 we're all going to take deep breaths as we go
2 through this thing. We're not going to rush it.
3 We're going to preserve all the objections and
4 we're just going to go through it one step at a
5 time. Okay. All right.

6 Mr. Johnson, anything else?

7 MR. JOHNSON: Well, chain objection,
8 obviously, Your Honor, as we go through it and they
9 establish whether or not they have sufficient
10 chain. I have that on the record.

11 THE COURT: Okay.

12 MR. JOHNSON: The codefendants'
13 statements, I guess that touches back on *Lyle* and
14 what the ruling is about. What's admissible as far
15 as other arrests from the three codefendants and I
16 didn't know if you ruled on that as far as --

17 THE COURT: I don't know that we -- I'm
18 not inclined to get into any arrests. We're not
19 getting into that, are we?

20 MR. OSBORNE: I think the only arrests
21 that I can remember in this case that would come
22 up, obviously, when Luther Smith was interviewed,
23 he was under arrest.

24 THE COURT: Right.

25 MR. OSBORNE: He's in custody and

1 everything.

2 THE COURT: And he was Mirandized.

3 MS. ZMROCZEK: That was for a drug
4 charge.

5 MR. OSBORNE: That was for a drug
6 charge; right?

7 THE COURT: Right.

8 MS. ZMROCZEK: And, Your Honor, I mean
9 --

10 THE COURT: There's no reason for us to
11 fight about drug charges in this case.

12 MS. ZMROCZEK: Right. And I'm
13 certainly not in a position right now to reveal my
14 strategy about how that will affect later. But I
15 think that's something that we can -- but,
16 obviously, drugs are coming, you know. So to try
17 to keep that out I think is just going to be
18 messier.

19 THE COURT: Well, I don't know that we
20 can. Okay. Mr. Leiendecker?

21 MR. LEIENDECKER: And as to Mr. Bailey,
22 there was in 2015 a drug arrest and also a UCAP
23 arrest. And so I'm not sure whether that -- the
24 State is attempting to bring that in or not since
25 they're going to deal with the gun as part of --

1 MR. OSBORNE: Stop the morning after,
2 Christopher Wright, the victim's dad, said to ask
3 who do you think did it. Said Pocket did it. They
4 go to talk to Pocket. When they talk to him, they
5 find that he has weapon in the car would have
6 charged him with the weapon, cocaine, and money.

7 THE COURT: Okay.

8 MR. LEIENDECKER: They charge another
9 individual with the weapon, another weapon as well.

10 MR. OSBORNE: Obviously, cross.

11 THE COURT: Okay. What else?

12 MR. OSBORNE: In August, I think it's
13 August 24th of 2016, the sheriff's office went to
14 Derrick Coleman's house wanting to speak to
15 Derrick. When they got there, they ended up making
16 arrests for simple possession of marijuana. Antly
17 Scott and Derrick Coleman were both arrested on
18 that day. That is very relevant to us in
19 establishing res gestae and some actions in
20 particularly Derrick Coleman. After that arrest,
21 he fled the state.

22 MS. ZMROCZEK: And I think that's where
23 -- I know that I don't represent Mr. Scott and I'm
24 certainly not prosecuting Mr. Scott, but there were
25 more than just marijuana that was found there and I

1 think that that's going to be -- I think we have
2 pictures of it. There are bullets, there are
3 things that I think are relevant that especially
4 to, you know, what I expect to be probably one of
5 their most important witnesses which is
6 Mr. Coleman.

7 And I certainly intend to venture into
8 what he had in his house, the fact that he fled,
9 this was the second -- I mean, he fled twice. So
10 -- because he fled once to Michigan, came back and
11 then that was without Mr. Scott if I understand
12 correctly, he fled to Michigan. But he did go with
13 Ms. Buxton and then comes back. Is arrested again
14 and then he and Mr. Scott go to Alabama. I don't
15 know if fled is right at this point --

16 THE COURT: Why don't we just say
17 visiting.

18 MS. ZMROCZEK: Right. Visiting. And I
19 think he has -- I think Mr. Coleman either grew up
20 there or spent some time there, has family there
21 because reading his text messages, I mean, he's,
22 you know, talking about showing Mr. Scott around
23 where he lives and those kind of things. And so I
24 do think that that's going to be relevant.
25 Obviously, as I cross examine, I will try to be

1 mindful of the issues with the codefendants, but I
2 think that's probably going to be one of the bigger
3 issues when we're trying it like this it's just
4 because, you know, there are things that I think I
5 need to explore on Mr. Smith's behalf.

6 THE COURT: Okay. All right.

7 MS. ZMROCZEK: And I guess the only
8 other thing, Judge, is when -- I received emails,
9 like five emails because I don't know who is
10 speaking with the *Times and Democrat*, but I feel
11 like they have a seat in this courtroom somewhere
12 because they have been publishing articles, after
13 articles, after articles. So, obviously, we would
14 -- before we even get started ask that you
15 specifically inquire.

16 THE COURT: Ask the jury?

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Not a problem. And the
19 news people are not in the courtroom. They're
20 listening on -- at -- like everybody else.

21 MS. ZMROCZEK: I mean, it was fairly
22 accurate. I just didn't see them. I was like,
23 wow!

24 THE COURT: Well, I'm glad to hear they
25 were accurate. You know, I quit reading what they

1 wrote about me, you know. So, but I will ask about
2 if anybody is doing that and caution them again.
3 And if we run into a problem, you know, we'll deal
4 with it. What else?

5 MR. OSBORNE: I'm so sorry. There was
6 a sequestration order for the witnesses. I forgot
7 to address this earlier. So we would request that
8 Donsha Shuler be allowed to be present if some of
9 her children, one in particular, the victim in this
10 case, testifies.

11 THE COURT: Okay.

12 MR. LEIENDECKER: Object to that, Your
13 Honor.

14 THE COURT: Huh?

15 MR. LEIENDECKER: I'll object to that,
16 Your Honor.

17 THE COURT: Tell me why.

18 MR. LEIENDECKER: If one of her
19 children, obviously, is the 14 year old, part of
20 where we're going to be is that his memory,
21 knowledge, and information has been shaped by his
22 family, not by his actual memory. I don't want his
23 mom in here sitting outside where he can see her
24 and coaching him or being an encouragement to him
25 to say the things that he's been told to say at

1 home.

2 THE COURT: How about just being here
3 as a comfort factor?

4 MR. LEIENDECKER: There are a bunch of
5 family members that will be here, Your Honor. So I
6 object to it. If these people are witnesses then
7 that's part of what we risk in what we take when we
8 have witnesses.

9 THE COURT: Okay.

10 MR. LEIENDECKER: And when a child
11 victim in a sex offense is protected by testifying
12 separately over video there's no parent sitting in
13 the room to hold their hand, encourage them, or
14 even sit at a distance and be a comfort to them.
15 And we're not talking a small child, we're talking
16 a 14 year old.

17 MR. OSBORNE: Well, Judge, the only
18 thing that I would say to that is there's obviously
19 information that's going to come out in this trial.
20 You were privy to some of that via the ex parte
21 communication. And I think that the fear that that
22 family has been put through since this incident
23 occurred is real. It's real. And I'm not --

24 MR. LEIENDECKER: If mom testifies
25 first; right?

1 MR. OSBORNE: -- and D.N. has
2 a right to get up here and testify and say what
3 happened. And his mom has been taking care of him
4 and keeping him safe this whole time, I think she
5 has a right to be in here as well. And, no, we do
6 not -- Donsha, we do expect to testify after
7 D.N. .

8 MR. LEIENDECKER: I'm just saying
9 that's how it works. If the -- there is no
10 sequestration order once someone's testified.

11 MR. OSBORNE: And the jury will be able
12 to witness and they will be able to judge the
13 credibility of the witness when he's on the stand.
14 The way we have it set up, Judge, I mean, we're
15 talking on the record, he's literally going to be
16 standing right -- sitting right there in front of
17 them, more so than any other trial we've ever had.
18 The mother will be sitting on the other side of the
19 courtroom. So if he's getting coached, which I
20 hope he doesn't, if he's getting coached they're
21 going to see that. It's a comfort thing. It's not
22 a coaching thing.

23 THE COURT: Okay. Well, you're not
24 calling him today?

25 MR. OSBORNE: I do plan on calling him

1 today.

2 THE COURT: All right. He's 14?

3 MR. OSBORNE: Fourteen now.

4 THE COURT: Okay. Well --

5 MR. OSBORNE: And, Judge, may I just
6 say one other thing? We've talked about that we
7 would have to do his competency hearing. If you
8 lean on my side, then I'll stop. If you're leaning
9 their side, then I would ask that you evaluate for
10 yourself when he gets up here and he does a
11 competency outside the presence of the jury and
12 then make the ruling then.

13 THE COURT: Okay. Let me listen to the
14 competency hearing when we do that. Okay. Then
15 I'll -- remind me to rule on this. Okay.

16 MR. OSBORNE: Yes, sir.

17 THE COURT: Okay. All right. What
18 else?

19 MR. OSBORNE: Nothing more from the
20 State.

21 MR. LEIENDECKER: As to the
22 sequestration order, the State obviously always has
23 an exception to that in that they bring the case
24 officer in with them and he sits with them and
25 helps them try the case. The Defense has primary

1 investigators and we would ask that we would be
2 given that same opportunity to have them in the
3 courtroom even though they're potentially on the
4 witness list. I'm not even certain they'll
5 testify.

6 THE COURT: Any objection to that?

7 MR. OSBORNE: None, Your Honor.

8 THE COURT: Okay.

9 MS. ZMROCZEK: And I think that goes
10 for all of us.

11 THE COURT: It goes for all of you.

12 MR. LEIENDECKER: Everybody has an
13 investigator.

14 MS. ZMROCZEK: Right. We all have our
15 own.

16 THE COURT: Okay. You through,
17 Mr. Leiendecker?

18 MR. LEIENDECKER: I'm sorry.

19 THE COURT: I just want to make sure
20 you had anything else I need --

21 MR. LEIENDECKER: No, that's all I know
22 that I have right now.

23 THE COURT: All right. Ms. --
24 Mr. Johnson, we're back finishing up your stuff?

25 MR. JOHNSON: I'm going to let Ms.

1 Zmroczek go if she had something else.

2 THE COURT: She's shaking her head like
3 the answer is no.

4 MS. ZMROCZEK: Which I know the court
5 reporter loves. Sorry.

6 MR. JOHNSON: Well, and the Solicitor
7 addressed my motion as far as the competency and
8 the pretrial motion there. So that's...

9 THE COURT: We'll do the competency
10 hearing. Okay.

11 MR. JOHNSON: I had a motion about the
12 Department of Motor Vehicles files and hearsay. I
13 guess -- I assume Your Honor wanted to assess that
14 as the testimony goes through and I make my
15 objections whether or not they've got the proper
16 foundation in the DMV records.

17 THE COURT: Oh, yeah.

18 MR. JOHNSON: Motion to reveal the deal
19 they -- the Solicitor, I believe, did address that
20 on the record if there's nothing additional then I
21 have -- unless the Solicitor says --

22 THE COURT: As I understand there is no
23 deal.

24 MR. OSBORNE: That's correct, Judge.

25 MR. JOHNSON: So that's been addressed.

1 And the motion, photographic lineup. The Solicitor
2 indicated there's no photographic lineup testimony
3 being used.

4 THE COURT: Right.

5 MR. JOHNSON: There's no jail call
6 messaging or any kind of recorded communication
7 from the jail that's being used.

8 MR. OSBORNE: That's correct.

9 MR. JOHNSON: Under the -- well, we've
10 hashed out those issues under the discovery motion.
11 I asked the Solicitor about additional, not just
12 related to what his motion to seal of certain
13 files, but whether or not there were other
14 statements provided or summaries provided. And
15 just to make sure we're accurate, Your Honor, the
16 last request I sent to Mr. Osborne --

17 MR. OSBORNE: I have it, Mr. Johnson.
18 Amanda Howard, Shyheim Lippman, and Lionell
19 McFadden, we haven't met with any of them today.
20 If we do, we'll let you know.

21 MR. JOHNSON: Okay. Judge, that covers
22 -- we don't have any statement summaries from them.
23 But that would cover that. And as far as, I guess,
24 the last one to address is the *Denno* when we get
25 into that clip. Like I said, I withdrew that

1 portion of my objection to that first clip that I
2 have seen this morning --

3 THE COURT: Right. And you're still
4 looking at the other two.

5 MR. JOHNSON: I've got two more I'm
6 looking at. I guess, we'll address that if Your
7 Honor want me to do that over lunch or I can do it
8 now --

9 THE COURT: Well, I don't know how soon
10 the clip's going to be used today?

11 MR. OSBORNE: No, Your Honor. At best,
12 tomorrow afternoon, but more likely Friday.

13 THE COURT: Okay. So you can do it
14 tonight.

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Rather than eat supper.

17 MR. JOHNSON: Yes, sir. Thank you,
18 Judge.

19 THE COURT: Okay. All right.

20 MS. ZMROCZEK: And the only other issue
21 and I'll discuss this with Mr. Osborne just maybe
22 we can work it out. But I may want to use in my
23 opening a photograph which I believe is going to
24 come in one way or the other. And so I'll show it
25 to him and discuss it and if he has an issue then

1 we can take it up before.

2 THE COURT: Okay. All right. And,
3 Mr. Leiendecker, nothing else from you?

4 MR. LEIENDECKER: No.

5 THE COURT: And Mr. Johnson has just
6 stood up again, so you can sit back down. Okay.
7 Mr. Johnson?

8 MR. JOHNSON: Do we need to address the
9 motion by the State anymore regarding third party
10 with a definition of what we're going to go into
11 with the third party guilt? They're trying to stop
12 us from talking about these lists of issues and I
13 didn't know.

14 THE COURT: You know, you can go in --
15 like we said, I believe I said and not we, you
16 know, you could ask them if they followed up on
17 whatever it was. But then you're going to be --
18 after that, you know, like you say what was the
19 results or something like that. You're going to be
20 stuck with whatever they say unless, you know, you
21 got -- you have some other information that you can
22 -- that you want to introduce into evidence.

23 MR. JOHNSON: So, I guess, Your Honor,
24 I'm just assuming you're saying it's appropriate to
25 ask an officer where was this person -- did you

1 question this person as a suspect in this case or
2 did you question -- yes. Well, where was this
3 person when the crime was committed. And whatever
4 the answer is, I think it's appropriate to ask,
5 well, how did you confirm that. And they could say
6 I spoke to this person or that person.

7 MR. OSBORNE: One hundred percent
8 hearsay. One hundred percent all day long.

9 THE COURT: Well --

10 MR. JOHNSON: Well, I'm not talking
11 about a statement. I'm saying, did you speak to
12 someone to -- how did you confirm it. If the
13 question is how did you confirm it --

14 MS. ZMROCZEK: Or did you confirm it.

15 MR. JOHNSON: -- or did you confirm it,
16 how did you confirm it. How is that hearsay?

17 MR. OSBORNE: That is one hundred
18 percent hearsay. Because how do you confirm
19 something, you talk to someone else. That's how
20 you confirm it. Or you look at phone records.
21 Hearsay. Hearsay. Hearsay.

22 MR. LEIENDECKER: It reaches a bit of a
23 level of a double standard. The State wants to be
24 able to call their officers and ask them did you
25 follow-up on it and what did you find out. Well,

1 how did you follow-up on it? You obviously talked
2 to people, you went to places, you investigated.
3 What's good for this goose is good for this gander.
4 We're not asking what somebody said.

5 MR. OSBORNE: Object.

6 MR. LEIENDECKER: You're not asking
7 what somebody said. You're not asking what someone
8 was told. You're asking what did you -- did you
9 follow it up.

10 THE COURT: Again, the same rule will
11 apply to the State. Okay. So, if he wants to get
12 into how he did it and you can object to hearsay on
13 that as well. Okay. In other words, what I'm
14 saying is, I think it's reasonable to go and ask if
15 they checked these leads or whatever like that.
16 But we're not going to go on these things for --

17 MR. JOHNSON: Well, it's absurd to
18 think that a Solicitor is not going to put up a
19 case where he has an officer say I went to talk to
20 this person or I went to talk to that -- they do it
21 all the time and they're going to do it this time.
22 For him to say I can't ask that question.

23 THE COURT: I didn't say you couldn't.

24 MR. JOHNSON: Well, yeah. That's the
25 Solicitor's argument.

1 THE COURT: Oh.

2 MR. OSBORNE: That wasn't exactly my
3 argument. You said where was he. Well, Culpepper
4 -- Shumpert has no idea where that dud was on the
5 night of the murder. But somebody else might. So
6 that question is going to illicit hearsay. I spoke
7 to so and so, they told me he was here. I did the
8 phone records, they said he was here. All that's
9 hearsay.

10 THE COURT: Guys, as much as I enjoy
11 listening to this, you know, I think y'all got a
12 general idea of where we can go. We can make it
13 hard. We can make it easy. However y'all want to
14 do it.

15 MR. JOHNSON: I'm sitting down.

16 THE COURT: All right. Good. Anything
17 else from the State?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: All right. So we going to
20 be ready at -- they coming in at 1:30; right?

21 MR. OSBORNE: Yes, sir.

22 THE COURT: Okay. Just out of
23 curiosity, have y'all looked -- I mean, have y'all
24 gone over any evidence or we're going -- has
25 anything been agreed on?

1 MR. OSBORNE: Oh, no. Judge, no, we
2 tried.

3 THE COURT: All right.

4 MR. LEIENDECKER: We've looked at it
5 all.

6 THE COURT: Okay. Just wanted to know.
7 It's more fun to do it piecemeal. That drags it
8 out. That way I don't have to do motions next
9 week, so it's good for me. Okay. All right. So I
10 will see y'all all at 1:30.

11 MR. OSBORNE: Yes, sir.

12 THE COURT: We'll all be in our places
13 smiling. Okay. All right. Thank you. We'll see
14 y'all at 1:30. Thank you.

15 (Lunch break)

16 THE COURT: Is the State ready to go?

17 MR. OSBORNE: Yes, Your Honor.

18 THE COURT: Mr. Leiendecker, are you
19 ready to go?

20 MR. LEIENDECKER: Yes, Your Honor.

21 THE COURT: Ms. Zmroczek?

22 MS. ZMROCZEK: Yes, Your Honor.

23 THE COURT: And, Mr. Johnson?

24 MR. JOHNSON: Yes, sir. I didn't know
25 if you wanted me -- just to the matter we talked

OPENING STATEMENT - MR. OSBORNE

1 THE COURT: All right. Thank you,
2 Mr. Osborne?

3 MR. OSBORNE: Thank you. Your Honor,
4 may it please the Court.

5 THE COURT: Yes, sir.

6 OPENING STATEMENT OF MR. OSBORNE:

7 MR. OSBORNE: It's summertime. There's
8 no school tomorrow. Hanging out. Late night.
9 Watching TV. Eating junk food. Playing board
10 games. Taking selfies in front of the mirror. It
11 is the best time for a kid.

12 July 14th, going into the early morning
13 hours of July 15th, it was just that night for an
14 8-year-old boy and his two older teenage sisters.
15 By all appearances, they were normal happy kids
16 leading a normal happy life. But when they were in
17 that house at [REDACTED] Old State Road in Holly Hill,
18 their lives were surrounded by danger. Because,
19 see, that house was not their house. They were
20 visiting. It was their dad's house. It wasn't
21 their momma's, it was their dad's. And their dad
22 was a dope dealer. That house was his stash house.

23 Now, maybe their dad thought, you know,
24 these kids are like shields, no one would break
25 into that home with kids being in there. No one

OPENING STATEMENT - MR. OSBORNE

1 would bring violence into that home with children
2 there. Well, his gamble was wrong. The violence
3 that these men brought on to that house that night
4 was horrific.

5 When Robert Bailey, Luther Smith, and
6 Antly Scott, and their accomplice were through,
7 there would be two adults and three children all
8 shot in the head, execution style. They didn't
9 care who was in that house that night. Children or
10 not, they were coming for the dope and they weren't
11 leaving without the dope. And once those bullets
12 started flying and the bodies started dropping,
13 they couldn't stop. Because at that point there
14 can be no witnesses.

15 Now, ladies and gentlemen, the Judge
16 sort of insinuated this, it's going to be a little
17 bit different. We provided to you notepads and
18 pens and normally we don't start like this, but I'm
19 going to start like this. I'm going to introduce
20 the players in this case. I'm going to start with
21 the victims.

22 Krystal Hutto. Krystal was addicted to
23 drugs. That house, that was her house. That was
24 Krystal Hutto's house. It was purchased for her by
25 her parents years before this incident. You're

OPENING STATEMENT - MR. OSBORNE

1 going to hear that those kids that were in that
2 house that night, they were not her biological
3 kids. But when the chips were down, Krystal did
4 all she could to save their lives.

5 Jerome Butler. Jerome Butler was also
6 addicted to drugs. Jerome was homeless and
7 harmless. He was sitting in a Camero drinking beer
8 when he was shot twice. Later, he would be shot in
9 the head while he lie on the ground.

10 Tamara Perry. Tamara was a 14-year-old
11 girl. These intruders made entry into the home by
12 kicking in the back door. When Tamara heard that,
13 she rushed herself into the kids' bedroom along
14 with her sister and her brother. Barricaded
15 herself in the room. Those intruders wanted in
16 that room so bad that when they forced entry into
17 that room, they destroyed the door. Tamara was
18 shot in the head while she lay on the ground in her
19 room.

20 Shamekia Sanders. Shamekia was the
21 oldest sister. She was 17 years old. Just 40
22 minutes after taking a selfie of herself in front
23 of the mirror, Shamekia would be shot while she lay
24 on the ground in that room.

25 [REDACTED] D.N. [REDACTED] . [REDACTED] D.N. [REDACTED] was an

OPENING STATEMENT - MR. OSBORNE

1 8-year-old boy at the time. [D.N.], like his
2 sisters, was visiting his dad for the summer. When
3 those intruders made entry into that home, [D.N.]
4 hid in the closet, but they found him. [D.N.]
5 would be shot in the head while he lay on the
6 ground in between his two sisters. All would die
7 that night except [D.N.]. For six long hours,
8 [D.N.] would fight for his life on the ground
9 covered in his blood and his sisters' blood with a
10 bullet lodged in his head. [D.N.] would not be
11 found until the following morning.

12 When his dad, Christopher Wright,
13 arrived at the house and when he did, he saw Jerome
14 Butler lying outside deceased, called 9-1-1. The
15 Orangeburg County Sheriff's Office responded to the
16 scene. With guns drawn, they entered that house.
17 And while clearing that house and witnessing the
18 carnage that they left, they heard a gasp. [D.N.]
19 was still alive. EMS was called. Paramedics
20 arrived on scene. They rushed [D.N.] out of that
21 house. Airlifted him to MUSC. [D.N.] survived.

22 All right. Those were the victims.
23 Now, let's talk about these guys. Robert Bailey.
24 You might hear people call -- well, you will hear
25 people call him "Pocket." Luther Smith. You might

OPENING STATEMENT - MR. OSBORNE

1 hear people call him "Joe" or "Joseph." And back
2 here, Antly Scott, you'll hear people call him
3 "Jackie Man." Jackie Man. And there's another
4 guy. Another defendant. His name is Derrick
5 Coleman. And I'm going to prepare you, Derrick was
6 involved in a motorcycle accident years before
7 this. As a result, he has sever burns about his
8 body and his face.

9 Derrick was the getaway driver that
10 night. And there are two other people who are
11 important in this case, Mark Windham who is
12 Luther's brother, and then Samantha Buxton.
13 Samantha Buxton is a white girl. She is Mark
14 Windham's or was Mark Windham's girlfriend.

15 All right. On the night of the
16 murders, you have Derrick, Antly, Luther, Samantha,
17 and Mark. They were all hanging out in Mark's
18 trailer in Eutawville getting high. As the night
19 went along, they ran out of dope. So Derrick,
20 Luther, and Antly, all left in Derrick's truck
21 looking for dope. They went to Pocket's house.
22 And when I'm talking about dope, I'm talking about
23 coke or meth. Pocket didn't have any dope, but he
24 sure knew where to find some. Preddy's house.
25 "Preddy" is Christopher Wright. Christopher Wright

OPENING STATEMENT - MR. OSBORNE

1 is the victims' dad. From there, they went to
2 Preddy's house.

3 Now, you're going to hear the
4 Orangeburg County Sheriff's Office responded,
5 worked the scene. You are not going to hear that
6 there are any fingerprints, any DNA, or any
7 footprints that put these Defendants at the crime
8 scene at the time of the murder. And we'll talk
9 about that. But what you will hear is hours after,
10 the very next morning, Pocket/Bailey, thought that
11 he was good. He was rolling around with a gun, a
12 wad of cash, and cocaine. Couldn't be better.
13 Then he heard something terrible. He got the worst
14 possible news that he could hear. There was a
15 survivor. And it wasn't just any survivor, it was
16 D.N. .

17 Now, see, this is really bad news for
18 Pocket. Because Pocket would see -- well, let me
19 put it this way, D.N. 's grandma lived right
20 behind Pocket, used to. Pocket would often times
21 go to visit D.N. 's aunt. Pocket would visit
22 D.N. 's mom. Pocket would come to Krystal
23 Hutto's house. D.N. knows Pocket. So from that
24 point on, Pocket is in a bad place. So he contacts
25 the one person that he knows who can give him

OPENING STATEMENT - MR. OSBORNE

1 information about D.N. and that's the aunt,
2 Veronica Bryant.

3 And you'll hear that over the next
4 couple of months, three times a day, Pocket is
5 calling Veronica with just one question. And I
6 think you can guess what it is: What does he
7 remember? What does D.N. remember? His concern
8 for D.N. would end one day when Veronica told
9 him, you're good, he doesn't remember anything.
10 But D.N. -- or Pocket was far from good.
11 Because what Pocket didn't know was that Veronica
12 didn't have the whole story.

13 These men thought that they had
14 silenced all the witnesses. These men thought that
15 they had erased all evidence of their guilt. They
16 thought that there would be no one left to tell
17 what they did. They were wrong.

18 Ladies and gentlemen, at the end of
19 this trial, I'm going to ask you to come back with
20 the only true and just verdict in this case. I'm
21 going to ask you to find them all guilty. I'm
22 confident you will. Four counts of murder, one
23 count of burglary in the first degree, and one
24 count of attempted murder. Thank you.

25 THE COURT: Thank you, Mr. Osborne.

OPENING STATEMENT - MR. JOHNSON

1 Mr. Leiendecker?

2 MR. LEIENDECKER: Thank you, Your
3 Honor. If it please the Court, on behalf of
4 Mr. Bailey, the Defendant would like to defer their
5 opening statement until the close of the State's
6 case and the beginning of the Defendant's case.

7 THE COURT: Sounds good. Thank you,
8 Mr. Leiendecker.

9 MR. LEIENDECKER: Thank you.

10 THE COURT: Ms. Zmroczek?

11 MS. ZMROCZEK: Your Honor, I think
12 Mr. Johnson is going to go first.

13 THE COURT: Oh, you're going to allow
14 him to go first?

15 MS. ZMROCZEK: I'm sorry.

16 THE COURT: Never mind. Come on,
17 Mr. Johnson.

18 MR. JOHNSON: Thank you, Your Honor.
19 May it please the Court.

20 THE COURT: Yes, sir.

21 OPENING STATEMENT BY MR. JOHNSON:

22 MR. JOHNSON: First thing let's do,
23 let's hang all the lawyers. Who said that? I
24 think it was Shakespeare. Not that I read
25 Shakespeare because I don't understand Shakespeare.

OPENING STATEMENT - MR. JOHNSON

1 But Shakespeare was writing about a fellow who was
2 wanting to take over the government. And it wasn't
3 just, oh, hate lawyers, it was hang all the lawyers
4 because the lawyers are only shuffling their papers
5 around, talking about people's rights, so got to
6 get rid of them.

7 The Judge just described the court as a
8 place of honor dedicated to the protection of
9 people's rights. And I thought that was wonderful.
10 And when you look at the government and people's
11 rights, well, this is the government right here.
12 The Solicitor and the police officers and all their
13 resources. They've got all the resources with law
14 enforcement, state law enforcement, everybody at
15 their disposal, that's the government.

16 And one thing I grew up with was my
17 father telling me stories about, well, sometimes
18 the government might got it right, sometimes the
19 government got it wrong. My father served career
20 military. He served World War II, Korea, and
21 Vietnam. He told me stories that stick with him
22 his whole life. He went over to Vietnam and they
23 said, well, he was grounded as a pilot because of
24 his hearing. And they said, well, you can be a
25 supply officer. We're going to send you to a place

OPENING STATEMENT - MR. JOHNSON

1 called Da Nang. And they told all his friends, you
2 can spray this agent orange, you can go around
3 spraying all this stuff, it will be just fine. And
4 all of his friends that were flying and spraying,
5 well, some people got sick, some people died. The
6 government got that wrong.

7 I remember stories about the government
8 saying, well, we're going to dump all the supplies
9 on the beach there in Vietnam at Da Nang on the
10 beach. And then my father's a supply officer and
11 he says, well, you know, I don't want to buck the
12 government, but the supplies are getting stolen off
13 the beach. They're stealing batteries. Might be a
14 problem. Batteries are used to launch rockets. So
15 what happens next? Tet Offensive. Thousands of
16 people storming the wire.

17 Sometimes the government just makes
18 mistakes. The government with all their resources,
19 all they have at their disposal, since the first
20 time this case started, I would say as you look at
21 the evidence presented, it's not just fair to look
22 at the evidence, but question is, what did they
23 fail to do? Listen to cross examination. Because
24 as the Judge said, this is a place of honor
25 dedicated to the protection of people's rights.

OPENING STATEMENT - MR. JOHNSON

1 One of those people, Antly Scott,
2 seated right back here, and if Mr. Scott can stand
3 up, I just want to make sure everybody sees him.
4 We're kind of crowded. This is my client, Antly
5 Scott. Mr. Scott is an innocent man. Let's get
6 that straight. We're all born innocent. Thank
7 you, Mr. Scott.

8 The whole purpose, the whole theory is,
9 you've got rights that you were born with given to
10 you by god. You're born innocent and you are
11 innocent unless and until the government can prove
12 you guilty beyond a reasonable doubt.

13 Now, the Judge will advise you as to
14 the law and you listen to the Judge about what the
15 law is. But they've got the burden and I would
16 submit to all of you that that man that Shakespeare
17 was writing about trying to take over the
18 government, he wanted to get rid of these lawyers,
19 to get rid -- to make sure this process did not
20 happen. Because the last line of defense for
21 citizens, the fair shake -- really is what it's all
22 about is about being fair, is the jury. It's the
23 jury.

24 The jury is there and that's what that
25 man wanted to get rid of. Because when the

OPENING STATEMENT - MS. ZMROCZEK

1 government makes a mistake, well, as I've
2 discussed, it can be devastating. So listen to the
3 evidence very carefully and, also, please, cross
4 examination and maybe the absence or the failure of
5 the State as it is outlined. Thank you.

6 THE COURT: Thank you, Mr. Johnson.
7 Ms. Zmroczek?

8 MS. ZMROCZEK: Your Honor, may it
9 please the Court.

10 THE COURT: Yes, ma'am.

11 OPENING STATEMENT BY MS. ZMROCZEK:

12 MS. ZMROCZEK: Good afternoon.
13 Innocence covered up by incompetence and lies.
14 Ladies and gentlemen, the evidence that the
15 government is going to present to you and the full
16 evidence that me, on behalf of Joseph Smith, is
17 going to present to you, is going to show you that
18 the evidence doesn't make sense. Ignorance covered
19 up with lies and incompetence.

20 He was 28 years old when I was
21 murdered. Who is that? Oh, my god, who's here?
22 Why are they here? Why are you yelling? They're
23 looking for the money. The counterfeit money that
24 we've been giving. They want the real money.
25 They're looking for the drugs. Not the cut drugs,

OPENING STATEMENT - MS. ZMROCZEK

1 but the real drugs that we've been cutting. I
2 don't know where he is. I just want to get high.
3 I just want to get high. I don't know where Preddy
4 is. I'll call him. Where are you? Where are you?
5 Why aren't you answering? There are people here.
6 Where are you?

7 Your daughter is calling maybe he'll
8 answer. I just want to get high. I just want to
9 get high. Look, I'll do whatever you want. I'll
10 do that. What's another blow job. I just need
11 those drugs. Can I please have those drugs? I
12 don't know where he is. I don't know what you
13 want. Please, please do not hurt those children.
14 Just -- can I just get high? Can I just do it?
15 (Sniffing a board) Please don't hurt them.

16 Ladies and gentlemen, Krystal Hutto did
17 that on Old State Road on July 15, 2015 along with
18 Shamekia, along with Tamara, and along with Jerome
19 Butler and D.N. was shot. The evidence that the
20 government's going to show you, it's that tunnel
21 vision. For months and months they're receiving
22 tips about counterfeit money, and you'll hear about
23 it. They're investigating all kinds of information
24 about people that are coming after Preddy, Chris
25 Wright and Krystal Hutto.

OPENING STATEMENT - MS. ZMROCZEK

1 You'll see phone records and text
2 messages and I'm so sorry to say this, but you're
3 going to see pictures and they're awful. And I am
4 sorry. Because what happened to all of them was
5 terrible. The only thing as terrible as what
6 happened to them is convicting an innocent man.

7 Ladies and gentlemen, Joseph Smith, my
8 client, with Mr. Lackey has been waiting six years,
9 six months, and 26 days for this day. There are
10 three defendants on trial. Joe, you'll hear
11 referred to as Luther. His name is Luther Joseph
12 Smith. Everybody calls him Joe except for the
13 police. Mr. Bailey and Mr. Scott, but I'm here to
14 talk to you about Joe.

15 This is what Joe looked like September
16 of 2016 when he was arrested. Not for this crime.
17 See, you'll hear about Joe and how he had a normal
18 life until it started to unravel when his wife left
19 him. And he had these issues with his mental
20 health, so he self-medicated with drugs. And if we
21 could put drugs on trial, I would gladly do that
22 because Krystal Hutto would be here. All of the
23 children would be here. But we can't. Obviously,
24 Joe looks a lot different today being clean for six
25 years -- or five years will do that to you.

OPENING STATEMENT - MS. ZMROCZEK

1 Mr. Osborne talked to you about some of
2 the players. So these are the storytellers that
3 are connected with Joe. His brother Mark, Mark's
4 girlfriend Samantha. You'll hear Samantha was a
5 girlfriend to a lot of people. Amanda or Cricket
6 who was Joe's girlfriend at the time. Mary Jo, his
7 mom. Okay. Most importantly, I think you'll hear
8 from this gentleman, Derrick Coleman.

9 Mr. Coleman, obviously, as you can see
10 and you will see when he testifies, Mr. Coleman was
11 in a bad accident several years ago. It had
12 nothing to do with anything, but it was just a
13 really horrific accident where he was burned and
14 caught on fire. He survived. Had a lot, a lot of
15 money. You will hear how much money he was getting
16 a month allowance to him. And Mr. Coleman was also
17 self-medicating, using drugs.

18 And Mr. Coleman met these people. He
19 actually met Joe through Joe's brother Mark, you'll
20 hear about that. Mr. Coleman was not really
21 friends with Joe. He was friends, but
22 acquaintances. He was friends with Mark. He was
23 friends with Mr. Scott. He knew maybe of
24 Mr. Bailey. But like Joe, Mr. Coleman was anxious,
25 easily manipulated.

OPENING STATEMENT - MS. ZMROCZEK

1 Because, ladies and gentlemen, what
2 you're going to see through all of the evidence,
3 not just little bits and pieces, but all of the
4 evidence that's presented is that this storyteller
5 right here, storyteller Shumpert for the
6 government, created this narrative when they
7 couldn't figure it out. When they refused to
8 follow leads, couldn't get anybody to cooperate,
9 everybody was lying. Mr. Wright you will hear was
10 lying then, who knows what he will do today or
11 tomorrow when he testifies.

12 But storyteller Shumpert figured it
13 out. He figured it out that he could take these
14 weak-minded individuals and he could make them
15 confess. And I will tell you, ladies and
16 gentlemen, it is not an easy thing to wrap your
17 head around. Because everybody will tell you. You
18 will tell yourself, there's no way that I would
19 confess to even being at a scene or being present
20 where something this horrific happened. But it
21 happens. And you'll see how. You'll see the
22 techniques. You'll see storyteller Shumpert
23 feeding information and then they regurgitate it
24 back.

25 And so he puts together these stories

OPENING STATEMENT - MS. ZMROCZEK

1 and they're all interdependent. He'll tell
2 Derrick, oh, Joseph -- he calls him Luther. Luther
3 told us this and then he'll tell Joe, ah, Derrick
4 says this. And he's building this story so that
5 they can close this case. The problem is is that
6 the story that Shumpert builds doesn't line up with
7 any of the evidence objective.

8 Ladies and gentlemen, you're going to
9 hear from digital forensics phone experts. You're
10 going to hear from false confession expert. You're
11 going to hear from experts and police procedure.
12 And then you're going to see with your own eyes how
13 these interviews took place, and how -- for
14 example, Mr. Coleman says, I called Mr. Scott who
15 was inside the house. They were taking too long.

16 Ladies and gentlemen, that's the beauty
17 of objective evidence. Because what we do is then
18 we go to the phone records and we see where the
19 call was. We go to the cell towers and we see
20 where those calls were made. And, ladies and
21 gentlemen, when you see that evidence you will see
22 that he wasn't there. But he said he was. But he
23 wasn't. And you'll see why he said he was.

24 This case isn't going to be easy. It's
25 not going to be fun. But it is going to be

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1 important. This is the most important job that you
2 have probably taken on to sit in judgement of
3 another man's life. And in order for you to do
4 that, we have to ask the questions. We have to ask
5 cross examination questions. We have to ask, why
6 didn't you do this? What did you do? How come
7 this? Why doesn't this make sense? Why did you
8 lie? Because without us asking questions, ladies
9 and gentlemen, you can't find the facts. And I
10 assure you, the facts you will find don't add up.

11 There are three human beings on trial.
12 And Judge Dickson told you, three separate people,
13 three separate cases, and we're going to do our
14 best to not be redundant. But there are very
15 important reasons why we have to ask these
16 questions.

17 Mr. Osborne outlined some of the
18 players for you. I hate that term players because
19 this is not a game. What happened to these family
20 members was awful. And we are -- we feel that
21 tragedy. It's not lost on us. They can't be
22 brought back. And that's not lost on us. The
23 Judge is going to tell you you can't base your
24 verdict on emotion. Because I'll tell you, every
25 time you hear -- and when you see D.N. who is

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1 now 14, but he was 8 years old when this happened
2 and it breaks your heart. But we picked you, we
3 picked each and every one of you because of the way
4 you answered your questions, the way you presented
5 yourself to us, because we knew that you were all
6 up for this job.

7 You'll hear from Chris Wright, the drug
8 dealer who set this -- who set this whole ball in
9 motion. You'll hear and see text messages from
10 Chris Wright's ladies. So he was engaged to
11 Krystal Hutto. He was also engaged to T'Carra
12 Woods. He was also having relations with Anna
13 Weatherford and Hope Clark. You will hear about
14 his friend -- friends. You will read their text
15 messages. You'll see him dealing drugs. You'll
16 hear about he had multiple residences. You'll hear
17 about his drug trafficking. Multiple phones. You
18 will see pictures of the cars. You'll see pictures
19 of the drugs.

20 Ladies and gentlemen, this is one thing
21 I've always had a problem with this case. As my
22 colleague here, Mr. Osborne says, they were drug
23 dealers going in for the drugs. Then why leave the
24 drugs. You'll see the drugs in the house. You'll
25 see these poor, poor victims execution style shot

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1 in the head and then you'll evaluate the evidence
2 and say are these drug addicts that good of a shot
3 and they were so ambitious to take these people out
4 that they just left the drugs. It doesn't make
5 sense, ladies and gentlemen. It does not make
6 sense.

7 You're going to hear that the
8 government is going to put on little clips what
9 they want you to see of interviews. Oh, well,
10 Mr. Smith said he was there. We're going to show
11 you all 12, all 12 of his confessions and how they
12 change and how they're fed and how they don't line
13 up with the physical evidence. We're going to show
14 that to you.

15 The State's also going to bring in some
16 snitches, my favorite. People who will tell you
17 what they want so that they can get some sort of
18 deal. And they'll say there's no deal. We'll
19 explore those. You'll hear and you'll see me and
20 I'm sure the other attorneys, ask questions, very
21 hard questions of Investigator Shumpert, of all the
22 other investigators because that's what we have to
23 do. Well, Ms. Zmroczek, it's so easy just to blame
24 the police. Everybody blames the police. Oh,
25 they're corrupt and confident.

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1 Ladies and gentlemen, what you're going
2 to see is these police, most of them aren't even
3 still employed with this force, but they let you
4 down. But more importantly, they let the victims
5 down. Because they didn't find out who did this.

6 You'll hear about the objective
7 evidence. The leads that we're going to talk
8 about, the phone calls that were coming in to say,
9 hey, I heard this. You should follow-up on that.
10 I know this. And they'll -- you'll hear that they
11 issued over 90 subpoenas for cell phones. But if
12 Mr. Joseph -- Luther Joseph Smith is so bad and he
13 was so guilty then why not get his phone records so
14 that he -- we can find out where he is. Because
15 guess where he wasn't?

16 We finally get some phone records on
17 Friday, six years later, of a cell tower right by
18 the house on Old State Road. Guess who's phone
19 does not show up there? Joe, because he wasn't
20 there. He was at home passed out because his blood
21 pressure medicine had to be fixed just a few days
22 earlier and you'll hear about that.

23 You'll hear about motorcycles. This
24 motorcycle is the biggest red herring that I've
25 every seen in my life. They're going to concoct a

OPENING STATEMENT - MS. ZMROCZEK

1 story, Storyteller Shumpert has it all planned out
2 in his head that Mr. Bailey and Mr. Wright who were
3 friends, in fact, you'll see a text message that
4 they're wishing each other Happy Father's Day. But
5 yet they want you to believe -- who I don't
6 represent Mr. Bailey, but we're all lumped in
7 together because it's easier that way for the
8 government. He says Happy Father's Day to
9 Mr. Wright, but then they want you to believe that
10 he goes and shoots somebody in the head.

11 And you'll hear the evidence that, oh,
12 Joe was just there. He didn't shoot anybody.
13 There's not going to be any evidence that the
14 government thinks my client shot anyone. But they
15 have to put him there so that they can try to tie
16 this case up. You'll see the interrogations.

17 But, ladies and gentlemen, when you
18 look at all this evidence, I want you to be on the
19 lookout for these red herrings. Because that's
20 what the government wants to focus on are things
21 that will distract you from the actual, actual
22 evidence in this case.

23 George Orwell said, in a time of
24 universal deceit, telling the truth is a
25 revolutionary act. We have inherited a mess of an

OPENING STATEMENT - MS. ZMROCZEK

1 investigation. And we have fought hard to uncover
2 the truth. Because the truth is what those
3 families deserve and the truth is what Joe Smith
4 deserves.

5 Ladies and gentlemen, we're going to
6 ask you that you sanctify them with your truth,
7 your word. Your word is your truth. Judge Dickson
8 told you Joe was innocent until proven guilty
9 beyond a reasonable doubt. Ladies and gentlemen,
10 false stories, false confessions, and no
11 corroboration which is why, hopefully next week,
12 maybe later, I'm going to stand back up here and
13 I'm going to ask that you find him not only not
14 guilty, but innocent because the State got it
15 wrong. Thank you.

16 THE COURT: Thank you, Ms. Zmroczek.
17 Mr. Osborne, is the State prepared to call it's
18 first witness?

19 MR. OSBORNE: We are, Your Honor.

20 MS. GLOVER: The State calls Damien
21 Clinton.

22 DAMIEN CLINTON,
23 being first duly sworn, was examined and testified
24 as follows:

25 THE CLERK: You may be seated. Please

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 state your first and last name for the record.

2 MR. CLINTON: Damien Clinton.

3 THE COURT: Do you mind taking -- do
4 you feel comfortable taking your mask off so the
5 jury can see you and also hear you better?

6 MR. CLINTON: Yes, sir.

7 THE COURT: Thank you, sir. Ms.
8 Glover, he's your witness.

9 MS. GLOVER: Thank you, Your Honor.

10 THE COURT: Thank you, ma'am.

11 DIRECT EXAMINATION BY MS. GLOVER:

12 Q. Deputy Clinton, where do you currently
13 work?

14 A. Orangeburg County Sheriff's Department.

15 Q. How long have you been there?

16 A. Been there since 2008.

17 Q. Any prior law enforcement experience?

18 A. Yes, ma'am. I worked 12 years in
19 Santee Police Department before coming here.

20 Q. Okay. Back in July of 2015, where were
21 you working?

22 A. I was working in the east region of
23 Orangeburg County.

24 Q. What area does this include?

25 A. Basically the Elloree, Santee, Holly

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 Hill, Eutawville, Bowman, Vance area.

2 Q. How many patrol deputies are there
3 working in the east division at any particular
4 time?

5 A. Usually working on the road there's
6 two.

7 Q. That sounds like a lot of ground for
8 two deputies?

9 A. Yes, ma'am.

10 Q. Did you have the occasion to respond to
11 [REDACTED] Old State Road in Holly Hill?

12 A. Yes, ma'am.

13 Q. Is that resident -- Deputy Clinton, can
14 you speak really, really loud so that our court
15 reporter can get everything that we're going
16 through right now as loud as you can?

17 A. Yes, ma'am.

18 Q. Thank you. Take it up a few --

19 A. Yes, ma'am.

20 Q. Okay. Is [REDACTED] Old State Road, is that
21 in the County of Orangeburg?

22 A. Yes, ma'am.

23 Q. And what is the nature of the call when
24 it was dispatched?

25 A. We were dispatched in reference to a

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 shooting incident.

2 Q. And what time were you dispatched?

3 A. It was around 6:48 a.m.

4 Q. Did you respond by yourself or with
5 someone else?

6 A. Myself and Deputy Lawrence was working
7 the east region that day.

8 Q. Where were you responding from?

9 A. The Santee area.

10 Q. About how long did it take you to
11 arrive on scene?

12 A. That morning when they called it was
13 around seven to ten minutes.

14 Q. Were you the first to arrive on scene?

15 A. No, ma'am.

16 Q. Did any other law enforcement arrive on
17 scene with you?

18 A. Deputy Lawrence arrived right before I
19 did and also there was a DR -- DNR officer that
20 arrived on scene also.

21 Q. Other than law enforcement, was there
22 anyone else at the home when you got there?

23 A. Pulling in the yard we met two young
24 subjects standing in the yard.

25 Q. Did you later identify them?

1 A. Yes, ma'am.

2 Q. Who were they?

3 A. The first gentleman that we talked to
4 was Christopher Wright and the next one was Her'Von
5 Grayson.

6 Q. Did Christopher Wright tell you who he
7 was?

8 A. At the time he said, my family -- I'm
9 not sure exactly who he was at the time, but later
10 learned that he was the father of the children
11 there.

12 Q. After speaking to them, did you observe
13 anything in the yard?

14 A. Yes. There was a male subject laying
15 on the ground next to a red vehicle that was parked
16 beside the residence.

17 Q. How did he appear?

18 A. When we went to check on the subject,
19 he seemed to be nonresponsive at the time when we
20 went to check on him.

21 Q. Did you see if he was dead or alive?

22 A. He was nonresponsive. He seemed to be
23 dead at the time that we checked him.

24 Q. At this point, did you know if
25 Christopher or Her'Von were involved in this

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 incident?

2 A. No, ma'am, we wasn't sure what we had
3 at the time yet.

4 Q. And what did you do with them?

5 A. Basically, we went back to them and
6 advised them that we were going to place them in
7 the vehicle. Both were placed in two separate
8 vehicles until we can check, further investigate.

9 Q. And after securing them in the car,
10 what did you do?

11 A. Basically, we went to the residence to
12 the back door of the residence to go secure the
13 residence because of the fact that he was saying
14 his family was inside. We basically drew our guns
15 out, called out from the door, and proceeded to
16 check the residence.

17 Q. Who all entered the home?

18 A. Myself, Deputy Lawrence, and DNR
19 Officer Cume.

20 Q. Did you have any idea if the person or
21 persons who shot the man outside were still in the
22 home?

23 A. No, ma'am, we wasn't sure what we would
24 find inside the residence.

25 Q. But you did have your guns drawn?

1 A. Yes, ma'am.

2 Q. Where did you enter the home?

3 A. The back door of the residence where
4 the carport's at.

5 Q. As a police officer, are you trained to
6 be careful when responding to a scene as to not
7 tamper or contaminate evidence?

8 A. Yes, ma'am, as much as possible.

9 Q. But is there a greater concern or
10 responsibility that officers have when responding
11 to crime scenes?

12 A. Well, usually especially at that time
13 we was trying to find any suspects or victims and
14 see if we could render aid to anybody that needed
15 it.

16 Q. All right. When you entered, did you
17 make note of anything about the door?

18 A. The back door that we entered, there
19 was damage near the lock area on the door and the
20 frame seemed to be like it was forced open some
21 type.

22 Q. Briefly explain to the jury the layout
23 of the home upon entering?

24 A. Basically entering the back door of the
25 residence there was like a kitchen area and a

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 living room area, they were kind of together like
2 an open floor plan. We could see that there was a
3 bunch of items and items on the floor that may have
4 been like out of drawers or thrown down or
5 whatever.

6 Q. Inside of the living room, could you
7 see any other rooms in the house?

8 A. Yes, ma'am. There was a door to the
9 left of the house -- to the left of us after we
10 entered through the kitchen into the living room.
11 And there was two additional doors to the right in
12 the hallway.

13 Q. Describe to the jury what you saw
14 inside the home?

15 A. Like I said, it was a lot of items that
16 were on the counter or wherever they were, they
17 were thrown about. The drawers were opened, like
18 cabinet doors or whatever opened in the residence.
19 Seemed like it was searched through or went
20 through, ransacked type.

21 Q. Did you see any people inside?

22 A. As we entered the first bedroom to the
23 left of the residence, yes.

24 Q. Who did you see?

25 A. A female subject that was on the floor

1 there. She was nonresponsive. Seemed to be
2 deceased at the time.

3 Q. You mentioned the female suspect, did
4 you see any children?

5 A. Yes, ma'am. After we left the room
6 with the female subject, we went to the right of
7 the residence and checked the two other rooms there
8 after we got through the hallway and got to the
9 last bedroom. There were three children that were
10 on the floor laying in the room.

11 Q. How did those children appear to be?

12 A. At first sight, they seemed to be
13 nonresponsive. There was one -- the first female
14 we encountered, she was laying down. Her foot was
15 closer to the door. Her head was to the wall.
16 There was a male subject that was laying there and
17 another female subject. Her foot was kind of
18 closest to the wall and her head was closer to the
19 door area.

20 Q. So there were three children?

21 A. Yes, ma'am.

22 Q. Did you see blood in the area?

23 A. Yes, ma'am, there were blood on the
24 victims there and around in the floor area.

25 Q. Did EMS arrive?

DAMIEN CLINTON - DIRECT EXAMINATION BY MS. GLOVER

1 A. Yes, ma'am. They were outside at the
2 residence at the time when we were checking. When
3 we realized that Deputy Lawrence when we were
4 cleaning the last room where the children were, he
5 realized that one of the children was responding.
6 He yelled out that we had one responding. But then
7 got EMS to come in and check the victim that we had
8 that seemed to be responding.

9 Q. Which of the victims did you see
10 responding?

11 A. It was the little boy that was there.

12 Q. How did they get the little boy out of
13 the house?

14 A. Basically, when they came in and
15 checked his vitals and they realized that he was
16 still alive, they were starting to get the
17 stretcher, but realized that the stretcher wouldn't
18 have been able to get in the residence to where he
19 was. Things were thrown around and the tightness
20 of it, so they basically grabbed sheets off the bed
21 there and put him in the sheets and brought him out
22 in the sheets.

23 Q. Which path did EMS take in carrying the
24 boy out of the home?

25 A. When leaving the bedroom, there's a

1 hallway. You go into the hallway which opens out
2 into the kitchen and the living room area. Leaving
3 out the kitchen and going out the back door that we
4 came in onto the carport.

5 Q. Could you see if the boy was bleeding?

6 A. Yes, ma'am, he still was bleeding.

7 There was blood coming from his head area.

8 Q. I'm showing you now what has been
9 marked as State's 205. Could you take a look at
10 this and tell me if you are able to recognize it?

11 A. Yes, ma'am.

12 Q. If you could take a look at this again.
13 Is this how the children appeared to be when you
14 saw them?

15 A. Yes, ma'am, except for the young man is
16 missing from the picture.

17 Q. And is this a fair and accurate
18 depiction of how that room looked that day when you
19 entered?

20 A. Yes, ma'am.

21 MS. GLOVER: Your Honor, at this time,
22 we have no other questions.

23 Q. Mr. Clinton, please answer any
24 questions the Defense may have.

25 A. Yes, ma'am.

DAMIEN CLINTON - CROSS EXAMINATION BY MS. ZMROCZEK

1 THE COURT: All right.

2 Mr. Leiendecker, do you want to go first?

3 MR. LEIENDECKER: I think we'll
4 probably have Ms. Zmroczek, Mr. Johnson, and myself
5 for cross, Your Honor.

6 THE COURT: Ms. Zmroczek?

7 MR. OSBORNE: Your Honor, beg the
8 Court's indulgence for one second. We need to
9 adjust the monitors here. I'm not sure if I know
10 exactly how to do it.

11 (WHEREUPON, Defendants' Exhibit Number
12 1 was marked for ID)

13 CROSS EXAMINATION BY MS. ZMROCZEK:

14 Q. Good afternoon. It's Deputy Clinton;
15 right?

16 A. Yes, ma'am.

17 Q. How are you today?

18 A. Fine. Yourself, ma'am?

19 Q. Good, thank you. So you were working
20 that day?

21 A. Yes, ma'am.

22 Q. And what vehicle were you driving?

23 A. The patrol car I was driving?

24 Q. You had a patrol car?

25 A. Yes, ma'am.

1 Q. Okay. That's where I was going. So in
2 Orangeburg, are your patrol cars equipped with
3 dashboard cameras?

4 A. No, ma'am.

5 Q. No, ma'am? Did you say, no?

6 A. No, ma'am.

7 Q. Okay. Sorry. Okay. So you just were
8 on patrol, no dash cam, you get the call, explain
9 to the jury how you get that call. How does that
10 work? How do you know where to go?

11 A. Basically, we get a call from our
12 dispatch through our radio system.

13 Q. Okay. So there's an elaborate -- a
14 call comes in to 9-1-1 and they have it all planned
15 out to know who or how to send out notice that
16 people, such as yourself, deputies need to respond
17 to a location; right?

18 A. Yes, ma'am.

19 Q. And they give you the address?

20 A. Yes, ma'am.

21 Q. And do they give you a description of
22 the event or what's going on at that time?

23 A. If they're familiar with any
24 information that was going on they may.

25 Q. So what information did you have as

1 you're arriving first on the scene?

2 A. As far as I can remember, ma'am, we
3 just had a shooting incident.

4 Q. Just a shooting incident, that's all
5 you knew?

6 A. Yes, ma'am.

7 Q. Okay. So you -- now, did you have a
8 partner or you were riding solo?

9 A. We ride solo.

10 Q. Okay. But there were other people that
11 -- it just doesn't go -- the call just doesn't go
12 to you, it goes out countywide; right?

13 A. To all the people that's on our
14 frequency, yes, ma'am.

15 Q. On your frequency. Okay. And so you
16 then arrive at the location; right?

17 A. Yes, ma'am.

18 Q. And tell the jury about the dog. Was
19 there a dog?

20 A. There was a dog at the incident, ma'am.
21 I'm not familiar with anything else. I don't
22 recall.

23 Q. Okay. All right. And let me ask you
24 this, did you happen to write a report for this
25 case?

1 A. No, ma'am.

2 Q. You didn't write a report?

3 A. No, ma'am.

4 Q. Is that something typically that you
5 would do or was there a specific reason why you
6 didn't write one in this?

7 A. No, ma'am.

8 Q. Okay. So I'm going to show you what's
9 been marked as Defense Exhibit 1 and ask if you
10 recognize that document.

11 A. It's a crime scene log, yes, ma'am.

12 Q. A crime scene log; right? And so tell
13 the jury what a crime scene log is.

14 A. Basically, a crime scene log is if we
15 go to a call and it's labeled as a crime scene and
16 it has to be investigated, anyone that enters that
17 crime scene just signs into that log saying that
18 they were there on the scene.

19 Q. Okay. And so -- and did you do that in
20 this case?

21 A. Yes, ma'am.

22 Q. Okay. And what time does it say that
23 you arrived and entered the crime scene?

24 A. 7:06.

25 Q. A.m.?

DAMIEN CLINTON - CROSS EXAMINATION BY MS. ZMROCZEK

1 A. It just says 7:06, so, I'm guessing.

2 Q. And that was July 15, 2015?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. ZMROCZEK: Your Honor, at this time
6 we would move Defendants' 1 into evidence.

7 THE COURT: Any objection?

8 MS. GLOVER: No, Your Honor.

9 THE COURT: Okay. Defendants' 1 is in
10 evidence without objection.

11 (WHEREUPON, Defendants' Exhibit Number
12 1 was entered)

13 Q. Deputy Clinton, she had showed you
14 State's 25 just for ID purposes; right? She showed
15 you a picture of State's 25 and you said the only
16 thing that was different than what you saw was that
17 the boy wasn't there; right?

18 A. Yes, ma'am.

19 Q. But other than that, that's how when
20 you as you're entering the room that's what you
21 see; right?

22 A. Yes, ma'am.

23 Q. Okay. You stated that the residence
24 appeared -- you could tell that drawers were open
25 -- that items were disturbed; right?

1 A. Yes, ma'am.

2 Q. Okay. And was that just in one area or
3 was that throughout the house?

4 A. It seemed to be in the kitchen area,
5 the living room area, the hallway, things were on
6 the floor. I'm not sure how the residence usually
7 is, but there was things on the floor all over the
8 residence.

9 Q. Okay. And you've received training
10 that when you entered a crime scene like that,
11 obviously, you're wanting to make sure that the
12 scene is safe, that there aren't people there that
13 need help, those are your first primary concerns;
14 right?

15 A. Yes, ma'am.

16 Q. And, additionally, you're trying not
17 to, what we call, contaminate the crime scene;
18 right?

19 A. Yes, ma'am.

20 Q. So you see the kitchen, it's got stuff
21 on the floor, so you're not marching around in it;
22 right?

23 A. No, ma'am.

24 Q. Okay. So you -- but you saw stuff and
25 you make sure to do the best that you could to keep

DAMIEN CLINTON - CROSS EXAMINATION BY MR. JOHNSON

1 it the way it was?

2 A. Yes, ma'am, as safely as possible.

3 Q. As safely as possible. And, Deputy
4 Clinton, I believe those are all the questions I
5 have for you. Thank you.

6 THE COURT: Thank you, Ms. Zmroczek.
7 Mr. Johnson, any questions of this witness?

8 MR. JOHNSON: Just briefly, Your Honor.

9 CROSS EXAMINATION BY MR. JOHNSON:

10 Q. Officer, so just to kind of reiterate.
11 You're going to go in and want to preserve, make
12 sure if there's any DNA evidence that you don't
13 disturb it?

14 A. Repeat the question, sir.

15 Q. You're trained to go in and try not to
16 disturb evidence like DNA evidence; correct?

17 A. Just evidence in general, yes.

18 Q. Yeah, evidence in general. So whether
19 it's fingerprint evidence, or DNA evidence, or
20 whether it's, you know, prints out on the ground,
21 whatever, you're trained to make sure you preserve
22 that to the best of your ability, that's what you
23 did; correct?

24 A. Yes.

25 Q. So that it's accurate when that

1 evidence is collected by someone else to determine
2 what happened?

3 A. I don't understand the question.

4 Q. The purpose of that is to make sure
5 it's accurate, that the evidence when it's
6 collected it's accurate, it's not contaminated or
7 destroyed by you?

8 A. Yes, sir.

9 Q. Okay.

10 MR. JOHNSON: That's all I have, Judge.

11 THE COURT: Thank you, Mr. Johnson.

12 Any questions of this witness, Mr. Leiendecker?

13 MR. LEIENDECKER: Very briefly. Enjoy
14 being third as most questions are asked.

15 CROSS EXAMINATION BY MR. LEIENDECKER:

16 Q. Deputy Clinton, when you arrived at the
17 scene, you described the other individuals that you
18 saw there at the time. There was a DNR officer,
19 there was Deputy Lawrence of the Orangeburg County
20 Sheriff's Office and there were two witnesses or
21 suspects that I think you said you didn't know
22 which they were so you described them as that; is
23 that correct?

24 A. Subjects, yes, sir.

25 Q. And those two subjects that weren't law

DAMIEN CLINTON - CROSS EXAMINATION BY MR. LEIENDECKER

1 enforcement, one of them was Christopher Wright and
2 the other was, I'm sorry, the name?

3 A. Mr. Grayson.

4 Q. Mr. Grayson. And did you gather
5 information from Mr. Wright and Mr. Grayson about
6 why they called and what they had seen?

7 A. I didn't.

8 Q. Okay. And what did Mr. Wright tell
9 you?

10 A. No, I said I didn't.

11 Q. Did -- you didn't know anything that
12 Mr. Wright had said?

13 A. No, sir.

14 Q. Okay. When you arrived, had someone
15 else spoken to Mr. Wright?

16 A. Yes, sir.

17 Q. Okay. And who would that have been?

18 A. Would have to be Deputy Lawrence.

19 Q. Okay. Well, if I misunderstood in your
20 testimony before you described that Mr. Wright
21 suggested that his family was inside the house.

22 A. Yes, sir, he wasn't talking -- he was
23 basically having a conversation with them, but I
24 could hear from where I was at getting out of my
25 vehicle, yes.

1 Q. Okay. So you heard him say his family
2 was in the house?

3 A. Yes, sir.

4 Q. Okay. Did you hear him say he had gone
5 in the house and checked on his family?

6 A. No, sir.

7 Q. Did he say he had gone in the house?

8 A. I'm not sure if he said that.

9 Q. Okay. When you entered the house, you
10 along with Lawrence and the officer from DNR,
11 looked through the house to see if there were
12 family members inside the house; is that correct?

13 A. Yes, sir.

14 Q. Okay. And you found Ms. Hutto in one
15 bedroom and down the hall at the last bedroom you
16 found the children; is that correct?

17 A. Yes, sir.

18 Q. Okay. And when you looked in the
19 bedroom and saw the children, you described them as
20 all laying pointing towards the door or away from
21 the door in one spot on the floor; is that correct?

22 A. Yes, sir.

23 Q. And could you see them, the children
24 plainly, when you walked in the bedroom?

25 A. Yes, sir.

DAMIEN CLINTON - CROSS EXAMINATION BY MR. LEIENDECKER

1 Q. And what else did you see on the floor
2 with the children?

3 A. There was clothing, the bed seemed to
4 be had -- the mattress wasn't matching up. Just
5 other items.

6 Q. There was -- and blood from the
7 shooting; correct?

8 A. Yes, sir.

9 Q. But they were laying on the floor
10 uncovered; correct?

11 A. Yes, sir.

12 Q. Okay.

13 MR. LEIENDECKER: I don't think I have
14 any further questions.

15 THE COURT: Anything on redirect?

16 MS. GLOVER: No, Your Honor.

17 THE COURT: You may step down. Thank
18 you, Deputy Clinton. Is the State prepared to call
19 its next witness?

20 MR. OSBORNE: We are, Your Honor.

21 MR. OSBORNE: The State calls
22 Christopher Wright.

23 MR. LEIENDECKER: Your Honor, may we
24 approach?

25 THE COURT: Sure.