

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ELBERT DANIELS, JR.

RECEIVED
APPELLANT
DEC 23 2019

APPELLATE CASE NO. 2018-001630

SC Court of Appeals

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

FROM 8/22/2018: STATE'S EXHIBIT #1 (PHOTO BOARD), STATE'S EXHIBIT #2 (CD STATEMENT JAMES DANIELS), STATE'S EXHIBIT #3 (CD SECOND INTERVIEW JAMES DANIELS); FROM 8/27-30/2018: STATE'S EXHIBIT #2 (REDACTED COPY OF DANIEL'S LETTER), STATE'S EXHIBIT #3 (COPY OF DOCUMENT – JAIL LETTER), STATE'S EXHIBIT #5 (PHOTO), STATE'S EXHIBIT #6 (PHOTO), STATE'S EXHIBIT #17 (DVD), STATE'S EXHIBIT #18 (DVD-ARROWHEAD), STATE'S EXHIBIT #19 (DVD-OAK), STATE'S EXHIBIT #20 (DVD-OAK), STATE'S EXHIBIT #146 (DVD – VIDEO FROM JAIL), STATE'S EXHIBIT #167 (DVD – DANIEL'S INTERVIEW), STATE'S EXHIBIT #168 (DVD- DANIEL'S INTERVIEW)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2015-GS-26-01752, 01764, & 01766

STATE OF SOUTH CAROLINA,)
) **Transcript of Record**
Plaintiff,)
)
vs.) August 22, 2018
)
JAMES ELBERT DANIELS,)
JR.,)
)
Defendant.)

B E F O R E:

Honorable Robert E. Hood
Horry County Courthouse
Conway, South Carolina

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

Scott R. Hixson, Esquire
Attorney for Plaintiff

Barbara W. Pratt, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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EXHIBITS

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3	S1	1 Photo board (9 photos)	4	
4	S2	CD Statement James Daniels	4	
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1 AUGUST 22, 2018 - 11:42 A.M.

2 STATE'S EXHIBIT NUMBERS 1 THROUGH 10

3 MARKED FOR IDENTIFICATION

4 BY THE COURT:

5 THE COURT: All right. We are on the record in the State
6 of South Carolina versus James Elbert Daniels, Jr. This is
7 indictment -- one of the -- I'm just going to read one of the
8 indictment numbers, but indictment number 2015-GS-26-01763.

9 Are you Mr. Daniels?

10 MR. DANIELS: Yes, sir.

11 THE COURT: All right. Good morning, how are you?

12 MR. DANIELS: I'm doing good.

13 THE COURT: Good. And you got transported in from SCDC
14 one day last week; is that right?

15 MR. DANIELS: Yes, sir.

16 THE COURT: Okay. Good. And Mr. Daniels is present here
17 today with his attorney, Barbara Pratt. Barbara Pratt, who
18 has been appointed to represent him. The state is present
19 represented by Deputy Solicitor Scott Hixson. This case is on
20 the trial date for next week. And so, the attorneys reached
21 out to me, I don't know, probably last week and said they had
22 some pretrial issues, could we get together ahead of time and
23 work through some of those to make the trial move more
24 efficiently and just do all the things that we do and not
25 having to keep a jury waiting and things of that nature for

1 just good common sense court efficiency, so I was able to
2 procure a court reporter for today. And thank you for being
3 here. And we'll go ahead and get started. And is everybody
4 ready to proceed this morning?

5 MR. HIXSON: Yes, indeed, Your Honor.

6 MS. PRATT: Defense is ready, Your Honor.

7 THE COURT: Okay. Wonderful.

8 All right. So, it's my understanding that there are some
9 statements allegedly that have been made by Mr. Daniels in the
10 course of this case and this investigation and we need to do a
11 *Jackson v. Denno* or *Missouri v. Seibert* hearing on those
12 statements. Is that right, Ms. Pratt?

13 MS. PRATT: That is correct, Your Honor.

14 THE COURT: Okay. And you want to start with that; is
15 that okay?

16 MS. PRATT: I think that would be the most efficient
17 motion to start with, Your Honor.

18 THE COURT: Okay.

19 MS. PRATT: And certainly the state, I believe, would be
20 calling one of the detectives to set the stage in regards to
21 the interviews.

22 THE COURT: And is the state ready to go forward on the
23 state -- the issues concerning -- any issues that may exist
24 concerning the statements?

25 MR. HIXSON: Yes, indeed, Your Honor.

1 THE COURT: Okay. All right.

2 MR. HIXSON: At this time, the state would call Detective
3 Greg Lent from the Horry County Police Department.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 GREG LENT, HAVING BEEN DULY SWORN

7 TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated.

9 THE COURT: And would you spell your last name for me
10 please, sir?

11 MR. LENT: Yes, sir. It's Lent, L-E-N-T.

12 THE COURT: Okay. Thank you very much.

13 Mr. Hixson, you may proceed.

14 MR. HIXSON: Thank you, Your Honor.

15 DIRECT EXAMINATION OF GREG LENT BY MR. HIXSON:

16 Q: Good morning, sir. How are you?

17 A: Good, how are you?

18 Q: Please tell this Court what you do for a living?

19 A: I'm a Senior Detective assigned to the Investigations
20 Division of the Horry County Police Department.

21 Q: Okay. Since the jury is not here, we're going to try to
22 get straight to the point in a little bit. Okay? Were you
23 working back in January of 2015?

24 A: I was.

25 Q: Did you have -- come to find yourself involved in the

1 investigation of a series of armed robberies and murders that
2 happened in Horry County around -- from January 2nd to January
3 25th of 2015?

4 A: I did.

5 Q: Okay. Tell us about the later stages of that, about the
6 circumstances that ultimately gave rise to you coming in
7 contact with James Daniels?

8 A: During the course of the investigation, Mr. Daniels had
9 been identified as a person of interest, somebody that we
10 would want to go speak to. We ended up at a residence out in
11 the Nichols area of Horry County, where we believed that he
12 was staying and made contact with his girlfriend.

13 Q: Can you stop for a second because they may be instructive
14 for the Court for later on. Can you talk about how you came
15 to find out this name and what, what, what the investigation
16 division was doing when this information generated?

17 A: We were reviewing surveillance video from a number of
18 different crimes. While we were reviewing that video, we
19 noticed a few things and there was one individual, that ended
20 up being identified as Mr. Daniels, inside the store prior to
21 one of the armed robberies.

22 Q: And which armed robbery was that that you saw on the
23 video, this -- this is more important for the next one, you
24 may as well not testify twice, so let's get the testimony.
25 So, were you looking -- let me get to the point. Were you

1 looking at the surveillance video of the 905/Red Bluff crime
2 that occurred on January 2nd?

3 A: Yes.

4 Q: Okay. Tell us about that?

5 A: So what -- there were a number of detectives or officers
6 in a conference room while the video was playing. At one
7 point, Mr. Daniels was seen inside the store making a purchase
8 and one of the officers was familiar with Mr. Daniels and
9 identified him.

10 THE COURT: So, just for clarification, there's two
11 Daniels right; there's McKinley Daniels and James Daniels?

12 A: Yes, Your Honor.

13 THE COURT: Okay. And I understand this is James
14 Daniels' trial, but when you -- when you say Mr. Daniels ---

15 A: I'm sorry.

16 THE COURT: --- if you, for my edification, if you could
17 just say James Daniels or McKinley Daniels, that would be a
18 big help for me. Okay?

19 A: Yes, Your Honor.

20 THE COURT: And you were being respectful in saying Mr.
21 Daniels and I appreciate that, but it would -- it'll help me
22 clear up who's who and who's seeing what and those things if
23 you do that for me. Okay?

24 A: Yes, Your Honor.

25 THE COURT: Okay. Thank you. All right. So, y'all were

1 reviewing some surveillance videos from the 905 armed robbery
2 and one of the officers identified James Daniels?

3 A: Identified James Daniels as being the person we saw
4 inside the store making a purchase prior to the armed robbery.

5 BY MR. HIXSON:

6 Q: Let me show you just a -- for the Court's purposes only
7 -- do I need them Court's exhibit, Your Honor?

8 THE COURT: Okay.

9 COURT REPORTER: I marked them as State's; is that okay?

10 MR. HIXSON: That's good. Thank you very much. I showed
11 defense counsel this.

12 BY MR. HIXSON:

13 Q: I'm showing you what's State's Exhibit 1, it's a collage,
14 just for pretrial purposes. If you're looking at the top
15 pictures, do you recognize those top video stills?

16 A: Yes.

17 Q: And what are those?

18 A: Those are still shots from the surveillance video at the
19 Highway 905/Red Bluff Sunhouse, and they depict Mr. James
20 Daniels inside the store.

21 Q: Okay. And describe that for Madam Court Reporter and for
22 the record, what the picture looks like that you're referring
23 to, because there are several photographs on that slide?

24 A: There's three photos. The first one shows Mr. James
25 Daniels walking into the Highway 905/Red Bluff Store. He's

1 just come into the door. The middle photo shows him walking
2 through the store, and the third photo shows him walking up to
3 the counter to make the purchase.

4 Q: And can you describe in some detail what clothing he is
5 wearing in all three photos?

6 A: He is wearing red pants and dark gray-in-color, a dark
7 sweatshirt, hooded sweatshirt.

8 Q: And how about the tennis shoes?

9 A: The tennis shoes look to be black and white.

10 Q: Okay. And he has dreadlocks in that?

11 A: Yes, he has long -- he has long hair in these pictures.

12 Q: And you can clearly see his face?

13 A: Yes.

14 MR. HIXSON: I'm just going to hand this up to the Court.
15 This is State's 1, Your Honor, for our pretrial motion.

16 THE COURT: Okay.

17 MR. HIXSON: And the officer is referring to the top
18 three. Okay?

19 THE COURT: All right.

20 BY MR. HIXSON:

21 Q: Detective, now, after you focused and realized that one
22 of your fellow police officers identified him in the store;
23 did you continue to look at the video to see how Mr. Daniels
24 arrived or left that location?

25 A: Yes, we watched the video. Mr. Daniels is seen exiting a

1 vehicle. That same vehicle appears to drive by the store a
2 number of times. After he leaves and, if I recall I think it
3 had come before it as well, the same vehicle is seen after the
4 armed robbery leaving the area -- leaving me area of the
5 store, I'd say, at a decent rate of speed and running through
6 a red light.

7 Q: So, based on the review of the video and the video stills
8 of the silver Malibu, what did -- what did -- what did y'all
9 do then after that?

10 A: Well, we were -- we were -- I'm sorry.

11 Q: Let me just get right to the point. Did you review
12 subsequent video of a Cultra Road and Oak Street incident.

13 A We did. We reviewed that video and found the same
14 vehicle matched -- looked to be the same vehicle, driving past
15 that store a number of times as well. And, Mr. Daniels was
16 also seen in that store prior to the armed robbery.

17 Q: Okay. From the time that you left from -- just prior to
18 getting to the Cultra Road and Oak Street store, were you
19 involved in another call for service of any kind?

20 A: I was. We had a reported armed robbery at a Scotchman
21 Store located on Lake Arrowhead in the Myrtle Beach section of
22 Horry County. I responded there with uniformed officers. At
23 that store, two individuals had gone in armed and robbed the
24 store clerk and then fled the store.

25 Q: All right. Were there surveillance videos of activities

1 inside the Arrowhead Store that you could see what the
2 perpetrators in that store were wearing?

3 A: Yes.

4 Q: Do you recall what they were wearing, the heavy set and
5 the thinner fellow? And I'll draw your attention to State's
6 Exhibit 1 again, the collage we were referring to.

7 A: Yes.

8 Q: If that refreshes your recollection?

9 A: It does. The one individual that enters the store on
10 Lake Arrowhead, the Scotchman, the heavier set individual
11 comes inside wearing a pair of red pants and dark-in-color
12 gray hooded sweatshirt.

13 Q: Okay. And then when you responded to the Cultra Road and
14 Oak Street, did they have video surveillance?

15 A: They did.

16 Q: And did they -- were you able to look and see what the
17 perpetrators looked like in the Cultra Road/Oak Street that
18 occurred on January 25th of 2015?

19 A: I was.

20 Q: And your -- when you looked at it, what were your take-a-
21 ways from that?

22 A: As soon as I -- as soon as I was able to bring up the
23 video at the Oak Street Sunhouse, I immediately realized that
24 the two individuals that committed that armed robbery had also
25 committed the armed robbery at the Scotchman on Lake

1 Arrowhead. The clothing descriptions were -- or the clothing
2 that they were wearing was the same and you could tell by the
3 body types it was the same two individuals.

4 Q: Okay. Now, were -- the Cultra Road and Oak Street
5 situation, did -- on video do you see a silver Malibu in the
6 Cultra Road/Oak Street crime?

7 A: Yes.

8 Q: Tell us about that?

9 A: From reviewing that video, we see that vehicle go -- go
10 pass the store prior to, that vehicle pulls up to the store,
11 parks, and Mr. James Daniels exits it and walks into the
12 store. He leaves a short time later and gets back into that
13 vehicle and leaves. That vehicle is seen driving up and down
14 Cultra Road or in that area around the store on the
15 surveillance camera and then, a short time later, the armed
16 robbery is committed.

17 Q: So, based on all that information -- let's go back --
18 that's a nice foundation, let's go back to what we were first
19 talking about is, how did you come to knowing all of that and
20 come to have a discussions of James Daniels?

21 A: We were able to obtain the -- the Ware Drive address for
22 Mr. Daniels. We go -- we went -- we went there. When we
23 arrived ---

24 Q: Who were with -- who was with you?

25 A: Myself, Sergeant Delpercio or at the time, Sergeant

1 Delpercio, and a number of other detectives from the Major
2 Crimes Section of the Horry County Police Department.

3 Q: Okay.

4 A: So, we go out there and we made contact with Mr. James
5 Daniels' girlfriend at the house. She was there, her mother
6 was there, there was a small child at the house. We
7 introduced ourselves and -- when we pull up, there is a silver
8 Malibu parked in the yard, that matches the vehicle that we
9 had seen on this surveillance video, at least a similar type.
10 We go in there, we speak with her. At the time, Mr. James
11 Daniels was at work at a Subway.

12 Q: Let me ask you that, where is that Subway location in
13 Horry County?

14 A: It's at the Walmart.

15 Q: And where is that Walmart in relation to the Arrowhead
16 Scotchman?

17 A: It's within two miles of it. We speak with her, an
18 interview was conducted with her. She explained that there
19 were times when Mr. James Daniels had control and would use
20 her car. Like I said, at the time, he wasn't home. We speak
21 with her. While we're speaking with her, he ends up coming
22 home. He ends up coming to the house where we are at. We
23 speak with him, we ask if he would be willing to come and
24 speak with us at the west precinct, which is located in the
25 Green Sea area, and we go there and an interview is conducted

1 with Mr. James Daniels.

2 Q: Okay. Did Ms. Chestnut accompany you all was well?

3 A: Yes, she did also come to the west precinct.

4 THE COURT: Is that the girlfriend?

5 MR. HIXSON: That's the girlfriend.

6 THE COURT: Okay.

7 BY MR. HIXSON:

8 Q: And what is the girlfriend's name for the Court?

9 A: If ---

10 Q: Is it LaShania Chestnut.

11 A: It is LaShania Chestnut.

12 Q: And so did he, did he -- was Mr. Daniels under arrest at
13 the time that he went down to the west precinct in Green Sea?

14 A: No.

15 Q: Was he in custody?

16 A: No.

17 Q: Was LaShania Chestnut in custody?

18 A: No.

19 Q: Okay. Did he voluntarily agree to go down to give a
20 statement to you?

21 A: He did.

22 Q: Okay. And now, let's tell us, once you get down to the
23 Green Sea -- tell us about the environment, is in a jail cell?
24 What was the environment where the statement was given?

25 A: No, it's ---

1 MS. PRATT: At this point, I'm gonna ask the solicitor
2 and -- and ask the Court to admonish him not to lead any
3 further?

4 MR. HIXSON: Fair enough.

5 THE COURT: This is pretrial, so ---

6 MR. HIXSON: I'll tighten up. I was just trying to get
7 -- thank you, Your Honor.

8 BY MR. HIXSON:

9 Q: Please tell us about the environment the statement was
10 given at?

11 A: It's a precinct. It's just offices, computer desks set
12 up for officers to come in there and right reports. There's
13 two detectives that have an office in there with two desks
14 where they do their work, and that was the office that we used
15 to conduct the interview with Mr. James Daniels.

16 Q: Did you have a discussion with Ms. Chestnut also during
17 that period of time?

18 A: Yes, we did. She was located in another office where
19 there were three or four computer desks set up for patrol
20 officers to come in and do paperwork.

21 Q: Okay. Was that interview memorialized in any way?

22 A: I believe -- yes, I believe it was audiotaped.

23 Q: It was audiotaped. Was it videotaped?

24 A: No.

25 Q: Okay. Have you had an opportunity prior to coming to

1 court to listen to that interview and the transcripts that we
2 provided the Court for this hearing as well as counsel?

3 A: Yes.

4 Q: Okay. Let me show you for this purpose what's been
5 marked as State's Exhibit 1. I have it marked as 2, I'm
6 sorry, it's Interview Number 1? I need to get a sleeve so I
7 can put them on here and get stuck on the computer. I'll get
8 a sleeve on that.

9 COURT REPORTER: This would be State's 2.

10 MR. HIXSON: Yes, ma'am. Thank you.

11 BY MR. HIXSON:

12 Q: Let me see if you recognize this item.

13 A: I do. I see my initials there at the bottom of the disc.

14 Q: Okay. And why did you put those initials on there?

15 A: That is a digital copy of the audio recorded interview
16 with Mr. James Daniels.

17 Q: Okay. Now, this one for the Court's purposes is redacted
18 on there. During the course of the interview, did Mr. Daniels
19 make reference to gang activity and being in prison ---

20 A: He did.

21 Q: --- prior to this?

22 A: He did.

23 Q: And as such, the redactions eliminate discussions of gang
24 activity and being in prison for a period of time?

25 A: Yes.

1 Q: Other than those that are reflected in the transcript
2 lines so that the Court can see that those redactions, what
3 are removed, is this is a fair and accurate representation of
4 the interview that you had with James Daniels at the Green Sea
5 substation?

6 A: It is.

7 Q: Okay. Now, subsequent -- let's talk about the nature of
8 that, first. Do you Mirandize Mr. Daniels at some point in
9 this interview?

10 A: Yes, during the course of the interview, I do provide
11 Miranda warnings.

12 Q: Okay. In fact, have you had the opportunity to review
13 the transcripts of these statements; I think you said you did?

14 A: I have.

15 Q: And is it approximately 18 pages into the transcript when
16 you Mirandize him; you talk to him for a period of time prior
17 to that?

18 A: It is.

19 Q: Tell us about that.

20 A: Well, it sounds like a very short time when we start
21 speaking about it now, but from January 2nd to the date that
22 we end up speaking with Mr. James Daniels, it felt like a
23 lifetime. In between those times, we probably interviewed, a
24 rough guess would be 30, 30 different people at least
25 throughout the county and, and surrounding counties trying to

1 investigate what had occurred. Going out and speaking to
2 another person was really not -- I mean, it was just kind of a
3 normal course of business at this point. I didn't know what
4 Mr. Daniels -- what Mr. James Daniels was gonna end up telling
5 me when I spoke with him. It could've been just like every
6 other interview that I'd had to that point where this whole
7 thing and nothing.

8 So, we start speaking and one of the first things I
9 wanted to find out was if he had access to the car, if he was
10 even in the area or around, or would've been able to have been
11 free on the dates when these crimes had been committed. So,
12 we start speaking about some things, some of which were his
13 work schedule and times that he would work. His answers to
14 those questions led me to believe that he would've been off
15 work at the time these crimes were committed, and that he may
16 -- or that he would've had access to Ms. Chestnut's vehicle at
17 the times those crimes were committed. In addition to that,
18 Mr. Daniels' body language and just his demeanor during the
19 course of the interview led me to believe that once I had that
20 information, that if I continued to speak to him, that there
21 was a possibility other information would end up coming out,
22 that he was possibly involved. That was when I decided that I
23 would go ahead and provide him his Miranda warnings at that
24 point. And that's what we did, we verbally Mirandized Mr.
25 James Daniels.

1 Q: Did you use a written Miranda form up there at the Green
2 Sea office?

3 A: I did not.

4 Q: And why not?

5 A: It was a conversation and I knew that I wanted to kind of
6 -- I wanted to make things as smooth as possible. I knew the
7 Miranda warnings, I was able to provide them to him verbally
8 and I knew I was recording the interview so that it would be
9 memorialized.

10 Q: And are your Miranda warnings on the recording that the
11 Court would hear here when we publish this recording?

12 A: They are.

13 Q: The -- there is a second statement here. I think from
14 that point on, the recording speaks for itself as it relates
15 to the context and tone of the interview; is that safe to say?

16 A: Yes.

17 Q: Subsequent to that, at the end of the interview, as a
18 matter of fact, you'll hear that ultimately put handcuffs on
19 him or Sergeant Delpercio does and he is taken into custody at
20 the end of the interview; is that right?

21 A: Correct.

22 Q: Okay. Subsequent to being taken into custody, or maybe
23 it's the next day, is there a second interview?

24 A: Yes, there is.

25 Q: And in that second interview, do you recall the setting

1 of that interview. He was in custody -- let me ask you this,
2 did you Mirandize him a second time at the beginning of the
3 second interview, after he is clearly in custody at that time?

4 A: I did.

5 Q: And did he waive those rights and continue to talk to you
6 after being apprised of the rights in the second statement?

7 A: He did. He continued -- yes, he spoke to me after being
8 provided his Miranda rights again.

9 Q: At any time during the course of this statement, did he
10 attempt to invoke his right to an attorney?

11 A: No.

12 Q: Did you threaten or coerce him or overbear at his will to
13 give a voluntary statement in any way during the course of
14 either one of these interviews?

15 A: Absolutely not.

16 MR. HIXSON: Your Honor, at this time, I believe we can
17 publish the ---

18 MS. PRATT: And, Your Honor, it might be more efficient
19 if I had an opportunity to cross examine about the
20 circumstances first, so the Court knows what you're looking
21 for when you hear the statement. Is that acceptable?

22 THE COURT: Any objection?

23 MR. HIXSON: No, I don't -- at the leisure of the Court,
24 Your Honor.

25 THE COURT: Okay. That's great.

1 MS. PRATT: Thank you very much, Your Honor.

2 CROSS EXAMINATION OF GREG LENT BY MS. PRATT:

3 Q: Okay. Detective Lent, you are actually speaking to my
4 client on February the 5th of 2015, correct?

5 A: I believe so, yes.

6 Q: And as you said in your testimony just a few minutes ago,
7 this had been a very long process, 30 days from January the
8 2nd all the way to the 5th, correct?

9 A: Correct.

10 Q: Fair to say that this was a hot issue in Horry County
11 because of the armed robbery and murder and then the second
12 armed robbery, correct?

13 A: Correct.

14 Q: And y'all had every detective in Horry County out looking
15 for people and beating the bushes, interviewing, I think I
16 have reviewed about 20 different interviews of people and that
17 may not be all of them?

18 A: Correct.

19 Q: Okay. So, there's no question that by the time that you
20 have gone to the home of LaShania Chestnut and James Daniels
21 on Ware Road, that you have already had detectives identify my
22 client going into two of the stores, correct?

23 A: At the time ---

24 Q: On the videos?

25 A: At the time, when we went to Mr. Daniels' house, we had

1 seen him on the one video at Red Bluff.

2 Q: Okay.

3 A: Once he -- once he was identified in that video as having
4 been made -- having made the purchase, we decided we would go
5 out to speak with him. Subsequently, I left and Sergeant
6 Delpercio at the time left. There was some other detectives
7 that also went on to the scene, went out there with us. There
8 were other people that were still working.

9 Q: But, now that identification of my client on the video
10 didn't happen on the 5th, it happened prior to that, didn't
11 it, when Bernard Grate says, oh, James Daniels, that's him and
12 his brother just got out of prison, and they start talking
13 about that. That was a different day, wasn't it?

14 A: No, if I recall correctly, he was identified the same day
15 that we went out there and spoke -- spoke with him.

16 Q: Okay. And no question that Bernard Grate, one of the
17 detectives that you had working the case with you, said that
18 James Daniels. He's been in prison for, you know, armed
19 robberies, his brother just got out of prison, correct?

20 A: I remember -- I remember Officer Grate identifying James
21 Daniels. What other information was provided then, I don't
22 recall. There was probably 15 of us in that room.

23 Q: Would you be surprised if it was in your report?

24 A: I wouldn't be surprised; I haven't read the report.

25 Q: Because otherwise, I wouldn't know about it. All right.

1 Detective Lent, at that point, you go with -- you go out to
2 the Ware Road house, correct?

3 A: Correct.

4 Q: And that's about 8 o'clock at night?

5 A: Yeah, it was dark, I remember that.

6 Q: Okay. And you -- there are four police cars that pull
7 up, correct?

8 A: There was myself in an unmarked Chevy Impala. I think
9 everybody that went out there was probably in unmarked
10 vehicles, I don't recall, but it was all detectives ---

11 A: But there's three other vehicles, yes.

12 Q: Okay. And you actually talked to LaShania and you seize
13 the Malibu at that point, don't you?

14 A: Yes, once we got on scene, we saw that the Malibu was
15 there. A search warrant was drafted and obtained to go ahead
16 and seize that vehicle.

17 Q: And it was seized that night, actually seized before my
18 client got home from work?

19 A: I don't recall.

20 Q: About contemporaneous, you'd already ---

21 A: It would've all been around that time. I don't recall
22 what was done first.

23 Q: All right. Now, at the time that my client arrives home
24 from work, which is somewhere in the neighborhood of 8:00,
25 8:30 something like that because, he had to come from the

1 Subway, and he was called by LaShania's mother. Do you
2 remember hearing her call him to say they're trying to arrest
3 LaShania.

4 A: No, I don't ---

5 Q: Do you remember that?

6 A: I don't know if I recall that.

7 Q: Okay.

8 A: I know at some point, obviously, he was -- he was
9 contacted and told the police were there because he came back.

10 Q: And then at that point, when he arrives, LaShania is
11 already in the back of one of the police cars, isn't she?

12 A: When -- I think when he arrived, I was still speaking
13 with Ms. Chestnut, and she would've been in the front seat
14 when she was speaking with me because Sergeant Delpercio was
15 in the back seat.

16 Q: Okay. So, she's in a police car?

17 A: She's in an unmarked Chevy Impala.

18 Q: Okay. And let's just flesh it out a tad more. She is
19 six, seven months pregnant?

20 A: I don't recall. Yeah, she was pregnant, I don't -- I
21 don't recall how many months.

22 Q: You can tell she's pregnant, let us say it that way.

23 A: I don't -- I think we had a discussion about her having a
24 baby.

25 Q: All right. And you know that that is actually my

1 client's baby that she's carrying from what they told you?

2 A: Yes.

3 Q: Okay. So, you have taken my client's pregnant fiancé and
4 put in her a police car. There's four cars at least, possibly
5 more, when my client comes home from work, and you're towing
6 the Malibu, correct?

7 A: There were -- there were unmarked police vehicles in that
8 -- in the yard. I remember when we left, I want to say that
9 some detectives were still there, so I don't know if the car
10 was towed at which point.

11 Q: Okay. My client arrives in a Grand Prix, correct?

12 A: Yes.

13 Q: But you did not allow him to drive the Grand Prix to the
14 Green Sea precinct, did you?

15 A: No.

16 Q: And the -- so, he is actually in a fifth police car that
17 arrives, you waited for a car to arrive to drive him off?

18 A: No, if I recall -- and again, I mean, this is going back
19 pretty far.

20 Q: I know.

21 A: I know we all went back to the west precinct. How we
22 ended up getting back, I knew there was no marked unit that
23 was called there to transport anybody. Nobody was carried in
24 the back seat of a caged vehicle. I know we all went back
25 there. The -- how we all sat or in which cars we were in, I

1 don't recall. I remember being in the yard. I remember being
2 at the west precinct having a conversation.

3 Q: Well, let me ask it this way. You had LaShania in one
4 car and you had my client in another car; he was not allowed
5 to drive his own vehicle. LaShania was not allowed to drive
6 her own vehicle. Is that a fair statement?

7 A: I would, again, I don't recall how we got back. It would
8 be normal course of business that we would say, well, we'll
9 drive. You know, drive with us, we'll go over to the west
10 precinct.

11 Q: Okay. And the west precinct, which is Green Sea from
12 where they are out in Loris, 20 minutes?

13 A: You're asking the wrong person.

14 Q: Well, I know in the statement you say that, you know, you
15 aren't as familiar with Horry County, but let's just say that
16 it's down -- it's down Highway 9 from Loris?

17 A: It's -- it's a few minutes away. I don't know how far.

18 Q: A little bit of a -- and there's no question that is a
19 police station?

20 A: Yes, it is. It's a part of the Magistrate's office and
21 it is offices that police officers use.

22 Q: Clearly marked on the front that it's a police station?

23 A: It's a brick building that's a Magistrate's office. I
24 don't know what the signage is.

25 Q: Okay. Now, your testimony was that you then spent a

1 period of time asking him questions about access to the car
2 and whether he was free on certain dates; is that correct?

3 A: Yes, I remember -- I remember and I know from reviewing
4 the interview, we spoke about his work schedule.

5 Q: And you actually took a calendar, which we don't have
6 now, but you took a calendar and had him marking what days he
7 believed he was working and when he wasn't, correct?

8 A: From reviewing the interview, yes, I do -- I mean, I
9 heard us speaking, we're using something, I believe it was a
10 desk blotter, you know it was detective's desk -- the desk
11 blotter with the calendar on it.

12 Q: And that has not been preserved and is not available for
13 evidence, is it?

14 A: No, we didn't take it that night.

15 Q: And if you've reviewed the statement, I know you're aware
16 that the questions before Miranda take about 18 pages of a 60-
17 page statement ---

18 A: Yes.

19 Q: --- does that sound right?

20 A: It sounds right.

21 Q: Okay. And we'll see on the statement or we'll hear on
22 the statement, but it is approximately 33 minutes in, correct?

23 A: Approximately, I don't remember how long.

24 Q: And once you got to -- back up just a pinch. When we get
25 to Green Sea, you actually spoke to LaShania first, didn't

1 you?

2 A: I believe so.

3 Q: And you spoke to her for about a half an hour?

4 A: I don't recall.

5 Q: So, would you be surprised to know that her interview was
6 28 minutes long?

7 A: I wouldn't be surprised.

8 Q: Okay. So, by the time we're getting to Mr. Daniels'
9 interview, it is approximately quarter to 10:00 at night?

10 A: It might be; I don't recall which time -- what time the
11 interview with Mr. James Daniels was started.

12 Q: At the end of his statement, you say that it's 11:30 at
13 the end of the first statement.

14 A: Okay.

15 Q: And the statement itself that we're talking about is an
16 hour and 40 minutes long. So, would that take us back to
17 about 10 till 10?

18 A: It would.

19 Q: So, by now, my client has been surrounded by police
20 officers might be the fairest way to say it, from around 8:30
21 when he gets home from work until 10 to 10:00, correct?

22 A: No, I wouldn't say that he was surrounded by police
23 officers.

24 Q: Well, there's four cars, maybe unmarked, at the house,
25 he's driven to the precinct, there's two officers at least

1 that you and Del -- Delpercio, Tom, who are interviewing him.
2 There's other people in the station, correct?

3 A: There are other officers there.

4 Q: Okay. And if he had wanted to leave, how's he supposed
5 to go?

6 A: He would've ---

7 Q: He doesn't have a vehicle?

8 A: If he would've asked -- if he would've told us he didn't
9 wish to speak to us and would've asked to be taken home or
10 had told us that he did not wish to go to the west precinct to
11 speak with us, we would've -- we would not've spoken to him or
12 we would've driven him home.

13 MS. PRATT: With the Court's indulgence, let me -- at
14 this point, Your Honor, I think I would like to recess my
15 cross examination, allow the statement to be played, and then
16 ask the detective some questions after; is that acceptable to
17 the Court?

18 MR. HIXSON: Yeah. Yes, sir.

19 THE COURT: Okay.

20 MS. PRATT: And you're gonna play the whole statement ---

21 MR. HIXSON: That'll be fine.

22 MS. PRATT: --- the complete one?

23 MR. HIXSON: No, I'm playing, my intention was to play
24 redacted because we're in agreement, aren't we in agreement
25 that relating to gang activity, all that stuff is reversible

1 error if it would come in and we have agreed to redact it. My
2 intention was to just play the redacted copy, but the Court's
3 transcript has the transcript of the full statement so, Your
4 Honor can see what is not in there anymore with lines through
5 it, but what you'll hear is what I hope the Court would find
6 admissible if that's appropriate. I have -- I have the
7 complete one with everything in it if Your Honor wants to hear
8 that.

9 THE COURT: I think she just wants everybody to agree on
10 what moment the Miranda warnings are read.

11 MS PRATT: Which as I -- that's correct, Your Honor,
12 which I understand is in the main statement or the full
13 original statement at minute 31:19.

14 MR. HIXSON: Yeah, I don't have any -- I mean, it stands
15 for what it is. I'm not challenging -- we press play, we hear
16 it. It's ---

17 MS. PRATT: It just won't be on this one as 31:19 because
18 of what you've taken out. But that's fine as long as the ---

19 MR. HIXSON: I'll play the full one.

20 MS. PRATT: --- court is aware, then I'm fine with that,
21 Judge, thank you.

22 MR. HIXSON: Let's just play the full one.

23 THE COURT: Well, I mean, if you agreed that it's
24 approximately 31 minutes in that he gives Miranda, then you
25 can just play the redacted one.

1 MR. HIXSON: Yes, I agree that that's the case.

2 THE COURT: Okay. All right.

3 MS. PRATT: Thank you, Your Honor.

4 MR. HIXSON: May I publish this to the Court, Your Honor?

5 THE COURT: Of course.

6 (REPORTER'S NOTE: State's Exhibit 2 published for the Court.

7 Not transcribed herein.)

8 THE COURT: How long are you gonna be?

9 MS. PRATT: I have just a couple of questions and then
10 there'd be argument. I could finish the questions in five
11 minutes..

12 THE COURT: Okay. Go ahead.

13 CROSS EXAMINATOIN OF GREG LENT BY MS. PRATT:

14 Q: MS. PRATT: Detective Lent, do you remember when I asked
15 you earlier about Bernard Grate and what he had been saying to
16 y'all in the interview ---

17 A: Yes.

18 Q: --- when y'all were looking? And I believe you told me
19 that you told me that you didn't remember today exactly what
20 was said; is that correct?

21 A: Correct, I don't remember the exact words.

22 Q: But you did write a report of investigation that was
23 given to me in discovery; is that right?

24 A: I would imagine, yes.

25 Q: All right. And I'm just gonna show you the first page of

1 it just to, and I don't want to put it in evidence, but I want
2 to refresh your memory with it. Would that be the report that
3 you would've written?

4 A: Yes, that's my report.

5 Q: All right. And I'd like you just to refresh your memory
6 to look at that first paragraph on Page 4 of your report about
7 what it says Bernard Grate had told you, and then I'm going to
8 ask you a question.

9 A: Okay.

10 Q: All right. So, now that you've refreshed your memory
11 from your own writings, isn't it true that Bernard Grate told
12 you that he recognized James Daniels, correct?

13 A: Correct.

14 Q: And he knew that James Daniels' girlfriend was known to
15 drive a Chevy Malibu?

16 A: Correct.

17 Q: And that was the kind of car y'all were looking for you
18 thought?

19 A: Correct.

20 Q: And that both Daniels brothers had recently been released
21 from prison for robberies?

22 A: Yes.

23 Q: And that they would be viable suspects for the crime we
24 were investigating?

25 A: That is what's wrote in my report.

1 Q: Okay. So, at the time that, and that paragraph is
2 describing what happened at that meeting when everybody is
3 looking at the video before you went to my client's
4 girlfriend's house on the 5th?

5 A: Correct.

6 Q: So, you knew from what Senior Detective Grate told you
7 that they would be good suspects, correct?

8 A: They would be possible suspects.

9 Q: Okay. No question about that. And then while you were
10 questioning or at least while we were listening to the
11 interview and I noticed that I had asked you earlier about the
12 car being towed and you didn't remember whether the car had
13 been towed or not; do you remember answering my question about
14 that?

15 A: No, what I said was I didn't remember at what point the
16 car had been towed. I knew the car -- I mean, yes, the car
17 was towed from that house. Whether it was towed prior to us
18 and James Daniels leaving to go to the west precinct or if it
19 was towed after that, I don't recall.

20 Q: Okay. And in the statement, which I believe shows up on
21 the court transcript as Page 25, Line 19, you actually tell
22 James that the car had been towed, correct?

23 A: I do recall hearing that. I knew the car was being
24 towed, that was a part of the investigation. It would've been
25 my decision to tow it.

1 Q: Okay. So, no question before you went to Green Sea, you
2 knew the car was gonna be towed?

3 A: When got on scene and we saw a vehicle that matched the
4 description of something that we had seen drive past those
5 robberies, yes, we were gonna take it back to the police
6 department to have it, to have it searched and examined to see
7 if that was the vehicle.

8 Q: I understand and I'm not trying to trick you, I'm just,
9 you know, saying that you knew that before you guys took my
10 client in a police vehicle to Green Sea that the car was being
11 towed?

12 A: Yes, I knew we were gonna tow the car.

13 Q: Okay. All right.

14 Your Honor, I think the rest of what I would do would be
15 argument about the statement.

16 THE COURT: You want to follow up with any questions?

17 MR. HIXSON: I did have a couple just follow-up
18 questions.

19 REDIRECT EXAMINATION OF GREG LENT BY MR. HIXSON:

20 Q: Did you come to understand where Jerome Jenkins lived,
21 specifically in the Goose Bay area, after these statements
22 that Mr. Daniels kind of indicated he didn't really know who
23 JJ was?

24 A: Yes.

25 Q: Where -- and did you execute search warrants on those

1 locations?

2 A: We did.

3 Q: And about how far apart do those two live?

4 A: Across the street from one another.

5 Q: And at the time and in the statements, he is indicating,
6 I've only seen him twice and I don't know his name?

7 A: Correct.

8 Q: And that he lives in Tabor City?

9 A: Correct.

10 Q: Subsequent to this conversation, I think it ends fairly
11 well, I think it stands for itself because relating to --
12 isn't it the case that you take Mr. Daniels and he goes to J.
13 Reuben Long and then there's a subsequent statement after
14 that?

15 A: Yes, we do interview him again at J. Reuben Long.

16 Q: Tell us about that; that's what we're calling Interview
17 Number 2?

18 A: Yes.

19 Q: Okay.

20 A: So, through the course of the investigation, by the time
21 that I go back and speak to Mr. James Daniels again at J.
22 Reuben Long and there was other information that was coming
23 about.

24 There was another individual who was stating that somebody
25 else had possibly been at the Conway store, the Sunhouse on

1 Cultra and Oak Street. So, I went back to speak to Mr.
2 Daniels to clear up or just to confirm that what he had told
3 me in the original statement and the people that he was with
4 when they robbed those stores, that that was -- that those
5 were the people, the same people he told me about in the first
6 interview were still the same people.

7 Q: Okay. And that, I think you testified earlier, just to
8 speed things along, you interviewed him at J. Reuben Long
9 Detention Center the second time?

10 A: I did.

11 Q: And no question you had served the warrants on him, he
12 was in custody, he was in -- incarcerated, no question?

13 A: Correct.

14 Q: Did you, prior to this time, had Mr. Daniels ever invoked
15 his right to an attorney after this tape was over or any point
16 in time to interview him the second time?

17 A: No, he never did.

18 Q: Then as a matter of fact, on the -- that second
19 interview, do you give him Miranda warnings a second time at
20 the beginning of that interview?

21 A: I do.

22 Q: Okay. Was that interview memorialized in any way?

23 A: It was. It was audiotaped.

24 Q: Have you had an opportunity to listen to that audiotape
25 as it relates to what we're calling Interview Number 2?

1 A: I have.

2 Q: Let me show you what's been marked as State's Exhibit
3 Number 3 and see if you recognize that.

4 And I'm handing the witness the compact disc, Your Honor.

5 A: I do. I see my initials on that disc. That's the disc
6 that I listened to. That is a digital copy of the audio
7 recorded interview of Mr. James Daniels at J. Reuben Long.

8 Q: And as such, is this a fair and accurate representation
9 of the interview that you recorded with him, the second
10 interview at J. Reuben Long?

11 A: It is.

12 Q: Is this a complete copy or were aspects pertaining to
13 gang activity and prior prison discussions redacted from this
14 interview?

15 A: That is a redacted copy.

16 Q: Okay. And have you see the transcript that went along
17 with this interview?

18 A: I have.

19 Q: And there are certain lines redacted, but the Court can
20 see what's redacted out, but this audio does not contain that
21 language; is that correct?

22 A: Correct, those things are taken out of that audio.

23 MR. HIXSON: Your Honor, this is about 10 pages of
24 transcript. I'm prepared to publish it if you want to do that
25 or if you want ---

1 BY THE COURT:

2 THE COURT: I really need to eat. Is everybody okay with
3 that?

4 MS. PRATT: Yes, sir.

5 THE COURT: I'll keep going if you want me to, but are we
6 okay to -- you're not allowed to discuss your testimony with
7 anybody in any way, shape, or form. When we come back, if
8 you'll just be sitting right there, Detective Lent. But I --
9 I'm sure court staff -- we started at such a weird time,
10 everybody is probably ready.

11 Is that okay, any major objections? Natalie are you
12 okay?

13 CLERK: Yes, sir.

14 THE COURT: Kay, you okay with doing that?

15 COURT REPORTER: Yes, sir.

16 THE COURT: Okay. All right. Let's do this. Let's --
17 it's 2:00. Let's break for 45 minutes and everybody kind of
18 get something to eat or something to snack on and then we'll
19 reconvene and jump back in.

20 And, Detective Lent, don't discuss your testimony with
21 anybody. Okay?

22 MR. LENT: Yes, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 MR. HIXSON: Thank you, Your Honor.

25 THE COURT: And I know we started at a wrong time, a

1 weird time and I apologize, but I think everybody probably
2 needs to eat.

3 MS. PRATT: Will this courtroom be locked, so I can just
4 leave my stuff here? I don't want to pack it all up and bring
5 it back.

6 THE COURT: That's fine with me.

7 MS. PRATT: Thank you, Your Honor.

8 **RECESS - 2:01 P.M.**

9 *****OFF THE RECORD*****

10 **(On the Record - 2:54 P.M.)**

11 THE COURT: All right. We're back on the record in State
12 of South Carolina v. James Daniels. Mr. Daniels is present
13 represented by his attorney, Barbara Pratt, and the
14 solicitor's office is present represented by Deputy Solicitor
15 Scott Hixson.

16 During the lunch, brief lunch break, I did get a request
17 for media coverage. So, at this point, there will be no
18 photos allowed. Where are my media people? Raise your
19 hands. Okay. No photos, please, of anything. Mr. Daniels is
20 not dressed out and I do not want any pictures of him in the
21 media in jail attire. So, everybody good with that?

22 UNIDENTIFIED REPORTER: I understand, sir.

23 THE COURT: Okay. Thank you very much. No video either,
24 I figure those kind of go together, but okay.

25 You ready, Mr. Hixson?

1 MR. HIXSON: Yes, sir.

2 THE COURT: We were on -- about to play the redacted
3 version of Interview 2?

4 MR. HIXSON: That's correct, Your Honor. I believe I
5 laid a foundation for it.

6 THE COURT: You did. Yeah, you did.

7 MR. HIXSON: May I publish this, Your Honor?

8 THE COURT: Yes, sir.

9 And, for the record, Detective Lent is back on the
10 witness stand and you are still under oath, Detective Lent.

11 MR. LENT: Yes, Your Honor.

12 MR. HIXSON: And that's State's 3, Your Honor.

13 THE COURT: Thank you very much.

14 (REPORTER'S NOTE: State's Exhibit 3 published - not
15 transcribed herein.)

16 BY MR. HIXSON:

17 Q: Detective Lent, are there any other substantive
18 statements made by the defendant to you that you're aware of
19 in relation to this case?

20 A: No.

21 MR. HIXSON: I don't have any further questions on the
22 showing for the voluntariness of the statement and the Miranda
23 warnings. Of course, I may -- may want to recall Detective
24 Lent. We'll see how it transpires, but just argument now,
25 Judge.

1 THE COURT: Anything you want to ask him about the second
2 statement?

3 MS. PRATT: No, Your Honor, just argument in regards to
4 the statement and its admissibility.

5 THE COURT: You can step down, Detective Lent. Thank you
6 very much.

7 MR. LENT: Thank you, Your Honor.

8 THE COURT: All right. Yes, ma'am, I'm happy to hear
9 from you.

10 ARGUMENT BY PRATT:

11 MS. PRATT: Thank you, Your Honor. Your Honor, we are
12 making a challenge under the cases of *Missouri v. Seibert*, 542
13 U.S. 600, 124 Supreme Court 2601, 159 L.Ed.2d 643, a 2004
14 United States Supreme Court case, which has been adopted in
15 South Carolina under a case called *State v. Navy*, 386 S.C.
16 294, 688 S.E.2d 838, a Supreme Court case here from 2010. I
17 have copies of both of those cases for the Court and for the
18 solicitor if you wish to have them.

19 THE COURT: Okay. Great. Thank you.

20 MS. PRATT: Thank you, Your Honor.

21 The issue in *Missouri v. Seibert* is, the facts are that
22 there was a statement which was given by a defendant without
23 Miranda, and then after the incriminating statements had been
24 made the officers gave Miranda warnings and then asked him
25 basically the same questions again. And the Court in that

1 case were very clear that the concern was that the Miranda
2 warnings become less effective and really don't mean anything
3 if you've already given one incriminating statement and you're
4 doing the same again. The assumption is that the Miranda
5 warnings mean less after that incriminating statement had been
6 made. And we contend that the same thing happened in this
7 case.

8 Now, one of the things that is interesting about *State v.*
9 *Navy* is that they make it clear about what the detective's
10 purpose was. One of the things that *Navy* talks about is that
11 the purpose of the interrogations was to obtain incriminating
12 information. And you see in the *Navy* case that there are
13 actually three statements. The Court of Appeals and the
14 Supreme Court differed but, in the final analysis, the Supreme
15 Court agrees that the second and third statements in *Navy*
16 should not have been admissible because of the issue with the
17 Miranda warnings.

18 The first issue that we need to talk about is whether or
19 not my client was in custody at the time that he gave these
20 statements and when I talk about the statements, Your Honor, I
21 would ask the Court to consider when I say the first
22 statement, I'm talking about those first 18 pages prior to
23 Miranda. And then the second statement would be Pages 18 to
24 60. And then for me, the third statement is the one we just
25 played, which was taken the next day.

1 To me it's very clear that my client was in custody. He
2 was taken from the house in a police car. There were four
3 police cars, at least, whether they were marked or not, lots
4 of detectives there. All of the detectives knew that
5 Detective Grate had said that he and his brother were
6 suspects. So, there's no question that they already had this
7 in mind, that this was a suspect situation.

8 THE COURT: That's not what they said. They said they
9 were possible suspects.

10 MS. PRATT: Correct, correct.

11 THE COURT: They didn't say they were suspects as if they
12 had some type of definitive information at that point in time
13 that Mr. Daniels had participated in a crime.

14 MS. PRATT: And I agree, Your Honor, you are correct that
15 they were possible suspects, but certainly they were persons
16 of interest, they were not just witnesses that were on the
17 sidelines here that they were looking for information from.
18 They had already determined to tow the vehicle, which they
19 believed not only from Detective Grate but also from viewing
20 the vehicle themselves, was possibly the one that had been
21 used in two of the incidents that we're talking about on
22 camera at the 905 Sundown [sic] and then the Cultra Road
23 Sundown [sic]. So, they had a good idea. Here they were with
24 someone who had been suggested by a detective to be pretty
25 good viable suspect, a vehicle that's there. They take my

1 client from his home rather than letting him drive himself and
2 they take his very pregnant girlfriend. They keep his
3 girlfriend in another room at the police station. So, we not
4 only are dealing with the *State v. Evans* factors of location,
5 but we're also looking at purpose. And they intended, it's
6 our position, that they intended at that point to illicit
7 incriminating information from him.

8 The interrogation, the first -- the whole statement given
9 on the 5th, which I would call Parts 1 and 2 is an hour and 40
10 minutes. The first 18 pages take 31 minutes. So, that is
11 actually a third of the time of the entire statement. It's
12 not a short period of beginning information, what's your date
13 of birth, so forth, although that's in there, but it is
14 certainly a lot longer portion of the entire interrogation.
15 And although I appreciate Detective Lent saying, oh, if he'd
16 asked to leave, we would've taken him home, I'm not so sure
17 they would have, and I'm not so sure that my client believed
18 that he was free to leave. Certainly, whether a person is in
19 custody has more to do with what a reasonable person would
20 think in that circumstance and whether a reasonable person
21 would believe he was in custody and the case I cite for that,
22 Your Honor, is well known law here, *State v. Evans*, 354 S.C.
23 579, a 2003 case. I did not bring a copy of that, but it is
24 cited in *Navy*.

25 So, then we have to look at the actual statement itself.

1 In the first 18 pages, what you see are Detective Lent, very
2 skillfully, pinning my client down about some important
3 incriminating information. The first thing that he does, is
4 he makes it -- he gets my client to write on a calendar the
5 dates that he's working. What does that does basically is
6 refute any potential alibi in regards to the dates of the
7 incidents. It is actually on Page 4, Line 14 of that first
8 part of the statement where he has my client admit that he's
9 using LaShania's car. So, now he's got him using the car
10 during the time period and he's talking to him about the days
11 that he's working from Page 8, Line 14 and through Page 12,
12 Lines 19 on in regards to both the Cultra store and the 905
13 store. Then, he has on Page 17, Line 48 to Page 18, Line 1,
14 and this is on the lined through -- that's what I'm referring
15 to, the lined through transcript, he has my client admit that
16 he bought a soda at the Red Bluff store. Now, as the Court
17 knows from our discussion in chambers, part of what the
18 state's case, the most three important things that they're
19 talking about here are he bought a soda, he used the car, he's
20 already got that admission from my client and he's also got
21 him to talk about his work schedule and when he is using the
22 car, when he's working and when he's not. Then he gives him
23 Miranda. So, the first -- first thing that we have in *Seibert*
24 is the completeness and detail of the questions and answers in
25 the first round of interrogation. And at this point, we

1 submit that Detective Lent has elicited what he needs in order
2 to box my client into a corner about now the timing of the ---

3 THE COURT: In the first 18 pages, what did he confess
4 to?

5 MS. PRATT: In the first 18 pages, he admits that he's
6 driving the car, he admits he bought a soda at the Red Bluff
7 store and he gives them all that information about his work
8 schedule.

9 THE COURT: And when -- and what did you just say that
10 was a crime?

11 MS. PRATT: They are the factors in the crime that
12 they're using in the second statement, Your Honor.

13 THE COURT: All right. But buying a soda at a store and
14 driving a car and being at work are not crimes. He didn't
15 confess to a crime.

16 MS. PRATT: Well, but what the state does, Your Honor, as
17 -- as you are aware as how they're going to use this
18 information is to say that the reason my client went into a
19 store to buy a soda is because he is checking out the place
20 prior to the robbery and that would link him somehow as a ---

21 THE COURT: Well, that's what they're saying now.

22 MS. PRATT: That is what they're saying.

23 THE COURT: How do you know that that was their theory on
24 February the 5th of 2015?

25 MS. PRATT: Because of the way the later questions come

1 down, Your Honor. The later questions when he says -- when he
2 knows exactly what time the soda was bought and exactly what
3 time the robbery is, he had pieced it out in his mind as to
4 how this was gonna go down.

5 THE COURT: I mean that's speculation.

6 MS. PRATT: Possibly, but ---

7 THE COURT: And there's no evidence in the record from
8 Detective Lent that he knew that the moment that he started
9 questioning James Daniels that James Daniels was the scout for
10 all of these armed robberies.

11 MS. PRATT: Well, I don't think that there's any doubt
12 that that's what they thought from the way the questions are.
13 Now, I agree that he did not make that admission on the stand
14 and I did not ask that question because I didn't know what his
15 answer would be. But certainly, when you read the way the
16 questions come in the second part of that first statement, you
17 see how he boxes him in from the information at the beginning
18 in that first 18 pages.

19 And then, Your Honor, I'm very concerned about the way
20 that Miranda was given. First of all, there's no written
21 Miranda warning. I know that's not fatal, but I don't like
22 that and they're in a police station and you've got two
23 detectives, who I would think would have Miranda forms with
24 them or know where they were in the station; maybe not, but
25 that is a concern. Then the way that he brings up Miranda is

1 he makes a joke about it; I don't know if you're gonna say
2 something about a dead midget. Well, that's making it sound
3 like, you know, this is going to be some fantasy. It's not
4 talking about what's really going on here. Then if you look
5 at the transcript and the way the Miranda questions are asked,
6 he doesn't elicit ever any answer from my client. He doesn't
7 say, you understand you have the right to remain silent, and
8 have James say, yes, sir. That doesn't happen at all. The
9 Miranda warnings are very quickly given, very lightly given,
10 and at the beginning of them, besides the dead midget comment,
11 he makes -- let me turn to Page 18. He says, like I said, if
12 you tell me you've got a midget somewhere, right, so, you
13 understand you have the right to remain silent. That's making
14 it sound like that's all we're talking about, fantasy. He's
15 not talking about what he's really about to ask him about.
16 And then he has already said to him, you're going to cooperate
17 with us, right? He says that to him on Page 18, Line 31.
18 You're going to cooperate and speak with us, right? All right
19 -- cause I'm just afraid of what might end up coming out.
20 Well, that's kind of putting the cart before the horse. He
21 shouldn't be making a decision about whether he's gonna speak
22 to them or not until after Miranda is given to him. And then
23 once Miranda says you've got the right to remain silent, then
24 he gets to make the decision. But, there's a question right
25 here, you're going to cooperate and speak with us. All right.

1 And then he says, whatever else, just to cover everybody,
2 we're all sitting here, you're nodding, handcuffs, we brought
3 you here, you were willing to come down and talk to us. But
4 we still don't have a yes from my client after that. So, our
5 position is that even when Miranda was given, it was given as
6 a throw away, as not the important rights that it truly is,
7 making sure that my client understood that he really did have
8 the right to remain silent, to stop the questioning at any
9 time. And you heard the statement. So, I know that you heard
10 a few times where my client says, well, you're just gonna lock
11 me up. If you're just going to lock me up. And then they
12 very quickly cover that and say, no, no, you're helping
13 yourself; you're helping yourself. It's almost as if he's
14 thinking about stopping talking and they get him talking
15 again. He never does invoke and I'm not trying to say that he
16 does, and he never says I want to leave, but those statements
17 where he says, well, you're just gonna lock me up, that
18 concerns me. There's no question under the *Seibert* factors
19 that the timing and setting of the first questioning, that
20 first 18 pages, and the next 40 some are exactly the same and
21 it's the same personnel. The continuity of personnel, the
22 timing and setting of the first questioning and the second,
23 and the degree to which the interrogator's questions treated
24 the second round as continuous with the first, and that's
25 exactly what happens there. They continue on. Okay, now,

1 we've done Miranda, let's keep talking. And he doesn't even
2 say here -- you know, Lent says, you understand those rights,
3 okay. Do you have any questions? There's no responses from
4 my client at all, nothing. So, we don't know because it's not
5 video whether he did understand, whether he shook his head no,
6 whether he shook his head yes, or made no response at all.
7 So, I have some very strong concerns in regards to that. Let
8 me make sure I pointed -- the days off and then the Miranda.
9 Those are my concerns in regards to those two statements.

10 Now, under Navy then, if the second statement is not
11 admissible because of the failure of Miranda in the first part
12 of that first statement, it carries through to the statement
13 that was given the next day. And that next day statement,
14 while it is the next morning, because it's the 6th, it's the
15 Saturday, no, the Friday -- I'm sorry -- the Friday. He says,
16 you're still under Miranda, blah, blah, blah. Again, no form,
17 no slow questioning and having him say yes, sir, no, sir,
18 throughout the questions and it even starts that out by saying
19 I was talking to you yesterday, and I need to, you know,
20 follow up with some more questions. He starts out the very
21 first statement he makes is, I want to go back over some stuff
22 real quick. And then he says, I know we spoke the other night
23 and obviously the night went on and on, so I wanted to come
24 back up real quick and just touch base with you. So, again,
25 we've got a continuity, we've got a different place because

1 it's J. Reuben Long Detention Center, but it is still a place
2 of a police type of office, police, sheriff, the police
3 station in Green Sea, same general location or style of
4 location. And then we also have the same officer asking the
5 questions. I don't know if Officer Delpercio was there that
6 day, but certainly it's Detective Lent again. And so, we
7 have again, the -- the timing and setting of that questioning
8 and then this next statement, the continuity of police
9 personnel and the degree to which the interrogator's questions
10 treat the second round as continuous with the first. So, I
11 believe that there is a very strong *State v. Navy, Missouri v.*
12 *Seibert* challenge here, Your Honor.

13 THE COURT: All right. Mr. Hixson?

14 ARGUMENT BY HIXSON:

15 MR. HIXSON: Thank you, Your Honor. Looking through the
16 transcript, Your Honor, had an opportunity to hear it almost
17 in kind of real time. It's a pretty -- fortunately, many of
18 these transcripts on audio are very difficult to hear. It's
19 difficult to hear some language in it, and so the transcript I
20 think aided the Court quite a bit.

21 Interesting, let's go right straight to the not -- the
22 defendant's not in custody, his rights and Miranda warnings
23 weren't even required at the onset of this. One of the
24 specific points of it, to show the voluntariness of this
25 defendant's conduct, as he voluntarily drove, once LaShania

1 Chestnut's mother called him to come back to that location
2 knowing the police was there. So, we know that he got in the
3 car and went there knowing they were there, clearly in an
4 effort for obvious objective person could see that he was
5 willing to cooperate with law enforcement. So, we don't have
6 to speculate about that. He hadn't even been asked a question
7 when he voluntarily exposed himself to law enforcement.

8 As it relates to the voluntariness of it, the testimony
9 was that he was free to leave. The testimony in the record
10 was LaShania Chestnut came down there with him, both as
11 persons of interest and suspects perhaps because the car looks
12 good; that's okay. The terms that we use to call the parties
13 at this point, don't carry today. Ms. Chestnut left. So, we
14 can show that Detective Lent was correct when he said, no, she
15 was free to go. He was free to go if he said I want to go,
16 but he never did. Interestingly enough, I feel like it was an
17 absolute textbook example of when a detective realizes that
18 he'd better stop asking questions and Mirandize this person
19 when he felt as if it was getting into an area that may be a
20 concern. And that is the transcript is clear that Detective
21 Lent, light bulb went off, and he specifically says, okay,
22 James, we're gonna have to have a serious talk here, man. All
23 right, James, me and you need to have a serious talk, because
24 I don't know what you're gonna say now, but some of the stuff
25 that you're saying, I got a concern. That's what we want the

1 law enforcement officers to do is to scrupulously protect the
2 rights of a defendant and give him Miranda warnings on the
3 record. I think that the Miranda form is terribly
4 interesting, because to me it indicates he did know that he
5 was gonna ask other questions that needed a Miranda form,
6 because at that time, he came voluntarily down to the Green
7 Sea Substation with his girlfriend to talk about where he's
8 been. That is -- he was offered a couple of times for a
9 Pepsi, asked if he wanted another drink.

10 Now, let's go specifically to the question first tactics,
11 which I think it fails on several prongs on that,
12 specifically. The one, the completeness and detail of the
13 question and answers in the first round of interrogation.
14 Now, what Seibert and Navy stand for is the proposition that
15 you give an absolute confession and then from there, you sneak
16 back up on the defendant and say, you just told me you killed
17 that person, say it again now. Your Honor's question I
18 thought was right on the point that he, he gives no
19 incriminating information. He absolutely says that I went in
20 and bought a soda. He doesn't have a mask on, no crime has
21 been committed, putting himself in a place buying a soda in an
22 area where he lives; there's nothing incriminating about it.
23 Contextually perhaps, it may be incriminating, but it is now,
24 several years later. But at the time, it absolutely wasn't.
25 And to prove more along the lines of that point, that the fact

1 that the soda is non-incriminating is, if you recall, Your
2 Honor, Detective Lent indicated he did not hear and did not
3 know that James Daniels had entered the Cultra Road store,
4 hadn't seen him on the video there yet. He said I just saw
5 the Malibu in the Oak -- the 905/Red Bluff store, but had not
6 worked that level of the investigation to go ahead of prior to
7 the killing and realize that he entered that store, too. At
8 the time of the interrogation, that was elicited from the
9 witness stand. So, the idea that he was setting something up
10 to trap him, that information, he didn't know at that point in
11 time in the investigation how linked they were.

12 As it relates to the details and the completeness of the
13 first statement, he spent 15 pages talking about a work
14 schedule and never got anything incriminating, not even an
15 admission of any kind beyond historical information concerning
16 work. It was not even complete as it relates to the, the Red
17 Bluff store that night or anything related, had not brought up
18 JJ or McKinley Daniels or Conway or any of the other ones.
19 So, it was not a complete or detailed question. It fails on
20 the first prong of *Seibert*. The continuity of police
21 personnel is the same -- is the same people. The timing and
22 setting of the first and second statements does show it's not
23 a continuous statement between 1, 2 and 3. The first one is
24 one statement. It's a one proper statement. The second
25 statement is another post-Miranda statement after he's under

1 arrest and fully advised twice of all of his Miranda rights.
2 The degree to which interrogator's questions treat the second
3 round as continuous of the first. The fact that Detective
4 Lent says, whoa, we're gonna have to have a serious talk here.
5 It's his effort to break those two and you can hear it. We're
6 going to an area that you need to get your Miranda warnings
7 right and you need to understand what you're saying because I
8 can see this going a different way.

9 As it relates to a midget, I hope there's no midgets in
10 the jury panel because that could be a concern, but it was a
11 police tactic that he used, whatever that might mean.

12 As specifically concerning the second statements, they
13 are absolutely improper. It is no -- it's not a question for
14 his tactic. Miranda warnings were given. As it relates to
15 him understanding them, we can recall Detective Lent and if
16 there is any questions concerning the non-verbal responses to
17 his questions, but five times on that, as I believe it's five
18 times, he paused and stopped and said, do you understand
19 you're here voluntarily? Do you want -- you can stop at any
20 time. This specific transcript where -- on the page
21 concerning that is -- and you can hear it real time with the
22 pauses that Detective Lent gave. He says -- I apologize and
23 beg the Court's indulgence because I thought I had it pulled
24 for you. At the beginning of it, he talks about, you're
25 coming down here voluntarily. On Page 16, he asks, all right,

1 you're gonna cooperate with us and speak with us, right? All
2 right. We brought you here, you were willing to come down
3 here and talk with us, right? I did not ask him on the
4 witness stand about did he non-verbally accept that statement,
5 but clearly one of the ways that you can adopt a statement of
6 somebody is that you don't react to it and he continues to
7 talk through it. So, if anything, he adopts that by the fact
8 that he continues to talk freely. And if I can, I'd recall
9 him and ask him, did he nod, did he acknowledge, did he say
10 anything. But, he asked, you understand you have the right to
11 an attorney; do you understand those rights? And there's a
12 pause. Okay. Do you have any questions about any of those
13 rights? Oh, you've been at work. Have you been drinking?
14 No. And he stops talking right now in response to it. So,
15 it's prima facia evidence, obviously, that he was read it,
16 understood it, and kept talking. And so for those reasons,
17 Your Honor, I'll answer any questions, but we believe the
18 statement was voluntarily given, the prophylactic requirements
19 of Miranda were done properly, and we would ask the Court to
20 admit both of those statements or allow them to be in
21 evidence.

22 THE COURT: Come on back up, Detective Lent.

23 EXAMINATION OF GREG LENT BY THE COURT:

24 THE COURT: Do you have a copy of the transcript?

25 MR. LENT: I don't, Your Honor.

1 THE COURT: Can somebody give him one?

2 MR. HIXSON: Yes, Your Honor.

3 CLERK: Would you like for me to swear him in?

4 THE COURT: You're still under oath.

5 MR. LENT: Yes, Your Honor.

6 THE COURT: Thank you, Natalie?

7 Which one are you giving him?

8 MR. HIXSON: I'm handing him the final lined redactions
9 transcript, Your Honor. That's James Daniels Interview 1,
10 final line redactions.

11 THE COURT: Do you have that, Ms. Pratt?

12 MS. PRATT: I do, Your Honor, thank you.

13 THE COURT: Okay. All right. So ---

14 MR. HIXSON: I'm handing him Page 18, Your Honor.

15 THE COURT: Perfect. Okay. So, here's how we're gonna
16 to do this. I'm going to ask you a few questions. Okay? And
17 then I'm gonna let them ask you a few questions. So, this
18 just won't be me talking.

19 So, the point that Ms. Pratt brought up, was one of my
20 big notes that I made to myself as I was processing through
21 this interview, and we're really and kind of the bottom -- you
22 kind of, okay, so up around Line 18, you kind of start this,
23 it's time to have a serious talk thing, right; you with me?

24 MR. LENT: Yes, Your Honor.

25 THE COURT: Okay. Okay. So, you're tracking with me on

1 the transcript?

2 MR. LENT: Yes.

3 THE COURT: Okay. All right. So, you come down and then
4 you start going -- you're going to cooperate in speaking with
5 us. We brought you here, you were willing to come down and
6 talk with us, right? And in the transcript, there's no
7 reflection that there's any response. So, my ears kind of
8 perked up there. I didn't hear anything in the audio
9 recording either. So, can you tell me what occurred or what
10 did not occur kind of in this transaction beyond what I read?

11 MR. LENT: Yes, Your Honor. As I'm asking -- as I'm
12 saying these things, you understand you do have a right to
13 remain silent and everything else, at this time, Mr. James
14 Daniels is sitting in the chair, myself and Sergeant Delpercio
15 at the time were also seated in chairs and Mr. Daniels -- Mr.
16 James Daniels was nodding and agreeing, yes, I understand, I
17 understand. He nodded throughout the entire reading of
18 Miranda to him.

19 THE COURT: Okay. And did he appear to understand what
20 you were asking him?

21 MR. LENT: Yes, he did.

22 THE COURT: Did he have any questions for you about any
23 of those rights?

24 MR. LENT: He did not ask -- he did not ask any questions
25 about them ---

1 THE COURT: At any point in time, did you come under the
2 conclusion that he was under the influence of any type of
3 alcohol and/or drugs?

4 MR. LENT: No, not at all.

5 THE COURT: And did he give to you -- and how many years
6 have you been in law enforcement?

7 MR. LENT: I've been in law enforcement for 11 years, and
8 I've conducted investigations ongoing almost seven years.

9 THE COURT: Okay. And so you've come in contact with
10 people in your line of work that are under the influence of
11 alcohol and/or drugs?

12 MR. LENT: I have, Your Honor.

13 THE COURT: And did he appear to be under any at that
14 time?

15 MR. LENT: No, he did not.

16 THE COURT: Okay. And so, what I'm hearing you saying
17 is that he was non-verbally agreeing with the information that
18 you presented to him and then from that point forward,
19 continued to speak with you?

20 MR. LENT: Yes, Your Honor.

21 THE COURT: Okay.

22 All right. Ms. Pratt, you may cross examine him if you'd
23 like?

24 RECROSS EXAMINATION OF GREG LENT BY MS. PRATT:

25 Q: Detective Lent, when you do an interrogation and someone

1 is not answering or is giving uh-huh or whatever, don't you
2 then say, I need you to say yes or no?

3 A: No, not in every -- not in every interrogation that I've
4 ever conducted.

5 Q: But in some certainly?

6 A: In some, there are times where I'm sure I've said, I
7 couldn't hear you, I can't see anything. Most of the times, I
8 mean, if they're nodding and they're not speaking out, I mean,
9 I will continue reading the Miranda rights. I will continue
10 advising them.

11 Q: So, if something is important, I mean, that's crucial in
12 an interrogation, and at that point, you did know where you
13 were going, you probably knew a little bit before then, but
14 you at least knew on Page 18 where you were going, you didn't
15 take the time to make sure that the audio that you were taking
16 was clear as to whether my client understood what was going
17 on?

18 A: We were recording it. I did not ask him to say yes. I
19 had another officer, a sergeant with me in the room. No, Mr.
20 James Daniels was nodding in agreement that he understood what
21 it was that I was saying to him, to that point in the
22 interview, everything we had spoken about, he was able to
23 answer clearly. He had no issues understanding anything that
24 I had said to him at that point. And there were multiple
25 times prior to that, when we were speaking about things where

1 he would've nodded throughout the interview or answered it
2 with a uh-huh, huh-uh, things of that nature.

3 Q: But also, throughout the interview, when he would make a
4 statement like a yeah or a no, y'all, one of you, either you
5 or Sergeant Delpercio would repeat that back. Here you
6 haven't gone through the process of saying, you understand,
7 yes. I mean, at one point, you do say okay. You understand
8 those rights, okay. But you don't -- and yet, you didn't
9 think it was important enough to do that?

10 A: If I'm saying okay, he's nodding, I'm saying okay. I'm
11 going to continue to read you your rights and then accept that
12 for what it is.

13 Q: There was one other question the solicitor asked you or
14 the statement the solicitor asked you or stated, excuse me,
15 that I want to clarify. LaShania was actually still at Green
16 Sea all the way through both of these interviews, all the way
17 till after 11:40 at night, wasn't she?

18 A: I'm not sure when she left. She very well could've been
19 there until we finished with Mr. James Daniels.

20 Q: Because you stepped out and talked to her twice in this
21 interview?

22 A: I did step out to her while I was speaking with Mr. James
23 Daniels.

24 Q: Thank you.

25 THE COURT: Mr. Hixson?

1 MR. HIXSON: Just briefly.

2 REDIRECT EXAMINATION OF GREG LENT BY MR. HIXSON:

3 Q: So, you're confident in your ability to determine whether
4 an individual gives you a non-verbal affirmative response?

5 A: Yes..

6 Q: And in relation to the reading of Miranda rights, did
7 James Daniels and after you asked those questions, did he give
8 you an affirmative non-verbal, yes, that he agreed and would
9 continue to cooperate?

10 A: He absolutely did.

11 Q: No further questions.

12 THE COURT: And did he do the same thing at the J. Reuben
13 Long Detention Center the next day?

14 MR. LENT: He did, Your Honor. And in all my years in
15 investigations, conducting interviews and interrogations,
16 there were not very many people that I interrogated that were
17 as cooperative or that were as willing to speak to me as Mr.
18 James Daniel were about incidents of these nature -- of this
19 nature.

20 THE COURT: Okay. Any follow up as to on that, Mr.
21 Hixson?

22 MR. HIXSON: No, Your Honor.

23 THE COURT: Ms. Pratt?

24 RECROSS EXAMINATOIN OF GREG LENT BY MS. PRATT:

25 Q: Do you think that's because he may have thought you

1 weren't going to use it against him?

2 A: I have no idea what his thoughts were.

3 Q: And isn't that the whole point of Miranda, what his
4 thoughts are?

5 A: I advised him that it would be used against him.

6 THE COURT: Okay. Thank you. You can step down,
7 Detective Lent.

8 BY THE COURT:

9 THE COURT: All right. I'm gonna process through these
10 statements kind of as I go. And, when I go through this, I'm
11 going to refer to the first statement as the entire first
12 recording and the second statement being the one at the J.
13 Reuben Long Detention Center. All right?

14 So, the record at this point is clear, I have listened
15 to the direct examination and the cross examination of
16 Detective Lent. I have reviewed and listened to the redacted
17 audio recordings of Mr. James Daniels' interviews, both the
18 first interview and the second interview. So, the record is
19 clear, I find that that items that were redacted in both of
20 those statements were completely and totally appropriate for
21 redaction and had y'all not agreed on that, I would have
22 ordered that they be redacted. So, I appreciate y'all getting
23 together and redacting that information. That made perfect
24 sense to me as I followed through with it.

25 So, here's how I probably, in most of these cases, the

1 *Seibert* case, the Navy case -- what's my other one, hold on,
2 there's one more. The *Seibert* case, the Navy case, one of the
3 things that they all talk about is the different factors that
4 I have to consider. So, at this point, I'm gonna make these
5 specific findings so that the record is clear.

6 So, in regards to Statement Number 1, the most telling
7 thing to me about Statement Number 1, is that when the
8 officers go to James Daniels' residence, you know, they know
9 from at least one video that Mr. Daniels was in a store that
10 was robbed prior to the robbery taking place. That's really
11 the only thing they know about Mr. Daniels other than somebody
12 said, yeah, he just got -- he just finished being in trouble
13 or, you know, that kind of thing, which I would assume is
14 fairly common talk amongst police officers. When they get
15 there, they didn't know they were gonna find a silver Malibu.
16 They didn't know what they were gonna find. They knew a
17 silver Malibu was a car, an issue of interest in the case, but
18 I don't think any of them -- there's no evidence that any of
19 them knew when they rolled up to that residence, that there
20 was gonna be a silver Malibu sitting there. Once they do get
21 there, at that point, there's no way for the officers to say,
22 he's a witness or he's a suspect or, or anything. They know
23 that he's on a video in a convenience store that was later
24 that day robbed. And that's really -- and had that officer
25 not been sitting in that room and said, hey, I know who that

1 is, who knows where we would all be 'right now and in this
2 moment. But upon arriving, they find the Chevy silver Malibu
3 that clearly matched the description of a car that was of
4 interest to them. Mr. Daniels' girlfriend was there. They
5 were talking to her. Sometime during that questioning,
6 somebody communicates with Mr. Daniels and tells him that the
7 police are present. He voluntarily leaves wherever he is and
8 comes home and upon arriving at the house, he knows that the
9 police are there. I mean, he -- this is a situation where, in
10 this case, Mr. Daniels went to the police. The police -- he
11 wasn't home, he could've easily gone and done whatever he
12 wanted to do that night. He made the conscious choice to
13 drive to the house knowing that there were police present and
14 that they were questioning people. They then asked Mr.
15 Daniels and his girlfriend to come to the precinct. They both
16 agreed to do so. There's no evidence that anybody said no or
17 I don't want to go or you better arrest me or that there's
18 absolutely no evidence that them getting in the car, in
19 whatever car situation they got into, and going to the
20 precinct. They did not go to headquarters, they did not go to
21 the J. Reuben Long Detention Center, they went to a precinct,
22 which based upon the evidence that's before the Court today,
23 is essentially set up like an office, an office area, and
24 there's no evidence that their getting in those cars was
25 involuntary. There's no, and I guess, you know, we all -- we

1 all do these cases all the time and I'm thinking of the cases
2 where it's you're not allowed to leave right here; everybody
3 stay still; no one's allowed to go; somebody take the kids
4 into custody. Those are all the kind of different things that
5 lead a reasonable person to believe that they're -- that
6 they're in custody. There's absolutely no evidence in this
7 record that either one of them got in those police cars
8 involuntarily. There's no evidence that they were under
9 arrest, that they were under investigative detention, that
10 they were in handcuffs or that they said, we don't want to go
11 and the officers made them go. So, he's taken to the
12 precinct, he's not handcuffed, he's not under arrest, and
13 according to the testimony that's before this Court, he was
14 free to leave.

15 Now, so basically for about -- I put my timer on as I
16 went through and I realized I was listening to the redacted
17 version, but Ms. Pratt is right, for about 30 minutes, 30, 31
18 minutes, right around in there, he is questioned by Detective
19 Lent. And during that time, he does not say I participated in
20 an armed robbery with my brother and JJ He does not say JJ
21 and McKinley went there to rob those people and it went bad
22 and they got killed. He doesn't say any of that. He says,
23 this is my work schedule. The girlfriend is carrying my child
24 and, you know, they kind of go through their schedule and
25 where they've gone and kind of the things they've done. He

1 admits that his car is in the shop. He admits that he's using
2 her car. They're, you know, in these *Seibert* cases and these
3 Navy cases, the defendants in those cases are making specific
4 confessions to the crime. In *Seibert*, *Seibert* confesses to
5 the crime, non-mirandized, and then they, uh-oh, this isn't
6 good. We better get, you know, and that's the situation
7 that's here. I mean, short of -- even the in7formation he
8 gives on the back end, isn't the greatest confession in the
9 face of the world. I mean, let's all be perfectly honest, you
10 know, by the end of it, he admits to being there. He admits
11 to being there, he admits to knowing one person has a gun, and
12 he admits to seeing a cash drawer, and that's basically it. I
13 mean, he -- I mean, it's hard to say he still even fully
14 confessed to the crime even after Miranda. I mean, he
15 certainly gives incriminating information after Miranda that's
16 more general than I bought a soda and I drove a silver car
17 during the timeframe in question. But, you know, those first
18 31 minutes, and I -- I mean, I was paying attention, I was
19 reading along, I was listening. He's talking about his work
20 schedule, where he works. I mean, I can tell you where he
21 works, what his shifts are, the different times that he works,
22 the different shifts that exists, and it's very calm, it's
23 very unthreatening, it's very unalarming, it is a very calm,
24 simple, conversation. And then at some point in time, a bell
25 goes off in Detective Lent's head and says based upon a bunch

1 of different factors, this may turn into something else and he
2 chooses to Mirandize him.

3 Now, Detective Lent, I'm gonna say this, I don't know you
4 personally, but in the future, use a form. Okay? Use a form
5 and get them to initial it and put a waiver paragraph at the
6 bottom and get them to initial and sign that, and write their
7 age on it, and write their education on it, and write on there
8 that they can read, write, speak, and understand the English
9 language and that makes all of this a lot easier for me in
10 this scenario. Okay? But, you know, every county you try
11 cases in does things differently, but that being said, that's
12 my one moment of preaching for the day. So, let's let that be
13 done.

14 But I do find that he was given the appropriate Miranda
15 warnings, that he was noticed of his rights under *Miranda v.*
16 *Arizona*. He was noticed of all of his rights under *Miranda v.*
17 *Arizona*. He was done so orally, he was done so in the
18 presence of officer or Detective Delpercio, I'm sorry if I
19 said that wrong. And at that point in time, the testimony
20 that we now have is that he agrees and goes along with after
21 acknowledgement of his constitutional rights with the decision
22 to continue to talk to law enforcement. And so, I do not find
23 that this is a *Seibert* violation, nor do I find that it is a
24 Miranda violation. I just -- I've read *Seibert* and I've read
25 Navy and I've read them over and over again and, you know, in

1 Navy, of course Navy was one of our Richland County cases
2 where, you know, the investigator, Investigator Weeks -- her
3 name is Lancy Weeks -- Investigator Weeks went into the
4 interview -- with information that she had gotten from the
5 forensic pathologist that nobody in the whole world but the
6 killer can know. And then, and she used that to spring it on
7 him and to trap him in this big, big scenario. And I just
8 don't find that form of questioning taking place here. They
9 knew he was on a video. They knew, you know, based upon one
10 officer's statement, you know, he's probably not winning the
11 citizen of the year award, but they go out there and find a
12 silver car in, in -- and you know, at that point, they don't
13 even know that he's driving it. I mean, they don't know --
14 he's not on video driving the car, he's not on video
15 committing an armed robbery, he's not video murdering anybody.
16 He's on video walking in the store 30 minutes before it gets
17 robbed, which could be any single one of us in this room
18 frankly. Anybody that goes to a gas station.

19 So, I do not find a *Seibert* violation or a *Miranda*
20 violation. I do not find that for the first, I do
21 specifically find that for the first 31 minutes of that
22 interview, he is not in custody and I'm basing that upon the
23 totality of the circumstances. Yes, he was at a police
24 precinct. He was not at police headquarters. He was not at
25 the J. Reuben Long Detention Center. He was not in custody.

1 He was not in handcuffs. He had not been forced to be there.
2 He was there voluntarily. And, you know, based upon the --
3 based upon the testimony of the officer, he was free to leave.
4 There's no indications of his right to attorney. There's no
5 desire stated by Mr. Daniels at any point in time that he
6 wants to stop talking or maybe I need a lawyer, or you guys
7 think I should get a lawyer or all those kind of haphazard
8 statements that we all hear in these cases. There was no
9 denial of creature comforts. He was offered drinks. He was
10 offered sodas. He seems extremely relaxed. He seems
11 extremely comfortable in the interview. He's communicating
12 with them. Nobody is yelling, nobody is screaming, no one is
13 coercing, there are no threats, there's no intimidation. You
14 know, the biggest issue that I have, even -- that I had, even
15 before you all started your arguments was, you know, did he --
16 did he waive his Miranda warnings by continuing to talk or did
17 he give some type of verbal or non-verbal affirmation of his
18 waiver.

19 So, I find that he did give a non-verbal affirmation of
20 his waiver of his constitutional rights and he continued to
21 talk for another -- I'm gonna get the amount of time wrong,
22 but you know, we're at about 31 minutes and the whole thing
23 was about an hour and a half. So, he continues to talk for,
24 you know, at least the next 50 to 60 minutes. Then the
25 following day or the day after when he goes back to -- when

1 Detective Lent goes to the local county detention center, he
2 meets with the defendant. He advises him of his Miranda
3 warnings, which Detective Lent has testified that he
4 acknowledged and agreed to talk to him and continues to have a
5 very calm conversation with him. You know, he's saying he
6 wants to cooperate, that he wants to help, you know, and can
7 he get his -- can his girlfriend get his car back and can he
8 get the bankcard. These are just not conversations that --
9 that people who do not want to talk with the police or are not
10 voluntarily doing so, have with them.

11 So, I find that the statements at this point with the
12 redactions are admissible and are not in violation of *Seibert*
13 and/or *Miranda v. Arizona*. I find based upon the totality of
14 the circumstances present that the statements are freely,
15 voluntarily, knowingly, and intelligently made after having
16 been advised and waived his constitutional rights under
17 *Miranda v. Arizona* and take the *Missouri v. Seibert* case, the
18 *State v. Navy* case and the *State v. Marshall Miller* case,
19 which goes to the totality of the circumstances and
20 voluntariness, put them all together and that is my ruling.

21 Sorry, this -- I usually don't talk for that long. So, I
22 apologize, Kay, but this one I wanted to make sure that the
23 record was clear on what was going on in my mind as I process
24 through that. Okay?

25 All right. Now, let's talk about some of this other

1 stuff that we need to hash out.

2 MOTIONS:

3 MR. HIXSON: Indeed, Your Honor. I suppose the best way
4 to go forward is we had a conversation in chambers
5 specifically referring to Ms. Pratt's motion, I think, under
6 the rules, I think it was couched as kind of a motion to elect
7 charges. I would certainly concur and join the opportunity to
8 hash these out pretrial with it. So, the state's intention is
9 to call the indictment in the matter of that occurred on
10 January 25th of 2015, specifically Trish Stull's murder.

11 THE COURT: And that's the ---

12 MR. HIXSON: The armed robbery and that is the Cultra
13 Road and Oak Street situation.

14 THE COURT: Okay. And so, what all charges come out of
15 that incident that this Mr. Daniels is charged with?

16 MR. HIXSON: It will be an armed robbery and a murder.

17 THE COURT: Okay. So, one charge of armed robbery and
18 one charge of murder?

19 MR. HIXSON: White acting in concert with others -- he
20 knowingly -- under State v. Adams, which I have a copy of that
21 for the Court and a copy for counsel.

22 MS. PRATT: Your Honor, there is also a possession of a
23 weapon during a violent crime charge from that day.

24 THE COURT: That's correct.

25 MS. PRATT: And a criminal conspiracy direct indictments

1 that he did.

2 THE COURT: So, is the state not going forward on the
3 weapons charge and the conspiracy or what's the plan with
4 that?

5 MR. HIXSON: Not on the weapons charge, Your Honor,
6 because we don't have any allegation that James Daniels
7 possessed a weapon during any of this.

8 THE COURT: Okay.

9 MR. HIXSON: The -- the conspiracy charge, I'm holding
10 that discussion in abeyance simply based on our conversation
11 before the Court today. In other words, we would be
12 interested in a criminal conspiracy charge. The reason we
13 added that is because we're able to use circumstantial
14 evidence of the existence of an agreement and the indictment
15 itself goes back to January 2nd of 2015. There are two
16 conspiracy indictments. If we went forward, we'd only go
17 forward with one, and that would be the conspiracy that
18 subsumes from January 2nd all the way to February 6th. That
19 -- date of that is the determination of the conspiracy at the
20 time he was placed under arrest. So, the timeframe of the
21 conspiracy alleged is a conspiracy between McKinley Daniels,
22 Jerome Jenkins, and James Daniels, which committed armed
23 robbery during that timeframe.

24 And as Your Honor is aware, with conspiracy, we can prove
25 the existence of an agreement through circumstantial evidence

1 and that makes their conduct in these other crimes probative
2 for the element of that.

3 But, prior to getting there, I would prefer to go back
4 originally, Your Honor, and to talk about the joinder of the
5 Lake Arrowhead charge. So, ---

6 THE COURT: So, and I'm going to tell you how my mind
7 processes through these. So, we have, hold on. Just so we
8 all use the same words.

9 MR. HIXSON: Yes, sir.

10 THE COURT: So, the way that I understand them, there's
11 the January 2nd, 2015, 905 Sunhouse.

12 MR. HIXSON: Yes, sir.

13 THE COURT: And that's where a gentleman whose name I
14 cannot pronounce ---

15 MR. HIXSON: Bala Paruchuri.

16 THE COURT: Bala Paruchuri was murdered; is that correct?

17 MR. HIXSON: Yes, sir.

18 THE COURT: Okay. All right. And then we have the
19 January 25th at 10-something at night, Cultra Road, Cultra/Oak
20 Road armed robbery and murder; that's Ms. Shull; is that
21 right?

22 MR. HIXSON: Stull. Trisha Stull, Trish Stull.

23 THE COURT: And how do you spell Stull?

24 MR. HIXSON: S-T-U-L-L.

25 THE COURT: Okay. Trisha Stull. Okay. I'm sorry, if I

1 said that wrong, I didn't mean anything by it. Okay. And
2 then so prior to the Cultra Road is the Lake Arrowhead
3 Scotchman?

4 MR. HIXSON: That's correct, Your Honor.

5 THE COURT: Okay.

6 MR. HIXSON: And no one was hurt in that one; that was
7 just an armed robbery.

8 THE COURT: And that's an armed robbery with no murder
9 charge?

10 MR. HIXSON: That's correct.

11 THE COURT: Okay. So, the state would -- the state is
12 thinking or your thought process is that Lake Arrowhead comes
13 in under res gestae; is that correct?

14 MR. HIXSON: Well, I believe there are several arguments
15 for it, Your Honor.

16 THE COURT: Okay.

17 MR. HIXSON: Specifically, I believe under the case law,
18 a joinder would be appropriate with that because it's a crime
19 spree, they're separated by less than two hours apart. As
20 Your Honor is very well aware, the evidence required to do a
21 joinder are the same event and circumstances -- that the
22 events are of the same nature provable by the same evidence,
23 by the same witnesses, and no right of the defendant is
24 prejudiced by the presentation, the trial of separate
25 indictments together at one time.

1 THE COURT: So, you want to go forward on the Lake
2 Arrowhead charges against Mr. Daniels?

3 MR. HIXSON: Yes.

4 THE COURT: Okay. And what are those charges?

5 MR. HIXSON: Armed robbery.

6 THE COURT: One count of armed robbery?

7 MR. HIXSON: That's correct.

8 THE COURT: Okay. All right.

9 MR. HIXSON: And once again, there are no allegations in
10 that Lake Arrowhead that he was in there during the course of
11 it. It is acting in concert with another relating to that.
12 Okay?

13 THE COURT: All right.

14 MR. HIXSON: Then the next step after that, which is
15 really the key to entire thing is the evidence of the Chevy
16 Malibu -- of course, you've heard about his involvement with
17 Lake Arrowhead realizing at the time of January 25th, we know
18 that there was an armed robbery that he drove people to and
19 from the 905 and he was wearing the same clothing,
20 circumstantially -- I don't want to get into the ownership --
21 but if you'll watch the video, you'll see him, what I will
22 refer to as casing the place, at 905 wearing red pants, white
23 t-shirt with the tails hanging out, and a gray fleece
24 pullover. That is the same clothing that Jerome Jenkins
25 ultimately wears in Lake Arrowhead and the same clothing

1 that's being worn in Cultra Road and Oak Street. We know that
2 by lay person's comparison press and play on a video.

3 We also know that in his statement on the second, or
4 excuse me, the statement, Interview Number 2, he specifically
5 talks about in -- about who was with you at the Conway store,
6 which is Conway is considered Cultra Road and Oak Street, Your
7 Honor. So, when I say Conway store, that's Cultra and Oak.
8 Who was with you at the Conway store? JJ and McKinley. Okay.
9 Were you guys switching clothes or anything during any of
10 these robberies? No, I probably had some clothes in the car,
11 though, so -- in the back seat. Yeah, I probably had some --
12 yes, I understand. Because he says, Greg Lent says, well,
13 well somebody probably wouldn't go in the store wearing the
14 stuff they're sitting in the car with because what if they got
15 stopped by the police, they don't want to be wearing the same.
16 And James said yes, I understand. I probably had some clothes
17 in the back seat. So, were they throwing different clothes on
18 just so they would look different when they're in the store?
19 Well, I think JJ probably switched styles because he did have
20 an army fatigue shirt on when he got in the car and when he
21 got out. He also says when he had red pants when he got in
22 the car. It is passive incredulity when you see James Daniels
23 wearing the gray -- the same outfit on Highway 905 prior to
24 that killing, when he walks in and buys a soda, and I'd like
25 to play the videos for Your Honor so you're able to see it in

1 real time, not to know that an armed robbery took place in
2 exactly the same M.O., the same silver car. Jerome Jenkins is
3 seen wearing a blue bandanna in all three burglaries. That
4 blue bandanna is recovered in the Chevy Malibu when they
5 executed a search warrant, they have photographs, it's in
6 evidence, you know, Your Honor will see all -- be able to
7 handle all that.

8 For Mr. Daniels to not know what's going on, the key to
9 this or the state's position, Your Honor, his statement
10 maintains throughout his entire defense and this entire thing
11 is mere presence, lack of intent. His entire defense is, I
12 dropped them off but I had no idea what was happening. And
13 you will hear Greg Lent specifically address it by saying, Bo,
14 you dropped him off at 905 and someone died, and you dropped
15 him off at Arrowhead and they came running down the road and
16 you saw them getting out with guns, coming back with a cash
17 drawer and then you go to Conway right after that wearing the
18 same clothing and you go in there and someone dies and you
19 didn't know any of this was going on? That is why it is so
20 probative across the board to be able to show through Lyle, a
21 common scheme or plan. Everyone is executed exactly the same
22 way. His statement is he does the same thing every time.
23 Lyle evidence under 404(b) prior bad act evidence, it's
24 admissible to show of a common scheme or plan absence a
25 mistake or accident. And here we would use the 905 case to

1 show that this is not an accident; it's not a mistake on the
2 part of Mr. Daniels that he pulls up in the Chevy Malibu, they
3 get out with guns, they tell him to go down the road and wait,
4 they come running down with a cash drawer and that was a
5 mistake. And then he does it again and then he does it again,
6 and I haven't gotten to the uncharged prior bad acts though,
7 I'd like to talk about here in a second.

8 The key to it also, is the fact that the custody of this
9 clothing, whether or not who owns it, the fact is, is when
10 Detective Lent is interviewing him, he is wearing the same
11 gray sweatshirt with a pocket you can see in every one.
12 That's how it's recovered, when he is arrested. So, Jenkins,
13 circumstantially speaking, it's not like a serial number, that
14 same photograph shooting, involved with the killing of Ms.
15 Stull, he gets it back and is wearing it back again. The
16 reason that second statement is so important, because it is
17 proof that they were switching clothing, that he knew they
18 were switching clothing after the fact. And the only evidence
19 we can show that he was in custody and control of the red
20 pants and the gray hoodie is because he was using it when he
21 cased it at Highway 905. When he went in, he's on video clear
22 as a bell wearing that clothing and they come in other
23 clothing. Subsequent to that, he is wearing -- the other
24 assailants are wearing that clothing and, when you see it, it
25 is beyond a reasonable doubt when you see the videos and boom,

1 that is it.

2 In addition to switching clothing and switching shoes, in
3 a search warrant -- in a search warrant in the trailer, you
4 see very unique shoes, Niki shoes, navy blue and white with a
5 neon green sole. When James Daniels -- you'll see James
6 Daniels in some videos wearing those shoes. Then you see
7 McKinley Daniels wearing those same shoes in the Arrowhead
8 Road robbery and Trish Stull's armed robbery and the loss of
9 her life in there. Those are stills that are pulled from the
10 video, unmistakable. I'll show the summaries to the Court.
11 Those shoes are found in McKinley Daniels' house that he
12 shares with James Daniels' house in a search warrant. Both of
13 their ID's are in the house and they're recovered in there.
14 So, the jury will hold those shoes. Those are consistent
15 across the board. Specifically, the black hoodie sweatshirts,
16 those are used in the multiple crimes and it shows that -- it
17 corroborates all of his statements and the statements are
18 impossible to explain the context of the crime in his
19 statement because the defense is intent and *Adams* says, the
20 state must be able to show evidence of intent through *Lyle*
21 evidence. In other words, Trish Stull and Arrowhead reach
22 back to show the only evidence we have of the switching of the
23 clothes is when he's wearing red and -- and green or gray, JJ
24 is wearing red and gray, and then recover it after the fact,
25 and he's wearing it back again. Once again, his statements

1 indicate they're switching. So, our position is it's not so
2 much res gestae, because we're not arguing that a drug debt
3 was the reason why they had to rob the store and we want to
4 introduce an unrelated crime to talk about this. We believe
5 that it's absolutely pure prior bad act for intent, for a
6 common scheme or plan, and absence of mistake.

7 Now, the two other points that I would like to bring out
8 ---

9 THE COURT: Hold on. Hold on. Just a second. So, tell
10 me -- so tell me what that looks like in trial, that's my
11 question?

12 MR. HIXSON: Okay.

13 THE COURT: We're not going forward with the charges on
14 Red Bluff?

15 MR. HIXSON: Yes.

16 THE COURT: But tell me what it looks like in trial, is
17 that -- how is all that gonna come out is my question; does
18 that make sense?

19 MR. HIXSON: Yes, it does, absolutely it does. So, our
20 intention was to call the basic trial for Trish Stull. So, we
21 would call the first responding officer, or excuse me, Barbara
22 McDowell, the Arrowhead Road. So, Barbara will show, I was
23 robbed at gunpoint, I couldn't ID them, masks, you got a video
24 system, crime scene. And then, we'll have a detective
25 testify to that video. That video will be admitted and I have

1 it for Your Honor to see that video of the Arrowhead store.
2 As they were clearing the Arrowhead store, they got a call by
3 dispatch to go to Conway -- they hadn't cleared yet -- to go
4 to Conway and we have another armed robbery of a convenience
5 store and this time someone is down in that one. So, they
6 leave there and go straight up on, it takes less than 30
7 minutes to get there with blue lights on and they are there
8 fast. They get in there and Detective Lent, all of them, go
9 to the surveillance video and as soon as they see it, they go
10 boom, both of these guys hit the same one. These are the same
11 ones. You know, holy cow.

12 Now, what's key to it is in that video of Oak Street, you
13 see the Chevy Malibu going back and forth and you see James
14 Daniels inside before and you see them going around. They
15 don't know it right that moment in time, but you see the Chevy
16 Malibu and you see -- I'll play the video for that for just a
17 short piece, you see him go out of the store, get in the
18 Malibu and then for about 12 to 15 minutes, driving around the
19 gas pumps, out on the street, you can see it and you'll see --
20 MAIT team will testify that's what it is and he admitted in
21 his statement that's what he did. That he dropped them off and
22 cut the block, went down to the auction house and came back.
23 Then the timing, a half hour later, they come in -- McKinley
24 Daniels and Jerome Jenkins come in the thing and -- and in the
25 Trish Stull's situation, she complied, they took her purse and

1 they -- she was shot twice and lost her life in the store.
2 So, they were investigating that one when they go, a Chevy
3 Malibu in this one, and they go right away to 905 where
4 they're going this is the Chevy Malibu in two of these and
5 when you see the video, it's interesting because Sunhouse has
6 the same video system. So, the Sunhouse video and it looks
7 like it's the same store, but the dates on the screens, you
8 see them go back and forth.

9 To give you an idea, additionally, of the common scheme
10 or plan, Your Honor, on Friday the 2nd at the 905 store, the
11 video stamp shows James Daniels enter the store at 9:35 P.M.
12 And then at 9:57 P.M. the armed robbery occurs. In that case
13 two guns were used and Bala Paruchuri lost his life in that
14 one. Then you go to the -- we'll talk about the BB&T Bank
15 later on and the Highway 9 later on. The Arrowhead store, he
16 enters -- the Arrowhead store, they enter at 8:44 P.M. and
17 they do not get -- they do not get parking lot video from the
18 Arrowhead store because they went to the killing up here and
19 didn't pull the unit because they went to a death and this
20 lady wasn't hurt. So, they went up to Conway and in that
21 store, James Daniels entered the Oak Street at 9:39 P.M. He
22 enters within four minutes of the same common scheme or plan
23 they enter on the 2nd. 9:35 at 905 and 9:39 at Oak Street.
24 And then 30 minutes later on the nose, the two men enter Oak
25 Street after that. In that, you'll see in the video -- and

1 while they're -- before they're entering, you'll see the
2 Malibu in the background and then you see them enter the store
3 from the direction you see the Malibu, run to where the Malibu
4 was and you see the Malibu run the red light heading back
5 towards Goose Bay in Loris.

6 That's the same as every one, same three people, same
7 nature of the crimes are exactly the same, the common scheme
8 or plan is exactly the same, his statement and his defense is
9 exactly the same that it is intent. I dropped them off, but I
10 don't know what they did -- I don't know what's going on. I
11 had no idea this was happening.

12 There is no more evidence of the inevitable
13 foreseeability of a murder from an armed robbery than having
14 participated in one already. So, if your job is to case a
15 place and drive but you don't think anybody is going to die
16 from it, that is a plausible argument in one. When that
17 happens twice, you know you are on notice that an armed
18 robbery may result in a death and, if that happens, you're
19 guilty of murder if you do it again and you know it's
20 happening again. And that's why the -- the *Lyle* evidence is
21 so important because that is the only evidence relating to
22 intent because his defense makes it so probative, but I didn't
23 know what was going on, I had no idea, man, I had no idea this
24 was happening.

25 Specifically, two other instances that I wanted to bring

1 to the Court's attention and that is in Whiteville, North
2 Carolina, you heard Greg Lent talk about a bank robbery in
3 Loris. It wasn't in Loris, it was in Whiteville, North
4 Carolina. It was about three miles across the border,
5 crossing the North Carolina border. In that, there's FBI, the
6 FBI reports our witnesses are prepared to testify, I have
7 302's on all of that. In that case, you will see a still
8 video of James Daniels come in. It's clear as a bell, not in
9 a mask, wearing a striped hat. The clerk asks him what's he
10 need and he says, my BB&T debit card isn't working. After she
11 says this is kind of suspicious, 30 minutes later, two men
12 come in the bank and avoid the cameras. Now, while that's
13 happening, two folks are going to the restaurant across the
14 street and they're all under subpoena and prepared to testify
15 to this. They show up and they see a silver Chevy Malibu or a
16 Buick, four-door, South Carolina tags, parked in the Zeno's
17 (spelled phonetically) parking lot and thought it suspicious
18 because it was backed in facing the BB&T bank. One witness
19 says they see two black males sitting in it during that period
20 of time, and then the bank robbery occurs and downstream from
21 that we go. That has never been charged because it's in North
22 Carolina, so we can't charge that.

23 Then, the other prior bad act or uncharged bad acts also,
24 and those folks are under subpoena to testify, too, and I have
25 photographs of that. That is on Highway 9 in Loris. It's a

1 Sunhouse on Highway 9. At approximately 8:30 P.M., the clerk
2 calls Horry County Police -- and this is one day before the
3 25th. So, they're all prior bad acts of Trish Stull -- and
4 I'll let Your Honor -- give the Court's the exhibit to read
5 whatever Your Honor needs to review in that. The clerk calls
6 and said that, well, I want the police to come here now
7 because a male matching Mr. Daniels' description came in and
8 asked to use the bathroom. She saw him pull up in a silver
9 car. She called it a silver Chevy Malibu, four-door with dark
10 tinted windows. You'll see the photographs of that. He used
11 the bathroom and left. And then from there, she watched it go
12 across the street, turn the lights off and sit. It sat, they
13 went back, went back, went back, she was so concerned that she
14 locked the door because -- locked the door and called the
15 police. The police got there and nothing happened. The
16 police could not download the surveillance system, but the
17 police officer took a screenshot of that and I submit to you
18 and Ms. Pratt, if you'll look at the photograph and it is
19 James Daniels, from a layperson's comparison obviously because
20 -- that is a prior bad act relating to a common scheme or plan
21 that we would offer relating to it is arguably not even
22 prejudicial because it's not a crime, but it clearly shows the
23 ongoing things that were going on in the month of January 2015
24 in the community during this period of time that shows
25 absolute intent that this is not a surprise.

1 So, we would -- if joinder of trying the 905 crime with
2 this crime is more appropriate, then we would move for that
3 also. The state's position was because it's 22 days prior,
4 then it would be more likely that it would not be seen as a
5 crime spree, and as a result it'd be more likely to be
6 problematic for the Court of Appeals on our -- courts that may
7 review this in the event Mr. Daniels is convicted. But there
8 is no question that we cannot proceed -- that that is what
9 Lyle is for, is for common scheme or plan, intent, you know,
10 absent a mistake and it is -- if this case doesn't apply to
11 Lyle evidence, that -- on case law should -- it's not a CSC
12 case, it's not some of the stuff, it's every -- and when you
13 watch the videos, you will see that every person plays their
14 role in it. In other words, Jerome Jenkins has the gun and
15 breaks left when he comes in the door every time. McKinley
16 Daniels gets Newport cigarettes out of the -- the thing, takes
17 the cigarettes out, directs the person to empty the drawer and
18 then leaves and while -- and Jerome Jenkins has the gun and
19 McKinley, excuse me, and James is the driver, goes in and
20 cases it and he is never in there when anything happens and
21 it's happened -- it's extraordinarily unlucky for this to
22 happen to him three times without it being intentional
23 conduct. So, there's a lot more questions, there's a lot of
24 detail to it as you probably can understand from my allocution
25 and I ask any questions or play these videos to see what the

1 conversation was.

2 The other concerns is it's not being forthright -- let me
3 ask -- and one another thing, we've recovered through -- there
4 are videos that we intend to present of inside J. Reuben Long
5 Detention Center of them passing notes because they were
6 separated like Mr. Daniels indicated in lockdown. You see
7 them passing notes back and forth to each other. Once J.
8 Reuben Long sees those notes, they search his cell. In the
9 note, that's a writing, our SLED -- our questioned document
10 examiner will say that was James Daniels' writing, that he
11 wrote that in his expert opinion. In that note, he refers to
12 all of the crimes and how to make sure that kind of they get
13 their stories straight. I didn't tell them this; I told them
14 this. Now, about the Conway store, this is what I said, they
15 ain't got nothing on this. And so all of that letter talks
16 about all three. It talks about now, about Conway; now, about
17 that other man. And so that that -- it's impossible to use,
18 to even use that writing as a statement of a party opponent
19 without having discussions of *Lyle*.

20 Now, finally, if it's not *Lyle*, we'd argue that much of
21 this is *res gestae*, that we can get about the nature of the
22 crime to have a full discussion of the nature of this offense
23 through *res gestae*. But my understanding of *res gestae* has
24 always been an unrelated, you know, why has someone got --
25 because they owed a drug debt, and talk about the drug debt,

1 but not this. This is a common scheme or plan under Lyle.

2 THE COURT: Where the Arrowhead is closer to res gestae
3 that the Red Bluff.

4 MR. HIXSON: Yes, sir.

5 THE COURT: Okay.

6 MR. HIXSON: And then finally, if that in fact, if Your
7 Honor is still concerned about that, we believe that if we
8 call a criminal conspiracy indictment according to that, that
9 the evidence of the existence of a common scheme or plan is
10 evidence to show the existence of a conspiracy
11 circumstantially. In other words, the clothes, the statement
12 that he gave to Lent. But, yeah, probably -- probably maybe
13 the fact that the masks and stuff are recovered in the back of
14 the Malibu, the fact that they are switching clothes. They're
15 going to be a bunch of other people that are out there wearing
16 with a gray hoodie and red pants, but only one in Horry County
17 that robbed two places wearing a mask of that's the nature of
18 the arguments and that's -- I'd be happy to answer any
19 questions of the Court.

20 THE COURT: Okay. So, your -- your request is -- you
21 okay, Kay?

22 COURT REPORTER: Yes, sir.

23 THE COURT: Your request is that you're allowed to go
24 forward on the Cultra Road charges and the Lake Arrowhead
25 charges and then you want to Lyle in the Sunhouse on Highway 9

1 and the North Carolina BB&T and the 905 Sunhouse?

2 MR. HIXSON: Yes.

3 THE COURT: Did I say that right?

4 MR. HIXSON: Yes, but the most important one is the
5 Highway -- is the 905 ---

6 THE COURT: The January 2nd.

7 MR. HIXSON: --- because of the Malibu and all that;
8 that's inseparable.

9 THE COURT: Okay.

10 MR. HIXSON: The other ones are interesting, but the
11 clothing and the, you know ---

12 THE COURT: Okay. I got you.

13 All right. Ms. Pratt?

14 MS. PRATT: I'm not quite sure where I need to start,
15 Your Honor. So, I'm just going to begin at the Lake Arrowhead
16 issue first.

17 THE COURT: Okay.

18 MS. PRATT: Okay. Because I think that's the area of
19 joinder that we need to be talking about or severance. I
20 appreciate the solicitor saying that he wants to do is to
21 start with the Cultra Road one because that does give a frame
22 of reference. Now, the difficulty with putting the Lake
23 Arrowhead incident in as part of this or joining it is that
24 while it appears to be part of the chain of events, one of --
25 the proof of Lake Arrowhead is not necessary to prove the

1 Stull murder nor is it proof of the Stull murder necessary to
2 prove Lake Arrowhead. What we have is a chain of
3 circumstances. We don't have clear and convincing proof of my
4 client's involvement there because we don't have him going
5 into the store, we don't have pictures of the Malibu. We have
6 his statement and that's all we have at this point of any
7 involvement and even in his statement, he says all I did was
8 drop them off at an apartment complex. So, while there is a
9 robbery and, as to McKinley and Jerome, that's their trial and
10 that's their problem. They may be in that store on video and
11 they may then be in the Conway or Cultra Road store on video,
12 but my client is not in the Lake Arrowhead store on video.
13 And so I find that that particular incident, when we put it
14 in, gives the jury the idea now that he's involved with or
15 being tried on two armed robberies. And the concern for that
16 is the prejudicial effect versus the probative effect. I
17 mean, we're talking about him, the jury possibly making a
18 decision based on an improper motive and certainly the proof
19 is not clear and convincing as it would be necessary.

20 THE COURT: Okay. Can you hold on there for just one
21 second? Just kind of hang where you are in your argument.
22 What, what does he really say about Lake Arrowhead in his
23 statement?

24 MR. HIXSON: That's -- he says that I drove up there and
25 I dropped them off. He described by the trailer park or

1 campground, Apache Campground is right across the street from
2 there.

3 THE COURT: Okay.

4 MR. HIXSON: And then he told them to drive down and have
5 him come back.

6 THE COURT: Or they told him?

7 MR. HIXSON: Yes, that's what he testified to. Now,
8 what's important to remember is he knows by now that the last
9 time he did this, a man was shot to death and there was a
10 marshal manhunt with wanted posters on everyone who did it.

11 THE COURT: Okay.

12 MR. HIXSON: And that is why you can't escape intent when
13 he drops these two guys off again that ---

14 THE COURT: Okay. You don't need to rehash that.

15 MR. HIXSON: I'm sorry.

16 THE COURT: My question is ---

17 MR. HIXSON: I'm sorry.

18 THE COURT: --- and where I think you were going and the
19 reason I asked that question, Ms. Pratt, wasn't to cut you
20 off, it was in my mind, my original note to myself is, what is
21 the evidence that he participated in the Lake Arrowhead
22 incident, whatever you want to call it, and so I think my
23 answer to that question is -- and I'm not saying the Lake
24 Arrowhead didn't happen. Okay? What I'm saying is the
25 evidence that would be presented at a trial, whether it was

1 Lake Arrowhead by itself or Lake Arrowhead with Conway put
2 together, the only evidence that he participated in the Lake
3 Arrowhead armed robbery is his own statement that says he
4 dropped them off and drove down and came back. He's not on
5 video casing Lake Arrowhead. He's not on video participating
6 in the armed robbery. Am I saying that right?

7 MS. PRATT: You are, Your Honor. And if I could answer,
8 Scott.

9 THE COURT: Sure.

10 MS. PRATT: These -- his -- in his statement, which is
11 the first statement from the 5th of February begins on Page
12 42. He says he drops them off at a complex.

13 THE COURT: Okay.

14 MS. PRATT: And then the detective brings up the fact
15 that there's a store down there, but he says he drops them off
16 at a complex near some apartments. He didn't know what they
17 were doing, goes on, they talk about the Walmart being there.
18 They talk about some other things. You can read the statement
19 itself. And then he parks in Arcadian Dunes for a little bit,
20 about 15 minutes and they come back with cigarettes. And he
21 says that they had money to buy cigarettes, and that goes,
22 Your Honor, from Page 42, Line 7, is where he says when you
23 went -- Detective Lent says when you went down to the beach.
24 And then on 45, then they start talking about Conway down at
25 Line 42. So, you are correct and that's a problem for me not

1 only because it's not clear and convincing evidence, but it's
2 not the same pattern and it's clearly cumulative there to
3 prejudice the jury, so ---

4 THE COURT: Does the -- and this is a question and I'm
5 asking this question, this is -- it's gonna sound like I'm
6 being a smart aleck, I promise I'm not, but the question is,
7 is if it's admissible -- under the state's theory if it's
8 admissible under the crime spree case law, does it have to be
9 clear and convincing or does clear and convincing just apply
10 to 404(b)?

11 MS. PRATT: Well, the *Woomer* case talks about allowing
12 the trial of all of the incidents in a crime spree, and I know
13 you remember *Woomer*. I was around when it was going on, too,
14 but ---

15 THE COURT: I mean, I -- under 404(b) and *Lyle*, the
16 evidence of that clearly has to be clear and convincing, under
17 the *State v. Adams* case, but under the crime spree case is it
18 the same standard?

19 MR. HIXSON: No ---

20 MS. PRATT: Well ---

21 MR. HIXSON: --- I'm sorry, Barbara.

22 THE COURT: You both -- I'm going to let you both answer.

23 MS. PRATT: Sit down and let me talk for a minute or two.
24 I'm not convinced that the standard is necessarily clear and
25 convincing to allow joinder.

1 THE COURT: Okay.

2 MS. PRATT: I'm with you on that. However, I think that
3 that is important when you look at the danger of unfair
4 prejudice to the defendant.

5 THE COURT: Okay.

6 MS. PRATT: Because if it is not a strong case, if it's a
7 thin case, which I absolutely argue that it is, then it is
8 merely there to indicate that he's again involved with these
9 two guys that are on video that rob people and -- and there we
10 are with another one and it's a totally different style of
11 robbery if he is supposed to be the point man going in, that
12 didn't happen.

13 THE COURT: Okay. I'm tracking you. Okay. You can keep
14 going.

15 MS. PRATT: Okay. Thank you, Your Honor.

16 THE COURT: I'm sorry for interrupting.

17 MS. PRATT: No, it's all right. There's a lot of
18 information here.

19 So, we would be asking that you not join the Arrowhead
20 store. We would also be asking that because of the reasons
21 that we've alluded to here that you not use it as a Lyle
22 404(b) type of evidence either because it is not clear and
23 convincing at that point.

24 The question about the 905 store is problematic because
25 what we have is we've got two incidents if you look at the two

1 Sunhouses, the 905 and the Conway ones, that my client's
2 involvement is alleged to be the same, but they are 22 days
3 apart.

4 THE COURT: --- 22, 23 days.

5 MS. PRATT: Right. They're not -- they're clearly not
6 the same transaction; they are similar in incident. And, it's
7 like saying you've committed five burglaries in January, you
8 know, the same time of night, same whatever. We don't get to
9 bring all the others in to try to put so much cumulative
10 information into the record, so that the jury has to believe
11 it. Both of these ---

12 THE COURT: Well, and I don't dis -- I don't disagree
13 with that statement in -- I don't disagree with that statement
14 totally. You know normally we do separate those incidents and
15 take them one at a time, but in this specific case, based upon
16 Mr. Daniels' statement, he's made this issue of mere presence
17 alive and well in the courtroom that he's gonna get to present
18 a defense of mere presence without even taking the witness
19 stand through the admission of his statement. So, I mean, if
20 we, you know, if, if -- let's say he hadn't made any statement
21 to police and we were still here and he'd been arrested, if he
22 took the witness stand and said, I was just there, I didn't
23 know they were gonna do it, you know, at that point, he opened
24 the door to all this stuff that they're asking me to let in in
25 the beginning.

1 MS. PRATT: Right.

2 THE COURT: I mean, right now. So, I agree that you
3 know, that if you have five separate burglaries, they don't --
4 we don't necessarily try all of them together. In fact, most
5 of the time we try to stay away from that, but I think -- I
6 think this is a little bit different in the fact that he's
7 getting to present a defense through his statement without
8 ever having to take the witness stand. And he's, you know,
9 based upon that -- based upon his statement to Detective Lent
10 alone, he's getting a mere presence charge all day long.

11 MS. PRATT: But the problem with that, Your Honor, is
12 that the state doesn't have to play my client's statement.

13 THE COURT: True.

14 MS. PRATT: So, the state chooses to play my client's
15 statement and then says, oh, my gosh, Your Honor, now, I
16 really have to put in the evidence of these other things to
17 show intent.

18 THE COURT: Okay.

19 MS. PRATT: Or he could simply choose not to play my
20 client's statement. And obviously, the statement itself can
21 be redacted in regards to which different incidents that we
22 have as well. So, you know, that's another area that could be
23 explored, but I think the state causes its own problem of
24 intent when it decides it wants to play my client's statement
25 and then to use these things as Lyle and cumulative.

1 Certainly, they're creating the need for the prejudice and
2 then they're throwing the prejudice right in on top of it.
3 So, I've got some real problems with the 905. Now, I agree
4 that the evidence is stronger in regards to the 905 than it is
5 with these uncharged matters, and I certainly want to address
6 those because ---

7 THE COURT: I mean, at this point, the uncharged stuff is
8 out. I'm -- we can skip that conversation.

9 MS. PRATT: Perfect.

10 THE COURT: I'm not -- the uncharged stuff is just too
11 much of a -- of a stretch for me in where we are right now.
12 So, you can make it if you want to, but I'm gonna stay away --
13 we're gonna stay away from the Sunhouse Highway Number 9 on
14 January 24th where there's no robbery that takes place, and
15 then the January 15th North Carolina BB&T that's uncharged.
16 Those are just -- they're too extenuating for me to make it
17 to, so ---

18 MS. PRATT: Thank you. That's it.

19 THE COURT: And I don't ---

20 MS. PRATT: I'm not even gonna go there.

21 THE COURT: I don't like to cut people off, but I was
22 just trying to save your voice from ---

23 MS. PRATT: No, that's fine.

24 THE COURT: --- and just to let you know where my mind
25 was at the moment.

1 MS. PRATT: Well, and, Your Honor, you know I do point
2 out that we have a recent case *State v. King* that came out in
3 July about 404(b) evidence and I just happened to have copies.

4 THE COURT: Good.

5 MS. PRATT: We old school attorneys make copies of
6 everything.

7 THE COURT: It's easier for me to read so ---

8 MS. PRATT: Kill more trees than anything. Well, and in
9 this case, this case is kind of an interesting case because
10 what happens in *King* is they, they actually start talking
11 about unrelated murders and other issues and the evidence of
12 his prior bad acts, partly just before, I guess, oral argument
13 the state concedes that they probably shouldn't have put them
14 in. But, what they're talking about is two different murders
15 and another -- there's another crime as well that they want to
16 put as a string in order to put them all together and they
17 agree that those shouldn't have gone in at all and the case
18 gets reversed because they say it can't possibly be harmless
19 error. I point that out because it's the most recent law and
20 it does give you a good description about or discussion I
21 should say about 404(b). I realize there's a difference in
22 regards to an unrelated murder charge because the state is
23 arguing that these are related in our case, but it does talk
24 about pending charges that are similar in *McCall* and how they
25 probably are certainly under the analysis of prejudicial

1 versus probative, they would be creating too much unfair
2 prejudice. So, I think it's important to be looking at that.

3 I'm very concerned that what we do when we put in both of
4 these, especially with the seriousness of the codefendants'
5 charges because they were, as the Court is aware, looking at
6 the death penalty originally, and my client is looking at life
7 without parole. You have to be even more careful about what
8 we are allowing in in the unfair prejudice that would occur
9 because of it. The 905 murder can stand alone. It's evidence
10 is not necessary to prove the Stull murder and the Stull
11 murder's evidence doesn't relate to the 905 murder unless you
12 are arguing intent, which is what the state creates by putting
13 in my client's own statement.

14 Normally, the argument is that the crimes are so closely
15 related to one charge that proof of one tends to prove the
16 other. These are completely standalone situations and they
17 are 22 days apart. I don't need to go into the drug cases or
18 the others that we have talked about. I would point out that
19 Lyle is not a rule of admissibility, it's a rule of exclusion.
20 Generally inadmissible unless, not we get them in under this
21 and I think the state has characterized it that way.

22 THE COURT: It's the exception. Right, 404(b), that's
23 the exception clause and it's not the rule part of 404.

24 MS. PRATT: So, that our idea first has to be that they
25 are generally inadmissible to prove the defendant's guilt for

1 the crime charged. And I would point out, Your Honor, that --
2 that if it's not a prior conviction, the proof has to be clear
3 and convincing evidence. It's not a conviction and it's the
4 same evidence as the Cultra Road one. And, so I would ask
5 that the Court not allow 905 to be mentioned either. Don't
6 join the Arrowhead store and don't allow in the 905 murder
7 information.

8 THE COURT: Okay.

9 MR. HIXSON: Initially, the concession in *King* is clear,
10 that it is an unrelated murder charge. That *King* is
11 distinguished specifically by the fact that even the
12 prosecution says it's unrelated. I don't know why it was
13 offered as a 404(b) in that case because it's prima facie
14 evidence that probably shouldn't have come in. So, in this
15 case, the *State v. Fletcher* is really what I would like to
16 spend just a little bit of time on with the Court and it's
17 cited in *King* as well.

18 MS. PRATT: Do you have that case?

19 MR. HIXSON: I don't.

20 MS. PRATT: I don't either.

21 MR. HIXSON: I just pulled it out of this one, this
22 *Fletcher*.

23 THE COURT: Do you have a cite for it?

24 MR. HIXSON: I do. It is *State v. Fletcher*. This
25 particular cite was 363 S.E. 221, and *Fletcher* is cited in the

1 footnotes here on the *King* that was just handed up, also.

2 THE COURT: Okay. Thank you.

3 MR. HIXSON: Just to quote for a second, this and they're
4 laying out what the standard for that is and, under a common
5 scheme or plan exception, by close to greater similarity or
6 connection between the prior bad act and the crime for which
7 the defendant is on trial is required to support admissibility
8 under the common scheme or plan exception. That's under
9 *Cheeseboro*.

10 THE COURT: Felix Cheeseboro.

11 MR. HIXSON: A famous case, yes, sir.

12 THE COURT: I'm very familiar with the melted gun in
13 Felix Cheeseboro's case.

14 MR. HIXSON: That's right. The connection between the
15 prior bad act and the crime must be more than just a general
16 similarity. The common scheme or plan concerns more than the
17 commission of two similar crimes. Some connection between the
18 crimes is necessary. A common scheme or plan that embraces
19 several previous crimes so closely related to each other that
20 proof of one tends to establish the other. The degree of
21 similarity or motives between the prior acts and the crime
22 charged should be considered in determining the connection --
23 and, of course, you have to weigh 403 balancing after any
24 consideration according to that. So, where the evidence of
25 the acts are so similar to the charged offense that the

1 previous act enhances the probative value of the evidence so
2 as to outweigh its prejudicial effect and that's what they're
3 talking about in *Adams*. In *Adams*, it pretty much says the
4 Court must allow the prosecution to talk about that when the
5 issue is intent because -- let's back up and talk about intent
6 for a second.

7 We are not creating the evidence necessary -- we're not
8 creating a problem by introducing the statement. We have the
9 burden of proving intent in every offense in South Carolina
10 absence speeding, perhaps, or reckless homicide when gross
11 negligence is the standard. So, we have to put in evidence of
12 intent in every prosecution, specific intent. In this case,
13 we have to prove that James Daniels intended to commit an
14 armed robbery. And absolutely we have to prove, in order to
15 get a conviction for murder under those fact patterns, under
16 hand of one hand of all or felony murder we have to prove that
17 he intended to commit an armed robbery and that the death of
18 someone else is a foreseeable consequence of people using guns
19 in armed robberies. There is no more and there is no other
20 evidence of intent, but the fact that we can show beyond a
21 preponderance of the evidence through his own statement, which
22 we're not creating the liability, we have the burden of
23 whether we introduce the statement or not. And the most
24 effective way of doing it is to have him admit I was there. I
25 was there all three times and I didn't know this was gonna

1 happen.

2 Once again, the first time there's a plausible
3 discussion. It is impossible -- it is beyond a reasonable
4 doubt that you don't know -- and let me bring up a point
5 relating to the nexus on Arrowhead. There is one piece that
6 we didn't talk about earlier and that is on Page 42, Line 3,
7 he says, all right, so you were able to smoke a cigarette
8 while those guys were in there? Where did you guys go after
9 you ---

10 THE COURT: Are we talking about Arrowhead?

11 MR. HIXSON: Arrowhead.

12 THE COURT: Okay. I'm with you.

13 MS. PRATT: What page?

14 MR. HIXSON: Where did you guys go?

15 THE COURT: Can you tell Ms. Pratt the page, please?

16 MR. HIXSON: I'm sorry. Page 42, Line 3.

17 THE COURT: Okay. Did you find it, Ms. Pratt?

18 MS. PRATT: I'm on Page 42, but Line 3 says something
19 different. Let me look over your shoulder.

20 THE COURT: Make sure you're reading the right line.

21 MR. HIXSON: It's final redacted. If we do final
22 redacted it's off because the section was taken out. So, it's
23 Line 3 on this. So, the nexus of Arrowhead is -- and I'll
24 just read it to you. Where did you guys go after you left
25 here? Oh, who had -- who had -- did you see someone with a

1 gun coming out of Arrowhead? JJ is the only one I see. JJ is
2 the only one who had the gun? Okay. Where did you go after
3 you left here -- meaning Arrowhead. They went back to Conway
4 after that.

5 So, his statement says he cuts the loop, comes back and
6 sees JJ coming back to the car with a gun, and then they go to
7 Conway. I can't talk about him knowing what's happening next
8 if I don't -- if I'm not able to talk about Arrowhead.
9 And he's wearing the same clothes, under the other
10 circumstantial evidence surrounding that. So, and then said
11 earlier you said you drove them to Conway, and the testimony
12 from his statement flows from there. So, there is -- there is
13 no way to talk about it without talking -- and perhaps maybe a
14 better way of putting it is -- let me back up, Judge. Perhaps
15 the state should call Trish Stull and not call Arrowhead and
16 use Lyle for Arrowhead and 905 and not join them, but the
17 point is basically the same. The -- it -- that's why it was
18 concerning about Lyle versus res gestae versus joinder,
19 because there's several different ways, including criminal
20 conspiracy because there's several different ways. Either
21 way, they are all and let's just -- the joinder elements are
22 here. Charges can be joined when offenses charged in separate
23 indictments are of the same general nature, armed robberies
24 and in two cases, murder, all three, involving connected
25 transactions, all three the same people, all three get in the

1 Malibu, all three drive away in the Malibu. The gun was used
2 that killed Bala Paruchuri and it was the same gun used to
3 kill Trish Stull. That's the same weapon, the same evidence.

4 THE COURT: Somebody is gonna testify to that, I assume?

5 MR. HIXSON: It depends on what you ---

6 THE COURT: I mean, but there is a witness that says
7 that, though?

8 MR. HIXSON: The shell casings recovered from the scene
9 and Suzanne ---

10 THE COURT: There's some SLED person that would say that?

11 MR. HIXSON: Suzanne Cromer that works with SLED, yes.
12 Yes, sir. The same crime scene, Jill Domogauer does all three
13 crime scenes. Pete Cestare does all three videos. Greg Lent
14 investigates all three crimes. The letters shared in J.
15 Reuben Long are the same letters talking about all three
16 crimes. Perhaps, there's a potential to reduce prejudice to
17 not talk about a murder in 905 if Your Honor wants a limiting
18 instruction on saying, we'll talk armed robbery, we'll talk
19 about going in and out, but let's not play the video of -- and
20 I'll show you the video, the video of the 905 murder because
21 it is a rough one to watch. Of course, Ms. Stull's is equally
22 rough. That's the general argument, Your Honor.

23 THE COURT: Okay. Yes, ma'am?

24 MS. PRATT: I agree that the Court could join. There's
25 no question that joinder is possible because obviously they

1 are the same general nature, but that doesn't mean that the
2 Court should or must and I want to make that -- and I know you
3 know that. I want to make that very clear on the record.
4 They have to arise out of a single chain of circumstances and
5 they -- while the state would like to believe that they're
6 provable by the same evidence, it's not really the same
7 evidence because ---

8 THE COURT: Well, it's the same witnesses; that doesn't
9 make it the same evidence.

10 MS. PRATT: Right.

11 THE COURT: Is that what you're trying to do?

12 MS. PRATT: Partially, yes, because we've got the same
13 detective. We've got different witnesses, we've got -- that
14 are gonna sponsor in the surveillance videos from different
15 places. I mean it's not the same exact people every time.

16 THE COURT: Just because it's the same exact people,
17 doesn't mean it's the same evidence.

18 MS. PRATT: Exactly, Your Honor.

19 THE COURT: I track your point of thought on that.

20 MS. PRATT: All right. Thank you, Your Honor.

21 I think you know that the point I'm about to -- that I
22 was making and there's just so much information rolling around
23 that it's hard to separate it out, but I do absolutely ---

24 THE COURT: I do want you to make a 403 argument and make
25 sure that that's clear. So, let me hear from you on the 403

1 and the -- the prejudicial effect and the probative value. I
2 want to make sure that the record is clear on the -- because
3 we can kind of take everything that you just said but we -- I
4 still have to layer 4-0 -- take all the arguments we've talked
5 about joinder, severance, 404(b), all those kind of different
6 things into play at one time. The, the -- the factor that
7 lays over all those that I must make a specific analysis on is
8 403. So ---

9 MS. PRATT: And I agree, Your Honor. That certainly was
10 clear in the *Spears* case, which was my case from Horry County.
11 I think, you know, obviously, Rule 403 says that even if
12 evidence is relevant it may be excluded if probative value is
13 substantially outweighed by the danger of unfair prejudice,
14 confusion of the issues, or misleading a jury, or by
15 considerations of undue delay, waste of time, or needless
16 presentation of cumulative evidence. The important parts
17 being here, of course, unfair prejudice and confusion of the
18 issues because I think that there will be confusion with the
19 two different Sunhouses, the 905 and the Cultra Road. Unfair
20 prejudice means an undue tendency to suggest a decision on an
21 improper basis. The idea that because he's involved in this
22 one, he must be involved in that one because he's been charged
23 with two, he must be guilty of both of them. And I think that
24 we have to -- we have to look at the fact that it is not a
25 necessary -- it's not probative, it's not important in the

1 probative side because these cases do stand alone. Each crime
2 has its individual set of facts, it has its videos, it has the
3 casings, which -- I mean, how much more clear can you be in a
4 murder case than having the actual murder on video. It's not
5 necessary to bring in what -- the other crime to make this
6 more likely to be proven. It's not a requirement. These can
7 stand by themselves. My client's involvement in each of them
8 is peripheral and in each one earlier than the issue of the
9 Malibu. But when we toss in two with someone that has less
10 evidence against them than the main people charged, McKinley
11 and Jerome, who were on video shooting these people, then the
12 danger of unfair prejudice is that much higher. And there's
13 no question that in this situation there would be very high
14 danger of prejudice to try both -- not necessarily to try both
15 of these together only, but also to bring one is as Lyle on
16 the other. And if we bring in the Scotchman as -- I mean the
17 905 Sunhouse as Lyle evidence, then it has to be clear and
18 convincing.

19 THE COURT: Okay.

20 MS. PRATT: And that's a problem.

21 THE COURT: Thank you, ma'am.

22 Any response to that, Mr. Hixson?

23 MR. HIXSON: Yes, just briefly. I just bring your
24 attention to *Adams* again, Your Honor. And we believe *Adams*,
25 *State v. Adams*, the Supreme Court of South Carolina, that is

1 470 -- excuse me, I'll give this South Carolina cite -- 322
2 S.C. 114. In *Adams*, they specifically allowed prior bad acts
3 that Adams committed a robbery of Circle K. Evidence of the
4 defendant's participation in a prior armed robbery only a half
5 hour before the charged armed robbery was admissible to prove
6 the defendant's intent to rob the second store. We believe
7 that's exactly what we're trying to do here. And, they
8 specifically talk about clear and convincing evidence of
9 defendant's participation in a prior armed robbery, only a
10 half hour before, was admissible to prove the defendant's
11 intent to rob second store and to establish the prerequisite
12 to his liability as an accomplice to murder, during the second
13 robbery. Although the defendant made a statement to police
14 indicating that the other guy entered the store, just like
15 this one, defendant made another voluntary statement to police
16 admitting that he robbed the first store, that he witnessed
17 the other guy rob the first store. So, as it relates to the
18 prejudicial effect, there is a nice discussion about that in
19 *Adams* and we would rely on that here that certainly the
20 evidence regarding the Circle K robbery is highly prejudicial.
21 However, it's probative value is also high because the
22 evidence establishes Adams' intent to combine with Brown to
23 commit armed robbery, which combination is an essential
24 element of murder under the hand of one hand of all doctrine
25 and such the Trial Judge properly admitted this evidence.

1 We believe that applies and -- and I'll stop arguing here
2 in a second. If Your Honor would like to see some of the
3 videos to understand the factual basis for some of these
4 claims, they are short videos that show the clothing, the
5 movements, the cars, all that stuff.

6 THE COURT: Yeah, let me see some of that.

7 MR. HIXSON: They're fairly short.

8 THE COURT: Go off the record real quick.

9 *******OFF THE RECORD*******

10 **(On the Record.)**

11 THE COURT: Go ahead and get the video set up for me,
12 please.

13 Go ahead, Ms. Pratt?

14 MS. PRATT: Thank you, Your Honor, I just want to
15 distinguish *Adams*, the fact that the crime that they're
16 talking about is immediately before the other one.

17 THE COURT: Okay.

18 MS. PRATT: They're very different from 22 days apart.

19 THE COURT: Okay.

20 MS. PRATT: It also proves -- one crime tends to prove
21 the other because of the chain of events.

22 THE COURT: Got it.

23 MS. PRATT: Thank you, Your Honor.

24 MR. HIXSON: Your Honor, the -- and I'll mark these. I
25 probably need to do that now as Court's exhibits. I've

1 prepared each disc for each ---

2 THE COURT: Okay.

3 MR. HIXSON: This is Highway 905, if you can see, Your
4 Honor, up here the timestamp indicates it's 9:34 and 50
5 seconds. The state will show or produce evidence, that's --
6 this is -- this is the robbery. This is James Daniels. This
7 is after they come back in or go ahead, let's go ahead, let's
8 run it and see if ---

9 MS. PRATT: I can't see it. Let me move over.

10 THE COURT: Ms. Pratt, you can move around as you need
11 to. It won't bother me a bit.

12 MR. HIXSON: You're right. You're right. You're right.
13 You're right. The state will allege in the trial that that
14 car out right there, that the MAIT team will identify that the
15 silver Malibu with the headlights pulled up right to the left
16 corner. That is -- the testimony will be that is James
17 Daniels and you'll notice he's wearing red pants, the white
18 shirt and gray hooded sweatshirt with a pouch in the front.
19 (REPORTER'S NOTE: State's Exhibits 4, 5, and 6 published -
20 not transcribed herein.)

21 MR. HIXSON: That's the scene that Detective Lent had
22 indicated and will testify that they recognize him from
23 looking at that video.

24 THE COURT: We're just watching different angles.

25 MR. HIXSON: They're all different angles. We've

1 actually pulled some with a just a couple of views to shorten
2 if necessary, but -- and that's the extent of the inside of
3 the store for him.

4 THE COURT: Okay.

5 MR. HIXSON: Now, in the meantime, you have the stills of
6 the Malibu at 905 -- 905, the Malibu. The timestamps on that,
7 you'll see the following evidence would show that it begins
8 this series of procession of cars from 20 minutes of Mr.
9 Daniels on surveillance video, that's the argument the state
10 would be -- with the silver Malibu moving back and forth and
11 Pete or Pete Cestare will testify with an overhead on the
12 direction of the travel of the car. Can we just do a slide
13 show on that very quickly; it just gives you the general
14 character of it, Your Honor, and this is not a video, these
15 are -- there's a video of it, we just pulled the stills from
16 it.

17 All right. And you recognize seeing the video of that,
18 can you just click it quickly, Tonya, that kind of makes it
19 like an animation if you -- it won't let you click it.
20 You'll see the time stamps of the surveillance. You know, the
21 9:40, seven minutes later, there's three more minutes, you see
22 the car going in the other direction. So, all told he's still
23 in the area during that period of time and then surveillance
24 video shows the two individuals coming into it at 10:09. So,
25 from the time he leaves the store -- he just stayed in the

1 area for that period of time prior to McKinley and James
2 coming in at 10:09, I mean, excuse me, and McKinley and Jerome
3 Jenkins, I apologize.

4 That's the general character of that evidence. The MAIT
5 Team will give an opinion that that's the Chevy Malibu and
6 then his admission, of course, that it was a Chevy Malibu.

7 I'm showing now McKinley and Jerome Jenkins inside the
8 Sunhouse.

9 MS. PRATT: As you can see, Your Honor, you don't see
10 them coming from a particular vehicle.

11 MR. HIXSON: All for the Court's edification, there are
12 attempted murder charges pending against the other two for
13 Jimmy Mazyck, he's the fellow there. There are three shots
14 fired into the bathroom of him. He was hidden back behind the
15 toilet to keep from getting struck. Obviously, those charges
16 are pending on the other -- not Mr. Daniels. We're not going
17 forward on that.

18 MS. PRATT: You're not going forward on it, okay.

19 MR. HIXSON: And these, for your edification, the autopsy
20 report showed that seven rounds struck Mr. Paruchuri, or
21 approximately.

22 Can you fast forward -- the testimony, Your Honor, at
23 trial would be that Detective Lent would point out that the
24 person with the cash drawer is the one that Mr. Daniels
25 identified as McKinley Daniels, and the shorter, stocky

1 individual in the front is Jerome Jenkins.

2 That's good. That's enough to get the idea of the flavor
3 of 905.

4 Can we do Lake Arrowhead? Your Honor, Lake Arrowhead,
5 the video starts at 8:42 P.M. on January 25th.

6 (REPORTER'S NOTE: State's Exhibit 7 published - not
7 transcribed herein.)

8 MR. HIXSON: And obviously, I bring to the Court's
9 attention immediately that the clothing that Jerome Jenkins is
10 wearing.

11 Can you skip to the next one, Tonya, that are better
12 angles coming to the door. There you go.

13 MS. PRATT: Again, without them coming from any vehicle,
14 correct, Scott?

15 MR. HIXSON: That's right.

16 During the course of the discussion, indicated that their
17 roles, in the videos you noticed that Jenkins maintains the
18 weapon and -- and Daniels -- McKinley gets cigarettes and
19 directs her to the register in the two that we've seen so far.
20 And if you can give special attention, a little bit, also
21 McKinley Daniels clothes, too, including his shoes and the
22 defendant's shoes for that matter.

23 If I can just skip to when they're running out and
24 direction of travel when they run out, also. The door shot,
25 here we go, that's good.

1 In every robbery, Your Honor, McKinley Daniels takes
2 Newport Cigarettes out of it, and in the jail statements, he
3 asks why -- why James Daniels, why did you tell him I took
4 Newports, you know I didn't -- took Newports from the store.
5 That's the importance of one of the letters, admissibility of
6 one of the letters later on. Then in all three, he's on video
7 taking Newports in addition to money from the cash drawer.

8 And special attention to those shoes, Your Honor, that's
9 what I was referring to.

10 STATE'S EXHIBIT NUMBER 8 THROUGH 10

11 MARKED FOR IDENTIFICATION

12 MR. HIXSON: All right. Let's go to Cultra Road and Oak
13 Street, when James Daniels is in the video.

14 (REPORTER'S NOTE: State's Exhibit 8, 9, and 10 published -
15 not transcribed herein.)

16 THE COURT: Now, Your Honor, testimony or I believe the
17 timestamps that you'll see show at 9:39 P.M. an hour or so,
18 you see James Daniels, this is the Cultra Road and Oak Street
19 store. This is surveillance video. You can identify from the
20 other one because there's Christmas lights on Trish Stull's
21 store at the time, January 25th, they're still up.

22 I know Your Honor had ruled on the BB&T. The BB&T
23 surveillance video, he's wearing that same striped hat and in
24 the search warrant of the Malibu, that hat is recovered in the
25 search warrant. There's pictures of that hat in the Malibu

1 search warrant.

2 And then if you look in the background, Barbara and Your
3 Honor, you'll see the silver Malibu drive past the doors
4 through that shot. That's the Malibu.

5 I'm gonna do the video stills from the Malibu circling
6 for 10 minutes or so. Your Honor, we have video. These are
7 our individual screen shot stills from the surveillance camera
8 that show what the timestamps from the surveillance video.
9 All right. That's him passing the door, so -- if Your Honor
10 is seeing the timestamp show that -- now, the car's been back
11 and forth out there 10 minutes. And the surveillance video of
12 them entering the store is at 10:09. So, that's back --
13 that's all the way back at the beginning.

14 And then at 10:09, we can play the last one and that is
15 Jerome Jenkins and McKinley Daniels entering the Sunhouse,
16 entering Cultra Road and Oak Street Sunhouse.

17 Yes, the very last one. Ms. Pratt and I have had some
18 round about the last -- the last slide has audio on it and you
19 can hear the commands. We'll stop it there, because you know,
20 I understand for a period of time after the shots are fired
21 and the individuals leave, I don't think -- it probably would
22 be good to not let that jury hear any of that.

23 MS. PRATT: Or the victims in the courtroom.

24 MR. HIXSON: Well, yeah, of course.

25 MS. PRATT: Yes.

1 MR. HIXSON: Of course, Your Honor, there's previous
2 testimony that immediately upon seeing this, they knew that
3 these were the ones that -- at Arrowhead Road, shoes, clothes,
4 masks, red pants, gray shirt, blue bandanna. Once again,
5 McKinley goes for the drawer. James is -- I mean, JJ is
6 posted up. And the shoes. And run in the same direction.
7 That's it substantively. There's several different angles of
8 that, but that's -- gets the point across on what that is.

9 The importance of that angle, Your Honor -- and Ms.
10 Pratt, you can see the hood or the front pocket of the hooded
11 sweatshirt real clearly in that one.

12 This one has audio. Can you fast forward it through this
13 one? No, this one doesn't have audio, this is the register
14 shoot; it's the next one.

15 MS. PRATT: It's the next one.

16 MR. HIXSON: You can play the first part of it and then
17 we'll -- okay. And of course, we're offering this for taking
18 and carrying away, for the taking and carrying away ---

19 Can you skip to the next one? There you go. Go to the
20 next one, that last ---

21 There's the Newports going out and her purse. This is
22 the one that has sound but we've got the sound off.

23 We'd also offer the stills from this. This is what we're
24 referring to, the shoes that were recovered in the search
25 warrant and James Daniels and McKinley, those are very unique

1 shoes. We have those in evidence. Those are the same stills
2 from a layperson's comparison and the ones that were in the --
3 the Lake Arrowhead. When you hear the audio on this, you'll
4 hear the subject -- McKinley Daniels is doing the commanding
5 the same as the other -- other two. There you can see her
6 pushing the panic button on that shot right thing..

7 That's it. Let's shut that down.

8 That's the general evidence coming from those series of
9 crimes.

10 THE COURT: All right.

11 MR. HIXSON: Additionally, there is a video of the silver
12 car running up Red Bluff Road, running a red light, silver
13 Malibu, after this. I turned it off too quick, but there's
14 another shot of running the intersection going back towards
15 Loris.

16 THE COURT: All right. What else?

17 MR. HIXSON: That's generally -- I think Your Honor as a
18 concept of what we're dealing with.

19 THE COURT: Okay.

20 Anything else, Ms. Pratt?

21 MS. PRATT: I don't think we're arguing about whether
22 those are admissible or not, correct, Your Honor, this is just
23 for the purposes of this ---

24 THE COURT: Right.

25 MS. PRATT: Thank you, Your Honor. I have nothing

1 further.

2 BY THE COURT:

3 THE COURT: Okay. Here's what I think that the safest
4 thing to do is. The safest thing is -- it's 5:30 -- is to let
5 me go home and kind of process through -- I'm on
6 administrative week, technically. So, let me process through
7 these cases. I feel like I've -- I actually have an
8 understanding of what the different scenarios are and the
9 circumstances are. Let me process through these cases
10 tomorrow and then I'll email y'all. I won't do a written, a
11 formal written order; I'll put my reasoning on the record next
12 week. But, I'll email y'all tomorrow what my decision is so
13 you can be prepared for next week as opposed to preparing
14 something that may not exist or may not happen.

15 MS. PRATT: Thank you.

16 THE COURT: And but I -- if you would give me the morning
17 and probably early afternoon to kind of process through
18 everything and sit down and read these cases slowly and then
19 -- I won't do a formal written order, but it'll be an email to
20 where you understand what we're doing and who you need to have
21 here and who you don't need to have here. Okay? Is that
22 good?

23 MR. HIXSON: Yes, sir.

24 MS. PRATT: Yes, Your Honor.

25 THE COURT: Okay. All right. And you're at J. Reuben

1 Long now?

2 MR. DANIELS: Yes, sir.

3 THE COURT: So, you're able to meet with Ms. Pratt a
4 little easier than, than the Department of Corrections?

5 MR. DANIELS: Yes, sir.

6 THE COURT: Okay. Good. Okay. All right.

7 Thank you all very much. I'm gonna do a guilty plea real
8 quick and I'll see everybody else Monday morning.

9 MR. HIXSON: Thank you, Your Honor.

10 **ADJOURNED - 5:32 P.M.**

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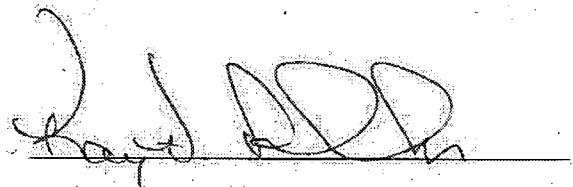
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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. James Elbert Daniels, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 22, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

December 4, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-1752, 1764, 1766

The State,)

Plaintiffs,)

vs.)

James Elbert Daniels, Jr.,)

Defendant.)

Transcript of Record

August 27-30, 2018

B E F O R E:

Honorable Robert E. Hood
Horry County Courthouse
Conway, South Carolina

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Voir Dire

1

1 (On the record, August 27, 2018. The following takes
2 place in the presence of the jury venire.)

3 THE COURT: Give me one second to get organized and then
4 we'll jump right in. When you travel the whole state, you --
5 everybody keeps different things up on their -- on their
6 bench. So you're trying to get things the way you like them
7 and make sure that you're organized.

8 Ms. Pratt, do you have an extra copy of what you gave me
9 earlier?

10 MS. PRATT: I actually do not, but I could write it out
11 for you, Your Honor.

12 THE COURT: Would you?

13 MS. PRATT: Yes, sir.

14 MR. HIXSON: May we approach, Your Honor?

15 THE COURT: Sure.

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury venire.)

18 THE COURT: All right. And I've already lost a piece of
19 paper this morning, so. My -- it's -- there it is right
20 there, right in front of me.

21 MS. PRATT: May I approach, Your Honor?

22 THE COURT: Yes, ma'am, you may. I found what you gave
23 me earlier now, yeah.

24 MS. PRATT: Oh, okay. I just found my copies.

25 THE COURT: It was in the -- it was in my big stack.

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1 MS. PRATT: Defense is ready, Your Honor.

2 THE COURT: All right. Mr. Solicitor, you may call your
3 case.

4 MR. HIXSON: Thank you, Your Honor. At this time, the
5 State would call three indictments before the Court, and all
6 three are captioned the State of South Carolina, the County of
7 Horry versus James Elbert Daniels, Jr., Your Honor. The first
8 indictment is 2015-GS-26-1752. That is an indictment for
9 armed robbery. Would Your Honor care for me to -- I think
10 Your Honor is going to read the allegations.

11 THE COURT: I will, I will read it, yes.

12 MR. HIXSON: Yes. The second indictment before the
13 Court, Your Honor, is 2015-GS-26-1766. That also is an
14 indictment for armed robbery, and finally, 2015-GS-26-1764,
15 that is the State of South Carolina versus James Elbert
16 Daniels, and that is an indictment for murder, Your Honor, and
17 they have all been true billed by the Horry County Grand Jury,
18 back in April of 2015.

19 THE COURT: All right, ladies and gentlemen, the State
20 has called its case, and what Mr. Hixson has just told you
21 about are the three indictments that are pending against Mr.
22 James Elbert Daniels, Jr. To these charges, Mr. Daniels has
23 pled not guilty. That plea puts the burden of proof upon the
24 State to convince a jury of his guilt beyond a reasonable
25 doubt. Now, what I'm going to do is read these indictments to

Voir Dire

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1 you. Now, it's important that you keep in mind and that you
2 know that these indictments that I hold in my hand are not
3 proof of anything, they are not evidence of anything, they are
4 simply the documents that give this court the authority to
5 hear this case. They are not evidence and they are not proof,
6 they are allegations.

7 So the first indictment that I will read to you is 2015-
8 GS-26-1752. This is an indictment against Mr. James Daniels,
9 Jr., for armed robbery, and this indictment alleges that James
10 Elbert Daniels, Jr., while acting in concert with others, did
11 in Horry County, on or about January the 25th of 2015, while
12 armed with a deadly weapon, to wit, a firearm, take and carry
13 away the personal property of Barbara McDowell from or in the
14 immediate presence of Barbara McDowell with the intent to
15 deprive Barbara McDowell of possession by use of force,
16 threats or intimidation in violation of the South Carolina
17 Code of Laws. Again, those are allegations.

18 The second indictment that I will read to you is 2015-GS-
19 26-1766. This is also an indictment against Mr. Daniels for
20 armed robbery. Again, these are allegations, these are not
21 proof of anything, these are not evidence of anything. This
22 indictment alleges that Mr. Daniels, while acting in concert
23 with others, did in Horry County, on or about January the 25th
24 of 2015, while armed with a deadly weapon, to wit, a firearm,
25 take and carry away personal property of Trisha Stull -- Stull

Voir Dire

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1 is spelled S-T-U-L-L -- from or in the immediate presence of
2 Trisha Stull with the intent to deprive Trisha Stull of
3 possession by use of force, threats or intimidation in
4 violation of the South Carolina Code of Laws.

5 The third indictment, ladies and gentlemen, is also an
6 indictment against Mr. Daniels, docket number 2015-GS-26-1764.
7 This is an indictment for murder. Again, these are
8 allegations. This indictment alleges that Mr. Daniels, while
9 acting in concert with others, did in Horry County, on or
10 about January 25th of 2015, willfully, feloniously and
11 intentionally kill the victim, Trisha Stull, with malice
12 aforethought, either express or implied by means of shooting,
13 and the victim did die as a proximate result thereof on or
14 about the same date.

15 Now, again, ladies and gentlemen, these indictments are
16 not proof of anything. They are simply the charging documents
17 that gets this case into this court. To these charges, the
18 Defendant has pled not guilty and has requested a trial by a
19 jury.

20 Now, we are about to begin asking you questions about
21 this case. Okay. So the first thing I want to do is make
22 sure that I have the right 53 people in the room. Okay? So
23 if I call out your name, just say here or present. Okay?

24 All right. Margaret Donohoe?

25 JUROR 102: Present.

Voir Dire

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1 THE COURT: Holly Nygaard?
2 JUROR 288: Present.
3 THE COURT: Angela Jordan?
4 JUROR 199: Present.
5 THE COURT: Robert Howard?
6 JUROR 177: Present.
7 THE COURT: Charles Wright?
8 JUROR 445: Here.
9 THE COURT: Jill Saenz?
10 JUROR 341: Here.
11 THE COURT: Diane Costa?
12 JUROR 81: Here.
13 THE COURT: Michael Pope?
14 JUROR 307: Present.
15 THE COURT: Megan Hughes?
16 JUROR 183: Here.
17 THE COURT: Carol Siefermann?
18 JUROR 362: Here.
19 THE COURT: Tyler Polhill?
20 JUROR 306: Here.
21 THE COURT: Timothy Snow?
22 JUROR 373: Here.
23 THE COURT: Brandie Shanor?
24 JUROR 354: Present.
25 THE COURT: Rose Bennett?

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1 issues, and I need to put those decisions and the reasons for
2 those decisions on the record so, so that the record is clear.
3 There was a hearing conducted here at the Horry County
4 Courthouse last Wednesday, I don't even know what day that
5 would have been, but last Wednesday, whatever that was, where
6 the State was present, Mr. Daniels was present and his
7 attorney was present. So in putting -- in coming up with a
8 plan or coming up with me processing through the different
9 issues that presented themselves last week, I'm going to kind
10 of start with the, the big picture and then come, come
11 smaller. So and, and we, we, and I say we, I mean me
12 collectively and this group, but we kind of use these words
13 joinder and severance and Lyle and 404(b), we all kind of use
14 them interchangeably, and they're, they're, they're actually
15 different issues with different legal standards, and so what
16 I, what I did Thursday, once I got back to Columbia, is I
17 legitimately spent the majority of the day reading the joinder
18 cases, reading the 404(b) cases, reading the res gestae cases
19 and putting all of them together to, you know, the final legal
20 decision that I came to in these matters.

21 So let's start with joinder. So the State is asking, and
22 I am granting their request to join what I call the Lake
23 Arrowhead case, which is the Scotchman armed robbery. That is
24 the alleged armed robbery of Barbara McDowell. Did I say her
25 name right?

1 MR. HIXSON: Yes, sir.

2 THE COURT: Okay. That is the alleged armed robbery of
3 Barbara McDowell that occurs, allegedly occurs, obviously, on
4 the same evening as the Cultra Road or the Conway armed
5 robbery and eventual murder of Trish Stull. So when I talk
6 about joinder, what I'm referring to is joining the Lake
7 Arrowhead/Scotchman case and the Cultra Road case, which both
8 occur on the same evening literally within hours of each other
9 to the extent that law enforcement is at the Lake Arrowhead
10 Scotchman when they learn about the next armed robbery, which
11 is at the Cultra Road or the Conway location.

12 So I read the cases that you all presented to me. I also
13 read State versus McGaha, which is 404 S.C. 289, which is a
14 2013 Court of Appeals case. I also read State versus Beekman,
15 which is 415 S.C. 632, which is a Supreme Court case from
16 2016, and I also read State versus Tucker, which is 324 S.C.
17 155, which is also a Supreme Court case, and what those cases
18 direct me to do is that I have to make individual findings as
19 to each of these four elements which are present or which
20 should be present and considered in joinder cases. I have to
21 explain the basis for the findings and then apply the law
22 correctly and then give the factual basis to support.

23 So the first of those elements that I have to consider is
24 the single chain of circumstances, and in that finding, I find
25 that we're literally talking about events that occurred on the

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1 same evening with the same people within the same county
2 involving the same vehicle, the same clothes and worn by the
3 suspects literally within hours of each other. It's
4 literally one -- from one armed robbery to the next armed
5 robbery.

6 The second element that I must consider is are they
7 proven by the same or similar evidence, and we use -- and a
8 lot of the cases refer to proven by the same evidence. If you
9 really read down into those cases and process through them,
10 it's really not same as in exact, it's same as closer to
11 similar and that's -- can be proven through the same
12 witnesses. These events spring from the same series of
13 transactions. They are committed by the same offenders, and
14 the proof that would be necessary in them, excuse me, is
15 similar, and a lot of these cases that, that I've read are,
16 are CSC cases where there's different victims. So there's no
17 way for it to be exactly the same, and so -- and that's what
18 helped me cross the hurdle of the two different victims in
19 these cases and the word same, you know, and the word same
20 really being interpreted as the word similar. Also, in the
21 same line of thought and proven by the same or similar
22 evidence, the Cultra Road case could be used as -- by the
23 State as evidence of flight and evidence of identity in the
24 Lake Arrowhead case. In the same general nature, the crimes
25 are of the same general nature, they both start with armed

1 robberies. Now, the Lake Arrowhead does not turn into a
2 homicide case, but this involves the nature of the cases and
3 when they are interconnected. The case that I found that
4 dealt with this issue was State versus Tucker. State versus
5 Tucker are both violent crimes, but one of them involved, if
6 my memory serves me correctly, one of them involved a homicide
7 and one of them did not, and the Supreme Court there found
8 that those cases were of the same general nature.

9 And then the fourth prong would be prejudice, and the
10 issue there is is there some substantive right of the
11 Defendant that would be prejudiced, and I find that there is
12 no real right of the Defendant that has been shown to me at
13 this point in time that has been prejudiced. There is a
14 logical connection between the crimes by showing a close
15 degree of similarity to show a common scheme or plan of these
16 individuals on the night of January the 25th of 2015. This
17 is, again, this is a requirement that the two be factually
18 similar. They don't have to be identical. What we're looking
19 for is a single course of conduct or connected transactions
20 closely related in kind, place and character, and I think as
21 far as the joinder goes of these two cases, we are looking at
22 a single course of conduct or connected transactions. They
23 are closely related in kind, place and character, all taking
24 place in Horry County and that there are glaring similarities,
25 and in this case is the similarities absent the homicide that

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1 occurs on Cultra Road. The similarities are there and are
2 present and I find that they are factually similar. They are
3 the same people, the same car. They are both in the same
4 county and have a close proximity in time.

5 Now, okay, now to move on to what I'll call the Red Bluff
6 Road incident, now, the Red Bluff Road incident occurred 22,
7 23 days prior to the events of January the 25th of 2015. The
8 first analysis that the Court has to make is are they
9 relevant. I find that the Red Bluff Road, the evidence of the
10 Red Bluff Road incident is relevant.

11 The next thing that comes into play is 404(b), and the
12 exception in 404(b) would be that there is common scheme or
13 plan or intent and then I have to do a 403 analysis. So the
14 analyzation that the Court takes into consideration is
15 analyzing the similarities between the charges, the current
16 charges being the Cultra Road charges and the prior bad acts
17 and the dissimilarities, and I must define whether there is a
18 close degree of similarity, and the rulings are that evidence
19 is admissible if the similarities outweigh the
20 dissimilarities, and because he has not been convicted of the
21 Red Bluff Road incidents, the evidence of the Red Bluff Road
22 incident must be clear and convincing and then I have to do a
23 403 analysis.

24 So in looking at the similarities, number one, both the
25 Red Bluff Road and the current charges involve the same three

1 Defendants. Number two, both the Red Bluff Road and the
2 current charges involve the same vehicle being used in the
3 crime. Number three, both the Red Bluff Road and the Cultra
4 Road involve the same murder weapon used in Red Bluff Road and
5 in Cultra Road. Number four, almost the same exact crimes
6 occur being armed robbery and murder. Number five, almost the
7 same items are stolen, cigarettes and cash, and number six, in
8 the Red Bluff Road and the Cultra Road, the same lookout or
9 scout or case man, whatever you want to call in that
10 situation, goes in 30 minutes prior. Number seven, the silver
11 Malibu drives around while stalking, staking out the store or
12 waiting on the robbery to occur. Number eight, they are the
13 same type of locations, all three being gas stations, and they
14 all occur during the evening hours.

15 So, now, as to the evidence of the Red Bluff Road being
16 clear and convincing, number one, the Red Bluff Road incident
17 is on video. Number two, Mr. James Daniels has given a
18 statement against his own interest and against the interest of
19 his brother and against the interest of Jerome Jenkins that
20 they -- that he participated in that. He does say that he did
21 not know that that was going to happen, but he puts himself
22 there. He puts himself driving the car. He, he states that
23 he knows that one of them has a gun. He sees them come back
24 to the car with the cash drawer and knows what has occurred.
25 So I do find that the evidence of the Red Bluff Road is clear

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1 and convincing based upon that information.

2 So what we're looking for is a common scheme or plan.

3 Some connection between the crimes is necessary. There's a

4 case called State v. Aiken from the Court of Appeals in 1996

5 where they had a string of armed robberies all taking place in

6 the same month. Again, we're looking for more than just a

7 general similarity. There must be a close degree of

8 similarity or connection between the prior bad acts and the

9 charges in -- for their probative value, and so I find that

10 based upon the similarities that I have stated, that the

11 videos are eerily, eerily similar. I mean, if you didn't put

12 the time stamps on them and the victim in Red Bluff Road

13 didn't look different than the victim in Cultra Road, it would

14 be -- it, it is -- they are eerily similar in the way that

15 they look.

16 So at that point in time, I have to do a 403 probative

17 versus -- probative value versus prejudice in -- so this is

18 the way I process through it. The State must prove that James

19 Daniels combined with McKinley Daniels and Jerome Jenkins to

20 commit an unlawful act, that being armed robbery, and the

21 second part of this is, is one of the more important parts and

22 that the homicide was a natural and probable consequence of

23 the acts planned. James Daniels' mere presence at Cultra Road

24 cannot establish his guilt. The Prosecution must prove a

25 combination. Stated another way, James Daniels' intent to rob

1 the store with McKinley Daniels and Jerome Jenkins was a pre-
2 requisite for his liability for murder.

3 Now, the probative value of the prior armed robbery and
4 murder is high because the evidence tends to establish James
5 Daniels' intent to combine with Jerome Jenkins and McKinley
6 Daniels to commit an armed robbery and murder, which is an
7 essential element of the hand of one is the hand of all.

8 So when you do a 403 analysis, I must -- it must be
9 determined by the entire record and the result will turn on
10 the facts of each case as presented, and the proper test for
11 403 places the burden on the opponent to establish -- of the
12 evidence to establish its inadmissibility, and at this point
13 in time, I have determined, based upon the arguments presented
14 and the case law that is read, that the probative value of the
15 evidence is not substantial -- or is substantially outweighed
16 by the danger of any unfair prejudice that may take place, and
17 the last thing is the standard for clear and convincing
18 evidence, it's evidence, that degree of proof which will
19 produce in the mind of the trier of fact a firm belief as to
20 the allegations sought to be established. Such proof is
21 intermediate. It's more than a mere preponderance, but less
22 than beyond a reasonable doubt. It does not mean clear and
23 unequivocal. Based upon that standard, I believe that the
24 evidence that has been presented to the Court of the Red Bluff
25 incident and Mr. James Daniels' involvement rises to the level

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1 of clear and convincing based upon his statements and the
2 videos corroborating his statements for that evening.

3 Okay. Now that we've dealt with that, what else do we
4 need to take up?

5 MR. HIXSON: Your Honor, as it relates, we're asking the
6 Court to have a preliminary ruling on admissibility of a
7 couple of documents that were discovered during the course of
8 the investigation of this.

9 THE COURT: Okay.

10 MR. HIXSON: The first one being, give Your Honor a basic
11 idea of a proffer of information, while Mr. Daniels, along
12 with Mr. McKinley -- James Daniels and McKinley Daniels were
13 incarcerated at J. Reuben Long Detention Center, they were
14 captured on videotape. The, the Court -- the State intends to
15 play that surveillance video of the two individuals. They
16 were separated into separate pods, but there's a common
17 recreation area, and you can clearly see on a color video that
18 will be offered by the staff at J. Reuben Long Detention
19 Center of Mr. Daniels passing sheets of paper, letters through
20 the door and then Mr. Daniels, McKinley Daniels, gathering
21 those up and going back into his cell. Mark Scott saw this
22 happening and called his supervisors, which they lock the
23 cells down and then went in and did a pat-down search and
24 searched both James Daniels and McKinley Daniels and recovered
25 several letters that the State would intend to offer.

1 As it relates to just a preliminary matter, we have still
2 photos from the surveillance video so Your Honor can see the
3 character of them.

4 THE COURT: Okay.

5 MR. HIXSON: I have them -- the first one, the evidence
6 at trial we'll offer, that's a still photo of James Daniels.
7 At that time, Mr. Daniels had a longer hairstyle. It's
8 evidenced by the still photos. That's probably, what's that
9 State's Five?

10 COURT REPORTER: Five.

11 MR. HIXSON: I'm handing up what's been marked as State's
12 Five, and the testimony will be that the rec yards, Your
13 Honor, are D-3 and D-4 rec yards. So each pod gets to go on
14 at different times, and you'll see the inside of this. I'm
15 handing the Court State's Six, and the proffering testimony at
16 trial will be that that is James Daniels, excuse me, that's
17 McKinley Daniels picking up those letters.

18 THE COURT: Okay.

19 MR. HIXSON: We'll have testimony from both from the, the
20 individuals at J. Reuben Long who recovered those as to the
21 contents, and we're also prepared to offer SLED, questioned
22 document examiner who will testify that James Daniels wrote
23 two of the documents and then McKinley Daniels wrote the other
24 one. I'm going to hand those copies up to the Court. Of
25 course, the originals are in evidence. These are photocopies,

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1 and I'm handing the Court what's been marked as State's One
2 and State's Two is a redacted copy of State's One, and we'll
3 talk about that in a second.

4 State's Three is also -- SLED will say that's James
5 Daniels. It's on the back of the discovery form on the side
6 of it, and then State's Four is the one of main interest.
7 That's purported to have been written by McKinley Daniels.

8 The two issues, mainly, Your Honor, we believe that
9 State's One and Two, I believe that's the, the regular two-
10 sided letter and a redacted copy of it, we believe that would
11 come in as a statement of a party opponent, Your Honor. It's
12 non-hearsay as it relates to once the authenticity of that
13 document is established through circumstantial evidence and
14 expert testimony. We believe that comes in just simply as a
15 statement of a party opponent. The more thorny question is it
16 relates to McKinley Daniels writing and we believe we're going
17 to offer that in as an 804(b) statement, a hearsay exception
18 relating to statements against penal interest, and we're
19 prepared to make a showing in that regard.

20 The redactions, Your Honor, in that, in that letter, he
21 specifically refers to prior jail time, some other things that
22 prior counsel or Defense counsel and I have agreed that, that
23 we believe it inadmissible for the jury to hear some of that.
24 That's why I provided the complete letter in addition to the
25 proposed redactions for the Court to see.

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1 THE COURT: You talking about One and Two again?

2 MR. HIXSON: Yes, sir.

3 THE COURT: All right.

4 MR. HIXSON: That's the ---

5 THE COURT: So let's, let's stay on One and Two.

6 MR. HIXSON: Okay.

7 THE COURT: What's the Defense's position on One and Two?

8 MS. PRATT: Well, Your Honor, our position on these
9 letters is the same as it was in regards to the admissibility
10 of his statement in that when the State admits these, then it
11 creates the need for what you've already ruled on in having
12 these Red Bluff incident come in as a common scheme or plan.
13 In these letters, he does make certain admissions certainly,
14 and they're very similar to what was in his actual statement,
15 but as we argued, when it -- when the statement come in and
16 the State puts that in, they create the need to then have some
17 refutation of that by putting in the 905, and so certainly we
18 are arguing against that admissibility of these.

19 THE COURT: Okay. And what about Number Three?

20 MS. PRATT: The same argument, Your Honor.

21 THE COURT: Okay.

22 MR. HIXSON: Your Honor is fully aware as it relates to
23 the James Daniels' letter that we're referring to that is that
24 we are required to show acting in concert with others and
25 intent relating to the entire incident, and it's pretty

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1 apparent from the contents of the letter itself that they're
2 specifically referring to basically getting their stories
3 straight, "At the Conway store, I told them that we did this",
4 "At the first store I told them we did this." He admits that
5 he's driving the car. Then the, the main thrust of the letter
6 is, and I'll bring your attention to the second page over --
7 of it his admission relating to, you know, "I know better. I
8 had two jobs. I was doing good. It's just something about
9 you that I have to prove myself to you." Then I'm -- the
10 redaction of the, the second sentences after that. I don't
11 want to mention that in open court. "You know I wouldn't tell
12 you no. You know I've always had your back," and that is part
13 of what we believe relating to the entire -- it's a group of
14 folks that are going on these robberies, and, and it's an
15 expressed statement of intent as well as motive to why Mr.
16 Daniels wouldn't let his brother down and participated in
17 these robberies.

18 THE COURT: All right. Let me read Number Four. Okay.
19 So what's the theory on Number Four?

20 MR. HIXSON: As it relates, as it relates to Mr. Daniels,
21 it's almost a reply doctrine issue, Your Honor. If you see
22 the contents of the first letter, and they're passing kites
23 back and forth to each other to get, for lack of a better
24 term, to get their story straight, I guess is one way of
25 putting it, the evidence will show that Mr. Daniels writes to

1 McKinley and tells him, "Hey, I didn't say anything about you
2 having a gun. I told you they -- I told them people that you
3 had Newports, that you were carrying Newports out of the
4 store." McKinley Daniels writes back in response
5 specifically, "You know I took Newports out the store. Why
6 you say Newports for?" That's the probative section, the last
7 sentence of that. In addition, above that, there's a line
8 that says, "All I know is that everybody was saying that they
9 had my fingerprints in the store. I know that that was a lie
10 from the jump because what I touched I took," and you'll
11 notice from the surveillance stills that we took, you see Mr.
12 Daniels taking -- McKinley Daniels taking the cash drawer out
13 of the store. His statement specifically is a statement
14 against penal interest to him. He's admitting his
15 involvement, admitting, and he's placing himself in the store,
16 he's admitting he's taking cash drawer, things out of the
17 store, as well as in every robbery as Your Honor was aware of
18 from Wednesday, you see close-up still video of every store
19 that was robbed of Newport cigarettes. As such, we believe
20 it's clearly an 804(b) statement, a statement against McKinley
21 Daniels' penal interest, which as Your Honor is well aware,
22 it's a well-accepted hearsay exception.

23 There's certain findings the State has to make and one
24 is, number one, the declarant is unavailable. The case law is
25 clear, and Your Honor is familiar with that, in that we had a

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1 -- I'm just careful of what I say really and to the, the media
2 around, but, but Mr. McKinley Daniels is unavailable. I spoke
3 with their attorney prior to that. He does not have an
4 interest and he is not going to testify. You can become
5 unavailable for the invocation or your Fifth Amendment Right
6 to remain silent if the Prosecution intends to use it as an
7 inculpatory statement. You can't use it as a shield if you
8 want to use it as an exculpatory statement. So you can't --
9 you can't invoke and then, and then say, "Oh, I didn't do it
10 by the way," and try to have an exculpatory statement. That's
11 very quick. We can talk about that more in a bit.

12 The second prong is that if there is -- if it's offered
13 against for the purpose of exculpating the accused there'd
14 have to be some level of corroboration or some indicia of
15 reliability surrounding that statement. The nature of the
16 corroboration in these statements is does, does this statement
17 exist, and a lot of times that's used as a verbal statement
18 some place at the crime scene at the time. Here we have
19 absolute proof that it exists in that the statements the State
20 intends to introduce are written statements. We can look and
21 see that they exist. So the corroboration, even though that
22 we don't have to corroborate because we're trying to use it as
23 an inculpatory statement, we can still corroborate it because
24 we're actually looking at the original documents that were
25 captured by guards at the J. Reuben Long Detention Center.

1 So the one specific case I noticed that Your Honor had
2 done one in Richland a while back, in that there was --

3 THE COURT: You talking about Barnes?

4 MR. HIXSON: Yeah. It was -- looks like the challenge.
5 The only thing that is admissible, I want to make sure that
6 that's clear, is the only thing that's admissible in these
7 statements are the inculpatory part, the specific statements
8 that are against McKinley Daniels' penal interest, and those
9 are the ones we intend to offer. The first couple of
10 sentences looks like biographical data, people coming to
11 visit, stuff like that. It doesn't appear to be exculpatory
12 or inculpatory, and so we could redact those, if necessary,
13 but the major ones that we're concerned a little bit about is
14 about if he goes to trial, about J.J. telling on him and then
15 the other, the other -- the, the fingerprints and the Newports
16 that we believe -- that's almost the reply, once again, the
17 reply doctrine against the statement, the letter that Mr.
18 James Daniels wrote.

19 THE COURT: I'm going to let you argue, Ms. Pratt. Just
20 give me one second.

21 MS. PRATT: Thank you, Your Honor.

22 THE COURT: Let me -- I wanted to look up something real
23 quick. Just let me process through it.

24 MR. HIXSON: Your Honor, the copy I have is Young is the
25 one I'm referring to, and I have a copy of that for your

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1 edification.

2 THE COURT: Okay. Thanks. Young and Barnes were Co-
3 Defendants that I tried together.

4 MR. HIXSON: Thank you, Your Honor.

5 THE COURT: No, no, no. I tried the other two together,
6 but Young and Barnes were all Co-Defendants in the Kelly
7 Hunnewell murder at the bakery. Yeah. Young and Barnes were
8 tried together, that's right. The third one was tried
9 separately.

10 Okay. What's your take on this, Ms. Pratt?

11 MS. PRATT: Thank you, Your Honor. Well, Your Honor, the
12 first thing I want to make very clear to the Court is that
13 while the two letters that have been alleged to have been
14 passed by my client were received by McKinley, this letter
15 written by -- allegedly by McKinley was never sent to my
16 client.

17 THE COURT: Okay.

18 MS. PRATT: So my client did not receive it. He did not
19 have a chance to respond for it.

20 THE COURT: Okay.

21 MS. PRATT: It is not truly reply testimony.

22 THE COURT: But Number Four is found in McKinley's cell?

23 MS. PRATT: Exactly, sir.

24 THE COURT: Okay. Okay.

25 MS. PRATT: And so I, I don't know whether it was a pat-

1 down or found in his property, but the way that the, the
2 supplemental incident report, which is document 1686 in the
3 discovery goes, it's, it's found with McKinley.

4 THE COURT: Okay.

5 MS. PRATT: So that's a problem for me first off because
6 my client has not had a chance to reply. Normally, when we
7 think about statements by someone else, part of their
8 reliability is that the person receiving it would challenge it
9 if it wasn't true. That's part of looking at its reliability
10 and truthfulness. I don't have a chance to cross examine
11 McKinley. It is a confrontation clause issue. It is a
12 hearsay issue. It's classic hearsay, even though it's a
13 document, because it's an out-of-court statement which is
14 being offered to provide proof of the truth of the matter
15 asserted, and I'm assuming that the matter that he is
16 attempting to use this for is some kind of agreement or, I
17 guess, combination between the three parties. Again, because
18 I don't have a chance to challenge and cross examine McKinley
19 or to in any way challenge this document, that it's -- it is a
20 hearsay problem for my client.

21 Now, what the State says that they are willing to look at
22 -- and I know he's talking about the first part about Cory and
23 and Jalicine [spelled phonetically], that could be
24 misconstrued by the jury about my client intending to pick
25 somebody up to be involved in another robbery. I don't know

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1 what that statement means. I don't know whether they're
2 talking about going to the, the grocery store or a bar or
3 whether they're talking about a robbery. So certainly there's
4 a problem with that.

5 When he responds or says, "If you go to trial, I'm not
6 going to do shit, you're your own man. All you got to worry
7 about is J.J. telling on you," then we're almost getting to an
8 additional layer of hearsay because we don't know what J.J. is
9 going to do and certainly ---

10 THE COURT: Well, you're -- it's shifting, shifting
11 blame, if you're saying what J.J.'s going to do, then that
12 means one could read into that that J.J. is involved. So it's
13 once the declarant begins shifting blame to another, that's,
14 that's part of, part of the rule.

15 MS. PRATT: But the declarant is not on trial here.

16 THE COURT: No. I know. No. I'm with you.

17 MS. PRATT: But I -- and so I, I agree with you and it is
18 shifting over to J.J., which is part of the, I guess, self-
19 exculpatory part.

20 THE COURT: Well, I mean, for it to be admissible, for
21 anything to be admissible, let's step out -- well, let's take
22 the confrontation clause out of it for just a second. For
23 anything to be admissible under this theory, it has to be self
24 -- it has to make yourself look bad. So when he shifts, tries
25 to shift blame to J.J., that is directly opposite what the

1 rule is trying -- the rule is you would only say you
2 participated in a crime if you were telling the truth, people
3 just don't lie about that. I mean, that's the, you know,
4 that's the inherit basis behind the rule.

5 MS. PRATT: Right.

6 THE COURT: So when you say, "J, you know, you got to
7 worry about J.J. talking on you," then you're saying J.J.'s
8 an accomplice. So that does not make you yourself look bad.

9 MS. PRATT: And the, and the statement right after that
10 is another one very similar, "They say my fingerprints were
11 there, but I know that was a lie from the jump." If any -- of
12 course, then he --

13 THE COURT: Right.

14 MS. PRATT: --- inculpates himself by saying, "What I
15 touched, I took."

16 THE COURT: Right.

17 MS. PRATT: And then the last sentence about, "Why, why
18 you say Newports for," so really the only thing that, that
19 relates at all and still there is the hearsay and the
20 confrontation part. I just believe that this letter taken as
21 it -- as a whole with those kinds of arguments would certainly
22 be more prejudicial than probative in this situation.

23 THE COURT: Well, the, the letter taken as a whole is
24 clearly not admissible. The, the, the letter in, in the form
25 that it's been given to me, which is State's Exhibit Number

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1 Four, is -- cannot be admissible period. Now, the issue is
2 can we -- can the Court go through an analysis to take out --
3 to pull out certain statements out of this statement that then
4 become admissible under 804(b)(3), and what I did in Barnes
5 and Young, and keep in mind Barnes and Young were also Co-
6 Defendants on trial together where I had witness -- in Barnes
7 and Young it was live -- there was a letter in Barnes and
8 Young, but there was also live witnesses that said, "Young
9 told me this in jail," and Young was on trial and Young
10 couldn't, you know, it had other issues. There's actually a
11 case before Barnes and Young where two parents kill a four
12 year old child in Columbia where we pulled out parts of their
13 statements, and the Court of Appeals didn't have an issue with
14 it like they did in Barnes and Young.

15 All right. So keeping that in mind, Mr. Hixson, what of
16 the -- which of these statements in here do you -- would -- do
17 you think fit under 804(b)(3) as in truly self-inculpatory?

18 MR. HIXSON: Your direct question is the last two
19 sentences, Your Honor, specifically, "They told me they had
20 our fingerprints in the store. I knew that was a lie from the
21 jump because what I touched, I took," and that corroborates
22 the video. Clearly you see him being careful about the cash
23 drawer, not touching anything else. You see him in all three
24 videos in all three robberies of then -- and then taking the
25 cash drawer itself or in some cases getting a tray underneath

1 the, the -- in, in Trish Stull's situation, he gets a box
2 underneath the register, has her touch the cash drawer and
3 then he takes that out, so that one and then the last one.
4 You -- that specifically goes to him admitting, "You know I
5 took Newports from those stores." That is express statement
6 on the part of Mr. Daniels that, "Hey, you know what was going
7 on. You were there. Why'd you say Newports," admitting his
8 -- James Daniels' knowledge of what was going on at the crime
9 at least one of three, if not all three. That's corroborated
10 by Mr. Daniels' statement that the Court is allowing to -- the
11 jury to hear when he said he came around back from the car and
12 they were carrying Newports. So I completely agree with the
13 Court's analysis relating to it has to be absolutely a
14 statement against penal interest. I think that's what the
15 pull away from Young, getting away from Dargan and all that
16 that it's a pretty, a pretty tightly constrained window of
17 admissibility if they're expressly against penal interest, and
18 then the last bit, this is an exception to hearsay under the
19 rule. So it is not a hearsay issue. By, by rule, if the
20 Court finds that it reaches the predicate level of
21 admissibility, and, and one last point, it -- as it relates to
22 -- we have to have an initial showing of unavailability, but
23 it is unethical for me to call Mr. Daniels to the witness
24 stand to get him to invoke, to, to have a bit of a dog and
25 pony show, so I just wanted to make sure the Court's aware.

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1 THE COURT: Yeah. The, the law is very clear that we
2 can't put somebody up just to invoke if we all know they're
3 going -- if we all have a good faith basis to believe based
4 upon a conversation with their attorney that they're going to
5 invoke.

6 What about the confrontation clause issue, Mr. Hixson?
7 What's your thought process on that?

8 MR. HIXSON: My understanding relating to if it's a --
9 it's continued, it has never been under, a couple of Supreme
10 Court's precedence, that it's, it's maintained its firmly
11 rooted exception because it's a historical, firmly rooted
12 hearsay exception. I believe it actually comes from Dargan, I
13 guess the case law from our Supreme Court that establishes
14 that and I have here. That is one of the few that -- that it
15 was fell in disfavor somewhat by the Supreme Court, then came
16 back to our jurisprudence, and beg the Court's -- in State
17 versus Doctor, I believe. Is that right? 804(b)(3) is
18 admissible and the Fifth Amendment makes -- that's, that's a
19 witness unavailability case. I apologize, Your Honor. Yeah,
20 United States versus Williamson is the case in the United
21 States Supreme Court that -- and then Young adopts it from
22 Williamson here in our state, and I believe that stands for it
23 being a firmly rooted hearsay exception that's -- that passes
24 constitutional muster for the confrontation clause, and
25 Williamson is 114 S.C. 2431.

1 THE COURT: And what, what about the idea that this
2 letter is found on McKinley Daniels' person and not on Mr.
3 James Daniels or Mr. James Daniels' cell?

4 MR. HIXSON: That's my understanding of a statement, of a
5 statement against penal interest the nature of it is rooted in
6 the admissibility of the mindset of the writer. When I said
7 reply doctrine, I didn't mean to invoke a legal doctrine for
8 that. I meant when you see -- it's, it's like an interlocking
9 confession like we used to be able to admit in Bruton cases
10 where the one letter, and it's clearly they're having a
11 conversation because they're answering each other's questions
12 on, "Are -- if you go to trial you going to hurt me, am I
13 going to hurt you." Clearly there's circumstantial evidence
14 of ongoing conversations, and we have had six, there are six
15 other letters that I'm not trying to offer up, including
16 passing books and other things that, that we, we could show a
17 pattern of these letters going back and forth, and we don't
18 know exactly when was passed. The video and the search and
19 the testimony is very contemporaneous with it, and this
20 particular letter was in the breast-pocket of McKinley Daniels
21 when Corporal Kidder as well as David -- Corporal David
22 Wilhelm got it off McKinley Daniels' person. So I don't know
23 that, that it relates to constitutional admissibility that we
24 have to prove that McKinley wrote it or not. It's the, the,
25 the reliability of it is because McKinley Daniels says, "I

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1 committed armed robberies," and that's what makes it
2 probative.

3 THE COURT: All right. Ms. Pratt, you can jump back in
4 if you'd like to.

5 MS. PRATT: I just have one comment I want to make, Your
6 Honor. If this was found in his pocket or on his person or
7 even in his cell, it can't possibly ---

8 THE COURT: You mean, you mean McKinley?

9 MS. PRATT: McKinley, yes, I'm sorry, sir.

10 THE COURT: Okay.

11 MS. PRATT: We've got too many Daniels in this.

12 THE COURT: Yeah.

13 MS. PRATT: It can't possibly be a reply to the letters
14 that he's trying to put in as One, Two and Three because he
15 just got those in the pass-through. So this is some kind of
16 statement that he is trying to make, possibly trying to stir
17 up my client, but that's McKinley's issue. That is not
18 something that my client is responding to or he is not
19 responding back to my client. I do think there's a
20 confrontation clause issue and a prejudicial versus probative
21 issue as well, Your Honor. We would ask that you keep this
22 out.

23 THE COURT: Okay. All right. I'm going -- I'm not going
24 to rule on Number, Number One, Two and Three based upon the
25 proper foundation, you know, I would preliminary deem

1 admissible based upon the people saying what I would expect
2 them to say about how they found them and what they saw and
3 those kind of things, but Number Four, I, I -- in the Barnes
4 and Young case, I read one case, and I had myself convinced
5 that I was good, and I spent a lot of time reading that case
6 and Judge Hill kind of did an expose' in the Barnes and Young
7 opinions on that. So I want to spend a little bit more time
8 reading that, which I will this afternoon before I rule on
9 Number Four. Okay?

10 MR. HIXSON: Thank you, Your Honor. Very good.

11 THE COURT: All right. What else?

12 MR. HIXSON: I think we have a -- we have one judicial
13 notice issue relating, I guess, as to the temperature of the
14 second offense, and in the past, I've used NOAA websites,
15 things like that. I just thought perhaps now is the time to
16 bring it up, and it's specifically Weather Underground which
17 the State Law Enforcement Division uses for arson cases, and
18 all I intend to elicit is we would ask the Court to take
19 judicial notice that on January 25th of 2015 at around 10:00
20 o'clock in the morning, the temperature at that time was --
21 the temperature at that time was 78 degrees out, I mean,
22 excuse me, 37 degrees outside, and I have a copy for the Court
23 to consider, but at the appropriate time, we would ask for
24 that towards the -- during the crime scene testimony of
25 specifics ---

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1 THE COURT: You said A.M. Did you mean P.M.?

2 MR. HIXSON: P.M., I apologize.

3 THE COURT: Okay.

4 MS. PRATT: Thank you, Your Honor.

5 MR. HIXSON: And specifically you see --

6 THE COURT: Okay.

7 MR. HIXSON: -- you see Mr. Daniels wearing a t-shirt and
8 shorts, and then the argument to the jury, of course, is we
9 know the clothes that he was wearing are the ones that -- the,
10 the long-sleeve warm clothes that Jerome Jenkins was wearing,
11 they literally gave him the clothes off his back prior to this
12 robbery because it was 37 degrees outside.

13 THE COURT: All right. Any objection to that, Ms. Pratt?

14 MR. HIXSON: That's what it looks like.

15 MS. PRATT: Obviously, I object to the interpretation
16 that he has placed upon the fact that my client is in shorts,
17 but I don't think I can object to the fact that it was 37
18 degrees at 10:00 o'clock at night.

19 THE COURT: Okay. I'm not, you know, I wasn't asking you
20 to agree to the, the interpretation, just the, just the
21 temperature.

22 MS. PRATT: Thank you, Your Honor.

23 MR. HIXSON: Your Honor, we're -- have a -- I don't think
24 -- we don't have any intention, the Solicitor is going to do
25 the opening statements and doesn't have any intention to refer

1 to the letters. So we have time for that.

2 THE COURT: Okay.

3 MR. HIXSON: So we get into the, the trial of the case
4 and figure that out.

5 THE COURT: Oh, I mean, I'm going to figure it out this
6 afternoon so.

7 MR. HIXSON: Yeah. The major work, I believe, Your
8 Honor, is to pre-mark stuff, and I don't know that we have to
9 take the Court's time up for us to get together.

10 THE COURT: Okay. Anything else, Ms. Pratt?

11 MS. PRATT: Not at this time, Your Honor.

12 THE COURT: Okay. All right.

13 MR. HIXSON: We did, if it's appropriate, we did -- I
14 don't think we're required to, but we did file a notice of the
15 State's intent to seek life in prison without the possibility
16 of parole. I don't know if any allocution needs to be on the
17 record for that. I don't think it's volitional by the Court.
18 I think that's fairly clear, but I just wanted to make sure
19 you're aware of that.

20 THE COURT: Okay.

21 MR. HIXSON: I don't know that there's a necessity for
22 that, Your Honor.

23 THE COURT: All right. Mr. Daniels, do you swear
24 everything you're about to tell me is the truth?

25 MR. DANIELS: Yes, sir.

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1 THE COURT: Okay. And do you understand that the State
2 has given notice for their intent to seek life without parole
3 if you are convicted?

4 MR. DANIELS: Yes, sir.

5 THE COURT: And do you understand that based upon -- he
6 has one prior most serious?

7 MS. PRATT: That's correct, a kidnapping from 2004 or
8 '05.

9 THE COURT: Right. Right. So based upon the one prior
10 most serious, if you were convicted of armed robbery and/or
11 murder and/or any combination of any of them, the Court's
12 hands would be tied and I would be -- would be tied and I
13 would be required to give you life without parole. Do you
14 understand that?

15 MR. DANIELS: Yes, sir.

16 THE COURT: Do you have any questions about that?

17 MR. DANIELS: No, sir.

18 THE COURT: And today's not the first time you've heard
19 that; is that right?

20 MR. DANIELS: No, sir.

21 THE COURT: Okay. All right. Thank you very much. I
22 appreciate it. Anything else?

23 MR. HIXSON: No, sir, Your Honor. I don't believe so.

24 THE COURT: Ms. Pratt?

25 MS. PRATT: Not at this time, Your Honor.

1 (On the record, August 28, 2018. The following takes
2 place outside the presence of the jury.)

3 THE COURT: All right. Good morning, everybody. We're
4 back on the record in the State of South Carolina versus James
5 E. Daniels, Jr. Mr. Daniels is present and represented by his
6 attorney, Ms. Pratt. The State is present represented by
7 Solicitor Hixson and, I mean, Solicitor Richardson and Deputy
8 Solicitor Hixson. Anything we need to take up before we get
9 started?

10 MS. PRATT: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MS. PRATT: Your Honor, as we left it yesterday, you had
13 asked about what we wanted to do, what I wanted to do as far
14 as a continuing objection or a limiting instruction in regards
15 to the 404(b) evidence. We respectfully disagree with the
16 Court's ruling, as you know, as to the introduction into
17 evidence of the Sunhouse 905 incident as 404(b) evidence, and
18 that's for reasons already stated into the record. Your
19 Honor, we are requesting a continuing objection to the
20 introduction of this evidence without the need for a
21 contemporaneous objection each time the Sunhouse 905 evidence
22 is mentioned, and without conceding our objection or agreeing
23 that this might cure the evidentiary issue, we are also
24 requesting a limiting instruction that the Court -- that the
25 evidence may only be considered as to intent or common scheme

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1 or plan, and we would ask that that instruction be given in
2 your opening remarks to the jury so that they are not confused
3 as to the purpose of that evidence, which will be coming in, I
4 imagine, quite frequently this morning.

5 THE COURT: Okay. Mr. Hixson?

6 MR. HIXSON: Yes, sir. We have no objection to that
7 specifically. Only concern about is an ongoing objection
8 because if there's another foundation for an assignment of
9 error that that's objection made, it's just not a blanket
10 continuing objection to preserve error for anything unrelated
11 to 404(b).

12 THE COURT: Right.

13 MR. HIXSON: But I assume that level of detail that I'm
14 sure you'll object if you have another problem beside 404(b).

15 MS. PRATT: Absolutely. My point is I don't want to be
16 jumping up every five seconds to object to something because I
17 believe it calls attention to it for the jury rather than
18 actually curing a problem.

19 THE COURT: Right. I mean, and I -- every time I read
20 one of these appellant decisions, I say, you know, you know,
21 the Defense attorney has their job to do, but you're also --
22 don't want to be seen objecting to something and then because
23 that can also cause the jurors, you know, radar to go up and
24 say, "Well, maybe I need to listen to this more," and so I'm
25 with you and I understand that. So as to the 404(b) objection

1 that you made, I will allow that to continue throughout the
2 trial. Now, if there's some other basis that you want to
3 object under, then you, you know, of course you know that
4 you're -- you need to stand up and object and that's perfectly
5 fine, and we'll deal with that at that time. I do not get
6 frustrated by people objecting. So if you believe you need to
7 object, just, just, just do it. You won't, you won't offend
8 me or bother me in any way, shape or form, but I, and as I
9 stated last night on the record and I'll state again this
10 morning, I understand your 404(b) argument. I have processed
11 through it. I have read the cases. I have made my decision,
12 and I understand your objection to it and your legal basis for
13 it and your reasoning behind it, and at this point in time,
14 the 905 -- which road is that -- Red Bluff Road will be
15 allowed into evidence. Now, you want me to -- let's talk
16 about the limiting instructions. Go ahead.

17 MR. HIXSON: Just, just one brief point?

18 THE COURT: Sure.

19 MR. HIXSON: We believe there's potential depending upon
20 the case law relating to mistake and accident that, that I
21 think a limiting instruction is appropriate. We don't want to
22 just limit it to common scheme or plan or intent because I'm
23 not sure if the Defense, the way we'll get there is a mistake
24 or accident. That's like a mere presence type argument. So
25 we would -- if you're going to charge it, would like to have a

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1 discussion for the State to -- preserve a discussion for
2 mistake or accident for the jury charge at the end of the
3 trial.

4 MS. PRATT: Well, and perhaps it needs to come just
5 straight from the rule.

6 MR. HIXSON: Yeah, that's appropriate.

7 MS. PRATT: With all five exceptions, and then it doesn't
8 call attention to any one of them.

9 MR. HIXSON: I, I would agree with that.

10 THE COURT: Well, let -- I'm, I'm pulling it out so we
11 can -- I can read it instead of just going off of memory. So
12 what the rule says is evidence of other crimes, wrongs or acts
13 is not admissible to prove the character of a person in order
14 to show action in conformity therewith. It may, however, be
15 admissible to show motive, identity, the existence of a common
16 scheme or plan, the absence of mistake or accident or intent.
17 So you all want me to explain that in the opening charge?

18 MS. PRATT: That would be my request, Your Honor.

19 THE COURT: Okay. And so let's, let's talk about kind of
20 how -- what that looks like so I, I can process through it in
21 my own mind. So my -- I guess I would say, "You all are going
22 to hear evidence about another case that exists that I did not
23 read you an indictment on, that, you know, and we commonly
24 call that the Red Bluff Road or the 905 Red Bluff Road case.
25 And the purpose the," -- see, it's -- I'm trying to -- I'm

1 trying not to comment on the facts and explain it at the same
2 time. So what you think?

3 MR. HIXSON: We've been struggling with this a little
4 bit, especially last night, burning up some cellular data
5 minutes on this one, but the, the key to clarify, I think, is
6 appropriate for the jury to say is, "There are, there are
7 three indictments before you."

8 THE COURT: Okay.

9 MR. HIXSON: And chime in, please. "There's other
10 indictments pending. That's not before you today. You're
11 going to, you're going to reach a verdict on three
12 indictments. You're going to hear other evidence of other
13 crimes or other bad acts, but you're not going to reach a
14 decision on those today. That's an evidentiary issue. You're
15 only going to reach them on three." That's why we've been
16 trying to structure an opening statement that addresses that,
17 and perhaps that assists the Court to refer to the
18 indictments, and "Those offenses aren't before you on this
19 day, today."

20 MS. PRATT: Well, and I think that he's correct, that if
21 we use the word incidents and then you use the rule itself
22 that says this evidence is admissible, but only for the
23 purposes of and then list the five, I think that that covers
24 what my concerns are.

25 THE COURT: Okay. So I say something along the lines of,

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1 "You have three indictments that are your consideration in
2 this case. There are two counts of armed robbery and one
3 count of murder. Those are the only criminal charges that are
4 before you for the purposes of a decision, to which he's
5 presumed innocent," and all, all the stuff that I normally
6 say. "You are going to hear testimony concerning another
7 incident that Mr. Daniels is charged in but is not a case that
8 you will be making a decision on, and under our rules of
9 evidence, there are circumstances when evidence of other
10 crimes or wrongs or acts is not admissible to prove the
11 character of a person, to show that the action in conformity
12 therewith, however, they can be admissible to show motive or
13 identity," and kind of come at it that way.

14 MS. PRATT: Yes, sir.

15 THE COURT: Okay. All right. Hold on. Let me figure
16 out where I'm going to weave that in. Just one second. All
17 right. What else?

18 MR. HIXSON: I think we're -- I don't know if Your Honor
19 wants to reach a decision on 804(b)?

20 THE COURT: Yeah. I, I studied that for the majority of
21 the afternoon yesterday and where, where is that State's
22 Exhibit Number Four? I don't think I kept it.

23 MR. HIXSON: Take it back or I took it back from Dixie.
24 This is the statement. So that is not it. It's this one.
25 It's this one, Judge.

1 THE COURT: No. Okay. So I've read through these cases,
2 keeping in mind most of them were mine as I read through them.
3 They're not, you know, they're not exactly similar, but they
4 are -- they're, they're a good explanation of the law on
5 804(b)(3), and again, at this point in time, we're talking
6 about State's Exhibit Number Four, which is allegedly a
7 handwritten note by McKinley Daniels that was found on his
8 person during a search of him at the jail.

9 So under 804(b)(3), the only thing that can come is an
10 admission of a statement against McKinley's interest. Okay?
11 And so the statement, hold on, let me find where it is, he
12 says, "All I know is that everybody was saying that they had
13 my fingerprints in the store. I know that was a lie from the
14 jump 'cause what I touched I took." Okay. So that statement
15 is against McKinley and McKinley only. Okay. The next
16 statement says, "You know" -- now, this isn't written to
17 anybody. I mean, it's not like it says, "Dear James" or
18 "Dear", some nickname, but assuming it was written to James,
19 it says, "You know I took Newports out of the store. Why you
20 said Newports for?" Okay? The problem with that statement is
21 that implicates James, and that's what 804(b)(3) does not
22 allow. So under State's Exhibit Number Four, if the, if the
23 State still wants to introduce it, and I'm not -- then the
24 only statement in there that would be admissible would be,
25 "All I know is that everybody was saying that they had my

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1 fingerprints in the store. I know that was a lie from the
2 jump because what I had touched I took," because that
3 statement directly implicates McKinley and McKinley only, and
4 these cases say the rule only grants admissions of statements
5 against the declarant, that would be McKinley's, penal
6 interest. Statements that are against the penal interest of
7 an accomplice do not qualify for the, for the simple fact that
8 the accomplice is not the declarant. That -- the accomplice
9 in that -- in this scenario would be James. So if you all
10 still want to use that that's the one sentence out of it that
11 you can use. Okay?

12 MR. HIXSON: Yes, Your Honor.

13 THE COURT: All right. What else?

14 MR. HIXSON: We did a fair amount of marking exhibits
15 yesterday.

16 THE COURT: Great.

17 MR. HIXSON: I think we're up to roughly 150.

18 THE COURT: Okay.

19 MR. HIXSON: 156, right in there somewhere, and we're
20 trying to tighten things up with Dixie on qualification. So I
21 hope we qualify or qualifying to admit these kind of en masse
22 because the majority of them are still photos from the video
23 so as to not keep playing the video over and over and over
24 again. Did you have any specific objections that you wanted
25 to place concerning any of these or --

1 MS. PRATT: If I can look at which ones you're talking
2 about since we looked at 125 of them yesterday.

3 MR. HIXSON: All right.

4 MS. PRATT: Are these the ones you're talking about?

5 MR. HIXSON: Well, there's 125 of them. What -- my
6 intention was to just have a witness look at the -- keep the
7 packets together and say, "This is State's 72 to 82," to try
8 to figure out a way how we could get them and then have them
9 authenticate them at the time and then try to introduce them
10 as a pack in like tens.

11 MS. PRATT: And I think the best way then would be at the
12 time that he wants to do that, hand me the packet, let me look
13 at each one. If I have an objection to one of the pictures,
14 I'll let him know. I have looked at all of them as we marked
15 them, Your Honor, but did not formulate formal objections
16 because I don't know what propose he's using them for yet.

17 THE COURT: Okay.

18 MR. HIXSON: All right.

19 THE COURT: All right. Anything else?

20 MR. HIXSON: I believe that's it, Your Honor.

21 THE COURT: Okay.

22 MS. PRATT: Nothing more from the Defense, Your Honor.

23 THE COURT: Okay. So if you're in here right now out in
24 the audience, I'm happy for you to be here. Make sure that
25 your cell phone is off or on silent. If it goes off, I'm

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1 That's fine, either one. All right. So we're going to put
2 Juror Number, sorry, Number 183, Number 362 and Number 373 in
3 a cup and then we'll let the law clerk draw it out. All
4 right.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: All right. Welcome back, good morning,
8 ladies and gentlemen. I hope you all are doing well. All
9 right. Where is Juror Number 183? Okay. All right. So
10 you're now going to be a -- you're not going to be an
11 alternate anymore. You're going to be a normal juror in this
12 case. All right. So you can stay where you're seated right
13 now, but when you come back in, you need to move over to that
14 side when we come back from a break, and where is Ms. Perry?
15 Ms. Perry, you're going to become the foreman of this jury or
16 the forelady of this jury. Okay? Have a little shift in
17 personnel this morning. Okay. No one has done anything
18 wrong, nothing bad's happened. These things happen in cases,
19 and I have to just -- we have to take them in stride and move
20 forward. So you're going to be the forelady in this jury.
21 Your vote doesn't count any extra, and you don't get paid any
22 more, and when you come back in, you can just be seated in
23 that first seat right over there, if you would please. Okay?
24 Ms. Dana, can I see you real quick?

25 (Bailliff and Court confer in the presence of the jury but

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1 out of the hearing of the jury.)

2 THE COURT: All right. Now, welcome back, ladies and
3 gentlemen. We have been working since 9:30 this morning. I
4 jumped on the bench at 9:30 to make sure we were ready to go
5 for when you got in here. I'm going to give you kind of an
6 outline for the morning and then we're going to jump right
7 into things. So in just a moment, the clerk is going to
8 swear you in. Okay. Now, you took a couple of oaths
9 yesterday to tell the truth. The oath that you're going to
10 take this morning is different. The oath that you're going to
11 take this morning, we've literally been using in this country
12 for almost 200 years, and this is your promise to me, this is
13 your promise to the parties, this is your promise to the
14 witnesses, this is your promise to each other and this is your
15 promise to yourself that you are going to try this case fairly
16 and impartially without any bias or prejudice. You're going
17 to listen to the evidence, determine what the facts are and
18 then apply those facts to the law. Okay? And in doing so
19 it's going to be like you're each wearing your own black robe
20 as a judge to sit there fairly and impartially and do this.
21 So this oath you're going to take is very important.
22 Throughout the trial and at the end of the trial and
23 throughout the trial and usually at the end of each day, I
24 remind you of this oath because it's your promise to follow
25 the instructions that I give you, to follow the law that I

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1 give you in coming to a decision in this case. So if you
2 would please stand up.

3 (Jury sworn by clerk.)

4 THE COURT: Okay. Thank you very much.

5 Now, before we begin the actual trial of this case, I
6 thought it might be helpful to explain to you how a trial will
7 work. First, the State or the Solicitor's Office will be
8 allowed to make an opening statement. Now, opening statements
9 are not evidence. They're simply outlines to help you
10 understand what that party expects the evidence will show.
11 The Defendant may, if he chooses, present an opening
12 statement, but he does not have to for reasons that I will
13 explain to you in just a moment.

14 Following the opening statements, you will hear testimony
15 and evidence in the case. This will consist of testimony from
16 the State's witnesses as well as any physical exhibits which
17 will be introduced into evidence. Following the completion of
18 all of the testimony, the attorneys will again have an
19 opportunity to make what are called closing arguments or
20 closing statements to you. This is an opportunity for the
21 attorneys to summarize the case from their respective points
22 of view.

23 Now, as I go through this opening charge with you, I want
24 you to listen for the word evidence. So some things that
25 you're going to hear during this trial are evidence. Some

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1 things that you're going to hear during this trial are not
2 evidence. Okay? And you must base your decision off the
3 evidence. So opening statements and closing arguments are
4 guidelines to assist you, but they are not evidence. Okay?

5 Following the closing statements by the attorneys, I will
6 tell you what the law is in South Carolina as it pertains to
7 the issues that have arisen during this case. When I've
8 completed my instructions to you, you will then begin your
9 deliberations in order to reach a verdict.

10 Now, one of the things I need to explain to you is your
11 duty and your responsibilities during this trial. In a
12 nutshell, your responsibility is this. It is your duty to
13 decide from the evidence what the facts are. You and you
14 alone are the judges of the facts. You will hear the
15 evidence, decide what the facts are and then apply those facts
16 to the law that I will give you. That's how you'll reach a
17 verdict. In doing so you must follow the law that I give you
18 whether you agree with it or not.

19 So what is evidence? Evidence will consist of the
20 testimony of the witnesses, any documents or pictures or
21 photographs or anything like that received into evidence as an
22 exhibit and any facts on which the lawyers agree or anything
23 that I tell you, you must accept. So at some point during the
24 trial, the lawyers may say, "We all agree that on the day in
25 question the sky was blue." So I would tell you you must

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1 accept this fact that the sky was blue that day. You
2 understand that's a hypothetical, but sometimes that happens
3 in cases. So outside of that happening, there's kind of a
4 line in the courtroom. Okay? And on your side of the line
5 sits the facts, and on my side of the line sits the law. You
6 can't tell me what the law is, and I can't tell you what the
7 facts are unless the lawyers all agree that I can tell you
8 some fact. Okay?

9 Now, do not take anything that I say or do during the
10 trial as indicating what I think of the evidence or what I
11 think your verdict should be.

12 Now, this is a criminal case that's been brought by the
13 State of South Carolina. The State has charged the Defendant
14 with three charges; two counts of armed robbery and one count
15 of murder, and I read those charges to you yesterday. Okay?
16 The charges against the Defendant are contained in the
17 indictments that I read to you yesterday. The indictments are
18 not evidence of anything. They're simply the description of
19 the charge made against the Defendant.

20 Now, the Defendant has pled not guilty to the charges,
21 and he is presumed innocent unless and until proven guilty
22 beyond a reasonable doubt. Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the Defendant's
24 guilt. A Defendant has the right not to testify, and he never
25 has to prove his innocence or present any evidence at all.

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1 The burden of proof is always upon the State.

2 Now, as I told you, some things you'll hear this week are
3 not evidence and you must not consider them as evidence in
4 deciding what the facts are. Number one, the statements and
5 the arguments of the attorneys are not evidence. Number two,
6 the questions and the objections of the attorneys are not
7 evidence, and number three, anything that I tell you to
8 disregard. So in almost every trial somebody says something
9 that they shouldn't say. Okay? And I will tell you disregard
10 that statement, or disregard what that witness just said.
11 Okay? And if that happens, you cannot consider that statement
12 or whatever that may be as evidence. Okay?

13 There are two types of evidence that you will hear.
14 Evidence may be direct or circumstantial. Direct evidence is
15 testimony by a witness about what that person saw, heard, did,
16 touched, sensed by smell, something of that nature.
17 Circumstantial evidence is indirect evidence. That is it is
18 proof of one or more facts from which you can find another
19 fact. You are to consider both types of evidence. The law
20 permits you to give equal weight to both, but it is up to you
21 to decide how much weight to give any evidence. Okay?

22 Now, during this trial and throughout this case, there
23 are rules of evidence which control what can be received into
24 evidence. Okay. We're just not making this up as we go.
25 There's an entire -- there are entire rule books on how this

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1 all works. Okay? So this is what will happen. When a lawyer
2 asks a question or offers an exhibit into evidence and the
3 lawyer on the other side thinks that's not permitted by the
4 rules, that lawyer may object. So they'll stand up and say
5 hearsay. They'll stand up and say relevance. They'll stand
6 up and give some kind of objection. Okay? If I overrule the
7 objection, then the question can be answered or the exhibit
8 can be received. If I sustain the objection, the question
9 cannot be answered or the exhibit cannot be received. So
10 whenever I sustain an objection to a question or deny a motion
11 to admit an exhibit into evidence, you must ignore the
12 question or the existence of the exhibit, and you can't guess
13 as to what the answer would have been or what that exhibit
14 would have shown.

15 Now, it will be necessary during this trial for me to ask
16 that you leave the courtroom while I discuss legal issues with
17 the attorneys. That happens in every single case. Whether
18 there's one witness or 70 witnesses, there are times when I
19 have to ask the jurors to leave the room to discuss legal
20 issues. When this happens, do not speculate about what we are
21 discussing or why you were asked to leave the room. This is a
22 procedure that the law requires when certain legal issues come
23 up.

24 Now, there will also be occasions where I tell the
25 attorneys, "You all approach the bench," or they could say,

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1 "Your Honor, may we approach," and what they're doing is
2 they're trying to keep you from walking in and out and in and
3 out and back and forth as legal issues come up. So when this
4 happens, nobody is trying to keep anything from you, this is
5 simply a procedure that all courts use throughout the country
6 to determine and to decide legal issues. Okay?

7 Now, we've talked about the rules of evidence a little
8 bit, and I have with me this morning, and I'll have it with me
9 all week, my rules book, okay, and I'm going to show you this
10 because I want you to understand, you know, you're probably
11 wondering what am I looking at. Okay? So this is my evidence
12 book, okay, and it has tabs and it has my notes all over it,
13 and as I learn things and -- or new law comes out, I stop and
14 write it down in here to process through it, okay, and to help
15 me remember for the next trial. So we have an -- I have an
16 evidentiary rule that I need to walk through with you this
17 morning in this opening charge so that you're not confused by
18 what's happening. Okay?

19 So you have three indictments before you. Okay? Two are
20 for armed robbery; one is for murder. Again, those are
21 allegations. They're not proof of anything. Those are all
22 for incidents that allegedly occurred on one night, okay,
23 which is January the 25th of 2015. Okay? You are going to
24 hear evidence or you're going to hear testimony, excuse me,
25 you're going to hear testimony in this case and see items

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1 related to this case about an incident that allegedly occurred
2 on January the 2nd of 2015, okay, and we call that the Red
3 Bluff Road store. Okay? Now, those charges concerning the
4 Red Bluff Road store are not before you. They are not for
5 your consideration today or this week. Okay? Under the rules
6 of evidence, and the rule is called Rule 404(b), it permits
7 that evidence of other crimes, wrongs or acts are not
8 admissible to prove the character of a person in order to show
9 action in conformity therewith. They may, however, be
10 admissible to show motive, identity, the existence of a common
11 scheme or plan, the absence of mistake or accident or intent.
12 Okay? So you're going to -- when you start hearing things
13 today and tomorrow, and I don't know the order that the State
14 is going, but when you start hearing things, you're going to
15 hear things about an earlier prior incident, okay, and that is
16 why that testimony -- I've allowed that testimony is because
17 of that specific rule of evidence. Those charges are not
18 before you. They are not for your decision, but that is why I
19 am going to allow that testimony to come before you. Okay?

20 All right. Now, one of the things you're going to have
21 to decide this week is called the credibility of the
22 witnesses. You're going to have to decide which witnesses to
23 believe and which witnesses not to believe. Here are the
24 rules. You can believe everything a witness says. You can
25 believe none of what a witness says. You can believe part of

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1 what a witness says. Okay? So some things you can consider
2 but you're not limited to are: what was the witness's ability
3 to hear, see or know what he or she testified to; how good was
4 the witness's memory; what was the witness's demeanor or
5 manner like while they were testifying in front of you; does
6 the witness have an interest in the outcome of the case or any
7 motive or bias or prejudice; was the witness contradicted by
8 anything they said or wrote before the trial or by other
9 evidence; how reasonable was the witness's testimony when
10 considered in light of the other evidence that you believe.
11 You probably don't realize it but you judge people's
12 credibility every single day, and it's such a common thing for
13 you you really don't even realize you're doing it, and my
14 favorite example is right before we go to the bus stop in the
15 morning, when you say to the children, "Did you brush your
16 teeth," right? And if you have children you know what I'm
17 talking about, right? And you make a credibility decision
18 right there in that moment on that child as to whether or not
19 they brushed their teeth. It may be because you see the Fruit
20 Loops in their teeth, or it may be because she's a teenage girl
21 and she wouldn't go anywhere without brushing her teeth, but
22 you make a credibility decision on whether or not that child
23 is telling you the truth first thing in the morning, okay, and
24 you do that all day long and the reason -- what you do that
25 with is your common sense and the reason they selected you to

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1 be on this jury is because they believe in you and they
2 believe in your common sense. So you didn't leave your common
3 sense at the metal detector when you came in the building this
4 morning. Okay? You bring it with you, and that's why they
5 selected you. Okay?

6 Now, just a couple of more rules and then I'll be
7 finished. So until you begin deliberating, which is at the
8 very end, you are not allowed to discuss this case with anyone
9 including each other, friends, family members, and anyone
10 involved in the case. This includes discussions face to face,
11 by telephone, email, text message, blog, Facebook, twitter,
12 some other kind of app that I don't even know what it is. You
13 can't use it to communicate about this case at all. You may
14 not use a computer or cell phone or other electronic device at
15 any time while in the courtroom or in the jury room. During
16 your breaks, you'll be given these devices. However, you may
17 not use them at any time to get or send information about the
18 case, about a party, a witness, an attorney, a court officer.
19 You may not watch any news in any way, shape or form. You may
20 not do any research on any topics raised. You cannot read any
21 news. You may not go out and search anything about this case
22 or look for anything about this case. This case is on the
23 news, and you are not to watch it in any way, shape or form.
24 You are not allowed to watch local news, period, end of story,
25 not up for discussion. Okay?

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1 Now, once the case is submitted to you, you must discuss
2 it only in the jury room and only with each other. Again,
3 that's at the end. The attorneys and the parties in the case
4 have been told they are not to talk to you. So if they see
5 you in the hall and they don't say hello, they're not being
6 unfriendly, they're just following my instructions. It is
7 important that you keep an open mind and not decide any issue
8 in this case until all of the evidence has been presented, the
9 parties have made their closing arguments, and I have told you
10 what the law is. It is your responsibility to determine the
11 guilt or the innocence of the Defendant, and your verdict must
12 be based upon the evidence as is presented to you and on the
13 law that I give you at the close of the trial.

14 Now, I do not allow note-taking. So if somebody is
15 wondering whether or not we can take notes, the answer to that
16 question is no. What happens is when you start taking notes,
17 you stop listening, and the testimony continues on and you're
18 making a note. Even if you did take notes and even if you
19 were listening, when you begin your deliberations, your notes
20 would not be the official record of what occurred in here
21 because you could write down something wrong and that's why we
22 have Ms. Dixie over here keeping the official record. So
23 that's why I don't allow note-taking. Okay?

24 All right. Anything from the State before opening
25 statements?

Opening Statement by Mr. Richardson

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1 MR. RICHARDSON: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MS. PRATT: Nothing, Your Honor.

4 THE COURT: All right. Mr. Solicitor?

5 MR. RICHARDSON: Thank you, Your Honor. Ladies and
6 gentlemen of the jury, James Daniels is a member of a well-
7 oiled, very brutally efficient team of armed robbers. On
8 January 25th, 2015, and I've got a chart of what the Judge
9 talked with you about, is a lot to handle, and this is going
10 to go super fast, will probably be over with this case by
11 tomorrow. It's extremely important, but this isn't gonna'
12 last all week, and it's not going to go into next week. This
13 is extremely important, but it's a lot to cover.

14 On January 25th, 2015, Trish Stull, our victim in this
15 case, was working at the Sunhouse. Starting down here at the
16 bottom, she was working at the Sunhouse about a mile from here
17 on Oak Street and Cultra Road. She had the last shift, the
18 graveyard shift. She was there to close up. She was nervous,
19 everybody was nervous. There had been a lot of armed
20 robberies. The police, and you'll hear from some of them,
21 were going around when these places were closing up and trying
22 to help all of the convenience stores close down, but there
23 wasn't enough law enforcement to go around.

24 On January 25th, 2015, James Daniels went in at 9:39.
25 He's caught on camera. You see him there. He is there

1 saying, flirting with Trish Stull, talking with Trish Stull,
2 small talk, making a purchase at 9:39. If only Trish could
3 have known that within 30 minutes the rest of that team would
4 come in, and the rest of that team includes James' brother,
5 McKinley Daniels, and a friend called Jerome Jenkins. These
6 three were part of a team, always together.

7 James, if Trish could have known, James wasn't there just
8 to make small talk or to flirt or to purchase some small item.
9 James' part, James' role in this was to case the place. James
10 was to be the scout. He was the driver and the scout, and
11 here's what a scout does. A scout goes in, evaluates what's
12 going on inside the Sunhouse: where do you go behind the
13 counter; where are the cameras at; how many employees do they
14 got; is the cash register open; what is going on so that he
15 could take this information to his brother and to his friend
16 and pave the way for them to come in as the rest of the team
17 and cause chaos and act in the most brutally efficient manner
18 possible, and you're going to see when they came in they were
19 very brutally efficient. Every one of these cases that you'll
20 hear about was over and done with within two minutes. I'd
21 submit to you you can't do that without a scout.

22 But James Daniels' position in this didn't stop there.
23 James provided the car. The car, you will hear testimony that
24 the car belongs to James Daniels' girlfriend, that it's
25 registered to his girlfriend's aunt, that that's the only car

Opening Statement by Mr. Richardson

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1 that you'll hear in all of these cases, and it's always
2 provided by James, and when James goes back to his brother and
3 his friend and gives them the information that they are --
4 they're going to need to make this brutally effective robbery,
5 James takes up yet another job and that is to take that
6 vehicle away from the scene. So what's going to happen when
7 there's a murder or what's going to happen when there's an
8 armed robbery, people are going to start asking the police,
9 the police are going to start asking, "What did you see, what
10 did you hear, was there a car there?" "Shoot fire, yeah,
11 there was a car there. I remember this car." There wouldn't
12 have been a car there, and he'll tell you, the car was being
13 driven down to Teddy Henry's Auction site. You all know where
14 that is, maybe a mile from the Sunhouse, and then comes back
15 because he knows how long this is going to take. He is a
16 member of this team.

17 James did not come in to the Sunhouse with Trish Stull
18 with a mask on. How crazy would that be if you're the scout?
19 You don't wear a mask. Nobody's going to sell you candy or
20 bubblegum if you're in there with a mask on. Everybody is
21 going to be on edge. That wasn't James' job. James' job was
22 not to wear a mask. James' job was not to carry a gun.
23 James' job was to scout that Sunhouse on the corner of Oak and
24 Cultra, provide the information and then take the car off and
25 come back and pick these guys up.

1 Now, James will tell you, "I didn't know nothing from
2 nothing. You know, dumb luck, who knew? I didn't know what
3 my brother was going to do. I didn't know what J.J. was going
4 to do." Because of that, we need to back up. Oh, let me
5 finish that story for you. Evidence will be that Trish Stull
6 lost her life in a hail of bullets over a cash register
7 drawer, some Newport cigarettes and a purse, and she died on
8 January 25th, 2015, as a result of this armed robbery and as a
9 result of this murder.

10 Let's back up one hour from that. So we're going in
11 reverse order. This is January 2015 around 10:00 o'clock,
12 around 9:00 o'clock, this is all the way at the north end of
13 Horry County, the Scotchman at Lake Arrowhead Road, same day,
14 same players. In this instance, and he's on trial for this,
15 too, James is merely the driver. Now, that's what he's
16 charged with. Nobody was murdered at Lake Arrowhead. In
17 fact, Ms. Barbara over here will be one of the first
18 witnesses. She was the store clerk. You will get to see this
19 video of how brutally efficient it can be. You're going to
20 get to see this video of how brutally efficient it could be.
21 Ms. Barbara lived to tell about it. Okay?

22 Now, in that case there was no loss of life. So the
23 testimony will be that the police didn't take the whole
24 recording device. They did here, and you back it up 30
25 minutes, and you find James Daniels. They didn't take this

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1 one because there was no loss of life. This, this happened
2 before this. So they didn't take that recorder, but from
3 James' own words, he says, "I didn't go in this store. I was
4 the driver." So we're going to take him at his word. He was
5 the driver here. We don't know if he went inside. That was
6 brutally efficient, too. Again, James is not the shooter,
7 James is not the grabber, James didn't wear a mask. That
8 wasn't his role. In this case, James' role was simply to be
9 the driver.

10 Now, again, he could have gone in. We just didn't grab
11 the entire system out. So we wasn't able to back up 30
12 minutes and see whether or not James had gone in and scouted
13 it. He said he didn't do it. We take him at that, he was the
14 driver.

15 Now, these are the ones that you're going to have to come
16 back and vote guilty or not guilty on, Trish and Barbara, one
17 armed robbery, one armed robbery and one murder. We tell you
18 about this case, as the Judge has already talked with you
19 about, so that you can see is it starting to look less and
20 less like James is -- that this is just a dupe, that this is
21 more than just who would have thunk it? If it hasn't, you
22 need to hear about January 2nd, 2015. What got everybody on
23 edge here?

24 January 2nd, 2015, a store clerk at another 905 Sunhouse
25 up on Highway 905, his name was Bala. At about 9:35 enters

1 James Daniels, no mask, no gun, James Daniels, small talk,
2 small purchase, but boy, if Bala could have only known that
3 this isn't about a purchase, this isn't about small talk.
4 "All this is about is me scouting this place out so that I can
5 tell the rest of my team where the cameras are, how to access
6 the back, how the cash register opened, are there other
7 customers." That was James Daniels' role. You get to see it.
8 He played that role very well over and over again. This is
9 not a mistake. This is not a dupe, and fortunately for you
10 guys, not every case, this is not a whodunit. These guys are
11 connected as a team at the hip all the way up. This ain't a
12 whodunit. It ain't a what-is-it. It is clearly, if they did
13 what we say they did, it's clearly a murder, it's clearly an
14 armed robbery and it's clearly an armed robbery. Don't worry
15 about this. This is for a, a trial in the future. Another
16 jury just like you all will worry about this. You all worry
17 about this, but you get to hear about this to show that
18 there's an absence of mistake, that there's a motive, just
19 what the Judge had talked with you about, and man, it's eerily
20 similar. It shows that this wasn't a mistake, far from a
21 mistake. This was laid out, planned out. In James'
22 statement, you'll hear, "We got together and we discussed who
23 was doing what." This, this is planned out. This isn't
24 happenstance. This is murder. This is armed robbery. This
25 is caught on tape. You get to see it. The only place it's

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1 not on -- and you get to see how fast and devastating all of
2 these are. You just don't get to see this backed up 30
3 minutes.

4 I wanted to draft this because it's going to come fairly
5 fast and it's going to come -- I'm, I'm guessing you all don't
6 want to be here a couple of weeks. I don't either, but it is
7 important, and we've got to go through this stuff, and I
8 wanted you to have an outline of why people are feeling the
9 way that they're feeling. Why are these people nervous? Why
10 is she nervous? What's going on the community? That's it,
11 but this is a team effort.

12 Now, I'm not just a public servant, just a Prosecutor,
13 I'm a dad, too, and obviously, when school gets back in, the
14 only thing good about it is, first of all, you get the kids
15 out of the house, but second, it's football season. So I got
16 to see my first football game Thursday night, J.V. football
17 game, and you don't get to unwind and say, "Well, I'm a
18 prosecutor here, when I'm talking to you. I'm a dad here."
19 It all mingles just like it does in you guys' lives.

20 So I'm sitting there at this ballgame watching my kid
21 start thinking about you all before I've ever met you. How do
22 I explain this complex situation to 12 people that I haven't
23 met, and I started thinking about this is basically, it's
24 teamwork. Can you envision outside of a football game where a
25 15-year-old boy steps up into a huddle and in 10 seconds tells

1 10 other kids what to do and they all do it? Fifteen year
2 olds, that don't just happen. That takes planning, and you
3 can tell when they do that that they're all on the same page.
4 They're a team.

5 Now, my son's part in this is the center. Does anybody
6 know anything about football? I hope so. The center's job is
7 -- he's got several, but as he's coming out of the huddle, he
8 looks at the defense and then he tells those other guys on the
9 line who they're supposed to block. His second job is to take
10 the ball and snap it to the quarterback, and he's got to do it
11 -- he can't throw it over his head and he can't throw it on
12 the ground, he's got to do a pretty good job of snapping it,
13 and his third job is to block whoever is in front of him.

14 Now, I would submit to you, if you got Joe Montana back
15 there or, more timely, what's the guy's name at New England,
16 Tom Brady, Tom Brady. He can't do his job unless Joshua
17 throws him the ball. The play doesn't start. Every member on
18 the team has got a different thing that they've got to do. If
19 they don't, touchdown passes can't get thrown, the guys can't
20 catch it. It's all got to start somewhere. Josh is a member
21 of a team. You can tell a lot by watching these films just
22 how much practice has gone into this, just how important James
23 Daniels' role is at paving the way for this chaos and this
24 destruction because without it, you're going in pretty much
25 blind. You can't do it in a couple of minutes, and if you did

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1 do it, you got to have some way to get away. You got to have
2 a getaway driver.

3 That takes me to a concept that Judge Hood is going to
4 talk with you about, but it's important from the beginning,
5 and that concept is the hand of one is the hand of all, and
6 you see what I'm talking about here a little bit with
7 teamwork, whether it be football or whether it be a well-
8 oiled, well-timed armed robbery team, either way, but suppose
9 we go to a Scotchman and I say, "We plan on you're going
10 inside. You're going to rob that Scotchman. I'm just going
11 to make sure that nobody comes in. I'm going to stand outside
12 and kind of divert other people from coming in so that -- or
13 be the lookout, holler back, 'Hey, the police are coming,'
14 whatever, that's my job." If you go inside and shoot that
15 clerk or rob that clerk, guess who's just as responsible for
16 that murder as you are? I am, because I played a part, played
17 an important part if we're talking about James Daniels, played
18 several parts if you're talking about James.

19 Is there any doubt, and I can go ahead and tell you that
20 the Aynor Blue Jackets will not win the state championship,
21 but if they were to win the state championship, is there any
22 doubt that my son isn't a part of that even though he never
23 threw a touchdown pass or never caught a touchdown pass? He
24 is a member of a team, a very important member of the team.
25 Don't get confused. I will not stand here and tell you, nor

1 will anybody tell you, that James Daniels ever pulled a
2 trigger, but he's still responsible for murder. He never
3 pointed a gun, but he's still responsible for these armed
4 robberies because he played a part in this, a big, big, big
5 part in this. That is James Daniels' part. Hand of one is
6 the hand of all, and that is a very important concept.

7 And I want to leave you, you'll get to see this again,
8 but I want to leave you with this thought as you ponder it.
9 We don't know about this case. We're going to assume that he
10 didn't go in and scout this out. He's still responsible
11 because he was the driver, the getaway driver and the driver
12 up there and provided the car, but we're going to assume he
13 didn't go in because we didn't catch him on tape on that. No,
14 not saying that he was. Want you to think about something as
15 this trial unfolds, every -- when you're considering is this
16 dumb luck or is this team work, consider this fact, every
17 store clerk that saw James Daniels was dead within 35 minutes,
18 dumb luck or a player, team work or happenstance. Every store
19 clerk that saw him, talked with him, flirted with him, sold to
20 him, was dead right at a half hour by the hands of his brother
21 and his friend, McKinley Daniels and J.J., and you may be
22 wondering where is McKinley, where is J.J.? It's the same
23 thing that the Judge told you earlier about this case, there
24 are rules, we all abide by the rules, can't try them all
25 together, just believe me on that, there's -- you, you can't.

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1 They'll, they'll have another jury just like James will have
2 to account for this at a later time. There's reasons you
3 can't try them all together, but J.J. will have his set of
4 trials, Jerome Jenkins, so will McKinley Daniels. That's not
5 for you today. What you're to determine, and we're going to
6 ask you, I'm going to go ahead and be bold about it, at the
7 end of this case, it's going to be a quick case, but we're
8 going to come back and ask you to return the only verdict that
9 really speaks justice, if we've proven our case, and that is
10 James Daniels is guilty of armed robbery, he's guilty of
11 murder in the death of Trish Stull, he's guilty of armed
12 robbery of Barbara McDowell, even though he didn't go inside,
13 and don't worry about this one except to show the map of how
14 this all went down.

15 I really appreciate you all listening to me. This is an
16 important case. This is a tough case, and there's a lot of
17 moving parts. I hope that this short opening will kind of
18 give you a road map of, "Why am I listening to this particular
19 person, who is this, what do they mean." It's either going to
20 fall in like one guy, Pete Cestare, his -- he's a crime scene
21 guy, and when he testifies, he'll be talking about all of
22 these, and it's easy. Now, when you hear from James'
23 statement, it's easy to mix all these together. You've got to
24 separate them out to know that one of them took place here on
25 Oak Street right down the road, one of them took place 30

1 minutes from here at Lake Arrowhead up around where 22 goes
2 in, and one of them took place, the same month, just earlier,
3 the Sunhouse on 905. So they'll weave together. There's no
4 real way to tell the story without them weaving together, but
5 I thank you for listening to me today. I would ask you to
6 give the same attention to Ms. Barbara Pratt. She's a very
7 good woman, been doing this for a long time, and she
8 represents Mr. James Daniels. Thank you.

9 THE COURT: All right. Thank you very much, Mr.
10 Solicitor.

11 MS. PRATT: Good morning. Ladies and gentlemen, you just
12 heard an awful lot of information from the Solicitor. He has
13 given you his side, his view, his interpretation of the
14 evidence, and as the Judge told you, what he said is not
15 evidence. It is his argument or his interpretation of the
16 evidence. I'm asking you, because we chose you, each one of
17 you, to be logical, sensible and separate things out in a
18 planned or easy manner for yourself to know what is actually
19 against James Daniels, what happened in each incident and what
20 has happened and what is actually the fault of McKinley
21 Daniels and Jerome Daniels, because what you've heard this
22 morning is an awful lot of assumption. We assume, first of
23 all, the biggest thing that the State assumes here is that
24 there was a plan. You're not going to hear evidence of
25 somebody saying, "Yeah, we sat down at, at Burger King and

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1 made this plan." That doesn't happen, but there's an
2 assumption by the State as a result of what they see and how
3 they interpret things that there was a plan. So I need you to
4 be looking very carefully at what the actual evidence is and
5 not what people are arguing to you or suggesting to you
6 because of these assumptions and these inferences.

7 There's an awful lot of confusion when you start looking
8 at these cases and remembering which one is which and what
9 says what, and you're hearing this evidence for totally
10 different purposes. So I know that's tough on you, too. You
11 know, as lawyers, we deal with this all the time, but you
12 guys, you don't. So please use that sense of logic that I
13 chose you for. You all got good educations and sense about
14 how you run your lives and the things that you do in your
15 employment and, and work together when you finally sit down in
16 your jury room to keep these things separate as to what is an
17 inference, what's an assumption and what is actually evidence,
18 and I think there's something that's really important that you
19 guys need to keep in your mind all the time, and the State
20 says this, and he talks about it as being rules, but I need
21 you to remember very clearly that there are two empty chairs
22 in this room. There are two people that you're not going to
23 hear from. You're going to see what they do. You're going to
24 see it on videotape, but you don't see them sitting down with
25 James. You don't see a plan, and you don't have the ability

1 to look them in the eye and see their character, but it's
2 important for you to remember that we've got two people that
3 are not here that are truly the main players, that are truly
4 the vicious and violent and brutal folks.

5 There is only inference and assumption about teamwork and
6 a plan. The State would like to have you believe that when
7 James goes in to buy a soda that he's doing all this stuff,
8 but if he was would everything be on camera? I mean, let's
9 just be realistic and logical about it, and that's one of the
10 assumptions that I need you guys to think through. Does it
11 make sense? Now, there's a lot more that I can say, but I'm
12 going to leave it until after I hear what evidence actually
13 comes from this witness stand, which is the important thing
14 that's going to happen today. What are you going to hear from
15 here? Not what do you hear from me, not what do you hear from
16 Jimmy or Scott, but what do actual witnesses say to you, and
17 just be very careful as you go through this to know what is
18 evidence, what is inference, what is assumption and don't let
19 it confuse you. I thank you for your time.

20 THE COURT: Thank you very much, Ms. Pratt. All right.
21 The State ready to proceed? Okay.

22 MR. RICHARDSON: Can you get Ms. Barbara McDowell?

23 Whereupon, Barbara McDowell is called to the stand, duly
24 sworn by the clerk and testified as follows:

25 THE CLERK: Please be seated. Please state your full

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1 name and spell your last name for the Court.

2 MS. MCDOWELL: Barbara McDowell, M-C-D-O-W-E-L-L.

3 THE COURT: Can we turn her up at all? Hold on just a --
4 you're, you're sitting pretty close, but I, I'm -- I was
5 having a little trouble hearing you. Is there a way to turn
6 that mike up?

7 COURT REPORTER: Tap it and be sure it's, it's on.

8 CLERK: I'm pretty sure it's on. I'll turn the system
9 up.

10 THE COURT: All right. Say test one, two, three for it.

11 MS. MCDOWELL: Test one, two, three.

12 THE COURT: There we go. Ladies and gentlemen, no --
13 some witnesses or every witness they talk at different levels.
14 Usually I'm so loud I don't need a microphone, or at least
15 that's what people tell me. They think I'm yelling at them,
16 but I'm really not, but some witnesses are very soft-spoken,
17 some have very booming voices. So we'll, we'll adjust them,
18 but the goal is that you hear what the witnesses say, and so
19 if at any point in time you can't hear somebody, somebody wave
20 at me or kind of, you know, you know, say, you know, give me a
21 sign because we want you to be able to hear what the witnesses
22 are saying. Okay? All right, Mr. Solicitor.

23 MR. RICHARDSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

- 1 Q Ms. Barbara, I'm going to stand over here. So you speak
2 up when you talk with me. Okay?
- 3 A Okay.
- 4 Q All right. Ms. Barbara, tell these fine folks where
5 you're employed?
- 6 A Now?
- 7 Q Yes, ma'am?
- 8 A Pirates Voyage.
- 9 Q Okay. How long have you been with Pirates Voyage?
- 10 A A little over a year.
- 11 Q Were you -- where were you working on January 25th, 2015?
- 12 A Scotchman, Lake Arrowhead Road.
- 13 Q All right. And that's the northern part of Myrtle Beach?
- 14 A Uh-huh (affirmative response).
- 15 Q All right.
- 16 COURT REPORTER: Yes or no, please?
- 17 A Yes.
- 18 BY MR. RICHARDSON:
- 19 Q Now, always answer yes or no.
- 20 A All right.
- 21 Q Okay. What was your job, your responsibilities at the
22 Scotchman?
- 23 A I was a cashier.
- 24 Q All right. Do you remember anything about January 25th,
25 2015?

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- 1 A It was a quiet night, unusually quiet, and I was a little
2 nervous.
- 3 Q All right. Let's fast -- and have you seen the video
4 from that night, January 25th, 2015?
- 5 A Yes.
- 6 Q All right. And whose video was that, Ms. Barbara?
- 7 A I saw my boss' and I saw pictures the detective brought.
- 8 Q Okay. The, the video surveillance, was that part of the
9 Scotchman? Did you all own the video surveillance?
- 10 A Yes.
- 11 Q All right. Were you there when the police got there and
12 started reviewing the video?
- 13 A No. I worked the evening shift.
- 14 Q Okay. So you have seen -- you've seen it, but you didn't
15 see it that night with the police?
- 16 A No.
- 17 Q Okay. All right. Before we go into it, will you tell
18 the jury the first time you knew something was wrong, where
19 you were at and what was going on?
- 20 A I was in the middle of the store close to the front
21 window, and there was like boxes and things in front, but
22 something caught my eye passing, and I saw two guys scrunched
23 down, and first I little afraid, and then I thought one of the
24 kids, a couple of kids around there were playing around, which
25 a lot of kids ride their bikes and things there and the next

1 thing I knew, they were coming in the front door.

2 Q Okay. What happened when they came into the front door?

3 A One of the guys went straight behind the counter, and the
4 other guy came straight towards me and motioned me to the
5 front.

6 Q All right. Did they say anything to you while they were
7 moving you to the front?

8 A Just they wanted the money.

9 Q Was either or both armed with a gun?

10 A I didn't focus on the second one who had gone behind the
11 counter because when I got there his back was turned to me,
12 and when he was coming in I was focused on the guy coming
13 towards me, and I only noticed one gun.

14 Q Okay. Noticed -- but you did see one gun?

15 A Yes.

16 Q And they presented that gun to you?

17 A Yes.

18 Q All right.

19 A He held it at the back of my head as I was going to the
20 front.

21 Q All right. When, when that happened you went to the
22 front of the store and you're talking about where the cash
23 register is at?

24 A Right.

25 Q All right. Tell us what went on at the cash register?

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1 A Well, he was telling me to get the money out of the
2 register, and I opened the register, and he was sort of
3 looking around me at the safe. It was to my right, and I
4 opened the drawer, and he got what little bit of money I had
5 in there out, and he kept yelling at me, and he kept calling
6 me a bitch, to open the safe, and I told him I couldn't, and
7 he squatted down I think maybe twice in our conversation, and
8 he said, "Well, there's a key." I said, "The key turns the
9 safe on. My boss has two keys to open the safe," and then he
10 told me to get over to the other register and open it up, and
11 I was nervous because I had put my code in my register, and I
12 couldn't think of anybody else's code to go in the other one
13 to open it, and I sort of calmed down, and I remembered my
14 boss' code, and I opened that register, and they -- he got the
15 money out then, and he got a total of \$50.

16 Q Between the two registers --

17 A Yes.

18 Q -- he got about \$50?

19 A Yes.

20 Q And now, if you're explaining this to us, the safe had
21 some sort of a time mechanism on it?

22 A Right. I could have gotten a drop of -- the most I could
23 have gotten was \$60 in twenties, and we would have had to wait
24 about 30 seconds, but if they'd have told me to get a drop
25 out, I could have hit another button and gotten 20 and then

- 1 they'd had to wait about four or five minutes, but he didn't
2 know about this drops I don't guess.
- 3 Q But there's a security device built into the safe that --
- 4 A Well --
- 5 Q -- a certain amount of time --
- 6 A Right..
- 7 Q -- even if you knew the code or had the keys would have
8 to pass?
- 9 A Yeah. Once my boss turns one key, he has to wait 15
10 minutes till a red light comes on to turn the other key to
11 open the safe.
- 12 Q Okay. So it's like 15 minutes --
- 13 A Yeah.
- 14 Q -- after the first --
- 15 A Right. But he kept telling me to open the safe, and I
16 kept telling him I couldn't.
- 17 Q Did he ever threaten you what would happen if you didn't
18 open the safe?
- 19 A When I was trying -- well, no. When I was trying to open
20 the other register, he told me if I didn't get that register
21 open he was going to shoot me.
- 22 Q Okay. And you already knew him to have, one of them at
23 least, to have a gun?
- 24 A Right.
- 25 Q All right. Besides the money, the 50 bucks there about,

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1 was anything else taken?

2 A Well, the guy behind me was trying to get cigarettes, and
3 I think he only got what he could carry in his hands.

4 Q What kind of cigarettes, please?

5 A Newport.

6 Q Newports?

7 A Uh-huh (affirmative response).

8 Q Ms. Barbara, I want to show you a series of photographs.
9 They are State's Exhibits 72 through 82. I want you to flip
10 through them and see if you recognize those photographs.

11 A Okay. Yes.

12 Q All right. Ms. Barbara, hold up there.

13 A That's part of the tapes I was watching.

14 Q All right. Hold up there just one second.

15 A Okay.

16 MS. PRATT: Thank you, Jimmy. Thank you, Mr. Richardson.

17 MR. RICHARDSON: Thank you, ma'am. No objection?

18 MS. PRATT: I have no objection.

19 THE COURT: All right. State's Exhibit Number 72 through
20 82 are admitted without objection.

21 MR. RICHARDSON: Thank you, Your Honor.

22 (State's Exhibit Numbers 72 through 82 [Photographs]
23 admitted into evidence and appropriately marked.)

24 BY MR. RICHARDSON:

25 Q Now, Ms. Barbara, tell the jury where all of these

1 photographs are from?

2 A The surveillance tapes in our store we had.

3 Q Okay. So they're just segments of that tape?

4 A Right.

5 Q And you've seen these before?

6 A Yes.

7 Q They fairly and accurately depict the scene as it would
8 have been that night?

9 A Yes. They do.

10 Q I want to just go through a few of them here with you.

11 You're sure there was just two guys that came in?

12 A Right.

13 Q Correct?

14 A Yes.

15 Q And on State's Number 74 and 75, let's -- you don't know,
16 all right, first of all, look at State's 74 and 75.

17 A Uh-huh.

18 Q Okay? Now, you don't know McKinley Daniels or James
19 Daniels or Jerome Jenkins; correct?

20 A Right. I don't.

21 Q All right. So we're going to refer to them in say 75 as
22 the guy in red pants, and how would you describe the other
23 one?

24 A The guy with the diaper on his face.

25 Q So he had a white mask across his face?

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1 A Yeah. Yeah. It reminded me of my children's diaper. It
2 was kind of waffle --

3 Q Okay.

4 A -- fabric and that caught my attention.

5 Q All right. So which -- the one with the white mask on or
6 the one with the red pants, which one had the gun?

7 A Well, now that -- the guy with the white mask.

8 Q Okay. Can I see those again?

9 A Okay.

10 Q Well, hold on now. Look at State's Exhibit 75.

11 A Yeah.

12 Q Now, and we're identifying them by red pants or a white
13 mask?

14 A Right.

15 Q Right?

16 A Right. Yeah. I, I --

17 Q Let me ask you something.

18 A -- I know I turned around and saw this man behind me.

19 That's when I saw the mask really close.

20 Q Okay. And that photograph --

21 MS. PRATT: Objection. Asked and answered, Your Honor.

22 THE COURT: Overruled. Go ahead.

23 Q In State's Exhibit Number 75 --

24 A Uh-huh.

25 Q -- what is the guy in the red pants holding?

1 A He's holding a gun.

2 Q Okay. And you don't know if the other guy had a gun or
3 not?

4 A When they came in, it just happened so fast. All I
5 remember is the guy with the mask standing behind me because I
6 remembered the mask.

7 Q Okay.

8 A Whether they changed spots, I'm not sure.

9 Q That's -- and it happened really quickly.

10 A Yes.

11 MR. RICHARDSON: Your Honor, permission to publish
12 State's Exhibit 75.

13 THE COURT: Yes, sir.

14 BY MR. RICHARDSON:

15 Q All right. Ms. Barbara, I want to direct your attention
16 to State's Exhibit 76 --

17 A Uh-huh.

18 Q -- and tell me what that photograph depicts, please?

19 A Okay. The one guy is down there trying to see in the
20 safe, and I'm over at the other register trying to get the
21 other register open.

22 Q What does the guy in the -- with the white mask appear to
23 be doing?

24 A He's back there getting cigarettes. So actually I guess
25 transposed the two of them. I don't know.

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1 Q Okay.

2 MR. RICHARDSON: Publish State's Exhibit 76.

3 THE COURT: Yes, sir.

4 BY MR. RICHARDSON:

5 Q Ms. Barbara, I'm going to hand you what's been marked and
6 already entered into evidence as State's Exhibit Number 80.

7 Do you recognize that?

8 A Yeah. That's the guy in the white mask trying to get the
9 safe open.

10 Q And who is that young lady?

11 A That was me.

12 Q Okay.

13 MR. RICHARDSON: Publish State's Exhibit 80.

14 BY MR. RICHARDSON:

15 Q Okay. Ms. Barbara, you said that it happened really
16 fast. Do you have any idea of how long this entire armed
17 robbery took?

18 A No. It was just a couple of minutes.

19 Q They were in and out within a couple of minutes?

20 A Yeah. Because they ran in and they hurried out.

21 Q All right. Once they left, what did you do?

22 A I pushed the panic button. Well, I was pushing it while
23 they were leaving because I was left in that part of my desk.
24 I pushed the panic button, went straight to the door and I
25 looked out one time to see if I could see the car, and I

1 didn't see anything. So I locked the door, which was our
2 protocol.

3 Q So as soon as the door closed, you went around and --

4 A I had already pushed the panic button. Yeah.

5 Q -- to see if you could see a car --

6 A A car or anything.

7 Q -- or anything?

8 A Yeah. There were no cars around, and after I pushed the
9 panic button I went, I mean, I came back from locking the
10 door. I just stood there for a little while trying to see if
11 a car -- it's on a cul-de-sac -- if a car came up either side,
12 and about that time, the police called me, and I was standing
13 there and I never saw a car leave either side.

14 Q And you never saw the two individuals that had robbed
15 you? You never saw them again?

16 A No.

17 Q Okay. And you, again, you don't know any of these
18 people?

19 A No. I don't.

20 Q And you don't know Mr. Daniels?

21 A No. I don't.

22 Q You don't recognize Mr. Daniels as anybody that came in
23 on you on January 25th?

24 A No. They were totally covered.

25 Q Yes, ma'am.

Barbara McDowell - Cross by Ms. Pratt

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1 MR. RICHARDSON: The Court's.

2 BY MR. RICHARDSON:

3 Q Ms. Barbara --

4 A Uh-huh (affirmative response).

5 Q -- crazy question, but you said \$50 was taken at
6 gunpoint?

7 A Right.

8 Q Was that in Horry County?

9 A Yes.

10 Q Okay. I have no further questions. If you'll answer any
11 questions Ms. Barbara Pratt has for you.

12 A Okay.

13 THE COURT: Can we leave those exhibits up with Ms. Dixie
14 so we don't, we don't get confused --

15 MR. HIXSON: Yes, sir.

16 THE COURT: -- as to what's in and what's not in.

17 MR. HIXSON: Just continue to put them back in order, and
18 I'm going to pass them back up, Judge.

19 THE COURT: Thank you very much. All right. Ms. Pratt,
20 cross examination?

21 MS. PRATT: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MS. PRATT:

24 Q Ms. McDowell, you did not see a vehicle; correct?

25 A No. I did not.

1 Q Okay. And I'm sure the night of this incident, the
2 police asked you -- well, let me back up. You said this was a
3 pretty quiet night; is that right?

4 A It was an unusually quiet night.

5 Q Okay. So I'm sure that that night the police asked you
6 if anybody had come in prior, and if you had remembered
7 anybody coming in prior, you would have told them; correct?

8 A Right.

9 Q And nobody came in prior that you remember; is that
10 right?

11 A Not anybody close to that time.

12 Q Okay. And you don't recognize my client as being
13 somebody that came in; correct?

14 A I can't say for sure.

15 Q Thank you. That's all I have.

16 THE COURT: Redirect?

17 MR. RICHARDSON: Nothing, Your Honor. I would ask --

18 THE COURT: Thank you. Go ahead.

19 MR. RICHARDSON: I'm sorry. I would ask that she be
20 excused from her subpoena, and she can go on about her
21 business.

22 MS. PRATT: No objection, Your Honor.

23 THE COURT: Okay. All right. So the way we'll work
24 every witness is I'll assume they're excused. If you want
25 them to remain under their subpoena, just let me know so that

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1 THE COURT: All right. Welcome back, ladies and
2 gentlemen. Thank you very much, and we will continue now.
3 You may call your next witness.

4 MR. RICHARDSON: Your Honor, the State would call Ashley
5 Hardee.

6 THE COURT: Okay. Please come forward.

7 Whereupon, Ashley Hardee is called to the stand, duly
8 sworn by the clerk and testified as follows:

9 CLERK: Please be seated. Please state your name and
10 spell your last name for the Court.

11 MR. HARDEE: My name is Ashley Hardee, last name spelling
12 H-A-R-D-E-E.

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q And Ashley, will you give the -- this jury your title?

16 A I'm a lieutenant with the Horry County Police Department.

17 Q How long you been with Horry County?

18 A I've been with Horry County Police Department for 18
19 years.

20 Q All right. Lieutenant Hardee, were you working the night
21 of January 25th, 2015?

22 A Yes, I was.

23 Q All right. Tell the jury sort of around 10:00 o'clock
24 what, what you were doing?

25 A A lot of events going on in the county. That particular

1 time we were assisting businesses with closing, basically, an
2 armed robbery prevention team. I was at a Dollar General on
3 Highway 501 West of Conway closing a Dollar General up about
4 say about 10:00 P.M.

5 Q Is that Dollar General on 501, is that Dollar General
6 still in the City of Conway or is that -- do you know?

7 A It's in the county.

8 Q It's in the county?

9 A Yes.

10 Q All right. Between Aynor and Conway?

11 A Yes.

12 Q Out there. All right. Were you able to complete that
13 close of the Dollar General?

14 A No, sir.

15 Q All right. Tell the jury what took place that prevented
16 you from being able to close down the Dollar General?

17 A After a brief few minutes, myself and another officer
18 were attempting to assist the Dollar General in closing their
19 doors and making sure they got to their vehicles when we
20 received a panic alarm at a business in, in the county in
21 Conway.

22 Q All right. Now, this closing, helping close down the
23 business, did that have anything to do with the 905 Sunhouse
24 burglaries and what was going on?

25 A Yes. It had to do with several armed robberies in the

Ashley Hardee - Direct by Mr. Richardson

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1 area.

2 Q All right. When you left Dollar General where did you go
3 and how long did it take you to get there?

4 A The panic alarm came out of the Sunhouse at Cultra and
5 Oak, left there with emergency response with another officer,
6 about a five-minute response to that store.

7 Q So you were there at Cultra Road and Oak Street in about
8 five minutes?

9 A Yes, I was.

10 Q All right. Tell the jury what you saw and who was there
11 when you got there?

12 A Upon arrival, I was the supervisor that night for Central
13 Precinct. I was a road sergeant. Several of my officers were
14 already on scene. I was a few, probably a minute or a couple
15 of seconds after them arriving on scene. They were already on
16 the scene approaching the store trying to go in and secure it,
17 try to find out what exactly was going on inside.

18 Q Did you go inside the store?

19 A Yes. I did.

20 Q Tell the jury what you saw when you went inside the
21 store.

22 A Upon clearing the back of the store and the perimeter of
23 the store, I entered the front of the business to find my
24 officers inside trying to assess a victim inside of the
25 business.

1 Q Who was the victim?

2 A It was actually the clerk of the store.

3 Q Trish Stull?

4 A Yes..

5 Q All right. Was Trish -- Trisha, I'm sorry. Was Trisha
6 Stull alive when you got there?

7 A I'm not sure at that present time if she was. We, we
8 were calling emergency fire EMS to come inside to start
9 assessing her.

10 Q So you all got there before the EMTs?

11 A Yes.

12 Q Okay. What else happened that night?

13 A Upon finding the clerk inside, we started securing a
14 crime scene. I had protocol that I have to notify, upon a
15 violent crime taking place, I notified my supervisor, I
16 notified our on-call detectives and also we notified our
17 bloodhound tracking team to try to get a track on any suspects
18 that might be still in the area.

19 Q What happened with the bloodhound team?

20 A They arrived on scene. They didn't really get a track on
21 anything outside of the parking lot of the store really, and
22 they, they cancelled their search.

23 Q Okay. Is that consistent with not leaving on foot, being
24 picked up?

25 A Yes. It has been in past. Yes.

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1 Q Okay. Lieutenant Hardee, are you familiar with that
2 area?

3 A Yes.

4 Q I'm going to hand you what has been marked as State's
5 Exhibit Number 10.

6 MS. PRATT: Thank you.

7 MR. RICHARDSON: Without objection?

8 MS. PRATT: No objection, Your Honor.

9 BY MR. RICHARDSON:

10 Q I pass you what's been marked as State's Exhibit 10 and
11 is in evidence without objection. Tell the jury if you
12 recognize that map.

13 A Yes, I do.

14 Q All right. What is that?

15 A This is the Sunhouse store at the intersection of Cultra
16 Road and Oak Street.

17 Q Okay. And that is where you left, you left the Dollar
18 General on 501 and went to that location?

19 A Yes. I did.

20 Q Okay. And where's the front of the store, Ashley?

21 A The front of the store is right here. These are the gas
22 pumps. This is the front of the store.

23 Q Okay. Let me ask you this, and if you don't know, I
24 hadn't asked you before, but do you know where -- when you
25 called out for the detectives and crime scene, do you know

1 where they were coming from?

2 A They were coming from, from their residence I, I would
3 say. It was after hours.

4 Q All right. Did a group come from that Lake Arrowhead or
5 is that outside your purview?

6 A I don't recall. We operate on a different channel than
7 that precinct does. So I'm not sure what operations are going
8 on in north.

9 Q Okay. I have no further questions for you, Lieutenant
10 Hardee. If you'll answer any that Ms. Pratt has.

11 THE COURT: State's Number 10 is admitted without
12 objection.

13 (State's Exhibit Number 10 [Aerial Poster] admitted into
14 evidence and appropriately marked.)

15 THE COURT: Ms. Pratt.

16 MS. PRATT: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. PRATT:

19 Q So, Lieutenant Hardee, your involvement was that you were
20 the first responder and you secured the perimeter; is that
21 right?

22 A That's right.

23 Q And you wrote a short report to that effect?

24 A That's right.

25 Q It was in discovery. Thank you. I have nothing further.

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1 THE COURT: Redirect?

2 MR. RICHARDSON: No, sir, Your Honor.

3 THE COURT: Thank you. Lieutenant, have a nice day.

4 A Thank you, sir.

5 THE COURT: You may call your next witness.

6 MR. HIXSON: At this time, we'd call Crime Scene
7 Specialist Jill Domogauer from the Horry County Police
8 Department.

9 THE COURT: All right. Please come forward, ma'am.

10 Whereupon, Jill Domogauer is called to the stand, duly
11 sworn by the clerk and testified as follows:

12 CLERK: Please be seated. Please state your name and
13 spell your last name.

14 MS. DOMOGAUER: Jill Domogauer, D-O-M-O-G-A-U-E-R.

15 MR. HIXSON: Beg the Court's indulgence just for a
16 moment, Your Honor.

17 THE COURT: Okay.

18 MR. HIXSON: Take a moment or two and make it smoother
19 later. Thank you.

20 DIRECT EXAMINATION

21 BY MR. HIXSON:

22 Q Good morning, ma'am. How are you?

23 A Good morning.

24 Q Could you please tell this jury what you do for a living?

25 A I'm a crime scene investigator with the Horry County

1 Police Department.

2 Q And how long have you been engaged in that capacity for
3 Horry County?

4 A For Horry County about -- approximately about eight,
5 eight years or so.

6 Q All right. My math's not that good, but I guess that
7 probably means you were working around January of 2015; is
8 that right?

9 A Yes. I was.

10 Q Okay. And we're going to focus specifically on were you
11 working on January 25th of 2015?

12 A That was in the evening time, no, I was not. I was
13 called out to respond to a crime scene. I was notified by my
14 lieutenant, Lieutenant Pete Cestare to respond to a crime
15 scene at Oak Street and Cultra.

16 Q Okay. And just generally in case we don't really know,
17 see it on TV maybe, but what does a crime scene specialist for
18 a police department, just generally, do, just basic concepts?

19 A Without getting into too much, my responsibilities as a
20 crime scene investigator are to respond to scenes where
21 anything that I'm called upon to, to document the scenes in
22 several different ways, whether it's photography or sketching
23 or both. I also identify and collect evidence that we feel
24 is pertinent to whatever incident it was. I identify the
25 evidence. I mark it, again documenting with photography and

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1 other things. I collect those items. I package those items
2 and prepare them for transport to the state lab or other
3 facilities. I also work in the capacity in the evidence
4 department division, along with crime scene, to secure and
5 maintain the evidence and everything else, and I also am
6 charged with writing and preparing reports and sketches and
7 documentation for courtroom purposes.

8 Q So did you perform that function on August 25th, 2015,
9 excuse me, January 25th of 2015? I apologize.

10 A Yes. I did.

11 Q Okay. I'm going to focus your attention. There was a
12 lot going on during that period of time. So I'm going to
13 focus your attention and ask if you got called out to a call
14 for an armed robbery and a death of an individual in the
15 Cultra, the corner of Cultra and Oak Street here in Horry
16 County?

17 A Yes. I received a call on January 25th, 2015, at 22:42,
18 which is 10:42 that evening to respond to that crime scene of
19 a, a robbery that resulted into a death on Oak Street and
20 Cultra Road.

21 Q When you arrived on scene there, did you take any
22 photographs of the overall scene and, and what that situation
23 looked like at the time that you arose there, that you arrived
24 there?

25 A Yes. My, my arrival time was almost like TV. I was

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1 pretty quick to respond to this particular crime scene. I
2 live not too far from it. So when I first arrived on scene, I
3 had to wait for a moment with instructions because fire and
4 EMS were trying to assess the victim inside. Once I was given
5 the okay, I started my, my documentation of photography on the
6 overalls of the scene.

7 Q And do you know the name of the victim that was being
8 assessed when you arrived at the Cultra Road and Oak Street
9 location?

10 A Trisha Stull.

11 Q Okay. Are you aware did Ms. Stull lose her life in this
12 incident?

13 A I was briefed. Yes.

14 Q Okay. Let me show you a series of pictures.

15 MR. HIXSON: I'm showing the witness, Your Honor, what's
16 been marked as States 21 to 30.

17 BY MR. HIXSON:

18 Q Don't comment on them. Just take a look at all those and
19 see if you recognize those all en masse and let us know when
20 you're done.

21 A Yes. I recognize them.

22 Q You recognize, you recognize those items. Are those
23 items basically photographs that you took or that represent
24 the scene that you saw on January 25th of 2015 in that store
25 location?

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1 A Those are my crime scene photos. Yes, sir.

2 Q Thank you.

3 MR. HIXSON: Your Honor, at this time, we would move
4 State's 21 and 30, 21 through 30 into evidence. Your Honor,
5 for the record, I'm showing the Defense Counsel 21, 22 and
6 then 24 through 30 we're specifically having a discussion
7 concerning State's 23. Is that without objection on these?

8 MS. PRATT: Without objection to the Exhibits 21 through
9 30 with the exception of 23.

10 MR. HIXSON: Your Honor, may I approach with State's 23
11 so you can see the nature of that photograph?

12 MS. PRATT: I'm following.

13 (Whereupon, a bench conference is held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: All right. Ms. Pratt objects to State's
16 Exhibit Number 23. At this point in time, I'm going to admit
17 State's Exhibit Number 23, and we'll, we'll put the legal
18 arguments on the record a little bit later outside the
19 presence of the jury. Okay.

20 (State's Exhibit Numbers 21 through 30 [Photographs]
21 admitted into evidence and appropriately marked.)

22 MR. HIXSON: Thank you, Your Honor, may I publish these?

23 THE COURT: Yes.

24 MR. HIXSON: All right.

25 BY MR. HIXSON:

1 Q Let me, let me refer you, let's orient the scene just for
2 a second. I'm going to show you what's been marked as State's
3 Exhibit 10, that's in evidence, and can you orient that
4 photograph for the jury?

5 A And may I stand, Your Honor?

6 THE COURT: Yeah, just keep your voice up.

7 A Yes, sir.

8 THE COURT: That's the only, the only thing that I ask.
9 So, ladies and gentlemen, every trial, it doesn't matter what
10 county I'm in, lawyers deal with pictures and exhibits and
11 everything differently. Some introduce them all and never
12 show them to the jury, which makes no sense to me. Some
13 people blow them up. Some people pass them around. The goal
14 is that you get to see them. Okay? And anything that is
15 admitted as an exhibit into evidence, so when I say this item
16 is admitted either without objection or with objection,
17 whatever it may be, but if I say it's admitted, then it will
18 be back in your jury room with you during deliberations. So
19 you'll have all those exhibits that are admitted with you, and
20 you can spend whatever time you need to to go through them,
21 but, but that's kind, that's kind of the general nature for
22 how it'll work, but some people, some people use -- do it like
23 they're doing it. Some people do it differently. I let the
24 lawyers do whatever they want to do in those regards. Okay?
25 All right. But yes, ma'am, you may stand up. Just keep your

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1 voice up so everybody can hear you, please.

2 MR. HIXSON: All right. Just I'm referring to State's 10
3 to have the witness orient for the jury to understand when we
4 talk about Oak Street and Cultra Road.

5 BY MR. HIXSON:

6 Q What area are we referring to in those photographs?

7 A This photograph is an aerial photograph of this
8 intersection of Oak Street and Cultra. This area right here
9 is the Sunhouse. If you go down Cultra Road this way, you'll
10 get to 701 where the post office is in Conway. If you go down
11 this road of Cultra Road, you get to where the Walmart is. If
12 you go down this side of Oak Street, you'll go into downtown
13 Conway. If you go down this side of Oak Street, I think you
14 end up on Four-Mile Road or somewhere about that area.

15 Q And that's the location you responded to the armed
16 robbery, murder call?

17 A The Sunhouse right here.

18 Q Okay.

19 COURT REPORTER: And that's Exhibit Number?

20 MR. HIXSON: That's State's 10.

21 BY MR. HIXSON:

22 Q And that's -- that location of that Sunhouse had
23 surveillance cameras that covered the exterior, interior of
24 the, of the building?

25 A It had security footage. Yes.

1 Q Okay.

2 A From cameras.

3 Q I'm going to show you a series of photos, and for -- able
4 the jury to be able to see it. These are marked --

5 MR. HIXSON: Does Your Honor need to see the screen on
6 this? They are exact scans of this to publish through this
7 and we've got the hard copies for the jury.

8 THE COURT: No.

9 BY MR. HIXSON:

10 Q Let's just go through them. Start at State's 1-A, I mean
11 1-A, that's State's 21.

12 A State's Exhibit 21 is a street sign photograph that I
13 took that evening of Oak Street and Cultra Road.

14 Q State's or --

15 MR. HIXSON: Your Honor, when I'm referring to these
16 different numbers, these are the slide show numbers, not the
17 State's Exhibit Numbers. So, if I'm getting confused, I'll
18 make sure that I clarify that so.

19 THE COURT: Okay.

20 BY MR. HIXSON:

21 Q Slide Two, that's State's 22 you're referring to?

22 A Yes. I'll try to read the State's Exhibit, too, if that
23 helps, Your Honor.

24 THE COURT: That'd be great.

25 A I'm looking at State's Exhibit 22. It is the front of the

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1 Sunhouse at 2697 Oak Street.

2 Q Go to State's Three, please. I'm sorry. I want to refer
3 to -- show State's Exhibit 23. Okay? That is this current
4 slide.

5 A State's Exhibit 23 is an interior photograph I took when
6 walking through the front doors is what you would see.

7 Q Slide number four, and refer to that photograph.

8 A State's Exhibit 24 is a photograph of the store interior
9 as I'm looking and facing the cash register, clerk area of the
10 store. State's Exhibit Number 25 is showing I'm kind of
11 standing back towards like the clerk's stand. This is the
12 area where it shows the coffee and the aisles of groceries.
13 Also, in this photograph there's evidence that has been
14 identified and marked with yellow numbers.

15 Q Please describe to the jury what the purpose of the
16 yellow markers are?

17 A Once, once evidence is identified, a photograph is taken
18 with marker and there's also one taken without the marker.
19 The marker, because you can see it's got a big black number
20 and a yellow background. It helps identify in the photograph
21 what you're looking at when it comes to evidence. Can I say
22 what they are? In this particular instant markers one and two
23 are spent shell casings.

24 Q Thank you. Number seven, describe that photo for the
25 jury, please.

1 A State's Exhibit Number 27 is also a photograph I took.
2 This is standing, if you want to see over there where you can
3 see the paper towel machine, over on that side is where the
4 cash register is and then there's a small hallway that leads
5 to where a bathroom is. You can see the restroom sign and the
6 blue door. Next to that area is a small little walk-through
7 where you can get behind to where the register is and that's
8 where the soda machines are. The black looking like item is a
9 trajectory rod that I placed in a bullet hole in the wall by
10 the thermostat, if you can see that on the wall.

11 Q Describe that one for us, please.

12 A I'm sorry. This is State's Exhibit 28. This is me from
13 the other side of that hallway shooting back to where I was.
14 You'll notice the soda machines. I'm standing right next to
15 one of the blue doors, and you can see back out towards that
16 cash stand and the rest of the store.

17 Q Okay. Number nine, ma'am, what is that? What, what's
18 the State number for that one?

19 A Excuse me. I'm sorry. I apologize. State's Exhibit
20 Number 29 is a photograph, close-up of evidence marker number
21 three, which is a projectile recovered on the floor.

22 Q Slide 10, please.

23 A This is State's Exhibit 30. This is in the office area
24 of that particular Sunhouse. This is a photograph of their
25 surveillance system. I always like to take a picture of their

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1 camera screen so it documents what they had inside the store
2 the day of the incident.

3 Q And so was that surveillance system functioning properly
4 at the time that you reviewed it?

5 A It appeared so.

6 Q And were, in fact, able to recover video of the, of the
7 incident surrounding January 25th of 2015?

8 A I actually took the whole machine.

9 Q Now, is that common for you to take the entire video
10 machines if you're investigating a loss of life type case?

11 A This is a murder case, and if there's -- it, it wouldn't
12 have mattered whether it was a business or a personal
13 residence. If there was surveillance video in reference to
14 the incident of a murder or a loss of life, yes, I would take
15 a whole unit in any case.

16 Q Take the machine. Now, there's a lot of different
17 photographs going on as you're coming to understand what
18 happened. Do you render all these photographs in type -- some
19 type of a sketch or an exhibit that helps understand your
20 investigation at that period of time?

21 A Well, I take the photographs to document the interior and
22 exterior. I also do what's called a rough sketch and make it
23 a final sketch, a computerized sketch, because everybody's
24 handwriting can be messy at times, but I do a sketch of the
25 business or incident location.

1 Q And did you do that in this case?

2 A Yes. I did.

3 MR. HIXSON: Let me show the witness what's been marked
4 as State's Exhibit Seven. Move this into evidence.

5 THE COURT: What number?

6 MR. HIXSON: State's Seven, Your Honor.

7 MS. PRATT: No objection, Your Honor.

8 THE COURT: State's Seven admitted without objection.

9 (State's Exhibit Number Seven [Aerial Poster] admitted
10 into evidence and appropriately marked.)

11 MR. HIXSON: May I publish this, Your Honor?

12 THE COURT: Yes, sir, you may.

13 A Same request, Your Honor?

14 THE COURT: Of course, yeah. You're, you're free to move
15 around as you want to.

16 A Thank you, sir.

17 THE COURT: Yes, ma'am.

18 BY MR. HIXSON:

19 Q And if you can just orient this a little bit for the jury
20 that would be great. I'll tell you what I'll -- you want to
21 come all the way around?

22 A Yeah. Because we're dancing right here.

23 Q Okay. You can look at the screen, also, if that helps
24 you.

25 A Okay.

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1 THE COURT: Why don't you switch to the other side so
2 your voice is going this way.

3 A The microphone?

4 THE COURT: No, just on the other side of the photo.
5 There you go.

6 A There you go. Like Vanna White here. Okay. This is a
7 blown up picture of my computerized sketch of this incident
8 location. As you can see, this is Oak Street and this is
9 Cultra Road. This is where that traffic light is. It's not
10 to scale. So you don't see all the rest of the intersection,
11 and this is that Sunhouse interior that we were talking about.

12 MR. HIXSON: And, Your Honor, I'm also showing the
13 witness State's 10 in evidence, the photograph of the outside.

14 BY MR. HIXSON:

15 Q Is this the proper way to orient that as it relates to
16 your crime scene sketch?

17 A The way this sketch is exactly how you have that there,
18 this sketch represents this immediate area here, just the
19 building right here and right here. That is all this sketch
20 represents.

21 Q Okay.

22 A And it's not to scale.

23 Q Thank you. You can have a seat. Now, I'm going to draw
24 your attention back to the markers that you had at that scene.
25 Did you collect anything of evidentiary value for additional

1 testing in that Oak Street scene?

2 A I collected items of evidence. Yes, sir.

3 Q And I'll draw your specific attention to marker one and
4 marker two.

5 MR. HIXSON: Ms. Pratt. I'm going to hand Ms. Pratt
6 Exhibit 150 and 151, see if you --

7 MS. PRATT: No objection.

8 THE COURT: 150 and 151?

9 MR. HIXSON: Yes, sir.

10 THE COURT: All right. State's 150 and 151 admitted
11 without objection.

12 (State's Exhibit Number 150 and 151 [Photographs]
13 admitted into evidence and appropriately marked.)

14 BY MR. HIXSON:

15 Q Okay. And do you recognize those items? They're in.
16 Just describe them now since they're in evidence.

17 A Yes. State's Exhibit evidence photograph 150 is a close-
18 up photograph of a spent shell casing or cartridge casing on
19 the floor with an evidence marker number two. State's Exhibit
20 151 is a spent shell casing or cartridge casing near a rug
21 with the evidence marker number one close-up.

22 MR. HIXSON: May I publish these, Your Honor?

23 THE COURT: You may.

24 BY MR. HIXSON:

25 Q Upon marking these, do you collect these items?

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1 A Yes, among several things. Yes. I do collect them.

2 Q And did you collect these in this case?

3 A Yes, sir. I did.

4 Q I'm going to bring this box around and let you get in
5 there. Okay?

6 A Yes, sir.

7 Q And I'm specifically referring to the Oak Street case,
8 and please talk about evidence -- well, let's talk about
9 evidence collection for a minute or two here. So you
10 mentioned you collected them. You already testified that you
11 photograph them. Tell us what your process is after that.

12 A My process is not as different as the road officer's
13 process is except I have more toys at my disposal. Once
14 evidence is photographed, it is inventoried with a chain of
15 custody. That chain of custody follows that piece of evidence
16 throughout its entire journey. I also have more containers in
17 my crime scene truck than a road officer would. I would place
18 that item in a container that I felt suitable was for that
19 exact item. I then make some markings on the outside of the
20 box to identify what it is, and I also seal it with what's
21 called evidence tamper proof seal.

22 Q Okay. Please open that up and let's take a look at I
23 think it's 52, 53. Is that it, 152, 153?

24 A Exhibits 157, 158.

25 Q Missed it by a couple. All right. Let me show you

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1 what's been marked as State's Exhibit 157 and 158. Take a
2 look at those, take your time, and I'm going to ask some
3 questions about that in a second. Okay. Let's start first
4 one, first number, State's 156.

5 (Ms. Pratt and Mr. Hixson confer.)

6 BY MR. HIXSON:

7 Q Let's start with State's 157. Take a look at that and
8 tell me what that is?

9 COURT REPORTER: Move to admit?

10 MR. HIXSON: Pardon?

11 A State's Exhibit 157.

12 THE COURT: Any objection?

13 MS. PRATT: No objection, Your Honor.

14 THE COURT: Okay.

15 MR. HIXSON: And then let's do State's 158 also since
16 we're here?

17 THE COURT: Any objection on 158?

18 MS. PRATT: None, Your Honor.

19 THE COURT: 157 and 158 admitted without objection.

20 (State's Exhibit Numbers 157 and 158 [Casings] admitted
21 into evidence and appropriately marked.)

22 BY MR. HIXSON:

23 Q Okay. Now let's just describe it in more detail. Tell
24 us about the packaging and the forensic process to insure the
25 integrity of that item of evidence.

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1 A I will kind of try to show as much as I can. When you
2 see it, you'll be able to understand what I'm speaking about
3 right now. This cardboard box has a marker and it says CS1,
4 that will reflect the number I gave it that night, which is
5 crime scene one, going back to the picture with the number one
6 in it. It also has a case number 15007520. That's the case
7 number that was associated with the Sunhouse incident. Then
8 it gives you a description of what it is. It's a casing from
9 the rug -- from the rug area, that photograph that you saw.
10 This is that spent shell casing. Now, I put it in the box,
11 and if you can see the size of the box, there's this red tape.
12 The red tape is open, but this was sealed when I took it from
13 the crime scene. I seal it up in preparation. It was also
14 transported to the state lab, where they then examine my box
15 to make sure there's been no tampering. If it's been
16 tampered, they would refuse it and not test it. If it's all
17 sealed and like it's supposed to be, then they will accept it
18 and test it and then they will do their own markings on it,
19 and they remove the item from the box, which is in the bag.

20 Q Okay. When you say testing, what is the purpose or what
21 do you expect to get from a SLED analysis of a shell casing?
22 What are you looking for, generally speaking?

23 A There's several things that we look for: the caliber of
24 the weapon; a type of firearm that might have used that
25 weapon; if the weapon can be entered into IBIS, the Integrated

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1 Ballistic Index System and be compared with any other cases,
2 from other crime scenes or other incidents, you know,
3 nationwide or in the state, those kinds of things.

4 Q Very good. Now, you were referring, I, I noticed when
5 you were giving that testimony to State's 157. Did the same
6 process occur in 158?

7 A Yes. It did. The difference between the two is this is
8 crime scene number two. It has the same case number,
9 15007520. The description is different saying the casing from
10 the front Lance stand, the cracker stand, which is associated
11 with the picture where you see the number two in it.

12 Q Okay.

13 MR. HIXSON: Publish these, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. HIXSON:

16 Q I think you already answered this question, but -- and
17 you did forward these items to SLED Forensic Services for
18 evaluation? Is that -- I think you testified to that already?

19 A They were transported to SLED.

20 Q Okay. All right. Now, just prior to arriving at this
21 location, did you come to understand through discussions with
22 other officers that there was a robbery that occurred just
23 prior to this in a location called Lake Arrowhead Road?

24 A Actually, when I was called out by my lieutenant,
25 Lieutenant Cestare, he advised me to respond to the Oak Street

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1 and Cultra. I live closer to that and also it involved a
2 death. He advised me at that time he would be responding as
3 well. However, he had to respond to a robbery at Lake
4 Arrowhead. So he went to that particular scene while I
5 responded to this scene.

6 Q Okay. So we heard testimony concerning responding
7 officers being stretched. Crime scene was in two different
8 locations trying to deal with this also at that time?

9 A Yes.

10 Q But you did not respond to Lake Arrowhead. That's
11 correct. So Lieutenant Cestare handled that situation.

12 A My lieutenant briefed me when he gave me the call out for
13 this that he'd be responding to that one, and I would be
14 responding to this one.

15 Q Very good. Thank you. All right. Now, let's, if you
16 can, mentally go from Cultra Road and then Arrowhead. Were
17 you working on January 2nd of 2015 here for the Horry County
18 Police Department?

19 A Yes, I was.

20 Q And what was your duties on January 2nd, 2015?

21 A I was a crime scene investigator with the Horry County
22 Police Department.

23 Q Okay. And did you, in fact, have an opportunity or an
24 obligation to respond to the intersection of Red Bluff Road
25 and Highway 905 in Horry County?

1 A Unfortunately, it was my duty to respond to that crime
2 scene as well.

3 Q And did you, in fact, do so?

4 A Yes. I did.

5 Q And when you arrived there, what did you find?

6 A When I arrived there, I found several officers
7 surrounding a Scotchman at the corner of, I believe, Red Bluff
8 and 905. A large amount of crime scene tape was stretched
9 out. The scene was secure. Everybody was outside of the
10 yellow tape when I responded. It was also raining. I do
11 remember that.

12 Q Okay. Now, you already testified about what you're
13 usually required to do or what your duties are when you
14 arrive, taking photographs, measurements, collecting evidence.
15 Did you do that at the Sunhouse convenience store on Highway
16 905 and on Red Bluff Road?

17 A Yes. I did.

18 Q Let me show you what's been marked as State's Exhibit 21,
19 I mean, excuse me, 12. I was reading it upside down.

20 (Mr. Hixson and Ms. Pratt confer.)

21 MR. HIXSON: Your Honor --

22 MS. PRATT: We have no objection to 11 and 12, Your
23 Honor.

24 THE COURT: State's 11 and 12 admitted without objection.

25 MR. HIXSON: Thank you, Your Honor.

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- 1 (State's Exhibit Numbers 11 and 12 [Aerial Posters]
2 admitted into evidence and appropriately marked.)
3 BY MR. HIXSON:
4 Q All right. Let me show you a couple of exhibits.
5 State's 11 in evidence, take a look at that. I can do it this
6 way. It's in evidence so. See if you recognize that.
7 A It's an aerial photograph of that area, sir.
8 Q Okay. And can you -- let me show you what's been State's
9 12 in evidence. Describe that one for the jury.
10 A State's Exhibit Number 12 is an aerial photograph, but a
11 little bit more closer than that photograph shot.
12 Q Okay. So can you orient these for the jury for us?
13 Where are we looking on the bigger one compared to the smaller
14 one?
15 A State's Exhibit Number 12 is a magnified picture of this
16 area here on State's Exhibit 11.
17 Q Okay. Now, when we talk about Red Bluff Road and Oak,
18 Highway 905, just orient the jury to that so can understand
19 why those names are coming from?
20 A Okay. This is Highway 905. If you go in this direction,
21 I believe you go to Number 9. If you go back up this
22 direction, you head down into Conway. This is what they call
23 Red Bluff. Most people know Red Bluff. They'll call this
24 section of Highway 31 Red Bluff Road as well. If you go down
25 this section of Red Bluff, you end up in Loris. If you go

1 down this section of Highway 31, you get on 31 towards, I
2 believe, 90 east of that.

3 Q And then over the bridge of the Waccamaw River down
4 there?

5 A Well, in this photograph, yes. This is going towards
6 that -- this bridge area here.

7 Q Okay. And that building in the middle?

8 A This area right here is the Sunhouse, I'm sorry, where I
9 was at.

10 Q And does, does this Sunhouse location have a video
11 surveillance system that covers the exterior and the interior
12 of the building?

13 A Yes. They do, and I remember where their cameras also
14 can cover this little area of the intersection.

15 Q And based on your investigation, they were functioning
16 that night and captured images relevant to this, this
17 situation?

18 A Yes. They were.

19 Q Okay. And let's just jump ahead. After you did your
20 walk-through and your photographs of the 905 location, did you
21 render some of the findings of your investigation and
22 locations of items taken into some kind of a sketch or
23 documentation?

24 A Yes. Throughout the entire investigation of a crime
25 scene I do a rough sketch and document things as I go along

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1 that's pertinent to the investigation as I take my
2 photographs, and in this case, I, I also did what's called a
3 computerized sketch of my rough sketch.

4 Q Let me show what's marked as State's ID -- for ID only at
5 Eight. Do you recognize that? Don't publish it yet.

6 A Yes.. I do.

7 Q What is that?

8 A It is a picture of my sketch, my computerized sketch.

9 Q Is that a fair and accurate representation of your
10 sketch?

11 A Yes. It is, not to scale.

12 MR. HIXSON: We'd move State's Eight in, Your Honor.

13 MS. PRATT: Without objection, Your Honor.

14 THE COURT: All right. State's Eight admitted without
15 objection.

16 MR. HIXSON: All right. Thank you, Your Honor.

17 (State's Exhibit Number Eight [Poster] admitted into
18 evidence and appropriately marked.)

19 MR. HIXSON: Okay. Your Honor, we need to deal with the
20 -- these photographs, I believe. That's -- these are already
21 in? I think so. So that's Oak Street.

22 MS. PRATT: May we approach?

23 MR. HIXSON: Yes.

24 THE COURT: Sure. Okay. You all stand up, stretch.

25 Just stay right where you are. Just stand up and stretch,

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1 stretch your legs and twist them around and make sure you're
2 staying with me.

3 (Whereupon, a bench conference is held in the presence
4 but out of the hearing of the jury.)

5 THE COURT: All right.

6 MR. HIXSON: Your Honor, after discussion with counsel,
7 they have -- State's 31 through 49 are all photographs that
8 the State offered on Highway 905. We're going to withdraw
9 State's 43 and I'll offer that into evidence, Your Honor. So
10 I want to make sure.

11 THE COURT: So 41, 42, 44, 45, 46, 47, 48 and 49 are
12 admitted without objection. 43 is out.

13 MS. PRATT: I believe it's Numbers 31 to 49 --

14 THE COURT: Oh, 31. I missed that. Okay.

15 MS. PRATT: -- excepting Number 43, Your Honor.

16 THE COURT: Okay. So 31 to 49, 43 is out?

17 MS. PRATT: Yes. Your Honor, no objection.

18 THE COURT: You got that, Dixie?

19 COURT REPORTER: Yes, sir.

20 MR. HIXSON: Take this back.

21 (State's Exhibit Numbers 31 through 42 and 44 through 49
22 [Photographs] admitted into evidence and appropriately
23 marked.)

24 THE COURT: So we, we all kind of internally keep our own
25 logs, but Ms. Dixie keeps the official log of what is in and

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1 what is out. So, if I decide something is out, that needs to
2 go in a different stack so that's so we all keep our own
3 records of it so at the end of the day, if there's a debate,
4 we can all go back and look at. That's what we're doing, and
5 so we're making sure that that's accurate. So just so you all
6 understand why we're all talking to each other instead of --
7 and leaving you out of it. That's what we're doing.

8 MR. HIXSON: Your Honor, we're making sure we're deleting
9 this right now.

10 THE COURT: Okay.

11 MR. HIXSON: All right. Thank you for the Court's
12 indulgence, Your Honor.

13 THE COURT: Sure.

14 BY MR. HIXSON:

15 Q All right. Now, Ms. Domogauer, let's go through these
16 like we did before. It worked fairly well once we got used to
17 it. Take a look at that. We're starting with State's 31, and
18 I'll hand them to you so I can read the back. Okay?

19 MR. HIXSON: Slide number one, just to the photograph.

20 BY MR. HIXSON:

21 Q You recognize that?

22 A Yes. I do. Can I speak about it?

23 Q Yeah, please. We're publishing all these. These are all
24 in evidence, so we can just have a conversation and describe
25 to the jury what you're -- what, what you saw, what you took a

1 picture of. Okay?

2 A This is State's Exhibit 31. This is a geographical
3 photograph showing a street sign that night of where I was at.

4 Q Three?

5 A This is State's Exhibit Number 32. This is showing the
6 front numerical of a Sunhouse. The address is going to be
7 7406, I believe it's 905, and you can see crime scene tape up
8 around it.

9 Q What is that, and what -- call the State's Exhibit.

10 A This is State's Exhibit Number 33. This is me entering
11 the door and a, a view of what you see. You can somewhat see
12 some evidence down on the ground, but it's unmarked at this
13 time. This is my initial documentation of the scene.

14 Q State's 34? That's Five.

15 THE COURT: Are these popping up on that screen?

16 MR. HIXSON: They are, sir.

17 THE COURT: Okay. Can you see that, Ms. Pratt?

18 MS. PRATT: I can, Your Honor. Thank you.

19 THE COURT: Okay. All right. Can all the jurors?

20 Everybody's okay? Okay. Go ahead.

21 A This is State's Exhibit Number 34. I am already inside
22 the Sunhouse at this time. I've identified several items of
23 evidence, and I've marked them with those yellow markers with
24 the black numbers.

25 Q All right. And just so we're on the same page, can you

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1 read out those markers the ones that you see in that
2 photograph?

3 A Yes. Markers one, two, three, four and five.

4 Q Okay. Show you number six, please.

5 A I'm inside the Sunhouse, again, at this time. I'm sorry,
6 State's Exhibit Number 35. I apologize. This is more towards
7 the cash register. You can also see items of evidence marked.
8 You see number four again, and then you see a number six and a
9 number seven.

10 Q Slide Seven, please. State's 36?

11 A State's Exhibit Number 36, you see we're down one of the
12 aisles, I believe, in the Sunhouse on 905 and you see a, a
13 cartridge casing spent with a number eight.

14 Q 8-A, State's 37?

15 A State's Exhibit Number 37, you can see that, in fact, if
16 I'm not mistaken, is my lieutenant is holding two white rods.
17 Those are trajectory rods that's actually going through the
18 merchandise in the shelf area from the front of the store
19 towards the back. If you can see those two doors, that's
20 bathroom area towards the back of the store.

21 Q 8-B, that's State's 38?

22 A State's Exhibit Number 38, again, you'll see trajectory
23 rods that were placed through bullet holes. This is where the
24 beer is stacked up around the men's bathroom. You can see the
25 men's bathroom door at a distance shot, but this is a more

1 closer shot.

2 Q 8-C, ma'am, and I'm referring to State's 39?

3 A State's Exhibits 39 is a floor shot of that area with an
4 evidence marker number nine on the ground marking a piece of
5 evidence.

6 Q 8-D, State's 40?

7 A State Exhibit 40 is showing that door open, bullet hole.
8 You can still see the evidence I marked where I had marked
9 number nine showing the entranceway of a bathroom.

10 Q 8-E, State's 41?

11 A State's Exhibit 41 is, again, I believe, my lieutenant's
12 hand is holding a projectile that was recovered from the wall
13 of the bathroom with the identifier marker number 16.

14 Q 8-F, that's State's 42?

15 A State's Number 42 is, again, I believe, my lieutenant's
16 assisting me holding the evidence marker number 17 of a
17 projectile that was recovered from the wall on the outside of
18 that bathroom door frame.

19 Q 10, slide 10, State's 44?

20 A State's Exhibit Number 44 is where actually be behind the
21 cash stand. There's a projectile on the floor.

22 Q State's 11, excuse me, slide 11, State's 45?

23 A State's Exhibit Number 45 is evidence marker number 12.
24 It's also the open cash register where it shows a till is
25 missing, and that's the drawer that's put inside of a cash

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1 register, metal box.

2 Q Slide 12, that's State's 46.

3 A State's Exhibit Number 46, 46 is a photograph showing a
4 cash register, the clerk area. I'm sorry. Also in front of
5 it is a Red Bull Cooler with evidence marker number 18
6 identifying a piece of evidence that's sitting on top of the
7 cooler.

8 Q Okay. Slide 13, that's State's 47. Do you recognize
9 that?

10 A State's Exhibit Number 47 is actually a close-up of that
11 Red Bull container lid showing the evidence marker number 18,
12 showing the piece of evidence marked was a spent shell casing,
13 cartridge casing.

14 Q Slide 14, that's State's 48?

15 A State's Exhibit Number 48 is the office area of the
16 Sunhouse on 905 showing their surveillance system. It is
17 working, in operational condition. It was photographed, and I
18 collected the entire unit during the crime scene.

19 Q And once again, I think you testified that in relation to
20 Oak Street being that this is a loss of life investigation,
21 that, that shaped your investigation in this situation to some
22 degree?

23 A Yeah. When it comes to businesses or, like I said, loss
24 of life, homicides or anything of that nature, the entire
25 system is taken. If there was no loss of life, we would leave

1 it because that business is still open.

2 Q Okay. Let me bring your attention back to a particular
3 slide, the specific slide 11. That's State's 45. Bring it
4 back in reference to you had mentioned a missing cash till.
5 At some point in time during the course of your investigation
6 after this, did your agency find that missing cash till?

7 A If I'm not mistaken, it was found. This crime scene was
8 a very long crime scene to process. It was found in the
9 morning hours down the road of Red Bluff from the store on the
10 side of the road.

11 Q And in fact, did you respond to the location that it was
12 recovered to take additional photographs of where the cash
13 till, the plastic cash till was recovered?

14 A Yes. The cash till was recovered by the road officers, I
15 believe, if I can refer to my notes. Around 3810 Red Bluff
16 Road, officers located on the side of the road a cash till.
17 Once I was done with the duties I was doing, I was told to
18 respond to that area just to photograph and document the area.
19 I was informed it was close to a mailbox with that numerical,
20 and I responded to that scene.

21 Q Let me show you what's been marked as State's 49 that's
22 in evidence. That's slide 15. See if you recognize that.

23 A Yes. This is State's Exhibit 49. This is when I
24 responded. You can see the mailbox of 3810. You also see two
25 evidence markers down. That's actually plastic pieces that

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1 was fitted back into the actual cash till that was recovered.

2 Q So the cash till was broken into some pieces, recovered
3 and that's where you found the pieces?

4 A These are pieces that I found. The actual till, the
5 majority of the till was collected by road officers.

6 Q Okay. Now, you mentioned that address, 3810 Red Bluff
7 Road?

8 A Yes. I did.

9 Q Now show you what's been marked as State's 12, already in
10 evidence, and can you show the direction from this location,
11 where on Red Bluff Road that till, generally speaking, would
12 have been, was recovered?

13 A If you're looking at the photograph this way, this is Red
14 Bluff Road. 3810 Red Bluff would be -- kind of be over here,
15 but you would go down the road this way through, through the
16 intersection of the store, and it's kind of up in this area
17 like you're going towards Loris.

18 Q So some distance north on Red Bluff Road towards Loris?

19 A Yes. That side.

20 Q You -- can you approximate how far down that road you
21 think it was, but don't, don't guess?

22 A I don't want to, I don't want to speculate. No.

23 Q Yeah. Okay. Okay. See these. All right.

24 MR. HIXSON: Beg the Court's indulgence just for a
25 moment, Your Honor.

1 THE COURT: Yes, sir.

2 BY MR. HIXSON:

3 Q Let me ask a segue question. Did you -- while you were
4 in the Red Bluff scene, besides taking photographs, did you
5 collect any items of evidence? Specifically I'm focusing your
6 attention on shell casings.

7 A Yes. I collected the evidence in the crime scene.

8 Q Okay. I'm going to grab the box there. Can I draw your
9 attention to what's been marked as State's, let me get the
10 numbers correct for Dixie here, State's 59, State's 60 and
11 State's 61?

12 COURT REPORTER: That's 159, 160 and 161.

13 BY MR. HIXSON:

14 Q Thank you, Dixie. They're all 100s, 159, 160 and 161. I
15 apologize.

16 (Ms. Pratt and Mr. Hixson confer.)

17 MS. PRATT: No objection to those, Your Honor.

18 THE COURT: 159, 160 and 161 without objection.

19 MR. HIXSON: Yes, Your Honor. Thank you.

20 (State's Exhibit Numbers 159, 160 and 161 [Casings]
21 admitted into evidence and appropriately marked.)

22 BY MR. HIXSON:

23 Q Now, Jill, let me hand these to you and let's describe
24 these in a little bit detail there. I'm going to hand you
25 160, excuse me, 159. Let's talk about that one. There you

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1 go.

2 A State's Exhibit 159.

3 Q Yeah.

4 A Do you want me to describe it?

5 Q Yeah. Let me -- just talk about the characteristics of
6 how it's packaged you want to show the integrity of it.

7 A Yes, sir. As I previously testified in the Trisha Stull
8 Sunhouse, I utilize a cartridge box casing off this
9 particular crime scene. It's given a case number. In this
10 particular instance, so the Highway 905 Bala store, the case
11 number was 15000676, and this is also called crime scene one.
12 That's for that case number, the date and time collected and
13 the description, which was a casing inside the front door,
14 north door on the floor. I package it in the box. I use that
15 evidence tamper proof tape. I seal it. When I seal it in a
16 container, it doesn't get opened. It's then transported to
17 SLED, and then SLED will inspect the tamper proof seals to
18 make sure they're intact. If they're intact, they will
19 continue to test it. If they weren't intact, then they would
20 reject the evidence. This evidence was intact, and it went
21 and proceeded through the firearms testing at SLED.

22 Q And I'm going to refer to all three of those because,
23 159, 160 and 161, while they're in your custody and control,
24 did you protect the integrity of that item?

25 A Yes. I sealed them with the tape, and they stayed sealed

1 until they were opened by SLED.

2 Q Did you prevent anybody else from tampering with that
3 item through your secured procedures, the tape?

4 A No. The, the tape stays intact until it's opened by
5 SLED.

6 Q And did you alter them as to form or substance, form and
7 substance in any way?

8 A No.

9 Q Let me show you what's been marked as State's 47, 48 and
10 49. I've showed these to counsel. My understanding is
11 there's no objection?

12 MS. PRATT: There's no objection to those three exhibits,
13 147, 148 and 149, Your Honor.

14 THE COURT: 147?

15 MR. HIXSON: Yes, sir. I apologize.

16 THE COURT: 148 and 149?

17 MR. HIXSON: That's the third time I've done that.

18 THE COURT: Okay.

19 MR. HIXSON: Yes, sir. 147, 148 and 149.

20 THE COURT: Without, without objection.

21 (State's Exhibit Numbers 147, 148 and 149 [Photographs]
22 admitted into evidence and appropriately marked.)

23 MR. HIXSON: May I publish these to the jury, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. HIXSON:

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1 Q What are these, Ms. Domogauer?

2 A State's Exhibit 147 is a close-up of evidence marker
3 number one, a spent casing on the floor at the Sunhouse 905.

4 Q Is that the location where State's 159 was recovered?

5 A Yeah. State's Exhibit 159 is what's in this photograph.

6 Q Okay. Thank you. Let's go to State's 160, and I'm also
7 at the same time going to refer you to State's 148, see if --
8 what those are in comparison to one another?

9 A Yes. When I'm talking about State's Exhibit 160, it is
10 the physical evidence, spent shell casing marked with CS4
11 recovered from the Highway 905 crime scene. State's Exhibit
12 148 is a photograph of a spent shell cartridge casing labeled
13 with the number four that was collected from the scene. It's
14 a photograph of what's in the box.

15 Q Thank you. And finally, State's 161 and 149, what's the
16 relation of those two items to each other?

17 A Yes. We're talking about State's Exhibit 161. It's the
18 actual physical piece of evidence of a spent casing with a box
19 marked number five, CS5 for the Bala crime scene, Sunhouse on
20 905. I apologize. And we're talking in relation to State's
21 Exhibit 149, it is a photograph of a spent shell casing with a
22 marker number five. It's a photograph of the physical
23 evidence that was collected that night.

24 Q Thank you. Let's fast forward just a little bit from the
25 investigation that you did in January 2nd of 2015 through

1 Arrowhead past January 25th of 2015. Did you do any -- did
2 you serve any subsequent search warrants in this matter?

3 A While working the investigation, I was called upon to
4 execute several search warrants of various different locations
5 throughout the case and course of these investigations.

6 Q And I'm going to specifically draw your attention, did
7 you have the opportunity to execute a search warrant on a
8 Chevy, silver in color, Chevy Malibu that was -- that had some
9 relation to this case?

10 A On February 6th, 2015, a search warrant was obtained for
11 a 2012 Chevy Malibu, four-door, bearing a South Carolina tag,
12 and I was charged with executing the search warrant at our
13 police department impound area.

14 MR. HIXSON: Beg the Court's indulgence just for a
15 moment, Your Honor.

16 MS. PRATT: Your Honor, I don't have any objection to 50
17 through 55.

18 THE COURT: 50?

19 MR. HIXSON: 50. This is 50 through 55.

20 THE COURT: Through 55.

21 MR. HIXSON: It's truly not 150.

22 THE COURT: Okay. State's Exhibit Number 50 through 55
23 are admitted without objection.

24 MR. HIXSON: Thank you, Your Honor.

25 (State's Exhibit Numbers 50 through 55 [Photographs])

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1 admitted into evidence and appropriately marked.)

2 BY MR. HIXSON:

3 Q Ms. Domogauer, take a look at these. They are in. So
4 we can just talk about them. All right. I'm going to hand
5 the witness State's 50, and please describe to the jury what
6 they're looking at on the screen?

7 A This is State's Exhibit 50. We're actually located in
8 the Horry County Police impound area underneath a covered
9 shed. This is the front of the Malibu that I took a
10 photograph of and searched that day in relation to these
11 cases.

12 Q Okay. Okay. Do you -- the front license plate and some
13 details on what the front license plate and is?

14 A It's a -- you can tell it's a Chevy. It's got a Chevy
15 emblem, and the front plate is kind of like a zebra pattern,
16 personalized, says I believe Mrs. Smiles.

17 Q Mrs. Smiles?

18 A Uh-huh (affirmative response).

19 Q Let me show you what's been marked as State's Exhibit 51.
20 That is slide two. Could you please read the license plate
21 into the record, please?

22 A Yes. This is State's Exhibit 51. This is the rear of
23 that Chevy Malibu, and it is bearing South Carolina tag of J,
24 Juliette, W, Whiskey, W, Whiskey, 184, JWW184, South Carolina.

25 Q So and this is, this is the rear view of the same vehicle

1 we saw showing the license plate and rear tinted windows?

2 A Yes.

3 Q Slide number three, that's State's --

4 A This is State's Exhibit Number 52. This is the driver's
5 side view of that same vehicle that we were discussing.

6 Q Okay. I'm going to show you State's 53. Describe what
7 that is, that slide?

8 A This is State's Exhibit 53. This is the passenger side
9 interior view of the Chevy Malibu. You can kind of see the
10 pattern of the car seats and steering wheel match that front
11 plate. You see the passenger view showing magazines, a pink
12 jacket, a composition book, a black, red and white wool hat or
13 winter type hat. I think they're called toboggans. I'm
14 sorry.

15 Q Slide 5-A, State's 54, what is that?

16 A I believe it's going to be, I feel, the rear seat area,
17 State's Exhibit Number 50, is that a four?

18 Q I apologize. That's State's 54.

19 A I'm sorry. State's Exhibit 54 is a photograph of the
20 rear area of the Malibu with a piece of evidence marked with a
21 number five. Yeah. A piece of evidence that I was marking
22 and showing this in this photograph is the blue and white
23 bandana.

24 Q Okay. And State's slide 5-B, State's 55, what is that?

25 A State's Exhibit 55 is a photograph of the bandana that

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1 was removed from the vehicle in a lab setting. It's on white
2 paper and everything like that.

3 Q Okay. I notice there's additional markings on that
4 bandana. What -- describe what those are. Let me, let me
5 pose it to you in a different way.

6 A I'm not too familiar with it.

7 Q Were, were some of these items submitted to SLED for DNA
8 testing?

9 A Yes. This item was submitted. It was packaged and
10 submitted for SLED for DNA or ownership type of testing. Yes.
11 I apologize. The markings would be what the laboratory
12 personnel marks on it.

13 Q And what were the conclusions resulting from this DNA
14 testing of the scarf, the bandana?

15 A The -- this particular bandana's test results were
16 inconclusive, a mixture of too many people to tell you who a
17 major contributor was.

18 Q So you couldn't ID anything off the bandana?

19 A No. You couldn't.

20 Q Did you have an opportunity to execute any additional
21 search warrants in this matter, and I'm specifically, were any
22 search warrants of residences is what I'm referring to?

23 A Yes. Prior to me searching that Malibu, earlier that day,
24 I had executed search warrants on a residence on Goose Bay.

25 Q What is Goose Bay?

- 1 A Goose Bay is a road I believe in Loris.
- 2 Q In fact, did you focus on Goose Bay because it was your
- 3 understanding that these were the residences of McKinley and
- 4 James Daniels and Jerome Jenkins?
- 5 A Yes.
- 6 Q Did you, in fact, execute those warrants?
- 7 A Yes. I did.
- 8 Q Let me show you an exhibit.
- 9 MS. PRATT: I have no objection to Number 13, Your Honor.
- 10 MR. HIXSON: Your Honor, we'd move State's 30 -- State's
- 11 13 into evidence.
- 12 THE COURT: State's 13 without objection.
- 13 MR. HIXSON: Thank you.
- 14 (State's Exhibit Number 13 [Aerial Poster] admitted into
- 15 evidence and appropriately marked.)
- 16 BY MR. HIXSON:
- 17 Q Ms. Domogauer, let's take a look at State's 13 and see if
- 18 you can describe that and we'll turn it around.
- 19 A State's Exhibit 13 is an aerial photograph of Goose Bay
- 20 and residence on Goose Bay Road.
- 21 Q Okay. Are there specific residences in that -- depicted
- 22 in that photograph that you searched?
- 23 A Yes. I searched the residence [REDACTED] Goose Bay, and I also
- 24 searched a white trailer that was behind the residence of [REDACTED]
- 25 Goose Bay.

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1 Q Okay. Let's -- I'll just orient this to the jury. Can
2 you point to the residence, the locations that you searched?

3 A [REDACTED] Goose Bay is right here. The white trailer is behind
4 the numerical residence, [REDACTED] Goose Bay. It doesn't have its
5 own. It's on the same property, but it's the white trailer
6 that's behind that numerical there.

7 Q So for this purpose, the GIS map is this whole thing is
8 [REDACTED]; is that correct?

9 A Yes. I believe so.

10 Q Okay.

11 MR. HIXSON: All right. Ms. Pratt, how do you feel --
12 the State's prepared to offer 56 through 71. Ms. Pratt's had
13 a chance to look at them.

14 MS. PRATT: I have one foundational question I wanted to
15 ask her if I could, Your Honor?

16 THE COURT: You can.

17 EXAMINATION (RE: STATE'S EXHIBITS 56 THROUGH 71)

18 BY MS. PRATT:

19 Q Trailer number [REDACTED], who actually lived there?

20 A [REDACTED]?

21 Q Yes.

22 A I'm not quite sure who actually lived there. I can tell
23 you the evidence that I found inside the house of
24 identification.

25 Q All right. So when the Solicitor asked you about whether

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1 it was James or McKinley or Jerome, you don't know whether any
2 of those guys actually live there; is that correct?

3 A When I searched the residence, I found evidence of, of
4 people's names of who is in that residence.

5 Q Right.

6 A When I search the residence, I'm searching the residence
7 on the warrant, which was [REDACTED] Goose Bay Road.

8 Q Okay. Thank you.

9 MR. HIXSON: I'm offering 56 through 71.

10 MS. PRATT: Okay. I don't object to those, Your Honor.

11 THE COURT: 56 through 71 without objection.

12 (State's Exhibit Numbers 56 through 71 [Photographs]
13 admitted into evidence and appropriately marked.)

14 DIRECT EXAMINATION (CONTINUED)

15 BY MR. HIXSON:

16 Q Let's talk about [REDACTED] first. Okay?

17 A Yes, sir.

18 Q Please take a look at these and tell me what you see.
19 Once again, now that we're talking about [REDACTED], can you point
20 to the location of that, the residence that you searched on
21 this map?

22 A I apologize.

23 Q I'm going to hand slide number 1-A, that's State's 56.

24 A State's Exhibit 56 is a mailbox with the numerals [REDACTED]
25 in front of the residence.

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1 Q Okay. Slide 1-B, State's 57?

2 A State's Exhibit 57 is the front side of [REDACTED] Goose Bay
3 Road.

4 Q Okay. Slide 2-A, that's State's 58. What is that?

5 A State's Exhibit 58 is a -- there's two driver's license
6 or a driver's license and an identification card that was
7 found in the residence, I believe in the living room area.
8 One of them is for a James Daniels and the other for McKinley
9 Daniels.

10 Q So let's focus on the upper ID first in case it's
11 difficult to read. Can you read that? Who, who does that
12 driver's license belong to and who's that photograph?

13 A The driver's license is South Carolina Driver's License
14 Identification Number [REDACTED]. The name on the driver's
15 license comes back to a James Elbert Daniels, Jr.

16 Q Okay. Let me show you, and that was -- that driver's
17 license was recovered in the -- in what area in the [REDACTED]
18 address?

19 A I believe it was, it was located in a, a black wallet in
20 that residence.

21 Q Okay. In a wallet. Okay.

22 A Uh-huh (affirmative response).

23 Q Let me show you 2-B, State's 59. What is that?

24 A It is a South Carolina Identification Card. Excuse me,
25 I'm referring to State's Exhibit 59. I apologize. It is a

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1 photograph of a South Carolina Identification Card,
2 Identification Card Number [REDACTED]. It is in the name of
3 McKinley Lee Daniels.

4 Q Okay. And what does that say on the very bottom of that
5 driver -- that ID?

6 A That it's not a driver's license.

7 Q So that's not a driver's license?

8 A No. It's an identification card. State of South
9 Carolina's driver's license is different.

10 Q So the possessor of that card cannot drive a car?

11 A Well, not legally.

12 Q Let's take a look at this one, State's 58 back and now
13 let me show you, you've already identified that?

14 A Yes. I did, State's Exhibit 58.

15 Q And that is purported to be James Daniels' driver's
16 license?

17 A Yes. This is an actual driver's license, not an
18 identification card.

19 Q So James Daniels can drive a car with that license?

20 A Yes.

21 Q Thank you. Let me show you slide 3-A, State's 60. I'm
22 also going to show -- I've got to do the slides one at a time.
23 So --

24 A State's Exhibit 60 is a bedroom type area in the
25 residence with items marked as evidence. Item eight is a

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1 black hooded sweatshirt. Seven is some jeans, and I believe
2 nine are a pair of jeans as well.

3 Q Okay. Now, in relation to marker number eight, did you
4 collect that item?

5 A Yes, I did.

6 Q Okay. 3-B, and we're referring to State's 61. Do you
7 recognize that?

8 A Yes. State's Exhibit item Number 61.

9 Q What is that?

10 A It's a photograph of this sweatshirt I took, number, I
11 believe it was eight in the other photograph.

12 Q Okay. What side of the sweatshirt -- how is the
13 photograph oriented for the jury?

14 A I'm sorry. This is a hooded sweatshirt and you can see
15 the pocket that shows that it's the front side of the hood, a
16 hooded sweatshirt.

17 Q Okay. Slide 3-C, State's 62, please describe that for
18 our jury.

19 A State's Exhibit 62 is a photograph I took back at the lab
20 of the sweatshirt. This is the backside view of the
21 sweatshirt. I had put a piece of white paper inside the
22 sweatshirt so you could see if there's any type of tears or
23 holes, which you can see underneath the one arm, which I
24 believe would be the left arm in the back of the sweatshirt
25 has a tear. I took a photograph of it.

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1 Q Just to clarify for the record, so the orientation in
2 this photograph is a tear under the left armpit when you're
3 looking at the rear of the sweatshirt?

4 A Yes. I believe it's going to be the left armpit and left
5 back area. It's the back of the sweatshirt that was collected
6 from Goose Bay Road, [REDACTED] Goose Bay Road.

7 Q Thank you. Let's show you the next slide, that's 5-A,
8 State's 63. Tell us what you're -- tell us what we're looking
9 at there.

10 A State's Exhibit Number 63 is a pair of blue and white
11 Nike Jordan size 10 shoes that were collected from [REDACTED] Goose
12 Bay Road.

13 Q Okay. And you said they were collected and placed into
14 evidence?

15 A Yes. I did.

16 Q Thank you.

17 A Uh-huh.

18 Q Let me show you slide 5-B, State's 64?

19 A State's Exhibit 64 is a photograph in the lab of the
20 shoes, close-up.

21 Q And 5-C, State's 65?

22 A State's Exhibit Number 65, again, the same pair of shoes
23 with them turned so you can see the side view and also the
24 bottom tread of the shoe.

25 Q Thank you. Thank you. Let's talk about the address [REDACTED]

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1 that you executed a search warrant. I think you indicated
2 earlier, but just to clarify, on February 6th of 2015, is that
3 what you testified to earlier when you executed the search
4 warrant for these residences?

5 A Yes. February 6th, 2015.

6 Q February 6th, 2015.

7 A Uh-huh (affirmative response).

8 Q Okay. Let me show you these. Let's start with --

9 MR. HIXSON: Your Honor, I'm showing Ms. Pratt 66, 67,
10 68, 69, 70 and 71.

11 (Mr. Hixson and Ms. Pratt confer.)

12 THE COURT: Yeah, those are already in, right?

13 MR. HIXSON: I apologize, Your Honor.

14 MS. PRATT: I believe they are, Your Honor.

15 THE COURT: Okay. Thank you.

16 BY MR. HIXSON:

17 Q Let's take a look at those, and since they're already in,
18 we'll just go right to it. Let me show slide number one and
19 that is 14 -- that's it. Please describe that to the jury,
20 please, and I'm referring you to State's 66?

21 A State's Exhibit 66 is a view of [REDACTED] Goose Bay Road,
22 which is the residence in front of a white trailer. The white
23 trailer doesn't have a specific numerical address. So it's
24 described as the white trailer behind the residence of [REDACTED]
25 Goose Bay Road.

1 Q And you could -- could you --

2 MR. HIXSON: I'm referring the witness to State's 13.

3 BY MR. HIXSON:

4 Q Where are you going to -- what location are you going to
5 talk about the search warrant on [REDACTED]?

6 A This white trailer right here behind [REDACTED] s numerical,
7 it's the white trailer here.

8 Q Thank you. Slide number two, State's 67, describe that
9 one for us, please?

10 A State's Exhibit 67 is a closer shot of the white trailer.

11 Q Number three, State's 68?

12 A State's Exhibit 68 is another -- it's a photograph of the
13 side of the white trailer.

14 Q Okay. Slide number four, State's 69, recognize that?

15 A State's Exhibit 69 is a picture of a photograph that was
16 found inside of the residence.

17 Q And is that Jerome Jenkins in that photograph?

18 A It's J.J. Yes, sir.

19 Q In fact, what's in the left corner of the photograph?
20 We've blacked out the young lady's face there in it, but --

21 A Well actually, it's, it's J.J. and --

22 Q Yeah. I'll just --

23 A -- a certain name forever. It's a personalized
24 photograph.

25 Q Okay. Slide five, State's 70, what is that?

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1 A State's Exhibit 70 is a bedroom inside that residence.

2 Evidence marker number one is a pair of shoes.

3 Q Okay. Did you recover those shoes?

4 A Yes. I did.

5 Q And I'll refer you to a slide number six, State's 71.

6 What is that?

7 A State's Exhibit 71 are a pair of Nike shoes that were

8 recovered from inside the residence. This is a lab

9 photograph.

10 Q And I'll draw your specific attention to the other

11 photograph. Are there any characteristics of that, a low top,

12 high top, anything about the laces? Could you describe it for

13 the record?

14 A They're a pair of black Nike low tops.

15 Q What is the shiny silver thing near the bottom of the

16 laces? Is that --

17 A That's, that's indicative of Nike. They have those

18 little tags on their shoes.

19 Q It's a decoration for the shoe in essence?

20 A Yes.

21 Q Okay. Thank you.

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

23 moment. We're wrapping this one up.

24 Your Honor, that's all the questions we have for Ms.

25 Domogauer.

1 THE COURT: Okay. You all approach real quick.
2 Everybody stand up right where you are, just kind of stretch.
3 Let me talk to the attorneys real quick.

4 (Whereupon, a bench conference is held in the presence
5 but out of the hearing of the jury.)

6 THE COURT: All right. All right. We're going to go
7 ahead and break for lunch. Okay? All right. So you all take
8 your seats. Let me give you some instructions, and then I'll
9 get you out of here for lunch. So it's about 12:36, and one
10 of the things you'll see me do is I ask the attorneys, "Do you
11 think you're going to be long with the next witness or short,"
12 and you know, if she -- and I don't ever really hold them to
13 it, but if, you know, they think it's going to be real short,
14 I'll push through and finish it. If they think it's going to
15 be a little bit longer, which is perfectly reasonable, then
16 we'll just stop. Okay? So I'll tell the witness and I'll
17 tell the witness this in front of you, and Ms. Domogauer, that
18 you're not allowed to discuss your testimony with anybody in
19 any way, shape or form. You are allowed to go eat lunch and
20 do the things people do at lunch, but you can't talk about the
21 case with anybody in any way, shape or form. When we come
22 back from lunch, you'll need to be seated right there in their
23 chair -- in that chair and we'll jump right into Ms. Pratt's
24 cross examination of the witness. Okay?

25 Now, we're about to take a break for lunch. It's going

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1 to be our first lunch break. Things to remember are this, you
2 are not allowed to discuss this case with anyone, including
3 each other. You are not allowed to have any contact with any
4 of the parties or any of the witnesses or anybody involved in
5 the case in any way, shape or form. You are to keep an open
6 mind about the case. You are going to be -- have access to
7 your cell phones, but you're not allowed to look up any news
8 or get on any kind of news feed or news source or try to find
9 any news or do any kind of research. It is 12:37. Let's
10 start back at 2:00 o'clock. Okay? So we'll start back at
11 2:00 o'clock. So that'll give you time to get out, get to
12 lunch like you need to. Court staff all when we take a lunch
13 break, they just can't immediately leave. They have to kind
14 of shut down everything and close up and then go eat. So
15 that's why we take a little bit longer than an hour, but
16 let's start back at 2:00 o'clock. Do not discuss the case,
17 keep an open mind. Thank you for your hard work this
18 morning. Everyone else remain seated. The jury is
19 excused.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 COURT REPORTER: Judge, the witness wants to ask you a
23 question.

24 THE COURT: Okay.

25 A If it's all right with you and both parties agree, is

1 there a place where I can lock up the evidence that's
2 still it's in my custody that has not been signed into
3 court?

4 THE COURT: Natalie.

5 CLERK: I have a key to this door over there.

6 THE COURT: Yeah. We have a room right here you can put
7 it in.

8 A Thank you. It saves me from walking up and down with
9 it.

10 THE COURT: Okay. Yeah. I don't want you to have to do
11 that either. Okay.

12 A I appreciate it.

13 THE COURT: Let's put the objection to State's Exhibit
14 Number 23 on the record before I forget that. That's the
15 photo of Ms. Stull in the convenience store in the floor.

16 MS. PRATT: Yes, Your Honor. Thank you. We would be
17 objecting to Number 23 because it is a photo of Ms. Stull
18 deceased. While it is slightly in the distance of the
19 picture, it is clear that it is a deceased human being, and we
20 believe that that is more prejudicial than probative given
21 that we're not contesting that a murder actually occurred,
22 just who was involved in doing it.

23 THE COURT: Okay. All right. And so I find that Ms.
24 Pratt did raise that objection at the appropriate time. We
25 were right in the middle of a witness. So we discussed it at

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1 the bench, and she noted her objection to me at that point in
2 time, and I told her that I was going to allow the photo to go
3 forward to the jury and that we would put the legal argument
4 on later. So that's what she has done, but I find that she
5 did object at the appropriate time. I did find that photo to
6 be admissible. For the record, it is a still from one of the
7 crime scene or one of the video surveillance cameras from the
8 store. Ms. Stull is deceased in the picture. However, it is
9 not an up close picture. She's actually kind of far away at a
10 distance. You can see her. She is almost fully clothed.
11 There's no large amount of blood. I, I don't know that I saw
12 any blood in, in the photo. There's no -- it's -- there's no
13 picture of an entry wound or an exit wound or, you know, had
14 you not -- had we all not known what we know about the case,
15 it would look like a picture of a woman lying in a floor of a
16 convenience store. So it's not an autopsy photo. She's not
17 on an autopsy table. There's nothing particularly gruesome or
18 gory or so rising to the level that its prejudicial effect is,
19 is too much. So I, I did allow State's Exhibit Number 23 into
20 the record over Ms. Pratt's timely objection to the photo, and
21 for the record there was a, there was a photo from the 902
22 Bluff Road, 905 Bluff -- Red Bluff Road store with the victim
23 in that case in it, and there was -- it was more up close, and
24 I understand why law enforcement takes these pictures. I'm
25 not, I'm not fussing at them for taking the pictures, but that

1 picture was much more up close. It was up close and personal
2 with the victim in that case. There was blood everywhere. It
3 was a much more traumatic photo as we processed through
4 photos. So, all right. Anything else before we break for
5 lunch?

6 MS. PRATT: Nothing from the Defense, Your Honor.

7 THE COURT: Okay.

8 MR. HIXSON: No, sir.

9 THE COURT: Okay. All right. 2:00 o'clock. 2:00
10 o'clock. Thank you all very much.

11 OFF THE RECORD

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: You all good to go?

16 MR. RICHARDSON: Yes, sir, Your Honor.

17 THE COURT: Ms. Pratt, good to go?

18 MS. PRATT: Yes, Your Honor.

19 THE COURT: Okay. Let's bring them in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Welcome back. Thank you for
23 being on time. I hope you had a nice lunch, got to stretch
24 your legs and maybe one day the heat will go away, but until
25 then it will still be hot outside. Okay. You ready for cross

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1 examination, Ms. Pratt?

2 MS. PRATT: Yes, Your Honor. Thank you.

3 THE COURT: All right.

4 MS. PRATT: May it please the Court?

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 BY MS. PRATT:

8 Q Investigator Domogauer, I just have a couple of questions
9 for you. You were responsible for the crime scenes at the
10 Sunhouse on 905, the Red Bluff store, and also the Sunhouse at
11 Cultra Road here in Conway; is that right?

12 A Yes, ma'am.

13 Q And you did a pretty thorough investigation at each
14 location, did you not?

15 A Yes, ma'am.

16 Q You not only took what seems to be a hundred and some
17 pictures -- I don't know how many we've got in evidence
18 already -- but there were a lot of photos; correct?

19 A I take a lot of pictures. Yes.

20 Q And that's really to document what happens when you go in
21 and then what you find and then what you take out; correct?

22 A Yes, ma'am.

23 Q So your photos are kind of in three stages like that, I
24 would imagine?

25 A Yes. Somewhat like that, yes.

1 Q Okay. But you also did latent fingerprints. You dusted
2 for prints; did you?

3 A I believe we dusted and also swabbed for DNA.

4 Q And you swabbed for DNA, and you would have done that not
5 only in each location, but also in the Malibu that you talked
6 about; correct?

7 A Yes, ma'am.

8 Q And then also I believe that you were, you were present
9 at a couple of the searches on Goose Bay, but you would have
10 done touch DNA swabs or swabs from clothing or whatever from
11 the things that you seized from there as well; right?

12 A If, if it warranted, yes.

13 Q Okay. So you certainly did what you felt was a very
14 thorough investigation for those things?

15 A Yes, ma'am.

16 Q And at the time that you did those investigations, we
17 didn't have any suspects at the time of the two Sunhouse
18 investigations yet; correct?

19 A I, I don't believe so. No, ma'am.

20 Q Okay. And so and I'm just looking at my notes, you took
21 samples or did touch DNA, fingerprints or whatever was
22 appropriate for clothing that was sent to SLED; is that right?

23 A I don't do that kind of thing. We just send the entire
24 garment.

25 Q Okay. All right. But no question that you were -- it's

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1 your name on the transmittals that send stuff up to SLED for
2 the clothing?

3 A Yes, ma'am.

4 Q Okay. And also the cartridges?

5 A Yes, ma'am.

6 Q And the cash drawer, you did some touch DNA on that?

7 A I know we fingerprinted it. We might have done it. I
8 would have to refer to notes, but it was processed, yes,
9 ma'am.

10 Q Okay. All right. And those things were all -- whatever
11 you felt was important was sent on to SLED; right?

12 A Would have met the criteria, yes, ma'am.

13 Q Okay. All right. The second thing I wanted to ask you
14 about was about the wallet. The wallet is important to me
15 because it's where I believe you said you found the two
16 driver's licenses; is that correct?

17 A I believe so. They were in a black wallet.

18 Q Do you remember what else you found in that, if anything,
19 in that wallet?

20 A I'm seeing if I can refer to my notes. I know there were
21 other items in the wallet, but the only thing I recorded was
22 the two -- the driver's license and the ID.

23 Q All right.

24 A I think there's miscellaneous papers or other things
25 inside the wallet.

- 1 Q So we don't know from your notes or do we know from your
2 notes whether anything that was -- else that was in the wallet
3 indicates who was actually using the wallet for the purposes
4 we use wallets for, like holding driver's licenses, credit
5 cards, money?
- 6 A I have nothing indicating who owned the wallet --
- 7 Q Okay.
- 8 A -- if that's what you're asking.
- 9 Q All right. And I'm going to show you State's Exhibits 58
10 and 59. Unfortunately, when you photograph these new ID cards
11 stuff flashes up on it?
- 12 A There is a flare up. Yeah. It's the --
- 13 Q Holograms are on them; aren't they?
- 14 A Yes, ma'am.
- 15 Q All right. But I'm going to show you those two things,
16 and the first one I want you to look at is the one that is
17 James Daniels, which I think is number 58?
- 18 A Yes, ma'am. State's Exhibit 58, yes, ma'am.
- 19 Q All right. The issue date on that is May 2nd, 2011; is
20 that right?
- 21 A It appears. Yes. 5-2 of 2011.
- 22 Q All right. Some four years or three and a half at least
23 before these incidents occurred?
- 24 A Yes, ma'am.
- 25 Q All right. And that driver's license looks like it's

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- 1 pretty beat up in the picture; doesn't it?
- 2 A It's kind of worn, yes, ma'am.
- 3 Q Yeah. It's folding down. The plastic's coming off in
- 4 the corners and it's been used?
- 5 A Yes.
- 6 Q All right. And the address, what's the address on that
- 7 driver's license?
- 8 A I'm going to try to make it out. When you make pictures
- 9 bigger sometimes it's hard to see.
- 10 Q Sure.
- 11 A I believe it's -- I believe it's [REDACTED]-E Carolina Avenue,
- 12 Hartsville, South Carolina.
- 13 Q All right. So that's an -- a driver's license from four
- 14 years before with a different city address on it; correct?
- 15 A Yes, ma'am.
- 16 Q And it's pretty beat up. All right. And then the other
- 17 picture that I've shown you is Number 50 --
- 18 A State's Exhibit 59.
- 19 Q 59.
- 20 A Yes, ma'am.
- 21 Q Okay. And that is McKinley's?
- 22 A McKinley Lee Daniels, yes, ma'am.
- 23 Q And the address?
- 24 A The hologram does show, but I believe I can make out [REDACTED]
- 25 Goose Bay, Loris, South Carolina.

1 Q So the place that you searched is the same as McKinley's
2 driver's license?

3 A Yes, ma'am.

4 Q Okay. And that -- well, and that's an ID card.

5 A The ID card. Yes, ma'am.

6 Q I don't mean to confuse them.

7 A I was about to say that.

8 Q Thank you. I don't mind you correcting me because
9 there's a lot of pictures up here.

10 A Yes, ma'am.

11 Q All right. And that one's like new?

12 A It's not as worn as the other one. It's an
13 identification card. It's not as worn as the other one.

14 Q Pretty shiny?

15 A Yes.

16 Q Not beat up in the corners?

17 A I can't tell what the issue date is, unfortunately,
18 because the hologram in this photograph is blurring that out.

19 Q And you can't, can't see it on 58 either; can you?

20 A No, ma'am. It's right below that.

21 Q Okay. Let me look at that for a second, but no question
22 the address for McKinley is [REDACTED]?

23 A No, ma'am. I believe that's what the driver's license
24 says. Yes, ma'am.

25 Q Okay. And you didn't run -- you weren't responsible for

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1 running any updated driving record on my client to find out an
2 address or anything; were you?

3 A No, ma'am. That's not our responsibility.

4 Q Okay. And you don't know what the significance is of my
5 client's driver's license being in [REDACTED]; do you?

6 A No, ma'am. I do not.

7 Q I mean, it's possible if there's two driver's licenses in
8 one wallet that somebody is using one as a fake ID; is that --

9 A I, I don't know why.

10 Q It could happen?

11 A I'm not quite sure, I mean, why it was in there.

12 Q Okay. That's fair. All right. And you were present
13 during the execution of the search warrant on [REDACTED]; is that
14 right?

15 A Yes, ma'am.

16 Q I think that Marcus Rhodes actually got the search
17 warrant and you and Pete Cestare were both present; am I right
18 on that?

19 A Yes, ma'am. I believe you're correct.

20 Q Okay. And do you remember looking at the search warrant
21 before you went in? Would you have reviewed it for any
22 reason?

23 A I'm sure I would have read it to make sure the addresses
24 and things and it was signed by a judge.

25 Q Okay. And do you have any recollection of whose address

1 they believed that they were searching when they went into

2 [REDACTED]?

3 A Do you have a copy of the warrant to refresh my memory?

4 I'm sorry.

5 Q I was getting there. That, that was the purpose of my

6 questions. You don't have an independent recollection; is

7 that right?

8 A Right off the top of my head, no, I don't want to

9 speculate.

10 Q Then I'll show you just to refresh your memory the search

11 warrant issued February the 6th and direct your attention to

12 the bottom of what's been numbered as a 2-14 page?

13 A Yes, ma'am.

14 Q And whose address is it that you were searching?

15 A It says [REDACTED] Goose Bay Road as the address record for

16 McKinley Daniels.

17 Q Okay. Thank you. A lot of pictures went in for [REDACTED]

18 Goose Bay, that trailer that's behind the residence; is that

19 right?

20 A [REDACTED] was behind the residence. [REDACTED] was across the

21 street standing by itself.

22 Q Okay. And I think I was -- I said that wrong. The

23 residence is [REDACTED] and then the trailer is behind it. Does it

24 have a number or --

25 A No. It does not have a number.

Jill Domogauer - Redirect by Mr. Hixson

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1 Q All right. Any question in your mind that that residence
2 belongs to Jerome Jenkins?

3 A There would be no question in my mind of possessions and
4 photographs and everything would indicate that he resides
5 there.

6 Q Okay. So what you've introduced are, are pictures in
7 regards to Jerome's house and McKinley's house; right?

8 A Yes, ma'am.

9 Q Okay. And items of clothing that were found in Jerome's
10 house and McKinley's house; correct?

11 A Yes, ma'am.

12 MS. PRATT: Beg the Court's indulgence. That's all I
13 have, Your Honor, thank you.

14 THE COURT: You're welcome. Redirect?

15 MR. HIXSON: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HIXSON:

18 Q I have a couple of questions for you, ma'am. All right.
19 Did you have -- can you identify the driver's license number
20 on the photograph that Ms. Domogauer [sic] was referring to,
21 the search warrant photograph. I'm not sure exactly which one
22 you want, but you referred in some detail relating to a
23 driver's license that was collected inside the [REDACTED] Goose Bay
24 address?

25 A You want the driver's license or the ID number?

- 1 Q For James Elbert Daniels?
- 2 A I apologize. I'm referring to State's Exhibit Number 58.
- 3 Q Okay.
- 4 A South Carolina driver's license number [REDACTED].
- 5 Q Okay. Thank you.
- 6 MR. HIXSON: Could we mark this, please? Thank you.
- 7 Thank you. Your Honor, I'm going to hand Ms. Pratt a
- 8 document that's marked State's Exhibit 162.
- 9 BY MR. HIXSON:
- 10 Q Could you read the driver's license number again out,
- 11 please?
- 12 A Again, I'm reading off of State's Exhibit Number 58,
- 13 South Carolina driver's license number [REDACTED].
- 14 Q Okay. Thank you. Let me hand you a document what's
- 15 marked as State's 162. Do not describe this. Don't tell me
- 16 what this is.
- 17 MS. PRATT: And, Your Honor, I'm going to object. This
- 18 may be something we need to take up outside the presence of
- 19 the jury.
- 20 THE COURT: All right. Ladies and gentlemen, step back
- 21 to your jury room. Do not discuss the case. Keep an open
- 22 mind. I'll be back with you just as soon as I finish. Okay.
- 23 Thank you.
- 24 (Whereupon, the following takes place outside the
- 25 presence of the jury.)

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1 THE COURT: Okay. I don't know what it is.

2 MR. HIXSON: Okay. I'll show you what's marked as
3 State's 162. It's a 10 year old driving record. It was
4 provided in discovery as part of the MAIT team's report. The
5 documentation number is DL001000, excuse me, DL001-15. It's
6 part of the Highway Patrol's effort to identify the Malibu
7 that was used in it. There are several changes of address
8 here, and this document shows that he gave his address as [REDACTED]
9 Goose Bay in Loris. That's the location of where the -- and
10 the driver's license number matches. I was attempting to lay
11 a foundation for law enforcement to understand what a driving
12 record is and the driving number is the same.

13 MS. PRATT: And if I may, Your Honor?

14 THE COURT: Yeah.

15 MS. PRATT: I asked the investigator if she ran the
16 updated driver's record, and she said she did not. This is
17 not the proper witness to try to introduce any information
18 from that record. She is not responsible for it, did not run
19 it. It's a hearsay document, even though it's a document that
20 is kept in the regular business records, and so might be an
21 exception, but she was not the one that had anything to do
22 with it. So if he wants to introduce it through the person
23 who actually ran it, I think that that would be a proper time
24 to do it but not through Investigator Domogauer.

25 THE COURT: Well, what about 902 and self-authentication?

1 MS. PRATT: I'm sorry, Your Honor, I didn't quite hear
2 you.

3 THE COURT: Rule 902 under self-authentication says that
4 certified copies of public records are self-authenticating.

5 MS. PRATT: It's not a certified copy, Your Honor.

6 THE COURT: Is there a certified copy that exists?

7 MR. HIXSON: I haven't -- I don't have one yet. I can
8 have -- if it doesn't come in through Jill, I'm going to have
9 it come in through the lead or through Highway Patrol Luther.
10 By tomorrow it will be certified, but it's not now.

11 THE COURT: Okay. All right.

12 MR. HIXSON: I didn't know we were going to get into the
13 change of addresses so.

14 THE COURT: Okay. All right. That's fine. Let's not
15 use it with this witness.

16 MS. PRATT: Thank you, Your Honor.

17 MR. HIXSON: Very good.

18 THE COURT: Okay. All right. Let's bring them back
19 in.

20 MR. HIXSON: Thank you, Your Honor.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right. Welcome back. Thank you very
24 much, and we're on redirect, Mr. Hixson?

25 MR. HIXSON: Yes, sir. I have no further questions, Your

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1 Honor.

2 THE COURT: Okay. Anything, any follow-up, Ms. Pratt?

3 MS. PRATT: Nothing, Your Honor. Thank you.

4 THE COURT: All right. Thank you, ma'am. Have a nice
5 day, and you may call your next witness

6 MR. HIXSON: Special Agent Suzann Cromer from the South
7 Carolina Law Enforcement Division.

8 Whereupon, Suzann Cromer is called to the stand, duly
9 sworn by the clerk and testifies as follows:

10 CLERK: Thank you. Please state your name and spell your
11 last name for the Court.

12 MS. CROMER: My name is Suzann Cromer, C-R-O-M-E-R.

13 DIRECT EXAMINATION

14 BY MR. HIXSON:

15 Q Good afternoon, ma'am.

16 A Good afternoon.

17 Q Please tell this jury what you do for a living.

18 A I'm employed by the South Carolina Law Enforcement
19 Division, commonly referred to as SLED, as a firearm and tool
20 mark examiner in our forensic services laboratory. What I do
21 is called firearms identification. We look at ammunition
22 components, bullets, cartridge cases, fired bullets to
23 determine whether they were fired by or loaded into and
24 extracted out of a specific firearm. We can also look at
25 those ammunition components and give investigators an idea of

1 how many firearms were at a scene.

2 Q Okay. Did you have an opportunity to perform some of
3 your services on an investigation or several investigations
4 coming out of the Horry County Police Department?

5 A Yes. I have.

6 Q Okay. So you have some relevance to this issue, let's
7 talk about your training and experience, how long you've done
8 this and please the tell the jury all about that.

9 A Okay. I've been with SLED for 19 and a half years. I
10 completed the SLED's in-house training program for firearm and
11 tool mark examiners, which is a three to five-year intense
12 study program where we study under other court-qualified
13 firearm and tool mark examiners. It's more of an
14 apprenticeship. We work with them. We prepare their cases
15 while we're taking tests, written tests, oral tests, practical
16 exercises. Upon completion of all of the modules of our
17 training manual, we are given a comprehensive final exam,
18 which is graded by our training officer and our lieutenant
19 that includes mock casework, and once that is graded and once
20 we pass, we are deemed allowed to work cases on our own. I
21 have attended numerous classes with the Association of Firearm
22 and Tool Mark Examiners, which is an international
23 organization for our profession. They meet for a week-long
24 seminar every year to discuss relevant issues and offer extra
25 workshops. Some extra workshops I've taken is barrel making,

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1 Hi-Point firearm familiarization with the owner and a former
2 owner of Hi-Point Firearms, barrel making, machine gun
3 conversion, gunshot residue. I've taken several shooting
4 scene reconstruction workshops. I've also taken classes with
5 the Bureau of Alcohol, Tobacco and Firearms, commonly referred
6 to as the ATF on serial number restoration, and the National
7 Integrated Ballistics Identification Network or NIBIN. I am
8 the NIBIN Coordinator for the State of South Carolina, and I'm
9 also ATF's representative for our region, which includes North
10 and South Carolina.

11 Q Okay. Obviously have substantial training. How about
12 your educational core?

13 A I have a Bachelor's Degree from Clemson University, and I
14 did some graduate work at the University of South Carolina in
15 criminal justice.

16 Q Okay. You mentioned some of your experience. Let's talk
17 about have you ever been qualified as an expert in firearm and
18 tool mark examination in the State of South Carolina or any
19 other courts across the country?

20 A Yes, sir. Approximately 103 times in state and federal
21 courts.

22 Q Okay.

23 MR. HIXSON: Your Honor, at this time, we'd offer Suzann
24 Cromer to the Court as an expert in the area of firearms and
25 tool mark examination.

1 THE COURT: Voir dire?

2 MS. PRATT: No voir dire and no objection.

3 THE COURT: Okay. All right. Ladies and gentlemen,
4 normally when a person testifies before you, that person
5 cannot give opinion testimony. Okay? Normally, when somebody
6 testifies, they have to testify as to what they saw, they
7 heard, they did, they touched, touched or sensed by smell or
8 something of that nature. However, there is an exception when
9 someone is qualified because of education or experience and
10 that person is permitted to give their opinion in certain
11 areas if I qualify them in that way. So this witness will be
12 qualified as an expert in the area of firearm and tool mark
13 examination. She will be allowed to give her opinion in that
14 area. Now, that doesn't mean that you have to accept her
15 opinion, but it is evidence for you to use in any way that you
16 see fit, and you are to give it the weight and credibility
17 that you believe is appropriate as you are required to do with
18 each and every witness that appears before you. Okay? All
19 right.

20 MR. HIXSON: Thank you, Your Honor.

21 BY MR. HIXSON:

22 Q So, ma'am, let's go back to I think my second question
23 and that is you were given the opportunity to perform some
24 services for the Horry County Police Department.
25 Specifically, did you do some tool mark or firearm examination

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1 on two separate armed robbery/turning into a murder cases here
2 in Horry County?

3 A Yes. I have.

4 Q Please tell us a little bit about that.

5 A I received two separate cases that Horry County Police
6 Department asked us to compare with each other. So I received
7 both of those cases. It was called in as a rush status. They
8 wanted to know if they were linked as quickly as possible. So
9 I received fired cartridge cases and fired bullets in both of
10 these cases, and I received them from an evidence processing
11 technician in our laboratory named Verona Herrera on January
12 27th of 2015.

13 Q Thank you. We've talked a little bit before you got here
14 concerning receipt of evidence or submission of evidence to
15 SLED and protecting integrity of that through packaging and
16 turning it into a non-fungible item. Can you describe that to
17 the jury a little bit?

18 A What we do at SLED is we keep what we call a chain of
19 custody. When something is delivered to our forensic
20 laboratory, it is given a lab number based off of their case
21 number. So if Horry County case brings us case number
22 15007520, it's given a one individual lab number and that lab
23 number follows it whether it goes from firearms or toxicology
24 or DNA, that SLED lab number will follow that case, that Horry
25 County case number throughout the whole building. So once

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1 it's given that case number, each piece of item, each item of
2 evidence is given an individual item number. So that item
3 number is also either put in a container with a bar code on
4 it, that that bar code follows it around from place to place
5 or it's put in a container, a bunch of pieces of evidence are
6 put in one container and the barcode is put on the outside.
7 So if I'm getting evidence from our intake department, where
8 that agency drops it off, I will pick it up, I have a barcode,
9 I scan my barcode, I put my password in and that's how I get
10 my evidence.

11 So, in this case, I got it from Verona Herrera, who is a
12 technician in our evidence processing department. When she
13 handed it to me, I have to scan that barcode to myself. So
14 anyone who touches this evidence scans that barcode, puts
15 themselves in that chain. So that chain of custody doesn't
16 matter whose hands it's gone into, it will be scanned and
17 reflected in that chain all the way till we return it to the
18 agency and that person from the agency will have to sign for
19 it and then they're in the system.

20 Q As it relates to the, the nature of the packaging, talk
21 about receiving secure packaging from an agency and what
22 happens if it appears it's been tampered with or touched or
23 any -- in any regard?

24 A When I first receive something, I open it up and I will
25 photograph the packaging. I will first photograph how I

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1 receive the packaging, make sure that it has a taped seal on
2 it with initials and seal date. Then I'll open it up, and
3 inside if there's extra packaging, as in like this case, I
4 make sure that they are sealed, and I document that. I
5 actually take notes on it was in an evidence taped envelope
6 with initials and seal date and then it was inside that inside
7 a cardboard lid box that was evidence tape sealed and then
8 inside something else, evidence tape sealed, and then if
9 anywhere along the way we feel like it's been opened or
10 tampered with, we will stop our examination and call that
11 investigative agency that submitted the evidence to us and let
12 them know, "This does not look right. There's something wrong
13 with it. How do you want me to proceed," but we document it
14 all the way up.

15 Q So let's talk specific about State's 157 that's in
16 evidence. It's a marker up on the top corner of a Horry
17 County CS1 marked collected CS marker one. I know that's the
18 Horry County marker, and then let's also talk about 158, that
19 is marked as a CS, crime scene two location, and I believe it
20 also has your SLED indication on it. When you received those
21 items, did they appear to be intact, they were non-fungible
22 items such that you could perform an analysis on them?

23 A Yes. They were in sealed containers when I received
24 them. So I open them up. I photographed the packaging and
25 then did my examination on them, and then before I returned

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1 them, I put them in this bag with the original information.

2 So State's Exhibit 150, we'll start with 157 is my item number
3 two in this case, and it's returned it in a sealed envelope
4 with my initials and seal date.

5 Q Okay. So State's 159 and 160, excuse me, 158 and 159
6 came from the Cultra Road Oak Street location?

7 A State's Exhibit 157 and 158 is my item two and three.

8 MR. HIXSON: Beg the Court's just a moment.

9 (Court reporter and Mr. Hixson confer.)

10 MR. HIXSON: Just to make sure we're clear, for ID only.

11 (Ms. Pratt and Mr. Hixson confer.)

12 MR. HIXSON: Thanks. All right. Thank you, Your Honor.

13 BY MR. HIXSON:

14 Q As it relates to those items, did you perform any
15 analysis on those items, and I'm going to draw your attention
16 specifically to whether those two casings were discharged by
17 the same firearm, and I'm asking, Special Agent, to talk about
18 157 and 158?

19 A Yes, sir. I did. I did a microscopic examination of the
20 markings on these cartridge cases, and in my opinion, these
21 were fired by the same firearm.

22 Q Okay. And those are the two casings from the Cultra
23 Road, Cultra Road for the, for the Court?

24 A These were the casings that were marked from Sunhouse.

25 Q Yes. Yes. This lab number, yeah, from -- I'm sorry.

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1 I'm, I'm looking at your SLED report, 1124?

2 A Yes, sir.

3 Q Crime scene location one; correct, CS1?

4 A Right.

5 Q Okay.

6 A My item State's Exhibit 157, my item two was listed from
7 rug CS1.

8 Q Okay. That's fine.

9 A And State's Exhibit 158 was my item three was listed as
10 from Lance stand, CS2.

11 Q Okay. And both of those are fired by the same gun?

12 A That's correct.

13 Q Okay. Let's talk about these three. I'm referring to
14 State's 159, 160 and 161, and please, you can talk about it
15 just like you talked about the other ones would be great.

16 A Okay. State's Exhibit 159 was my item nine, which is
17 listed from inside front end door on floor. Again, it's still
18 in a sealed container with my initials and seal date. State's
19 Exhibit 160 was my item 12, and it was listed from inside
20 front ATM by north door, again, still inside a sealed
21 container with my initials and seal date, and State's Exhibit
22 161 was my item 13 listed from inside soda machine by north or
23 end door.

24 Q Okay.

25 A Again, still in a sealed container with my initials and

1 seal date.

2 Q Were you able to pour some micro -- were, were you able
3 to perform some microscopic analysis on the three shell
4 casings that were coming -- that were combined in that case?

5 A Yes. I did, and I determined that in my opinion all
6 three of these cartridge cases were fired by one firearm.

7 Q Okay. And that came to you under lab number 154?

8 A Yes, L15-00154.

9 Q And the Oak Street case came to you as 1124; is that
10 right, L15-1124?

11 A That's correct.

12 Q Okay. Now, then, to recap, my understanding is those
13 three casings came from a single firearm, these two came from
14 a firearm, a single firearm. Were you able to make
15 comparisons between those two cases?

16 A Yes.

17 Q The two incidents, not casings?

18 A I compared these cartridge cases from my lab number L15-
19 154, which was a crime that occurred on January 2nd to the two
20 cartridge cases that we talked about from my L15-1124 from an
21 incident that was listed as January 25th and determined that
22 they were all fired by one firearm.

23 Q So one firearm fired two in one crime and the same
24 firearm fired three in another crime?

25 A That's correct.

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1 MR. HIXSON: Just to clarify the record, I had State's
2 163 and 164 marked for ID, that's the internal certified chain
3 documents.

4 (Ms. Pratt and Mr. Hixson confer.)

5 BY MR. HIXSON:

6 Q Did you reduce these findings into a written report of
7 some kind?

8 A Yes, sir. I did.

9 Q Let me ask you another question. As you go through this
10 analysis, were you ever asked to compare the casings to a
11 specific firearm that was recovered in this case?

12 A No. I was not.

13 Q Okay. Are you able to make a determination, generally
14 speaking, as to the nature of firearm that may have fired
15 these casings, and if so how do you do that?

16 A What we do is we look at the markings that are left
17 there, and we look at the totality of all the evidence that we
18 have. So if I have a bullet and I can look at those rifling
19 marks, and what I say when I mean rifling marks is the number
20 of lands and grooves, raised and depressed areas that's put
21 inside of a barrel to make it have rotary motion. It gives it
22 a spinning motion to make it go more accurately towards its
23 target. Similar to a quarterback throwing a football, they
24 want it to go in that tight spiral. So we can look at those
25 rifling marks, those numbers of raised and depressed areas and

1 the dimensions of those and which way it's going to spin, if
2 it's left or right, and we can plug that in to a database that
3 was supplied from the FBI and that'll give us a list of known
4 manufacturers that use those rifling specifications. So based
5 on the evidence that I received, I determined that we were
6 most likely looking for a Hi-Point firearm.

7 MR. HIXSON: Beg the Court's indulgence just for a
8 moment.

9 BY MR. HIXSON:

10 Q Your Honor, at this time -- let me show you this and have
11 you authenticate it. State's 165, you indicated that you had
12 reduced your findings to writing. Do you recognize that?

13 A Let me just check it one moment. This does appear to be
14 a copy of my report.

15 Q Okay.

16 MR. HIXSON: At this time, we'd move State's 165 into
17 evidence, would show it --

18 MS. PRATT: May we approach for a moment, Your Honor?

19 (Whereupon, a bench conference is held in the presence
20 but out of the hearing of the jury.)

21 THE COURT: 165 is admitted.

22 (State's Exhibit Number 165 [Cromer Report] admitted into
23 evidence and appropriately marked.)

24 MR. HIXSON: Your Honor, can I publish this at a later
25 date?

Suzann Cromer - Cross by Ms. Pratt

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1 THE COURT: Yes.

2 MR. HIXSON: Okay.

3 THE COURT: You may.

4 MS. PRATT: Thank you, Your Honor.

5 BY MR. HIXSON:

6 Q I don't believe I have any more questions. Thank you for
7 your service, thanks for being here. Please answer any
8 questions Ms. Pratt has.

9 MS. PRATT: Let me make one note. All right.

10 CROSS EXAMINATION

11 BY MS. PRATT:

12 Q Ms. Cromer, I'm going to show you what was marked 163 and
13 164 for ID, and I think these are your chain of custody forms;
14 is that right?

15 A That's correct.

16 Q Okay. And I just want to ask you one question about each
17 one. Your chain of custody actually shows every place that
18 these cartridges went to in SLED; correct?

19 A Every piece of evidence where it went to in SLED. Yes.

20 Q Okay. So it would be a standardized chain of custody
21 that would just show different departments. If it went to
22 three it would have three different departments listed
23 separate?

24 A That's correct.

25 Q On each of those State's Exhibits for ID, it -- did these

1 cartridges go to a different department as well?

2 A Yes. They did. As I said, they went to Verona Herrera,
3 who was in the evidence processing department, before it came
4 to me.

5 Q All right. And actually listed on both of those chains
6 of custody, shows that it went to DNA testing as well;
7 correct?

8 A And that is what Verona Herrera does. She swabs them for
9 DNA testing.

10 Q Okay. Well, I didn't know that.

11 A Sorry.

12 Q So these have not only been tested by you for a firearms
13 analysis to see about the rifling and matching each other and
14 matching a gun, if there was a gun to match it to, but it also
15 has gone to DNA?

16 A That's correct.

17 Q And if they had had fingerprints on these, it would have
18 gone to your fingerprint department, if they were asked to do
19 that; is that right?

20 A That's correct.

21 Q Perfect. Thank you so much. I have no other questions.

22 MR. HIXSON: Nothing further, Your Honor.

23 THE COURT: Thank you.

24 A Thank you.

25 THE COURT: Have a nice day.

Peter Cestare - Direct by Mr. Hixson

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1 A You, too.

2 THE COURT: You may call your next witness.

3 MR. HIXSON: At this time, we call Lieutenant Peter
4 Cestare from the Horry County Police Department.

5 Whereupon, Peter Cestare is called to the witness stand,
6 duly sworn by the clerk and testifies as follows:

7 (Court and court reporter confer.)

8 CLERK: Thank you. Please state your name and spell your
9 last name.

10 MR. CESTARE: Good afternoon, Your Honor. My name is
11 Peter Cestare, C-E-S-T-A-R-E.

12 MR. HIXSON: If it please the Court, Your Honor?

13 THE COURT: You took 165 to swap it out; is that right?

14 MR. HIXSON: I did.

15 THE COURT: Okay. Just wanted to make sure. Just we
16 wanted to make sure where it went. Okay.

17 DIRECT EXAMINATION

18 BY MR. HIXSON:

19 Q Good afternoon, sir. How are you?

20 A Very good. You, sir?

21 Q Please tell this Court what you do for a living.

22 A I am a lieutenant and the commanding officer of Horry
23 County Police Department's crime scene section which
24 encompasses the crime scene response folks, our property and
25 evidence section and our regional drug lab.

1 Q Okay. And how long have you served in this capacity?

2 A I've been with Horry County Police Department and in this
3 same position now for a little over 15 years.

4 Q Okay. Were you in law enforcement prior to that?

5 A Yes, sir. I was.

6 Q Tell us about that.

7 A I'm retired from the New York City Police Department.

8 When I retired from there with 18 years, I was the head of
9 Manhattan -- Manhattan and Bronx homicide.

10 Q Okay. Well, welcome to South Carolina.

11 A Thank you.

12 Q Were you working then, I believe, around August, excuse
13 me, January 2nd, 2015?

14 A Yes, sir. I was.

15 Q And then were you also working on January 25th of 2015?

16 A Yes, sir. I was.

17 Q Okay. Please tell us about -- let's start about you
18 coming to work January 25th, 2015, and let's focus a little
19 bit in the afternoon to the evening hours of there.

20 Specifically, are you familiar with the area in Horry County
21 called Lake Arrowhead Road in the coastal part of the county?

22 A Yes, sir. I am.

23 Q Tell us about responding to service there.

24 A Okay. On that particular day, January 25th, if I recall,
25 it was a Sunday, and generally speaking, I'm off on the

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1 weekends. However, I'm on call 24 hours a day, seven days a
2 week. I was notified in the early evening hours of a robbery
3 that occurred on Lake Arrowhead Road and Kings Road at a
4 Scotchman convenience store and gas station on the corner
5 there at.

6 Q Okay. Are you generally familiar with that area of the
7 county then if we were to show you an aerial photograph?

8 A Yes, sir. I'm very familiar with it.

9 Q I'm going to show you what's been marked as State's
10 Exhibit Nine.

11 MR. HIXSON: I would move Nine into evidence, Your Honor?

12 MS. PRATT: I have no objection, Your Honor.

13 THE COURT: State's Exhibit Nine admitted without
14 objection.

15 (State's Exhibit Number Nine [Aerial Poster] admitted
16 into evidence and appropriately marked.)

17 BY MR. HIXSON:

18 Q Okay. See if you recognize that and can orient the scene
19 for, for the jury.

20 A Yes, sir. I can.

21 Q I'll hold it for you if that helps.

22 A All right. Looking here, this is the Scotchman station.
23 This is Lake Arrowhead Road that runs from 17 out by the
24 restaurant row area all the way back to the beach around Sands
25 Ocean Club area. The cross street here is Kings Road. Again,

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1 that comes down towards the Sands Ocean Club area here, and if
2 you travel the other way on Kings Road, it comes up by Highway
3 22 and the Walmart and everything up in that area.

4 Q Okay. What is this area here, these?

5 A This is a trailer campground. I don't recall the name of
6 it offhand, but --

7 Q And what about the -- in this area, these?

8 A These are all residential apartments. Most of them are
9 rental apartments and so forth. I don't believe there's an
10 awful lot of permanent residents that live there. Most of
11 that area is rentals.

12 Q Like vacation rentals?

13 A Yes, sir.

14 Q Okay. That's State's Nine. All right. Please continue
15 about responding to Lake Arrowhead Road, sir, please.

16 A All right. I was notified that an armed robbery had
17 occurred at Lake Arrowhead Road. As in most cases of a high
18 or important nature such as that, I get a notification, and
19 then it's up to me whether or not I'm going to send a response
20 from crime scene. In almost all cases a detective responds to
21 the location. Based on the details and whether or not I feel
22 that our response is going to support them and help them
23 determines whether or not I'm going to send somebody to that
24 location.

25 In viewing the details that were given to me that

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1 evening, my intention was to send Investigator Domogauer to
2 that location. However, I decided since I was closer than she
3 was to it that I would initially respond myself and kind of
4 size up and see what services may be needed there.

5 Q Okay. Tell us about then -- you, in fact, did that?

6 A I did.

7 Q And tell us what happened?

8 A Yes, sir. I responded to, to Lake Arrowhead to the
9 Scotchman station at Lake Arrowhead and Kings Road. The
10 details that were given to me was that two subjects entered
11 the store, presented a firearm, proceeded to take cash from
12 the register there and some other items from, from that store,
13 some packs of cigarettes and so forth off of the shelf behind
14 it. Obviously, my first question was is was there any shots
15 fired in the store, was there any shooting or anything of that
16 nature. I was told that no one was shot on scene, and at that
17 point, I decided not to send Jill to the location, that I
18 would just continue on myself.

19 Q Okay. Were you able to determine whether or not there
20 was a video surveillance machine working at that location at
21 the time?

22 A Yes, sir. When I got there, there were no outside
23 cameras at that location. The only cameras that I could
24 physically see were cameras inside the station pointing at
25 various areas in, in, in the convenience store, behind the

1 counter, some of the, some of the aisles and along the
2 refrigerated cases and so forth. At that time, I was not able
3 to download the video. The manager of the store was not on
4 scene, just the clerk, who was the only one working at the
5 time. So we, we did not have pass-worded access to be able to
6 download the video or anything of that nature, but we were
7 able to view some of the video on scene at that time.

8 Q Okay. And did you, did you review the video and actually
9 extract some of the video to save it for court, the video of
10 inside of the Lake Arrowhead Scotchman armed robbery?

11 A Yes. The video was viewed. I was able to clearly see
12 two male subjects enter the store, a brief clothing
13 description of what they were wearing, kind of their actions
14 within the store. I was able to see the clerk moving about in
15 the store, and, and at, at about that time, while I was there,
16 I got a second call to respond to another location.

17 Q Okay. Let's stay on this one first. Okay. Let me show
18 you what's been marked as State's Exhibit 18, see if you
19 recognize that?

20 A Yes, sir. That's going to be a copy of the video that we
21 obtained from the video surveillance system in the Scotchman
22 store at the corner of Lake Arrowhead and Kings Road.

23 Q And this captures the activities during the course of the
24 robbery?

25 A Yes, sir. It does.

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1 Q Okay. Is this a fair and accurate copy of the video
2 surveillance machine that you extracted it from?

3 A Yes, sir. It is.

4 MR. HIXSON: Your Honor, at this time we'd like to
5 publish State's 18 to the jury.

6 (Mr. Hixson and Ms. Pratt confer.)

7 MR. HIXSON: I'm going to ask a couple of more
8 foundational questions, Your Honor.

9 BY MR. HIXSON:

10 Q About how many camera views and about how many -- I don't
11 want to -- how much time is the raw material that you've seen
12 on the video roughly speaking, generally speaking? Is it
13 hours, is it -- it's a fair amount of time of the total video
14 that you're able to view?

15 A I, I would have been able to view hours worth of it.
16 However, in that particular case, we only took a small segment
17 of, of the video from that store, and let me see, I believe
18 there were six cameras in that, in that store location showing
19 the inside of the store only. There, there was one thing that
20 I did note looking at the cameras. When I first saw the
21 cameras, the time was off on the camera, and I immediately
22 looked at my watch and I took out my cell phone to get the,
23 the time off of the, the cell tower, and the cameras were off
24 by an hour. They were running -- they were actually an hour
25 ahead of where we should have been.

1 Q Okay.

2 A So if I'm looking at, just hypothetically, if I'm looking
3 at the camera at 8:00 P.M., the camera time is showing 9:00
4 P.M. So it's actually showing an hour later than what I was
5 viewing.

6 Q Okay. So and my more direct question, is the copy that
7 we're preparing as court, is that six cameras and six hours so
8 to speak of it or has it been narrowed for court for not
9 cumulative presentation of evidence for the purposes of trial?

10 A That's a cut-down version of what was recorded. That is
11 -- that's a narrowed down version based on specific events.

12 MS. PRATT: And Your Honor, I don't object.

13 MR. HIXSON: Just on State's 18, Your Honor.

14 MS. PRATT: I don't object to this cut-down version.

15 THE COURT: Okay. State's Exhibit Number 18 admitted
16 without objection.

17 MR. HIXSON: Thank you.

18 (State's Exhibit Number 18 [DVD - Arrowhead] admitted
19 into evidence and appropriately marked.)

20 MR. HIXSON: May we publish that, Your Honor?

21 THE COURT: You may.

22 BY MR. HIXSON:

23 Q If you can see this, Lieutenant, and I'm going to ask
24 some questions after we're done.

25 THE COURT: Does this have sound?

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1 MR. HIXSON: It does not.

2 THE COURT: Okay.

3 A Your Honor, may I step down for a minute to be able to
4 see it better?

5 (State's Exhibit Number 18 played in open court.)

6 BY MR. HIXSON:

7 Q Now, did you have an opportunity to interview or have a
8 discussion with the lady in the blue shirt in that when you
9 arrived on scene?

10 A Yes, sir. I did.

11 Q Was that Barbara McDowell? Do you know?

12 A Yes. That's correct. That's who it is.

13 Q Okay. Now, upon reviewing -- in reviewing these, let me
14 show you what's been marked or actually it's in evidence as
15 State's 72 to 82. It's already in evidence. Can you just
16 flip through those quickly and see if those are all video --
17 still shots from the videotape that we just saw that may help,
18 help you to -- aid your testimony?

19 A Yes, sir.

20 Q Okay. Let's just talk about these kind of quickly, and
21 if -- can we go to Arrowhead? I'm handing the witness State's
22 72. They're already in evidence. So we don't have to
23 authenticate it. Can you describe to the jury what you saw,
24 what information you're taking off that photograph that
25 ultimately aided you in your investigation?

1 A Yes, sir. This, this was a particularly important
2 picture to me at this time. I'm reviewing State's Exhibit 72.
3 This photograph, as you can see on, on the screen there,
4 depicts two males or two persons entering, entering the store.
5 One of them, at least one of them is visually seen carrying a
6 firearm, but what was significant to me in this is one of the
7 sets of clothing, the red pants and, and a gray hooded
8 sweatshirt or some type of a hooded garment because I had
9 believed I'd seen that similar clothing attire before.

10 Q Okay. Let me show you slide two. Also, as it relates to
11 the face coverings of the man in the red pants, discuss the
12 types of the face coverings I believe you see.

13 A Yes, sir. A couple of things, initially, I was told that
14 it appeared the suspects had entered the store were wearing
15 gloves. That, obviously, reduces some possibilities for us as
16 far as collection of DNA and so forth, but the, the masks that
17 are, are being displayed also appear to be coincidental to
18 another case prior to, to this date.

19 Q Okay. In what regard? What's the, you know, what,
20 what's on the, the man in the red pants face that pictures --
21 you can see from the picture?

22 A The clothing attire is the same attire that I had seen
23 in, in a case from 905 and Red Bluff Road, which had occurred
24 earlier in the month back on January 2nd.

25 Q Is that a blue bandanna?

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1 A Yes, sir. It is.

2 Q It is a white face covering and a person in the back?

3 A Yes, sir.

4 Q Let me show you the slide two, State's 73.

5 A Yes.

6 Q Can I, as it relates to this, can I draw your attention
7 to the shoes being worn by the person in the red pants?

8 A Yes. They are a black style footwear, but something
9 seems to fluoresce off the front of the, of the shoe, and
10 again, it was significant to some articles we had seen on
11 other occasions.

12 Q When you say fluoresce, what do you mean?

13 A Shine, something on it shined with the light. The, the,
14 the only lighting that you're seeing is the overhead
15 fluorescent lighting or, or whatever style lighting it is
16 inside that Scotchman station, but obviously, it was enough
17 to, to make something on the front of the footwear shine or,
18 or show like a shiny characteristic to it.

19 Q Okay. State's -- slide three, State's 74, and I'll do
20 the same thing, State's -- slide four, State's 75, just hold
21 that for a second. Go to the next one. I guess the time
22 stamp you're indicating on this, I'm looking at State's 74,
23 the time stamp, could you describe the time that's actually
24 going on. I think you indicated something about being off one
25 hour?

1 A It's off approximately one hour, correct. The, the
2 correct time looking at State's 75, you'll see it depicts
3 camera two, 2015, 01 being the month, 2-5 being the day and
4 then 21.42.31 representing 9:42 at night and 31 seconds. The
5 actual time would have been off by about an hour. When I
6 looked at my watch and, again, my cell phone, based on the
7 time on the camera, my cell phone and my watch were both an
8 hour behind what the camera was showing.

9 Q So in layperson's terms, it's 8:42 on January 25th?

10 A Correct. It's 8:42 in the -- on a Sunday evening,
11 January 25th.

12 Q Okay.

13 A All right. The other thing about these two photos,
14 again, that are significant is in State's 74 you can see that
15 shine on the second set of footwear. Obviously, you know, you
16 got left and right and in the first picture you see it on the
17 left foot. In this picture you see it on the right foot, and
18 on the second subject in this photo, the white mask is a
19 little bit clearer, and you can see a black and white or, or
20 some type of a dark color and white footwear.

21 Q And is there any question the way these folks entered
22 this building, are they acting in concert with one another?

23 A Yes, sir. They're, they're definitely acting together.

24 Q Okay. Five, slide five, State's 76, do you recognize
25 that or tell us about that.

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1 A Yes. That is, that is, well, if I can back up for one
2 minute.

3 Q Sure.

4 A The photos that you saw before are all of a camera facing
5 the entry, the front doors of that store coming in. The front
6 of that store actually faces Kings Road and diagonally out to
7 Lake Arrowhead Road. So you can almost see, you know, like a
8 pathway out past Kings Road and towards Lake Arrowhead going
9 back up towards the restaurant row area of, of the county
10 there.

11 This next photo, State's Exhibit 76, is a, is a camera
12 that fully faces internally, and it faces behind the service
13 counter, behind the, the, the clerk's counter. Where you see
14 the three people standing in this photo, that's an area that
15 should only be accessed by the clerk. So you've got the clerk
16 in, in the blue standing on -- to the left of the photo
17 crouched, crouched down. In the front of the photo or the
18 closest part of the photo is, is that person wearing the, the
19 gray and red attire, and towards the back of the photo is the
20 other male that I described with the, with the dark and, and
21 white sneakers towards the back.

22 Q Let me -- State's Six -- slide six and seven, that's
23 State's 77 and 78 and we'll kind of go quickly on those. What
24 does it appear the suspects grabbing out of that?

25 A State's 77 and State's 78, the suspect in the, in the,

1 I'll call them two-tone sneakers, if you will, is appears to
2 be pulling cigarettes out of the rack behind the, the register
3 counter there.

4 Q Okay. Slide eight, State's 79, what's that depict?

5 A That's a photo of the cigarette rack and the area where
6 the person is reaching. I determined, based on the cameras,
7 to be that Newport area of the cigarette rack.

8 Q I'm going to show you slide nine and follow up with 10.
9 That's State's Eight [sic] and 81. What does that depict and
10 specifically relating to the individual with the black hooded
11 sweatshirt's footwear?

12 A State's Exhibit 80 and 81 both show the subject with the,
13 with the black and white sneakers or the two-tone sneakers
14 crouched down still behind the register. The clerk is
15 obviously taking cash out, and it also shows the other male
16 partially crouched in, in the red and gray attire.

17 Q Okay. And finally, slide 11, that's State's 82, take a
18 look at that.

19 A State's 82, again, is that same camera that we initially
20 had seen showing the front doors of the store, and it's
21 showing the subject in the gray and red attire exiting the
22 store.

23 Q Are those, from what you can tell, do you believe those
24 are high top or low top shoes?

25 A I believe, I believe they're on the, on the black shoes,

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1 they're low top or, or like normal, normal height sneakers.

2 Q I'm going to show you what's already been submitted into
3 evidence as State's Exhibit 64, if you'll take a look at that.

4 A Yes, sir.

5 Q Do you recognize that item as a, as a purposes of a
6 layperson's comparison?

7 A Yes, sir. I do. State's Exhibit 64 is an item that we
8 subsequently collected.

9 Q Yeah. And what does that appear to you in a layperson's
10 comparison?

11 A It is a two-toned high-top or mid-top sneaker.

12 Q And I think if I refer you to State's 71 that's in
13 evidence, can you describe that photograph?

14 A Yes, sir. State's 71 is a, is a low or normal height
15 black footwear, and it also shows two silver components on the
16 places of it.

17 Q And that was recovered?

18 A That was subsequently recovered as well.

19 Q In a search warrant at 4767 Goose Bay?

20 MS. PRATT: Objection, leading.

21 A I don't --

22 THE COURT: Sustained.

23 A I don't recall the location, but --

24 Q Thank you. Refer to State's 71. Upon reviewing the
25 surveillance video and taking the stills from there, tell us

1 what you did a little bit later on while you were at Lake
2 Arrowhead and then into the coming hours?

3 A All right. Well, shortly after being at Lake Arrowhead,
4 as I started to mention earlier, again, I was alerted to a
5 second incident that occurred. On that particular evening
6 while at Lake Arrowhead, I was not, like I said, I was not
7 able to capture the video from the system because management
8 was not on scene, and we did not have password capabilities to
9 get -- to be able to download it. I was able to view it but
10 not download it. About the time while I'm on scene, I'm also
11 notified that we have a second armed robbery in which a female
12 clerk had been shot and possibly killed. At that time I asked
13 the clerk in this store to, to hold the shelves off that, you
14 know, we, we wanted to come back and do additional processing,
15 but she -- the store was going to be closed, and at that
16 particular moment, we needed to move all of our resources into
17 Conway to Cultra Road and Oak Street to a Sunhouse store that
18 had just been through an armed robbery and, and the clerk had
19 been shot.

20 Q Tell us about, you know, keep telling us the story?

21 A All right. At that point, I called Jill Domogauer again,
22 said, "Okay. Now, we've got a second robbery. This one the
23 clerk is shot." I, I remember giving her some type of comment
24 like this is the second Sunhouse now where somebody has been -
25 - where a robbery has occurred and a clerk has been killed. I

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1 told her to respond to there and that I was responding from
2 Lake Arrowhead and Kings Road. I immediately left that store.
3 I left the officers there, and, and one of the detectives I
4 believe was on scene there getting ready to leave to head
5 towards Cultra Road and, and Oak Street. I then exited the
6 building, got in my vehicle and proceeded lights and sirens to
7 Cultra Road and Oak Street to that store.

8 Q Okay. Tell us what you did when you arrived and --

9 A When I arrived on scene, Jill was, was there right about
10 the same time as I. I was apprised by the first responding
11 officers that they were called there on a panic alarm, that
12 when they arrived on scene they found what they believed was
13 the clerk of the store shot and killed on the floor just
14 outside of the counter area and that EMS had been on the
15 scene, pronounced her, pronounced her dead. There was minimal
16 movement to her. Obviously, at that point, everything about
17 that scene becomes important to us as far as what we're going
18 to try and look at, what we're going to try and collect, what
19 we're going to try and document, and as you can imagine, this
20 is two armed robberies now in a short period of time, and at
21 that particular moment, wasn't too sure whether there was any
22 connection between the two of them. I was more focused on
23 what was happening at hand here at Cultra and Oak. I also met
24 with Detective Lent on scene and we proceeded into the back to
25 begin looking at video footage in the store.

1 One thing that was unique to me going back and looking at
2 the cameras in the store, a few -- well, a few things we have
3 to do is by looking at the cameras we can tell where suspects
4 moved about the store, where the clerk moved about the store
5 so it can help determine what areas need to be secured to be
6 processed immediately and what areas we can use to move about
7 in the store where we're not going to tamper or contaminate
8 any potential evidence. Obviously, that's a concern as well.

9 In looking at the cameras from the store, it, it is
10 apparent that two suspects enter the store. They go behind
11 the counter again. There is -- there's some shots fired in
12 the store. The clerk is shot in, in that -- in those shots
13 that were fired. Some cash was taken, a purse was taken from
14 behind the counter, and the camera system in that store was
15 almost identical to the, to the camera system from the
16 Sunhouse store at 905. Obviously, both stores are owned by
17 the same company, so the video systems are the same.

18 Q Pete, let me ask you a question there just to interject
19 a little bit of a reference point. We're going -- I was going
20 to wait a little bit. Did you get called out to the January
21 2nd 905 Sunhouse robbery that occurred on Red Bluff and
22 Highway 905?

23 A Yes, sir. I did. I'm sorry. I'm referring to that and
24 hadn't mentioned that. Yes. I did.

25 Q Okay. And did you have an opportunity to review the

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1 video system and do an investigation in the 905 burglary
2 January 2nd and now here we are January 25th?

3 A Yes. I did. Same scenario, the January 2nd incident was
4 after hours. I was called from home, also at that time
5 directed Jill to respond to that location. As the luck would
6 have it, she was the on-call on that week and then came off
7 rotation and was back on the on-call on the night of the
8 Cultra and Oak scenario. So it was the same person on both
9 cases.

10 Q Okay. And so --

11 A But yes. I did.

12 Q -- just as a, as a summary as it relates to the
13 admissibility of this video, was the video system functioning
14 properly in the Cultra Road and Oak Street when you arrived
15 there to review video footage?

16 A Yes, sir. It was, and the time on that system appeared
17 to be accurate to me.

18 Q Okay. And immediate upon reviewing the video footage,
19 did, did anything of evidentiary value develop from -- for you
20 from the scene that you just left?

21 A Yes, sir. It did. I could immediately recognize a
22 clothing pattern again. I saw the red pants and gray
23 sweatshirt, and that let me know or, or led me to believe that
24 it may be the same persons from, from the Lake Arrowhead
25 Store, and it also brought my attention back to the January

1 2nd incident on 905 and Red Bluff because I'd also seen that
2 same clothing attire in that store, not during the commission
3 of the robbery, but earlier on in that store.

4 Q Okay. Now, as a foundation for this, approximately how
5 many hours of video surveillance do you believe you obtained,
6 and I'm specifically referring to State's Exhibit 20. See if
7 you recognize that item and describe what that is if you do
8 recognize it, please?

9 A Yeah. State's Exhibit 20 is a DVD excerpt of the, of the
10 video surveillance system from Cultra and Oak, the Sunhouse
11 that was taken as a result of the January 25th incident, and
12 that's State's Exhibit 20.

13 Q Okay. I think you answered the question. So this is the
14 universe of information and this is a -- cuts from it to --
15 for efficiency for trial for court?

16 A That's correct. We actually took the entire video, DVD
17 or video surveillance system from there because it was a
18 murder.

19 Q Okay.

20 MR. HIXSON: At this time we'd move State's Exhibit 20
21 into evidence, Your Honor.

22 MS. PRATT: Without objection.

23 MR. HIXSON: May I publish that?

24 THE COURT: State's Exhibit Number 20 admitted without
25 objection.

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1 (State's Exhibit Number 20 [DVD - Oak Street] admitted
2 into evidence and appropriately marked.)

3 MR. HIXSON: May I publish, Your Honor?

4 THE COURT: Yes, sir.

5 MR. HIXSON: Now, Your Honor, the very last camera angle
6 on this has sound.

7 THE COURT: Okay. Go ahead.

8 MR. HIXSON: It's in. I'm playing it unless you want to
9 object, I mean -- we have to -- objection. You want to take
10 care of it? It's -- may I approach, Your Honor?

11 THE COURT: Sure. You all stand up and stretch, stretch
12 your legs.

13 (Whereupon, a bench conference is held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: All right. Grab a seat.

16 (State's Exhibit 20 played in open court.)

17 BY MR. HIXSON:

18 Q Do you recognize that video?

19 A Yes, sir. I do.

20 Q Had you had an opportunity to pull video still shots from
21 that video itself?

22 A Yes, sir. After January 25th, after that incident, when
23 I went back to the police department, we now had the entire
24 video surveillance units from both Sunhouses, the Cultra Road
25 and Oak Street Sunhouse and the Highway 905 and Red Bluff

1 Sunhouse. We had both of those computers and that's, at the
2 time, protocol because there was a fatality involved in, in
3 both of them. So we took the entire computer to be able to
4 review every bit of footage and everything else. We did not,
5 as I mentioned, with the Lake Arrowhead Kings Road, we did not
6 take the video surveillance unit that night. I had to wait
7 for a password to be able to get into it and, and, and for
8 management to give us access to, you know, to the unit to view
9 it in total, but we did not take the unit from that area.

10 Q Let me ask you this question, after spending a little
11 time reviewing the surveillance video and specifically the
12 surveillance video that you saw in Highway 905, did you go
13 back and spend a little more time working on the Cultra Road
14 and Oak Street video prior to the robbery and the shooting,
15 reviewing that? That's a distended question. Let me try it
16 again. Okay.

17 THE COURT: Yeah. There were so many parts to that
18 question.

19 MR. HIXSON: Yeah. I was having a hard time with it
20 myself.

21 THE COURT: Break it, break it down just a little bit,
22 please.

23 MR. HIXSON: Okay.

24 BY MR. HIXSON:

25 Q Let's get these foundational photographs in. Then I'll

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1 ask that question again. How's that?

2 MR. HIXSON: Your Honor, at this time, we move State's
3 134 and 144, that's 905 robbery stills. Is that the one you
4 just looked at?

5 (Ms. Pratt and Mr. Hixson confer.)

6 (Whereupon, a bench conference is held in the presence
7 but out of the hearing of the jury.)

8 MR. HIXSON: Beg the Court's indulgence just for a
9 moment, Your Honor.

10 THE COURT: Okay.

11 MR. HIXSON: Trying to make sure that other still packet
12 didn't get mislabeled.

13 THE COURT: There's a packet up here.

14 MR. HIXSON: Here we go. This is it right here. State's
15 102 to 115, is that in?

16 THE COURT: I don't think so.

17 MR. HIXSON: That's the one I want.

18 (Mr. Hixson and Ms. Pratt confer.)

19 MR. HIXSON: Yes. That's the one, Your Honor. We had a
20 discussion on, on one of the photos in here. That's why I was
21 --

22 BY MR. HIXSON:

23 Q Lieutenant, I'm going to show you what's been marked for
24 exhibit, State's 102 to 115. Just look at those quickly.
25 Those are purported to be video stills from the video that we

1 just watched. Let's see if you can authenticate those and
2 move them into evidence.

3 A Yes, sir. These are still photos I took from the video.

4 Q Okay.

5 MR. HIXSON: We'd move State's 102 to 115 into evidence,
6 Your Honor.

7 MS. PRATT: Without objection, Your Honor.

8 THE COURT: Admitted without objection.

9 (State's Exhibits Numbers 102 to 115 [Photographs]
10 admitted into evidence and appropriately marked.)

11 MR. HIXSON: May I publish these, Your Honor, please?

12 THE COURT: You may.

13 BY MR. HIXSON:

14 Q Slide number one, that's State's 102. Let's describe
15 what we're looking at right there.

16 A This is moments before they entered the store at Oak
17 Street and Cultra Road. You can see in the background outside
18 the front doors. This camera is mounted towards about the
19 mid-level of the store looking at the front doors. At this
20 particular time, the clerk, whom I come to know later as Trish
21 Stull, is outside the, the store to the, to the right of where
22 that person in the, in the red pants and gray or, or dark
23 colored sweatshirt is. This is, this is the two persons
24 coming on scene, and, and they're actually directing her to
25 come back into the store with them and that is State's Exhibit

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1 102.

2 Q Okay. Let me show you an orienting photograph that's
3 already in evidence. That's State's Exhibit 10, and if you
4 can facilitate with this from where you sit. That's a -- I
5 bet you've used a laser pointer before.

6 A Uh-huh (affirmative response).

7 Q So I'll stand right here in front of like an easel and
8 see if you can describe what camera angles we're looking at
9 and where from the direction we're seeing, where are we?

10 A Okay. Can I -- Judge, may I step down for a minute?

11 THE COURT: Of course, please. Keep your voice up.

12 A All right. It'd probably be easier if I hold this and
13 just explain it to you.

14 Q All right. Very good. This is the Sunhouse at Cultra
15 Road and Oak Street. As Investigator Domogauer explained
16 before, if you continue on Cultra Road this way, you're going
17 towards the Walmart in Conway. If you go back this way,
18 you're going towards the post office in Conway. If you go on
19 Oak Street this way, it continues on past 4 Mile Road. If you
20 go on Oak Street this way, it continues on towards the
21 downtown area of Conway. Looking at the building in this
22 overhead shot, this ground right here, that's the gas pump
23 area. So that's the covering that you normally pull your
24 vehicle under when you go to fuel up. The entire building
25 here is not the Sunhouse. There are other stores on this end

1 of it. Sunhouse occupies only about half of this commercial
2 establishment, and I don't know if there was any -- anything
3 in the other two stores, but from the cameras that, that you
4 see in these videos, they are in the store. This is facing
5 the front. So where you see the gentleman in the red pants
6 there, he's actually standing right outside here. This is the
7 front door of the store. So that camera angle is looking this
8 way towards the, towards the front of the store and beyond
9 where that person is standing is these gas pumps.

10 Q So as it relates to the suspect, the shooter's direction
11 of travel in the red pants where they coming from?

12 A Okay. They were running from this area, and if you will,
13 this is almost we'll call it north, but this is almost north,
14 south, east and west. So they're almost running north to
15 south to the front door area.

16 Q Thank you.

17 A Uh-huh (affirmative response).

18 Q Number two, please, I meant State's 103. Okay. Can you
19 describe the clothing that you see in here that caught your
20 attention?

21 A Yes, sir. State's 103 shows a camera number 15, 201501
22 being January, 25 being the day, 2209.43 being 10:09 in the
23 evening and 43 seconds, and it is showing on the left of your
24 screen a male in red pants, a dark-colored hoodie with you can
25 see what looks like a white t-shirt hanging down. You see

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1 that dark shoe or sneaker footwear, and you see that same
2 almost fluorescing piece of metal that you saw earlier in the,
3 in the Lake Arrowhead store. From the side view, you can't
4 really see the face or anything or, or, or any face covering.
5 The second subject in this picture, you can see that white
6 mask, and obviously, in front of the second subject is Trish
7 Stull the clerk from the store, and she's being led back into
8 the store and, and going around to the counter, to the back of
9 the counter.

10 Q Slide three, State's 104?

11 A Okay. This is a little bit clearer shot. Again, camera
12 15, 2209.45, it is two seconds past that last shot, and in
13 this one you see the subject in the, in the -- you don't see
14 the red pants, but in a gray, what appears to be a gray hooded
15 sweatshirt, and you see some type of a covering, like a
16 bandana covering around the face, and that's State's Exhibit
17 104.

18 Q Slide four, 105?

19 A This one is 2209 and 42. This is two seconds prior to
20 what you just saw. This is a different angle of the camera.
21 This camera is mounted above the doors as you walk in and it
22 -- and it's looking the other way. So you've got one camera
23 looking towards the door. This one's looking towards the back
24 of the store.

25 Q I'll draw your attention to the individual in the red

1 pants, his footwear?

2 A Okay. The individual in the red pants, what you see is
3 dark footwear, again, red pants, what appears to be gray
4 hooded sweatshirt and a white t-shirt. The subject to the
5 left of him has some type of a black and white or two-toned
6 footwear on and, and again, you can see Trish Stull's, the
7 victim in front of them being led into the -- behind the
8 counter.

9 Q State's slide five, 106, State's 106?

10 A State's 106 is at 2210 even or 10:10 at night, and this
11 camera is behind the registers and above where the clerk would
12 be. The cigarette racks are on the back wall behind her, and
13 that's kind of what her back is to. Then you've got the
14 counter area that they just passed coming in. This one's a
15 little bit clearer image. You see the second male in, in the,
16 in the all dark attire down on the floor, and you see that
17 two-toned footwear that's fairly significant to what we find
18 later on.

19 Q Slide six, that's 107?

20 A All right. 107 is that person now standing, that subject
21 standing next to Trish Stull, and obviously she must have been
22 directed to pull that cash drawer out, but she's holding the
23 cash drawer, and then as you saw her in the video, she then
24 dumps the coin or change from the cash drawer into whatever
25 the subject is holding in his hand.

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1 Q Slide seven and then eight, I'm referring to 108 and
2 State's 108 and 109.

3 A All right. State's 108 is that subject in the, in the,
4 in the all dark clothing. This is leaving the -- behind the
5 counter area, and you see that person reaching with their
6 right hand, and they're actually taking what we find out later
7 on is Trish Stull's pocketbook from the counter. They take
8 that with them. State's 109 is just a photo a second or so
9 later, and you see that pocketbook in that person's hand as
10 they're exiting out from behind the counter.

11 Q I'm going to show you what -- slide nine, which is
12 State's 110.

13 A State's 110 is that subject that you just formerly saw is
14 now on the outside of the counter heading back towards the
15 front doors of the store, and that's at 2211 and 15 seconds or
16 10:11 and 15 seconds. So we're about a minute, a minute, a
17 minute and a half.

18 Q Before you set that down, I'd like to draw your attention
19 to the left rear kind of armpit area of that hooded sweatshirt
20 or that black covering they're wearing.

21 A Uh-huh (affirmative response).

22 Q Do you see anything of any -- in that left rear under the
23 armpit area on that photograph?

24 A Yeah. There, there, there was a white patch that we saw
25 or some type of a light color in that armpit area of that

1 particular jacket at the time, and, and we did not quite
2 understand what that was.

3 Q Let me show you what's already been admitted into
4 evidence, which is State's Exhibit 62. Do you recognize that?

5 A Yes. I do. That's looking at that --

6 MS. PRATT: Your Honor, I object to this line of
7 questioning since he's asking him or will ask him to give an
8 opinion.

9 MR. HIXSON: I'm not going to ask him to give an opinion.
10 It's a layperson's comparison.

11 THE COURT: Overruled.

12 A This is a rearview of that -- of a, of a sweatshirt
13 showing some type of a tear or cut and, and where you can see
14 white paper through it or a white object through it and that's
15 State's 62.

16 Q I'm going to refer you to 10, our slide 10, State's 111.
17 Tell us about that one.

18 A That is, again, that -- this is a zoom in look or, or a,
19 or a singled out look of that camera facing the front doors,
20 and it is the male in the, in the all dark attire with the
21 two-toned sneakers heading towards the door. This is as they
22 are leaving, and this is State's 111.

23 Q Are you able to, from that photograph and the video still
24 in that, that still, are you able to see the sole of the shoes
25 the man in the black is wearing?

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1 A Yes, sir. You, you can see, it's a little out of focus
2 here, but you can, you can vaguely make out a distinction in
3 the sole of the shoe, sole of the footwear as well.

4 Q Okay. And I'm going to refer you to State's Exhibit 65.
5 What is that a photograph of?

6 A State's exhibit 65 is a photograph of footwear that was
7 obtained later on during a search warrant, and it appeared to
8 be similar to that which we saw on the, on the videos.

9 Q Okay. I'm going to show the jury State's 65, also
10 showing the jury State's 63. That's State's 63.

11 All right. Let's go, if we can kind of -- I'll give you
12 several of these at once to kind of the -- to wrap this video
13 up. It is 11, 12 and 13. That's State's 112, 113 and 114.
14 Take a look at those. Then you can refer to them.

15 A Yes, sir. Again, these are stills that I took of the
16 video from the store. State's Exhibit 112, again, it's that
17 camera towards the back of the store or mid-level of the store
18 looking at those front doors again. Camera 15, 2015 the year,
19 01 the month, 25 the day, 2211 and 20 seconds representing
20 10:11 at night and 20 seconds, and what you're seeing is the
21 subject on the right, which was depicted from the earlier
22 photos who's in the all dark attire with the black and white
23 footwear turning, and he's pointing or that person is pointing
24 back towards the direction of where Ms. Stull is. To the left
25 of the photo, you see the other subject in the red pants and

1 the gray, grayish or dark colored hooded sweatshirt with the
2 dark shoes and the -- those metal tabs on the front of the
3 shoes is looking towards the, the, the other subject in the
4 photo at that point. Obviously, there's some communication
5 going on there.

6 Q Okay.

7 A State's 113 is camera one, which is another camera angle
8 that you're seeing that's outside the camera -- outside the
9 counter mounted towards the front of the store looking back
10 towards the counter area, and you can see up in there, there
11 is lottery cards and so forth. What you're seeing in this
12 photo is to the right of it, is your subject in the, in the
13 red pants and the dark shirt and the, and the white or looks
14 like a white t-shirt, the black footwear, and here again, you
15 can clearly see something shining on the front of that
16 footwear as they're turning and coming towards the front
17 door.

18 THE COURT: How much longer do you think you're going to
19 be?

20 MR. HIXSON: I want to put this last one in and then
21 maybe take a break; is that --

22 THE COURT: Okay.

23 MR. HIXSON: That'll end this train of thought
24 perhaps.

25 THE COURT: Great.

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1 MR. HIXSON: Okay.

2 A All right. And State's 114 is just showing another angle
3 of that same person in the, the, the red, red pants, the white
4 t-shirt, the hooded sweatshirt as they're turning and coming
5 towards the door again.

6 Q Okay. And lastly, slide 14, that's State's 115, what
7 does that depict?

8 A All right. 115, again, it's that mid-level camera
9 looking towards the front doors of the store, and what you're
10 seeing is the door open, the two subjects have, have just
11 exited out the front of the store, and they are heading
12 towards the left, and if you reference back to that photo, if
13 I can -- do we have that overhead? No, no, no. The overhead
14 map.

15 Q I apologize.

16 A Well, you see them running towards the left, which is the
17 same direction they came in from. So they're exiting out the
18 front of the store here and they're running in this direction.
19 When you see them coming on camera initially, they're coming
20 from this direction over.

21 Q Okay.

22 THE COURT: All right. Let's take a break, ladies and
23 gentlemen. We've been going for about an hour and 45 minutes.
24 So but I figure usually an hour and a half is about as long as
25 people can make it with me. So let's take an afternoon break.

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1 Do not discuss the case in any way, shape or form. Keep an
2 open mind. Detective Cestare, I'm going to say that wrong.
3 I'm sorry, but do not discuss your case -- your testimony
4 with anybody in any way, shape or form. You are allowed to
5 use the facilities or get a drink of water. Just be right
6 there when we come back. It's 3:43, 3:44. We'll start back
7 just a couple of minutes before 4:00. Okay? Thank you very
8 much.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Anything before we take a little
12 break?

13 MR. HIXSON: No, sir.

14 MS. PRATT: I want to put that on the record.

15 THE COURT: Yeah. Let's get, yeah, let's get through the
16 day and then we'll, we'll and we'll --

17 MS. PRATT: That's fine.

18 THE COURT: Let's keep this moving. Then I've got a big
19 note to myself that we'll deal with it.

20 MS. PRATT: Thank you, Your Honor.

21 THE COURT: You got it. Okay. Let's take about a 10,
22 15-minute break.

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury.)

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1 THE COURT: You ready to go?

2 MR. HIXSON: Yes, sir.

3 THE COURT: Okay.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right. Welcome back, ladies and
7 gentlemen. Everybody is back with us, and, Mr. Hixson, you
8 may continue.

9 MR. HIXSON: Thank you, Your Honor.

10 BY MR. HIXSON:

11 Q Let's touch a couple of points about while we're clearing
12 up little small matters. I want to show you what's marked as
13 State's Exhibit 16.

14 A Uh-huh.

15 Q I believe I showed that --

16 (Mr. Hixson and Ms. Pratt confer.)

17 MR. HIXSON: We'd move State's 16 into evidence.

18 MS. PRATT: Without objection.

19 THE COURT: Sixteen without objection.

20 (State's Exhibit Number 16 [Aerial Poster] admitted into
21 evidence and appropriately marked.)

22 BY MR. HIXSON:

23 Q I'm going to just take you back in time for a few
24 housekeeping matters relating to your response to the Lake
25 Arrowhead store. I think you referred to -- do you have that,

1 Lieutenant? You had some testimony already concerning a
2 close-up of State's Nine. I'll show you that, and then could
3 you show how State's Nine relates to State's 16?

4 A Yes, sir. Okay. This is a much wider overview. What you
5 can see here as, as I described earlier, Lake Arrowhead Road
6 coming from the Restaurant Row section down. The Scotchman
7 station is here. This is Kings Road. This continues on to
8 the ocean down near the Sands Club, as well as this side of
9 Kings Road. This side of Kings Road continues up and around,
10 you'll see the Walmart and the, and the shopping plaza there
11 and the entrance to Highway 22.

12 Q Okay. And for those who aren't familiar with the area,
13 where does, where does Highway 22 go if you take it inland?

14 A Highway 22 will take you northbound into the county, and
15 it'll cross Highway 31, Highway 90, Highway 905, Highway 701,
16 Highway 319, and then it ends up on Highway 501 in Aynor.

17 Q So based on going up 22, once you hit Highway 90 or 905,
18 in this case, Highway 905, that's one of them, is it correct
19 to say if you turn, if you're going north, if you turn left,
20 you go to Conway? If you turn right, you go to Loris?

21 A No. Actually coming off on 905, 905 only has one ramp.

22 Q Okay.

23 A You actually go past 905, you loop back and, and you come
24 back up to 905 facing back towards the beach area. So if you
25 went left, you'd go towards Red Bluff Road. If you turn

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1 right, you go towards Conway on 905.

2 Q The specific reason I'm asking that question is what is
3 the -- are -- do you -- are you familiar with the drive time
4 from the Lake Arrowhead location to make it up to the Conway
5 Cultra Road, Oak Street location?

6 A Yes, sir. I'm very familiar with it. I used to live
7 over off of Kings Road at one point. It's, it's 30 minutes --

8 Q Okay.

9 A -- from Lake Arrowhead and Kings Road to the downtown
10 Conway area or where the M.L. Brown Building is.

11 Q Is that average time? Is that speeding, going slow?
12 That's just average?

13 A That's just an average drive time.

14 Q Okay. So 30 minutes from Arrowhead to Conway --

15 A Yes, sir.

16 Q -- to Cultra Road. Thank you for cleaning up some of
17 that. Okay. Let's talk for a second before we keep -- Oak
18 Street, again. Let's take you back to what you initially
19 mentioned about you had recognized some things in this scene
20 that sparked your recollection back to January 2nd of 2015?

21 A Yes, sir.

22 Q Okay. Tell us about that.

23 A Okay. I had been working on the January 2nd video.

24 Obviously, as I mentioned, we took the entire DVD unit, which
25 happens to be a computer in this case. So I was extremely

1 familiar with it. The staff and, and, I guess, the management
2 staff from, from the Sunhouse Corporation were on both scenes
3 both nights, January 2nd and again on January 25th. On the
4 second, excuse me, obviously, this is, this is their first or
5 to my knowledge their first clerk shot and killed in, in a
6 store. So they were extremely accommodating with getting us
7 the administrative password, user name and password for the
8 computer system so that I could go through the computer and
9 look at video. I explained to them that evening that I needed
10 to be able to review every camera angle, I needed to take
11 still shots of them, I was going to download video and, and
12 that I would like to go back in time in the video to be able
13 to see what happened anytime earlier in the evening, if there
14 was anything that led up to it.

15 Well, jump ahead to, to January 25th, Sunhouse, same
16 management folks show up on scene afterwards. The computer
17 systems are identical and, and you'll see from some of the --
18 or, or you have seen from some of the still shots, I'm taking
19 pictures off of the computer screen with a camera for my still
20 shot purposes, and I'm capturing the time on the computer
21 screen where the DVD, you know, where, where the video is
22 playing and I'm taking photos of that to kind of begin to
23 build some type of understanding of what's happening. So both
24 systems are the same. Both system passwords, I believe, were
25 identical, the user names and so forth and, again, the

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1 management staff was extremely accommodating, making sure that
2 we got into it.

3 Well, by the time the January 25th incident happens, I'm
4 getting real good at going through these cameras quickly and
5 being able to jump from time to time and camera to camera to
6 see different angles. So at the, at the Cultra Road and Oak
7 Street, I'm now extremely familiar with the camera system.
8 I've been operating the 905 and Red Bluff machine for, for a
9 couple of weeks now and, you know, been reviewing video
10 footage and everything else.

11 Q Let me show you, just get this entered and we can
12 talk about this.

13 MR. HIXSON: I'm showing the witness what's been marked
14 as State's Exhibit 116 through 120. I'll show them to Ms.
15 Pratt. Do you have any concerns over those?

16 MS. PRATT: These are stills from the videos?

17 MR. HIXSON: The ones that -- yeah, the video stills of
18 Mr. Daniels.

19 MS. PRATT: From 905?

20 MR. HIXSON: Yes.

21 MS. PRATT: I don't have an objection to these being
22 stills from the video for being what they say they are, Your
23 Honor.

24 THE COURT: Okay. State's 116 through 120 admitted
25 without objection.

1 (State's Exhibit Numbers 116 through 120 [Photographs]
2 admitted into evidence and appropriately marked.)

3 BY MR. HIXSON:

4 Q And please take a look at these, initially what they are
5 and some -- what are your conclusions you got from them. So
6 we'll do those one at a time, Pete, and so I can get it up on
7 the screen so I can publish these.

8 A Uh-huh.

9 Q Let me lay a little more foundation for these. At some
10 point in time are you back at the police department reviewing
11 video surveillance? I think you were trying to segue into
12 that when I wanted to lay some foundation for the documents.

13 A Yes, sir.

14 Q Tell us about that.

15 A I had been looking closely at the 905 and Red Bluff Road
16 video to try and determine if anybody had been in the store
17 earlier, if, if I could see a vehicle, if there was anything
18 significant to, to the armed robbery and the shooting in that
19 store, and I was able, during the course of that,
20 investigating that particular case on 905, I was able to
21 determine what I thought was a vehicle of interest and, and,
22 and obviously, a couple of subjects of interest, and as a
23 result of that, I also asked the South Carolina Highway
24 Patrol, they have a MAIT Team, which is a Motor Vehicle
25 Accident Investigation Team, and they're real good. They work

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1 very closely with us on a lot of cases. They're real good at,
2 you know, if I give them a still photograph or a section of
3 video and say, "Hey, can you help me out with this and help me
4 determine, you know, type of vehicle or anything of that
5 nature." So they were already working with us on the 905
6 robbery and murder when, when the Cultra Road and Oak murder
7 came in.

8 Q Okay. At some point in time, did you pause the video
9 surveillance system as you were reviewing it on a particular
10 frame or a scene of an individual?

11 A Yes, sir. On many occasions, I paused it to -- for, for
12 different aspects of what I was seeing.

13 Q At some point in time, did it come to your attention that
14 McKinley -- excuse me, James Daniels was in, in the store
15 prior to the killing of the victim at 905?

16 A At that particular time, I did not know who the subject
17 was, but I was interested in a subject that had been in the
18 store approximately -- speaking on the 905 store.
19 Approximately 22 minutes prior to the robbery, a subject was
20 in that store, oddly enough, wearing red pants and a, and a
21 dark color gray or something hooded sweatshirt, which appeared
22 to me to be similar clothing to, to the Oak Street and Cultra
23 Road and to the Lake Arrowhead and Kings Road.

24 Q Can you tell us how specifically you found the name out
25 in that situation?

1 A Yes, sir. Well, after the, after the Cultra -- after
2 Lake Arrowhead and Cultra Road occurred, we're now into
3 January 26th, 27th, somewhere, somewhere in that timeframe,
4 and I'm side by side profiling videos from, from each
5 location, looking for significant items and, and things that
6 can help me make some type of a determination in the -- and
7 specifically in the videos. In the course of doing so, I'm in
8 a large conference room about half the size of this courtroom
9 at the time and up on the wall I've got three screen TVs or
10 two big screen TVs and a computer screen, and I've got three
11 videos up, three videos paused with this red clothing and the
12 red pants and the, and the, the dark colored hooded
13 sweatshirt. At that time, obviously to me, they all look the
14 same, but I can't tell who they are. In, in one of the
15 pictures is you can obviously see the person's face. It's a,
16 it's a still shot from the 905 and Red Bluff store 22 minutes
17 prior to the armed robbery, and the person in the still shot
18 who enters the store, comes to the counter to make a purchase
19 is wearing the red pants and, and, and that dark colored
20 hooded sweatshirt. Well --

21 Q Can I show you what's been marked as State's Exhibit 19?

22 A Yes, sir.

23 Q 119, I apologize.

24 A 119. Yes, sir. That's it.

25 Q Do you recognize that?

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1 A Yes, I do. That's a still shot that I took.

2 Q Okay. Was that an example of the still that was up on
3 the screen when other law enforcement were in the room?

4 A Yeah. Actually it's, it's one where he's standing right
5 at the counter.

6 Q Okay. Well, I'll tell you what, let's do it this way.
7 Let me -- the video machine, you extracted video from the 905
8 robbery relating to an incident prior to that?

9 A Yes, sir. That's, that's excerpts from it.

10 Q Okay. And that's a fair and accurate representation of
11 the excerpts of the video that you saw from video inside the
12 Sunhouse store on January 2nd of 2015?

13 A Yes, sir. That's correct.

14 MR. HIXSON: We'd like to publish this to the jury, Your
15 Honor?

16 MS. PRATT: What number is it?

17 MR. HIXSON: That is State's 15.

18 MS. PRATT: And subject to a prior objection.

19 THE COURT: Okay. Admitted.

20 MR. HIXSON: Your Honor, thank you.

21 (State's Exhibit Numbers 15 [DVD - Daniels] admitted into
22 evidence and appropriately marked.)

23 MR. HIXSON: Publish this, Your Honor?

24 THE COURT: Yes.

25 (State's Exhibit Number 15 played in open court.)

1 BY MR. HIXSON:

2 Q You recognize that video?

3 A Yes, sir. Yes, sir. I do.

4 Q I'm going to show you some stills from that, 116 through
5 120.

6 MR. HIXSON: Are these in? These are still photos from

7 --

8 THE COURT: Yes.

9 MS. PRATT: Yes.

10 MR. HIXSON: -- they're 116 through 110 [sic].

11 BY MR. HIXSON:

12 Q Slide number one, these are under 905 James Daniels'
13 stills. Take a look at that and tell us what you see. Tell
14 us what you're looking at, orient the time and then ask some
15 questions about it.

16 A State's Exhibit 116, the time on the -- this is the
17 Highway 905 and Red Bluff Road. The date is correct, January
18 2nd, 2015. The time appeared to be correct, 21-35-06. This
19 is essentially 9:35 in the evening. What this photo shows is
20 in the somewhat center towards the top you'll see what appears
21 to be a car headlight on. That vehicle had just pulled in to,
22 to a parking stall, and it appears the subject exits that
23 vehicle and enters the store.

24 Q Okay. Number two, 117?

25 A All right. State's Exhibit 117 is the subject that you

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1 saw from 116 coming into the store, and that subject's wearing
2 red pants. You can see somewhat of white hanging down between
3 the hooded sweatshirt and a dark colored hooded sweatshirt and
4 I'll call them two-tone sneakers, dark and, dark and light.

5 Q Okay.

6 A And that is, again, that's same date and time, January
7 2nd at, at 9:35, one second later and 11 seconds.

8 Q Slide number three, that's State's 118.

9 A That is 9:35 and 28 seconds. It shows the same subject
10 in the red pants, the dark hooded sweatshirt. That person had
11 come in, got a soda from the refrigerated case at the back of
12 the store. This camera is over the counter. He's now walking
13 to the counter. This photo was on the screen in the, in the
14 conference room where I was viewing videos from the three
15 different locations, and one of our detectives walked in.

16 MS. PRATT: Objection. Calls for hearsay.

17 MR. HIXSON: Specifically, State versus Jackson allows
18 for an investigator to state an out-of-court statement on why
19 an investigation turns towards a particular individual. It's
20 not for the truth of the matter asserted. It's not that he is
21 guilty of the crime asserted. It is why Detective Cestare
22 starts paying attention to James Daniels. That's, that's
23 specifically non-hearsay.

24 THE COURT: He can, he can state what he does based upon
25 the information he learns, but he can't state what the officer

1 admitted. The Supreme Court has recently decided that
2 investigative hearsay doesn't exist, according to their most
3 recent order. So he can state what he does based upon that
4 information, but he can't state what the other officer stated.
5 Go ahead.

6 MS. PRATT: Thank you, Your Honor.

7 A From this photograph --

8 Q Peter, let me ask you a question. Let me just make sure
9 we're safe on this. Based on your review of that video, based
10 on your investigation, did you focus on a particular suspect
11 based on that?

12 A Yes, sir. I did.

13 Q Okay. And did you, did you focus on a particular make
14 and model of a vehicle based on that conversation?

15 A Yes, sir. I did.

16 Q Okay. Let's go through the stills of this and we'll go
17 -- okay. Slide four.

18 A Slide four, State's Exhibit 119 is a still from that
19 video, the same time and all, where that person in the, in the
20 red pants and hooded sweatshirt is now leaving the counter
21 area and getting ready to turn to exit the store.

22 Q Okay. Okay. I'm sorry. And finally, slide five,
23 State's 120?

24 A That person, again, same person in the red pants, hooded
25 sweatshirt is leaving the store and going back towards that

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1 headlight, and in the video you see them cross in front of the
2 headlight. The headlight kind of blinks out behind them,
3 meaning they're going towards the driver's side of that
4 vehicle.

5 Q Okay. Based on this revelation, obviously, the
6 photographs, the nature of the clothing, the nature of your
7 fellow officers' discussions, did you spend some time seeing
8 if you could determine whether a vehicle became pretty
9 probative in you solving this situation?

10 A Yes, sir. I did. Initially, once I backed up in the
11 camera sequence and saw that clothing pattern, I paid
12 attention to the vehicle that pulls in and out at the -- it
13 pulls into the spot where you see that headlight just seconds
14 before a subject walks into the building wearing the red pants
15 and hooded sweatshirt, and then when that person leaves, you
16 see them cross in front of the headlight toward -- as if
17 they're going to the driver's side of, of that vehicle where
18 the headlight is lit and that vehicle immediately begins to
19 back out. Having conducted investigations throughout my
20 career into so many different vehicles and all, that vehicle,
21 at that particular time, appeared to me to be some type of a
22 Chevrolet. So now I began to look at knowing the clothing
23 patterns and so forth and the clothing patterns that were
24 possibly connected to both Lake Arrowhead and Cultra Road, I
25 then go back to look at the time of the robberies and the

1 times within a 20 to 30 minute prior to the robbery. I
2 couldn't do it with the Lake Arrowhead store because we didn't
3 have that much video, but the other two stores we took both of
4 the surveillance systems so I could back sometime and look at
5 it, and in both videos, I find a commonality in a, in a car
6 coming in and around the buildings at the time prior to the
7 robberies and, and during, you know, at the time of the
8 robberies and then leaving immediately after the robberies.

9 Q Did you review several minutes of video that contained
10 what appears to be a silver in color Chevy Malibu?

11 A Yes, sir. I did on, on both -- on, on, on both of the
12 Sunhouse stores. I reviewed the video and determined what
13 appeared to be the same type of vehicle in both occasions.

14 Q And did you take still photos from that video that
15 reflects the content of those videos?

16 A Yes, sir. I took multiple still photos of that vehicle
17 in the 905 location where you see that vehicle some 22 minutes
18 before and immediately following the robbery at 905 of the
19 vehicle, of a vehicle leaving the scene, and then again at the
20 Oak Street and Cultra Road about 30 minutes prior to the
21 robbery, you see a silver Malibu come through the parking lot.
22 Someone exits the vehicle, goes into the store, makes a
23 purchase, comes back out, gets in the vehicle and it leaves,
24 and then just prior to the robbery, you see that same similar
25 vehicle circling through the parking lot several times.

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1 Q Okay. I'm going to show you what's been marked as
2 State's 121 to 133. I'll show those to Ms. Pratt.

3 MS. PRATT: Which, which Sunhouse are those from again?

4 MR. HIXSON: These are from the ones I -- they're from
5 the 905 Sunhouse.

6 MS. PRATT: 905.

7 MR. HIXSON: They're the same ones.

8 MS. PRATT: No objection subject to the same.

9 THE COURT: What are the numbers?

10 MR. HIXSON: They're 121 to 133, Your Honor.

11 THE COURT: Okay.

12 MR. HIXSON: And they're purported to be video stills
13 from the outside video surveillance showing what appears to be
14 a Chevy Malibu in the parking lot.

15 THE COURT: All right. Admitted subject to the previous
16 objection.

17 MR. HIXSON: Okay.

18 (State's Exhibits Numbers 121 through 133 [Photographs]
19 admitted into evidence and appropriately marked.)

20 MR. HIXSON: May I publish these, Your Honor?

21 THE COURT: Yes, sir.

22 MR. HIXSON: Okay.

23 BY MR. HIXSON:

24 Q Let's do one, and we could go through them relatively
25 quickly because they just to this direction of travel and

- 1 stuff. Let's set the stage on State's, what is that, again?
- 2 A Okay. State's Exhibit 121, this is from the 905 and Red
- 3 Bluff. The date is correct, January 2nd, 2135, 9:35. This is
- 4 prior to -- some 22 minutes or so prior to the robbery. This
- 5 is that vehicle with -- you see the headlight where it pulls
- 6 into a parking spot. This is the side of the -- of that
- 7 building. The front of, of, of Red Bluff Road faces Highway
- 8 905. The side of the building faces -- this is actually old
- 9 Highway 31, but they call it Red Bluff Road, and on the other
- 10 side of the traffic light is Red Bluff Road. This is where my
- 11 first indication was that I was dealing with some type of a
- 12 Chevrolet. The front end of the car had all of the
- 13 characteristics to me of a Chevrolet.
- 14 Q Okay. And use that laser pointer since we can't --
- 15 A Yeah.
- 16 Q -- see the one you're talking about. Where are you
- 17 pointing on that?
- 18 A Where's my laser point?
- 19 Q Can you see it?
- 20 A It's going to be hard to see.
- 21 Q Hard to see it. All right.
- 22 A This is the lit headlight that I'm referring to and the
- 23 front, the front end or front grill assembly of, of that
- 24 vehicle, and from that photo, my first inclination was that it
- 25 was a Chevrolet.

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1 Q And then the individual to the left of that in the red
2 pants and the --

3 A It is, is someone that appeared to have come out of that
4 vehicle.

5 Q Let's go through -- these go in a fairly quick
6 succession?

7 A Yeah.

8 Q And that is State's Two, if you read the State ID number?

9 A State's Exhibit 122 is the gas pumps. This is kind of
10 looking diagonally out from -- we're on Highway 905 and Red
11 Bluff. This is kind of looking diagonally out from the side
12 of the building, and on the right side of the frame, if I may,
13 on the right side of the frame over here is the traffic light
14 at the corner of 905 and Red Bluff Road. This is the gas pump
15 area and on the left of the frame is what appears to me to be
16 the side of a Chevy Malibu.

17 Q Okay. And that's State's 12?

18 A Okay. And what --

19 Q Orient that to the photograph.

20 A -- what you're looking at here is the camera is right
21 hear facing these pumps. The traffic light that I showed you
22 here is in this intersection, and this vehicle that you see
23 here is entering the roadway here. All right. So it's
24 entering Highway 31, which is also considered Red Bluff Road,
25 and it's going to continue north of Red Bluff Road.

1 Q Okay. If you want to stay there that's fine. Slide
2 three?

3 A State's Exhibit 123, same date, 2138 hours and you see
4 that -- you see what appears to be a silver Chevy Malibu
5 moving out towards the green light at, at -- in the same
6 direction. It's just seconds after that prior photo.

7 Q So I can bring your attention back to 121, you get the
8 time stamp on 121 when the individual's seen leaving and the
9 time stamp on that one --

10 A Yes. This --

11 Q -- how much time difference in?

12 A State's Exhibit 121, when, when the, when the person is
13 leaving it's 1:30, I'm sorry, 9:35, almost 9:36, and at 9:38,
14 the vehicle is leaving and at 9:38, almost 9:39 it's
15 proceeding towards the traffic light.

16 Q Okay. So after the person leaves, the car is still in
17 the parking lot for three minutes after leaving at least?

18 A Yes. Well, it's somewhere. You see this car back out of
19 there and then you don't see it on camera until a minute or so
20 later when you see it enter the roadway.

21 Q We'll do slide four, which is State's 124, and slide
22 five, which is State's 125 and click those in succession.

23 A Okay. State's 124 is, again, a shot looking the same way
24 at that traffic light on the corner there, and 125, same, same
25 scenario again, at 9:40 and 27 seconds and it's looking at

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1 that same intersection and traffic light.

2 Q Okay. Two more, and that's slide six and then seven.

3 Let me get the State's Exhibit --

4 A Okay. State's Exhibit --

5 Q -- and note the time and the direction of travel on the

6 --

7 A State's Exhibit 126 is 9:40 and 31 seconds. State's

8 Exhibit Nine -- 127 is nine, 9:47 it looks like, and it's

9 basically showing that same side profile of that vehicle.

10 It's now at 9:47. It's coming back through the parking lot or

11 back around the parking lot area again, so some seven, eight

12 minutes from the first time you see it leave.

13 Q Okay. All right. Let's do these again. Eight and nine,

14 and we'll -- the direction of travel and time stamps, please?

15 A Okay. State's Exhibit 128, you can see that profile of

16 what appears to be that same vehicle back at 9:47 and 38

17 seconds, and again, at 9:47 and 39 seconds, it now pulls right

18 through the front -- the front of that gas station parking

19 lot. So it's turning from Old Highway 31. It's turning this

20 way onto 905.

21 Q Okay. And so, now, that's 12 minutes since the time that

22 the Malibu -- the silver car backed away. Correct?

23 A Yes, sir.

24 Q And let's see if we can get through these, 10 and 11.

25 A Okay. This State's Exhibit 130 shows the same date and

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1 time, same date. The time is 9:50 almost 9:51 now, and you
2 see the same profile of that vehicle coming back... So it's
3 coming from 905 and it appears to be turning back onto this
4 Old Highway 31. State's 131 is that vehicle just past the,
5 the light, and, and it's again, right there on, on 905 at, at
6 Old Highway 31, right in this area here.

7 Q Okay. Then the last two, 12 and 13?

8 A Okay. This is at 9:58, same date. No. Actually the
9 date's not on it, but it's 9:58, almost 9:59, and you see that
10 same profile of vehicle coming back around the station again,
11 and again, it's heading this way towards the light, and you
12 can see the light is indicated by green in that direction.
13 State's 133 shows that vehicle, shows that vehicle coming back
14 up on that intersection and the light in front of it is red.
15 So it's, it's right in this area here when you see the red
16 light.

17 Q At 9:58 and 52 --

18 A Yes, sir.

19 Q -- the last photo. So that is I believe you testified to
20 is 9:35 to 9:58 the Malibu is coming and going different
21 directions in front of those cameras?

22 A Yes, sir.

23 Q 17. You mentioned several times that you had pulled
24 video of the scene itself inside the 905 during the course of
25 the robbery --

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1 A Yes, sir.

2 Q -- on Highway 905. Have you had -- do you recognize this
3 item, State's 17?

4 A Yes, sir. This is another excerpt from the, from the
5 full videos at the Sunhouse at 905 and Red Bluff.

6 Q Okay. Is this a fair and accurate representation of the
7 video that you saw depicting the events of the robbery inside
8 905?

9 A Yes, sir. It is.

10 MR. HIXSON: Like to publish this to the -- we'd move to
11 admit and ask to publish.

12 THE COURT: Admitted over Defendant's previous objection.

13 (State's Exhibit Number 17 [DVD] admitted into evidence
14 and appropriately marked.)

15 (State's Exhibit Number 17 played in open court.)

16 BY MR. HIXSON:

17 Q Let me show you some still photos from that video.

18 MR. HIXSON: I think we've gone through these already.
19 I'm handing counsel 134 to 144.

20 MS. PRATT: We don't object that those are the -- what
21 they purport to be, Your Honor.

22 THE COURT: Okay. Those are admitted.

23 (State's Exhibit Numbers 134 through 144 [Photographs]
24 admitted into evidence and appropriately marked.)

25 BY MR. HIXSON:

1 Q Take a look at these. I'm going to show some stills.

2 You need to take a breath for a second. All right. Slide
3 number one, please, do you recognize -- just describe that
4 kind of briefly. They're somewhat self-explanatory.

5 A Yes. State's Exhibit 134 is, again, that side door of
6 the 905 and Red Bluff store, and it's showing two individuals
7 who are getting ready to come into that door.

8 Q Okay. Slide two, State's 135?

9 A All right. This one shows the, the camera date and time.
10 Again, it's January 2nd. This is Highway 905 and Red Bluff.
11 It's showing a time at 9:57 and 50 seconds, and you've got two
12 subjects that have entered the store in, in this video.

13 Q Okay. I'm going to hearken you back to State's Exhibit
14 50, 133. You just talked about this Malibu in a parking lot.
15 Take a look at that and give me the time stamp on -- describe
16 that photo of State's 133, what it depicts and the time stamp
17 that's on at the time of that, of that photo.

18 A It's nine, excuse me, 9:58. So it, it is basically a
19 little more than a minute from the -- from, from this
20 photograph here where they're in the store. It's a little
21 more than a minute later, and it's a vehicle leaving the side
22 of the store towards Red Bluff Road and the light signal is
23 red. That's what prompted me to go back and look at that
24 vehicle because at that time you can see the signal light in
25 the direction going northbound over 905 onto Red Bluff. That

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1 light signal is red. That vehicle obviously went through a
2 red light, crossed the intersection to continue north on Red
3 Bluff Road. That's what brought me back to that vehicle from
4 earlier and, and the, and the clothing descriptions and, and
5 that's where everything really started to pull together.

6 Q Three, which is State's 136?

7 A State's Exhibit 136 is two subjects inside the store.
8 This is a camera behind the counter. This is them coming into
9 the store, and, and their -- and both subjects in this case
10 are armed. I would like to note that in this -- in the video,
11 earlier than, earlier than what you see there is the clerk
12 behind the counter whose name was Bala, I can't pronounce the
13 last name --

14 Q Paruchuri.

15 A -- but there's also a second person who is in the store
16 at this time who I believe was a helper to Bala, and he's,
17 he's in the bathroom or back towards the bathroom in the
18 store. So the earlier testimony by Jill where she's showing
19 that bathroom door in the back and all, that's where that
20 fellow went in and locked himself in the bathroom.

21 Q Four, State's 137?

22 A This is at 2157 hours. It's State's 137, and you can,
23 again, this is that camera behind the counter. You can see a
24 hand up in the air. That's, that's the clerk behind the
25 counter and then you've got the one subject standing out on

1 the other side of the counter with a, with a handgun.

2 Q I'd like to draw your attention to the facial coverings
3 on the individual depicted in there.

4 A Yes, sir. It's, again, it's that same type of bandana
5 covering on the face.

6 Q And as it relates to --

7 A And again, that's what -- that bandana ties us back into
8 Lake Arrowhead and to Cultra Road.

9 Q Slide five, State's what?

10 A Slide Five is, is a zoomed in picture, State's Exhibit
11 138, of one of the male subjects going further into the store.
12 Shots are fired through a -- or a shot is fired through one of
13 the aisles. In fact, in -- I believe in Jill's testimony
14 earlier you see some trajectory rods and so forth. We were
15 able to trace the path of several of the, of the bullets that
16 were fired in that store.

17 Q Could you comment on the footwear of that suspect?

18 A Yeah. The footwear on it in this particular occasion
19 it's that black footwear, and again, you see that shiny device
20 on the, on the lace, on the laces or in the area of the laces
21 of the footwear. Again, that begins to become a familiar
22 sighting for me.

23 Q Slide six, State's 138?

24 A 138 is behind the counter. State's Exhibit 139, I'm
25 sorry --

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1 Q Certainly.

2 A -- is one of the subjects behind the counter. You can
3 see there's a handgun in one hand. They're taking the cash
4 drawer out of the cash register, and that's the clerk in the
5 blue shirt. That's Bala in the blue shirt to the side of him.

6 Q Thank you. Slide seven?

7 A Slide seven, again, this is the 905 store. It's at 9:58
8 and 18 seconds. This is the subjects coming back around the
9 counter area. You can see Bala in the, in the foreground
10 towards the left of the picture almost like trying to tuck
11 into the corner there.

12 Q Slide eight?

13 A And the cash drawer is gone in that photo.

14 Q Slide eight, 141?

15 A The time on this one is 2158. This is the camera, again,
16 behind the counter. You see the two males leaving the store.
17 One of them is carrying the cash drawer, and it's at this
18 point that another event occurs with, with Bala.

19 Q Slide nine, 142?

20 A 142 is a -- is another angle of the same thing. It's
21 showing the two persons outside the camera, one carrying the
22 cash drawer, both of them with handguns in their hands. You
23 don't see Bala in this picture, and again, another event has
24 occurred.

25 Q Ten, that's 143?

1 A 143 is a still shot that I took, again, of that side door
2 of the, of the Red Bluff and 905 station. This is the
3 subjects running out, and, and in the video, you see one
4 subject run to the left of a vehicle, one runs between the
5 vehicles and, and, and they're gone from the, from the camera
6 footage.

7 Q Could you comment on the direction of travel of the first
8 slide that you've discussed and this one?

9 A They are traveling out the side of the building towards
10 that Old Highway 31 street or side of the building.

11 Q Okay. On the --

12 A They are traveling -- that, that camera angle is showing
13 that the side door of the building is right here. Again, like
14 on the Cultra Road, the entire store is not, is not the, the,
15 the Sunhouse gas station. There's another vacant store or
16 something behind it back here, but that angle is showing these
17 first like two or three or four parking spaces and the camera
18 is shining this way. So you see one subject run this way, one
19 run between vehicles this way and they go off camera just
20 shortly after that picture.

21 Q Thank you. And the last one of the stills is slide 11.
22 That's State's 144. What does that depict?

23 A Okay. State's 144, if I can come down for one second
24 again? This is that vehicle from the earlier, a second or two
25 before. You can clearly see the light is red here, and that's

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1 what, again, focused my attention to go back and look at that
2 vehicle. That's that silver in color vehicle going through
3 the red light northbound onto -- going through the red light
4 from this direction, which is the direction where the subjects
5 ran out. It's coming through this intersection on the red
6 light and continuing up Red Bluff Road heading towards the
7 Loris area.

8 Q All right. We're getting close, but we got to do it.
9 After reviewing all of this that you have done, now we get to,
10 if you can, change your mind-set. Let's go back now with this
11 information that you had, and during the course of your
12 investigation, let's talk about your continued look at the
13 January 25th --

14 A Uh-huh.

15 Q -- Trish Stull situation with the evidence that you had --
16 -- the information you had gleaned from your investigation of
17 the January 2nd armed robbery that resulted in a murder or
18 killing?

19 A Okay.

20 Q So specifically draw your attention, did you go back and
21 spend more time on that video surveillance system now that you
22 had a context of what may or may not be going on?

23 A Yes. A number of things happened in the timeline of
24 January 2nd to January 25th. January 2nd, obviously, that
25 store has cameras outside and inside, and it enables me to go

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1 back in time and look at vehicles coming and going in the
2 parking lot, people coming and going in the store. The Lake
3 Arrowhead store, earlier in the evening on the 25th had no
4 outside cameras. So that was another reason why I wasn't
5 concerned with exterior video from that store. The only
6 cameras there were the internal cameras. Moving forward,
7 after a short time later, after Lake Arrowhead, we're now at
8 the Cultra Road and Oak Street store. I immediately, after
9 viewing the incident on the cameras in the store that night
10 and seeing the subjects come in, recognizing the clothing
11 pattern and everything else, I immediately wanted to go back
12 on the camera system and look for vehicles because you only
13 see the two subjects run in from the Cultra Road side into the
14 front of the store and then when they leave, they leave and
15 exit back out towards the Cultra Road side. So at that time,
16 now, I had to kind of get my mindset of we looking at a
17 similar vehicle or is that common vehicle coming back into
18 play here. So going back on the video, I decided let me, let
19 me jump back 45 minutes or so and start, you know, kind of
20 going through the video a little quicker than normal, you
21 know, not, not like live-time or, or real-time looking at it,
22 but I'm going through it at about eight or ten frames a
23 second, kind of going through it fast looking for something,
24 and all of a sudden, I see that silver Malibu come into play
25 again at the Cultra Road. Some 30 minutes before, a subject

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1 exits a vehicle in that description at about 9:39 at night,
2 goes into the store, makes a purchase, comes out about a
3 minute or so later at 9:40, and that's the video that you saw
4 initially, and then some 20, almost 30 minutes later is when
5 two subjects run into that store and, and the robbery and
6 shooting occurs, and -- but all in the timeframe from the 30
7 minutes prior to that I see that vehicle come in and out of
8 that parking lot several times after that person exits
9 initially and makes a purchase. So they've continued or that
10 vehicle appears to continue in and out of that parking lot a
11 number of times prior to the robbery occurring.

12 Q Okay. I'm going to show you a series of photographs that
13 were -- is marked State's 89 to 101. Did you have an
14 opportunity to review video of the Oak Street robbery you're
15 referring to of the parking lot and seeing the silver car run
16 back and forth? You saw that on live -- on video?

17 A Yes, sir. I did. That night in the store I did and then
18 as I stated we, we took the entire computer system. I believe
19 it was the following day we allowed -- we had to let them back
20 something up to it so they had the cash receipts and
21 everything, made sense for their business so they could
22 account for what was stolen and all, but we did take the
23 computer system for the surveillance, for the surveillance
24 purposes to be able to go back and review, you know, hours
25 before that video -- before that incident occurred.

1 Q Okay. Did you take video stills from those -- that --
2 stills from the video?

3 A Yes, sir. I took a number of stills from that video just
4 the same as I did from the 905, and in the stills, you'll see
5 the computer systems look the same. So when you see the time
6 and the date, you almost think you're in the same store, but
7 it's the -- it's two different stores. It's just the same
8 software in both of them. It's a corporation. So they use
9 the same type of cameras.

10 MR. HIXSON: At this time, Your Honor, we'd move State's
11 89 to 101 into evidence.

12 MS. PRATT: No objection, Your Honor.

13 (State's Exhibit Numbers 89 through 101 [Photographs]
14 admitted into evidence and appropriately marked.)

15 A The one thing significant, again, with Cultra Road and
16 Oak is they had cameras both inside and outside the store.
17 Now, understand when I mentioned about 905 and, and Red Bluff
18 and Cultra and Oak, they have cameras outside, but the cameras
19 don't face all four sides of the building. It mainly covers
20 the front entryway of the building, and you see the -- in both
21 cases you see the two streets. On the, on the 905 one you see
22 905 and Red Bluff, and on the Cultra Road one you see Oak
23 Street and Cultra Road. You don't see anything behind the
24 building or, or, or to the side like the Oak Street side of
25 the building. There's no cameras facing that way. It's

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1 mainly towards the pumps and, and the, and the corner that the
2 building sits on.

3 Q Okay. I'm going to show slide number one. I'm going to
4 show State's 89 and we'll go through these relatively quickly
5 because we've all been through them.

6 A Okay. This is at 9:38 on January 25th. We're now at
7 Cultra Road and, and Oak Street. This is 9:38, and this
8 camera is on the front of the store just above the front door
9 is where you see it and, and it's looking at the gas pump
10 area.

11 Q Slide two, slide two, this is State's 90?

12 A All right. State's 90 is now at 9:40, and here comes the
13 front end of that vehicle that I -- that appeared to be the
14 same type of vehicle from the -- from that side of, of the 905
15 store earlier in the evening, but this is where I begin to,
16 to, to see a pattern of that vehicle. This is at 9:40, and
17 the front of a silver Malibu pulls into the, into the parking
18 lot by the front doors of the store.

19 Q Slide three, State's 91?

20 A All right. 9:40 and 48 seconds, this is one second
21 later. This is a complete profile of the side of that car.
22 This is when I know for sure I'm dealing with a Chevy Malibu.

23 Q Slide four, 92?

24 A And it's very specific when you look at it because the
25 wheels have a certain spoke configuration to them. There's a

1 lot of detail in this photograph that narrows you in to look
2 for a particular vehicle out there, and the one thing that,
3 that you notice up above, if you see in those lights, those
4 are Christmas lights. It's the icicle lights hanging off the
5 front of the building. So that's what you're seeing in those
6 little flashes of light above the, above the vehicle.

7 Q Okay. Slide four, State's 92.

8 A State's 92 is at 2140. We're now two seconds later, and
9 it's showing that vehicle leaving or passing by the front door
10 of the store.

11 Q Okay. Now, the direction of travel at this point in time
12 at 9:40 P.M.?

13 A Okay. The direction of travel on this --

14 Q And juxtapose it on the next one after you're done with
15 that.

16 A Okay. Where am I at? That's 905. Where is --

17 Q Oh, this is not a -- from one --

18 A Help -- here we go. Okay. Let me just orientate you
19 here a second, again. As I mentioned earlier, not the entire
20 building is Sunhouse. There are other stores over here, none
21 of which were open at the time. Sunhouse is this side of the
22 building, and the gas pumps are here under this cover. So
23 what you're seeing is that vehicle driving in this way,
24 traveling in this direction towards Cultra, Cultra Road. So
25 it's passing the front door of the store and, and those lights

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1 are all hanging in this area here. It's passing the front of
2 the store and going towards the Cultra Road area.

3 Q Okay. I'm going to show -- let's get you going. Slide
4 five, State's 93?

5 A Slide five, State's 93 is 2151. So we are how many
6 minutes later? Forty -- we're 11 minutes later now, and you
7 see that vehicle, that same five-spoke front end of a, of a,
8 of a what appears to be a silver Malibu coming back into the
9 parking lot this way on the outside of the pump, kind of where
10 these vehicle are here. So it's coming back in like this,
11 some 11 minutes later in this direction.

12 Q Slide six, State's 94?

13 A Okay. State's 94, again, is that vehicle just a little
14 bit further. The time on it is 9:51. It's now directly in
15 the center of this pump island, and you're looking through the
16 gas pump areas towards where the vehicles is here.

17 Q Slide seven, State's 95. Let's orient. Change in
18 direction -- is there a change in direction now?

19 A We're now at 9:52, almost a minute later. The vehicle
20 has turned around, and it's now coming back the other way in
21 front of the pumps, and, and that's almost out on the Oak
22 Street, Oak Street side of the building.

23 Q Slide eight, State's 96?

24 A Again, that's that same vehicle a few seconds later, and
25 it's continuing on past the pumps. You're still seeing the

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1 pump area and the, and the sign is signage that's out over
2 here. So you're seeing it just beyond the side there.

3 Q Slide nine, State's 97?

4 A All right. That vehicle is now coming back, 9:57, it's now
5 coming back the other way back in front of the store again.

6 Q Slide 10, State's 98?

7 A State's 98, same vehicle, it's now coming back in this
8 direction again towards the, you know, passing the front of
9 the store.

10 Q All right. What's that time stamp -- what is the time
11 stamp on State's 98?

12 A 2157 and 21.

13 Q All right. Now, that's slide 11, let's start with the
14 time stamp on that.

15 A All right. This one is at 2205, so at 10:05. It's now
16 turned around and coming back this way across the front of the
17 pumps again, and that's eight minutes later.

18 Q State's 12. I'm sorry, slide 12, State's --

19 A State's 100, again, seconds later, it's at 10:05 and eight
20 seconds. It's crossing in front of these pumps again heading
21 in this direction towards Cultra Road.

22 Q And finally, as it relates to this line of questioning, 13
23 is State's 105?

24 A This is 22:05 and 10 seconds. So 10:05 two seconds from
25 that other photograph, and the car continues on and goes out

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1 of frame, out of the -- out towards the Cultra Road side of
2 the building.

3 Q And that's the last time you see it on the video when
4 this last, roughly this time, I should say?

5 A Yes, sir. I believe it is.

6 Q Is it safe to say, based on your review of this, that
7 that Malibu changes directions at least four times back and
8 forth across the period of roughly a half an hour?

9 A Yes, sir. It appears to be the same vehicle that's
10 changing direction. You know, and I'm basing that based on
11 the side profile of the vehicle, the, the front configuration
12 of, of the headlights and so forth in it and, and obviously,
13 I'm seeing the wheels with that common five-spoke wheel.

14 THE COURT: Okay. We need to stop.

15 MR. HIXSON: Okay.

16 THE COURT: Okay. All right. Ladies and gentlemen,
17 we're going to stop for the day. One of the -- your jurors
18 has somewhere to be to pick up a child by a certain time. So
19 I'm going to try to get her out of here.

20 Detective Cestare, you're not allowed to discuss your
21 testimony with anybody in any way, shape or form tonight. You
22 need to be back here tomorrow morning at 9:30 ready to go.
23 Okay?

24 A Yes, sir.

25 THE COURT: Ladies and gentlemen, I'm about to let you

1 thankful for that and for your time, and we'll be ready to go
2 tomorrow morning and jump right back into things. Okay?

3 Thank you. Everyone else remain seated.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Detective Cestare, you can step
7 down. Thank you.

8 A Thank you, sir.

9 THE COURT: All right. Let's kind of talk about a road
10 map for tomorrow. Then we'll circle back to this 404(b) issue.

11 MR. HIXSON: May I just interject for just one minute?

12 THE COURT: 100 percent.

13 (Mr. Hixson and Ms. Pratt confer. A bench conference is
14 held.)

15 THE COURT: Where's Dr. Proctor? Stand up, raise your
16 right hand.

17 (Edward Leroy Proctor, Jr., is sworn by the Court.)

18 BY THE COURT:

19 Q Is your name Dr. Edward Proctor?

20 A That's correct.

21 Q Are you a medical doctor?

22 A Yes, sir.

23 Q Do you have a specialty?

24 A Pathology, subspecialty forensic pathology.

25 Q Okay. So you've been qualified before in court as an

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1 expert in the area of forensic pathology?

2 A Yes, sir.

3 Q And did you conduct the autopsy of Ms. Trisha Stull?

4 A Yes, sir. I did.

5 Q Okay. And in a nutshell, what is your finding as to her
6 cause of death, and you may refer to your report if you need
7 to?

8 A Ms. Stull died as a result of gunshot wounds. There were
9 two gunshot wounds, one significant wound and that was a wound
10 that it struck her in the left chest lateral to the breast
11 area, passed in a left to right and inferior direction and
12 penetrated the chest cavity, the diaphragm, the left lobe of
13 the aorta, the vena cava right beside the aorta and through
14 the body on the right side. The other gunshot wound was a
15 gunshot wound through and through to the foot.

16 Q Okay.

17 A Yes, sir.

18 Q All right. And the -- so the first gunshot wound that
19 you described was the ultimate cause of death?

20 A That's correct. Yes, sir.

21 Q Okay.

22 THE COURT: All right. So can you all boil that down
23 into a sentence that everybody agrees on?

24 MR. HIXSON: The cause to a reasonable degree of medical
25 certainty is a single indeterminate range gunshot wound to the

1 left chest passing into the right, hit her vital organs and a,
2 and a second wound that was --

3 THE COURT: Nonfatal?

4 MR. HIXSON: -- superficial I guess is the best way of
5 putting it.

6 THE COURT: Okay.

7 MR. HIXSON: And then we do -- would stipulate to the
8 fact that our case theory is not that -- in the Trish Stull
9 situation that he was the one that pulled the trigger.

10 THE COURT: Right.

11 MR. HIXSON: He's not the shooter.

12 MS. PRATT: That he was not the one who pulled the
13 trigger.

14 MR. HIXSON: He is not the shooter.

15 THE COURT: Right.

16 MR. HIXSON: Yes. That James Daniels is not the one who
17 shot.

18 THE COURT: All right. You okay with all that?

19 MS. PRATT: I am, Your Honor.

20 THE COURT: Okay. You okay with all that?

21 MR. DANIELS: Yes, sir.

22 THE COURT: Okay. So I mean, you understand what we're
23 talking about?

24 MR. DANIELS: Yes, sir.

25 THE COURT: I mean, so instead of having to call the

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1 doctor him saying all that, we're just going to -- everybody
2 is going to agree if you're okay with it?

3 MR. DANIELS: Yes, sir.

4 THE COURT: You know that. She died as a result of a
5 gunshot wound and that you didn't shoot her?

6 MR. DANIELS: Yes, sir.

7 THE COURT: Okay.

8 MR. DANIELS: Yes, sir.

9 THE COURT: You with me?

10 MR. DANIELS: Yes, sir.

11 THE COURT: Okay. All right. And you -- have you had
12 enough time to talk to him about that?

13 MS. PRATT: I believe I have, Your Honor.

14 THE COURT: Okay. All right. We're just trying to avoid
15 you coming -- having to come back tomorrow, Doctor.

16 MR. PROCTOR: Thank you, Your Honor.

17 THE COURT: Okay. And that was really the purpose of all
18 of it. So I didn't mean to put you on the spot, even though I
19 did, but I was just trying to --

20 MR. PROCTOR: I was ready, sir. Thank you. I appreciate
21 it.

22 THE COURT: I was trying to avoid, avoid you having to
23 come back tomorrow if we didn't, didn't need you. Okay?

24 MR. PROCTOR: Yes, sir.

25 THE COURT: All right. Thank you very much. Okay. All

1 right. So we'll deal with -- you all write up whatever you
2 want to write up, and I'll read it tomorrow.

3 MR. HIXSON: Thank you, Your Honor.

4 THE COURT: Okay. Okay. Let's talk about the -- this
5 404(b) issue in the evidence that was admitted today. Okay.
6 So, clearly, there was evidence that was admitted today
7 through the testimony, hold on, let me go through it --
8 through the testimony of -- through Jill Domogauer, whose name
9 I'm going to say wrong, and I'm sorry, through Jill Domogauer,
10 who was one of the crime scene people, and through Suzann
11 Cromer, who was the SLED firearm and tool mark examiner, and
12 through Detective Cestare, who was also the crime scene
13 person, through each of those three witnesses' testimony there
14 was evidence in the form of, number one, their testimony, but
15 number two, photos, and number three, videos, number four, and
16 I may not get all these, but shell casings and things of that
17 nature that related to the 905 Highway, Red Bluff Road
18 incident that occurred on or about January the 2nd of 2015,
19 and Ms. Pratt made clear prior to trial and at the beginning
20 of trial in that she was objecting to that entire line of
21 testimony, whether it be from a witness or from a picture or
22 whatever it may be, and then as we started processing through
23 it and started introducing pictures and photos and videos and
24 shell casings and things of that nature, she said without
25 objection, and I didn't take that to mean that she was waiving

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1 THE COURT: Lieutenant, I'm sorry. I mess up people's
2 names all the time. I do apologize.

3 MR. CESTARE: That's okay.

4 THE COURT: We're still in the direct testimony of
5 Lieutenant Cestare. So, Mr. Hixson, the floor is yours.

6 MR. HIXSON: Thank you, Your Honor.

7 DIRECT EXAMINATION (Continued)

8 BY MR. HIXSON:

9 Q All right. Pete, do you remember where we left off?

10 A Yes, sir.

11 Q Almost done yesterday. Let's try to recap. We had
12 talked a little bit about a lot of video surveillance and a
13 lot of photographs that were pulled from that video
14 surveillance, if you recall. We talked about Oak Street, the
15 crime and the Malibu; correct?

16 A Yes, sir.

17 Q We talked about 905, stills and video of James Daniels in
18 the store prior to that or an individual looking like James
19 Daniels at this point in time?

20 A Yes.

21 Q And then the Malibu and then the crime; right?

22 A Yes, sir.

23 Q Okay. Let's go back and now let's talk about whether or
24 not James Daniels is in the store prior to the Oak Street
25 situation.

1 A Okay.

2 Q Okay. So did you, during the course of your
3 investigation after working on the 905 robbery and the video
4 analysis, do video analysis of the events leading up to the
5 Oak Street, Cultra Road armed robbery and killing resulting in
6 Trisha Stull's death.

7 A Yes, sir. Initially on, on that night, on January 25th,
8 2015, I viewed the video on-site in the store, downloaded
9 portions of it that were critical to the investigation going,
10 you know, on hand at that time, and as I had mentioned, we
11 came back, I believe, I'm not completely sure on the date, I
12 believe it may be the next day, and took the entire computer
13 system. Basically, the computer system in that store, as the
14 same as the 905 and, and Red Bluff Road is like a network
15 system, so, if you will, one computer in the main office in
16 the back of the, of the convenience store. All the other
17 computers feed into that, and all the cameras feed into that.
18 So everything is computerized, the registers and so forth. So
19 we gave them ample time to take care of the financial side of
20 what they needed for their business, and we took the computer.
21 We asked them not to touch the video portion of it. As soon
22 as we took the computer into the police department, I reviewed
23 it to ensure that the video was still intact as I had seen it
24 the night before. It was, in fact, intact, and at that time,
25 I, I put that computer with the others, and I now had, for the

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1 lack of better terms, almost like a command center where I
2 could look at three different videos at one time, the video
3 from the 905 and Red Bluff Road, the video from Lake Arrowhead
4 and Kings Road and the video from Oak Street and Cultra Road.

5 Q Did something in your investigation cause you to focus
6 more attention in a half hour or so leading up to the death of
7 Trisha Stull?

8 A Yes, sir. What -- the first indication, the first thing
9 that caught my eye, obviously, as I mentioned yesterday, was
10 the clothing, the significance of the red pants, the dark
11 colored hoodie, the white t-shirt sticking out from underneath
12 it, the black footwear with, with something shining on it.
13 From that, that's what caused me to back up and look at the
14 Oak Street and Cultra Road video, and I went back, I guess,
15 initially maybe like an hour or so to review it, and I, and I
16 believe somewhere around 30 minutes prior to the actual armed
17 robbery I had seen an individual go into the store that
18 appeared to, to be the same individual that I had seen on a
19 prior occasion from the 905 and Red Bluff Road, and that's
20 about 30 minutes before, and then it's in that timeframe, in
21 the next 30 minutes, where I see that same similar vehicle
22 coming in and out of the parking lot of Cultra Road and Oak
23 Street from different angles and doing what I would call a
24 slow pass in front of the business. You also see it about 30
25 minutes before stop in front of the business and, and so it's

1 -- it seemed fairly significant to me that I was looking at
2 the same vehicle from at least two incidents that I had been
3 involved in.

4 Q And so when you were looking at it, the person that you
5 saw on the 905 coming in a half hour early and the person that
6 you saw coming into Oak Street a half hour early is who?

7 A It -- at that time I didn't know the name. The
8 individual had the, you know, same appearance and description
9 to me. I later came to find that, that -- out the name of
10 that person.

11 Q And who is that?

12 A James Daniels.

13 Q Now, you mentioned looking at the video. Did you create
14 an excerpt from the video of the person you believed to be
15 James Daniels coming and going inside the Oak Street video
16 store?

17 A Yes, sir. That's correct. I did.

18 Q And let me show you -- hand you what's been marked as
19 State's Exhibit 19. Do you recognize that item?

20 A Yes, sir. That's the video. That's the excerpts of, of
21 the mainframe system at Cultra and Oak with incidents that I
22 had seen involving James Daniels.

23 Q Okay. And so this is at the universe of all the time
24 leading up to it; this is just a probative --

25 A Yes, sir.

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1 Q -- excerpts of the probative time you're referring to?

2 A That's correct. That's just a short excerpt of, of, of
3 the hours of video that I looked through.

4 MR. HIXSON: At this time, we'd move State's 19 into
5 evidence?

6 MS. PRATT: Without objection, Your Honor.

7 THE COURT: Nineteen without objection.

8 (State's Exhibit Number 19 [DVD - Oak] admitted into
9 evidence and appropriately marked.)

10 MR. HIXSON: May I publish this, Your Honor?

11 THE COURT: Yes, sir, you may.

12 (State's Exhibit Number 19 played in open court.)

13 A Your Honor, I have a question for the Prosecutor. Am I
14 allowed to ask that in private?

15 THE COURT: No, sir.

16 A No. Okay.

17 Q Do you recognize that, Pete?

18 A Yes, sir. That's the excerpts I made.

19 Q Draw your attention to the last two scenes in that,
20 specifically the outside scenes. So what do you see in that
21 video? Do you recognize that vehicle?

22 A Yes, sir. That's the same vehicle that I had observed in
23 the next 30 minutes or so coming in and out of the station at
24 Cultra Road and Oak Street. It's also appeared to be the same
25 vehicle that I had seen at the 905 and Red Bluff Road. All

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1 right. And the individual that you see there, at one point,
2 looking at the facial description of him, I determined that
3 that was the same person I had seen go into the 905 store
4 prior to the incident there as well.

5 Q Okay. Did you notice -- draw your attention in that
6 pictures, but let me show -- refer you to -- let's take care
7 of the still shots first quickly. We don't have to go into a
8 lot of discussion of it because the jury just saw the video of
9 it, but referring to State's 83 through 88. I've showed
10 counsel these videos prior to coming to court.

11 MR. HIXSON: We'd move State's 83 to 88 into evidence.

12 BY MR. HIXSON:

13 Q First, before I do that, just look through quickly and
14 see if those are all still photos from the video we just saw.

15 A Yes, sir. They are.

16 MR. HIXSON: At this time, we'd move State's 33 through,
17 excuse me, 83 through 88 into evidence, Your Honor.

18 MS. PRATT: Without objection, Your Honor.

19 THE COURT: 83 through 88 without objection.

20 MR. HIXSON: Okay. Thank you.

21 (State's Exhibit Numbers 83 through 88 [Photographs]
22 admitted into evidence and appropriately marked.)

23 BY MR. HIXSON:

24 Q Now, I'd like to specifically like to draw your attention
25 to State's 83, that's slide one and draw attention to foot --

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1 the headwear, the headgear being worn by this individual. Can
2 you describe that?

3 A Yes, sir. This is State's Exhibit 83. I'm viewing the
4 same photo that you have up on the screen, and it's showing a
5 male entering into the store. The time on it is 2139,
6 basically 9:39 in the evening on January 25th, 2015. This is
7 from their camera one, and the headwear is a white and red
8 headgear.

9 Q Okay. Let me show you what's already admitted into
10 evidence through Crime Scene Domogauer, State's 53. Don't
11 worry about that. I'll just show the still. All right.

12 A Yes, sir. This is State's Exhibit 53. This is a photo
13 taken, I believe, by Investigator Domogauer, at the Horry
14 County Police impound lot during her search, search warrant
15 execution of the vehicle, and clearly on the passenger seat is
16 a red, white and black headgear attire, similar to what you
17 see in the, in the previous slide.

18 Q And so this was from the interior of the search warrant
19 of the silver --

20 A Of the silver Malibu, that's correct. Yes, sir.

21 Q If you don't mind, let's just click through these slides
22 for the jury so they can see what -- we'll just go through
23 them quickly. A lot of it is self-explanatory. State's 2A,
24 I'll hand these to you, Pete. You're going to follow along
25 and have some comments that you may feel free.

1 A Yes, sir. This is State's Exhibit 84. Again, same time
2 and date as the prior, same camera, and it's showing that male
3 with the red, white and black headgear at the counter.

4 Q I'm handing the witness State's 85.

5 A State's 85 is a close-up shot of the prior, the time and
6 all is the same on it, and it just shows a side profile of the
7 face and the red, white and black headgear.

8 Q Could you describe for Madam Court Reporter, that's an
9 audio record. They don't get to see this. So that's why we
10 describe it in detail. Can you describe what the individual
11 in this photograph is wearing?

12 A He's wearing a, a -- the red, white and black hat, a long
13 white t-shirt with, with a logo on the front of it, what
14 appears to be gray and black pants and white sneakers.

15 Q And specifically, as it relates to the pants, are those
16 shorts or long pants?

17 A Those are long pants.

18 Q Let's play that video again. Let's take a look at that
19 video again and see what you think.

20 MS. PRATT: Your Honor, may we approach?

21 THE COURT: Yes, ma'am, of course.

22 (Whereupon, a bench conference is held in the presence
23 but out of hearing of the jury.)

24 MS. PRATT: Thank you, Your Honor.

25 BY MR. HIXSON:

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1 Q Okay. Lieutenant, can you come around and watch this
2 video for a second?

3 A Sure.

4 Q I need to ask you a couple of questions after you see
5 that. Pause that, please. Can I ask you a question? Can you
6 describe what clothing that individual is wearing?

7 A He's wearing a red, white and black hat, a long white t-
8 shirt. It appears to be gray and black, I refer to it as long
9 pants because past the knee, but I guess you would say they're
10 shorts and white sneakers.

11 Q I have no further questions related to this video,
12 related to this video. Just so the -- excuse me, a
13 housekeeping matter on this, I have a few more questions. Can
14 you please just take a look at these. We're not going to
15 publish these, but I want to have you --

16 MR. HIXSON: I'm handing the witness what's been marked
17 as State's 53, 54, 55, 56, 152 and 166.

18 BY MR. HIXSON:

19 Q I'm going to ask you a foundational question on those.
20 Are all those items stills from all the videos and the, the
21 photographs that we've admitted, are those summary sheets of
22 all of those photographs, and if so are those fair and
23 accurate representations of those stills and video?

24 A All right. For the record, I'm reviewing State's 166,
25 State's 153, State's 154, State's 155, State's 156 and State's

1 152, and yes, these are excerpts of video and photos taken
2 subsequent to these investigations.

3 Q Okay.

4 MR. HIXSON: Your Honor, at this time, the State would
5 move all of these into evidence and publish at a later date.

6 THE COURT: Numbers what?

7 MR. HIXSON: 166, 153, 154, 155, 156 and 152.

8 THE COURT: Any objection?

9 MS. PRATT: Yes, Your Honor. We believe that these are
10 being presented for argument and not -- the actual pictures
11 are already in evidence for the viewing of the jury and these
12 would be cumulative and also argumentative.

13 MR. HIXSON: My intention is to use it for closing
14 argument. It's to streamline the process, and so these
15 photographs can go back to the jury rather than 180. These
16 can go back with, that the jury can refer them to them. These
17 are excerpts from those. It's an effort to streamline the
18 process versus closing with 178 pictures.

19 THE COURT: All right. They're admitted over Defense
20 objection. They're not any new pictures.

21 MR. HIXSON: No. These are excerpts.

22 THE COURT: Okay.

23 MR. HIXSON: Only excerpts from these as summary pages
24 under Rule 1006, or excuse me, 1001. All right.

25 (State's Exhibit Numbers 152-166 and 166 [Posters -

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1 Photographs] admitted into evidence and appropriately marked.)

2 BY MR. HIXSON:

3 Q All right. Let's ask about other efforts that, that your
4 agency undertook to solve this crime, specifically items
5 collected for DNA testing, for fingerprint testing in an
6 effort to determine who these perpetrators were. Can you talk
7 about that a little bit?

8 A Yes, sir. At each of the -- during each of the cases at
9 -- articles of evidence were collected that were processed for
10 DNA. Some were processed for fingerprinting, some things were
11 collected as far as footwear impressions from the, from the
12 floors. Hard physical evidence was collected as was
13 documented by Investigator Domogauer, casings, projectiles.
14 In subsequent search warrants, articles of clothing that were
15 significant to the cases were collected during those search
16 warrants at residences and from that vehicle, and
17 specifically, the silver Chevy Malibu. The Chevy Malibu
18 itself was collected and brought in to be processed at our
19 impound area. A number of items were sent to the State's lab
20 for testing. SLED, as was discussed yesterday, one of the
21 items Agent Cromer spoke about, several of the items that she
22 investigated or tested, as well as a number of other items
23 were sent to various disciplines within SLED for testing, and
24 that's customary. Any time, excuse me, any time we collect
25 evidence, we will do the initial prep and setup work for it.

1 We are not an accredited testing lab. So everything goes to
2 the state lab for DNA, serology, firearms, anything related to
3 that. Most times with fingerprints, we do have a -- an
4 automated fingerprint identification station, and I do have
5 people who are certified in latent print examination that will
6 review that evidence, but --

7 Q Let me ask you a question specifically. Can you, based
8 on your training and experience as a lieutenant over Crime
9 Scene Section of Horry County, can you just briefly describe,
10 just in a summary, what potential DNA evidence results can be
11 relating to being inconclusive or major, minor contributor?
12 What do those terms mean?

13 A Yes, sir. When you submit any type of DNA evidence, and
14 DNA evidence can be something -- you're looking for something
15 to identify a particular person or persons. It will come back
16 either directed towards one specific person, it could come
17 back as a combined mixture of, of different persons. It could
18 come back inconclusive. Inconclusive would be if I, if I
19 swabbed a doorknob in, in someplace, how many people may have
20 touched that doorknob in the course of a day or a counter in,
21 in a specific place, if I took a DNA swab from the counter,
22 how many patrons, how many people may have touched that
23 counter, when was the last time it was cleaned, what was it
24 cleaned with. You could have a mixture of more than one
25 person up to an infinite amount of people in that. So there's

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1 no way to extract one particular person's DNA from something
2 that is deemed to be multiple contributors.

3 Q So in this particular case, during the course of your
4 investigation, were you able to find any particular DNA
5 evidence that was conclusive that, that was, in other words,
6 admissible here versus being a major minor contributor or any
7 conclusive results?

8 A Not to my knowledge, sir.

9 Q Now, you mentioned a little bit about making an effort to
10 find, to find out what this vehicle was. Did you reach out to
11 South Carolina Highway Patrol?

12 A Yes, sir. Early --

13 Q Let me ask you a question. Did you provide him videotape
14 and still photos from what you testified about yesterday?

15 A Yes, sir. It started with the, the January 2nd incident
16 at Sunhouse Red Bluff and 905. That's where I first observed
17 the vehicle, felt that it was important to that case, asked
18 them to look at it to see if they could determine a make and
19 model of the vehicle or anything specifically characteristic
20 about it. I had already formulated my own opinion at that
21 point. I sent them a video and still shots that most of which
22 was seen here yesterday or all of which was seen here
23 yesterday and asked them to analyze that and see if they could
24 come up with a conclusion on the vehicle as well.

25 Q And did they provide information or suggestion on a

1 vehicle that you should look for?

2 A Yes, sir. They did come back. It was later on, I want
3 to say probably close to the time of the Oak Street and Cultra
4 Road. They did come back with an indication that it was a
5 Chevrolet Malibu, and they gave me a date range of years of,
6 of that particular model of vehicle.

7 Q And that led your investigation to the next step?

8 A Yes, sir. It did.

9 MR. HIXSON: Beg the Court's indulgence just for a
10 moment, Your Honor.

11 THE COURT: Thank you.

12 BY MR. HIXSON:

13 Q Thank you, Lieutenant. I have no further questions.

14 A Thank you, sir.

15 THE COURT: All right. Cross examination?

16 MS. PRATT: Thank you.

17 CROSS EXAMINATION

18 BY MS. PRATT:

19 Q Good morning, Lieutenant. How are you this morning?

20 A Very well. Good morning, Ms. Pratt.

21 Q I think you entered or sponsored into evidence about 150
22 pictures yesterday. Does that sound somewhere around right?

23 A I don't know the exact number, but it was quite a few.

24 Yes, ma'am.

25 Q It was a lot?

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- 1 A Yes.
- 2 Q Okay. All right. And you have testified about some of
3 your conclusions or inferences or assumptions based on those
4 pictures; correct?
- 5 A Yes, ma'am. That's correct.
- 6 Q All right. You have looked at pictures and compared them
7 to other pictures, and you've given what I believe Solicitor
8 Hixson called a layman's comparison; correct?
- 9 A That would be correct. Yes.
- 10 Q All right. But you're not giving an expert opinion?
- 11 A No, ma'am.
- 12 Q And you're not expecting this jury to rely on your
13 opinion; correct?
- 14 A No, ma'am. I'm, I'm basing what I saw on that video, and
15 they can base their conclusions the same way.
- 16 Q Exactly. So they will have these pictures to be able to
17 look at and determine whether they agree with your inferences;
18 correct?
- 19 A Yes, ma'am.
- 20 Q All right. The last thing that the Solicitor was asking
21 you about is kind of interesting because it's something I
22 wanted to start with. You don't have any DNA results that
23 match my client on any of these evidentiary items; correct?
- 24 A Not to my knowledge. No, ma'am. I don't know what all
25 the DNA evidence is, but to my knowledge, I don't believe

1 there's anything there for him.

2 Q Well, if there was, the -- you or the State or Greg Lent
3 or somebody would be jumping and down and presenting it to the
4 jury; wouldn't you?

5 A I believe that would be correct. Yes.

6 Q Okay. So we don't have any DNA that matches my client?

7 A It's safe to say that. Yes.

8 Q And none on the cartridges?

9 A No, ma'am.

10 Q None on the clothing?

11 A Not that I'm aware of.

12 Q And all this clothing that you all have seized you seized
13 from [REDACTED] Goose Bay, the trailer behind [REDACTED] and the Malibu;
14 am I right?

15 A I don't know the exact addresses. Those were on the
16 search warrants that were done by Investigator Domogauer, but
17 yes, I believe that sounds correct.

18 Q Okay. Which I believe we've sort of established as being
19 McKinley's residence at [REDACTED]; right?

20 A Yes, ma'am.

21 Q And Jerome's residence of the trailer behind [REDACTED]; right?

22 A Yes, ma'am.

23 Q And then the Malibu; right?

24 A Yes.

25 Q Okay. Did you search [REDACTED] Ware Road?

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1 A I don't recall the address offhand.

2 Q Okay.

3 A I may have. I'd have to look back at notes, or if you
4 have something specific that you can refresh my memory with,
5 I'd be happy to look at it.

6 Q Well, would you be surprised to know that there was no
7 search warrant issued for [REDACTED] Ware Road, where my client and
8 Lashana Chestnut lived?

9 A I don't have any idea about that that I'm aware of.

10 Q And certainly, you know from the pieces that you've taken
11 photos of that nothing is in evidence or pictures or anything
12 else from that residence; correct?

13 A Not to my knowledge right now. No, ma'am.

14 Q Okay. All right. We don't have any DNA from shoes. We
15 don't have any DNA from hoodies; correct?

16 A Not that I am aware of. No.

17 Q Okay. And we don't have any fingerprints on anything
18 that might be able to hold a fingerprint, and I understand the
19 clothing doesn't, you know, take a latent, no matter what they
20 do on CSI on TV?

21 A Uh-huh (affirmative response). No, ma'am. As I
22 mentioned before, with trying to fingerprint counters or
23 anything of that nature there's too many contributors to get
24 either DNA or a good latent fingerprint lift from it.

25 Q Okay. But -- and that's when you talk about inconclusive?

1 A Yes, ma'am.

2 Q So the number of people that have probably touched this
3 bar would mean that this would be inconclusive for touch DNA?

4 A There's a good possibility. Yes.

5 Q But if my daughter and I were the only ones that wore
6 this jacket that I'm wearing today, that would show up as a
7 major and minor contributor if there's touch DNA on there;
8 correct?

9 A If they, in fact, were able to collect it from an
10 appropriate location. Yes.

11 Q All right. And you can get touch DNA from clothing,
12 can't you, sweat around the collar or under the arms?

13 A On occasion you can. I've also experienced many times
14 when we could not obtain it, even though we knew an article
15 had been worn by a person, it just because of the area that
16 was tested not showing anything conclusive or not, not being
17 able to come up with a profile in general. Yes.

18 Q Okay. And if I were the only one that wore the jacket,
19 that would just be mine --

20 A If --

21 Q -- if, if there was touch DNA or any DNA on it?

22 A In fact, again, if they were able to extract DNA from
23 that article, yes, but again, not all occasions do they get
24 it.

25 Q All right. Well, and, and, you know, if it's something

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1 that say a person is wearing that's an undergarment or a t-
2 shirt or something, that's more likely to have some DNA; is
3 that correct, that could be tested because we do that in rape
4 cases all the time?

5 A Something that would have direct contact with, with the
6 person's skin, sure, but again, I've seen cases where we've
7 not obtained it, even though it was an article that was worn
8 directly against the body, and as you mentioned in, in CSC or
9 rape cases, we've oftentimes not produced any DNA or the lab
10 has not produced any DNA even though we knew a garment was
11 worn by the person. So, yes.

12 Q All right. Now, you are making inferences about the same
13 clothing worn by my client at the 905 store a half an hour
14 before the robbery and then what's being worn by one of these
15 two gentlemen at the Cultra Road store on the 25th; correct?

16 A No, ma'am. That's not correct.

17 Q Okay.

18 A My -- what I'm saying is the appearance of the color
19 coordination and the type of clothing appears to be the same
20 in each of them. I could not tell you for sure that it is
21 exactly the same garment in each of the photos. All I can
22 tell you is in, in my view of the videos and the still
23 photographs, it appeared to be the same clothing.

24 Q Okay. Because you're not trying to say that that's the
25 only red pair of sweatpants in Horry County?

- 1 A Certainly not.
- 2 Q And you're not trying to say that's the only gray hoodie
3 or the only black hoodie; correct?
- 4 A That's correct.
- 5 Q All right. And you even made an interpretation, oh gosh,
6 I might have to try and find the number, just a second. Do
7 you remember doing an interpretation of the back of the black
8 hoodie and you saw some kind of white fuzzy thing over here?
- 9 A Yes, ma'am. I do.
- 10 Q Do you remember that?
- 11 A Yes.
- 12 Q Okay. And you pointed that out to the jury, but you
13 don't know from the picture whether that's a slice in the
14 hoodie that you took out of Jerome Jenkins' trailer or whether
15 it's a piece of fuzz; do you?
- 16 A I do not know, ma'am. All I did was look at the two and,
17 and they showed similar, similar characteristics.
- 18 Q Well, they showed white?
- 19 A Uh-huh (affirmative response).
- 20 Q White similar, but that's not anything more than white?
- 21 A In, in the same area. So that's, that's why I deemed it
22 to be significant and, and something characteristically that
23 we were looking at.
- 24 Q Certainly, but you don't know; do you? It's an
25 inference? It's an assumption?

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- 1 A That's correct. It's an assumption.
- 2 Q Okay. All right. Now, the shoes that you say are
- 3 similar, certainly those aren't the only shoes that look like
- 4 that in Horry County; correct?
- 5 A No, ma'am. Those --
- 6 Q And they're kind of a leather feel to them or a vinyl I
- 7 guess. It's a -- the kind of texture that would probably hold
- 8 touch DNA or fingerprints or something if, if it wasn't
- 9 smeared; correct?
- 10 A I don't know if it would or wouldn't hold DNA. Are we --
- 11 which footwear are we referring to?
- 12 Q The two-toned ones that you described in the photos.
- 13 A Okay. Yeah. I wouldn't -- I don't know if they would
- 14 hold DNA or not, and again, all I'm basing it on is, is
- 15 characteristics and the significance to other videos or other
- 16 still shots.
- 17 Q So you can say that they're similar shoes, but you don't
- 18 know they're the same ones; do you?
- 19 A That's correct, ma'am.
- 20 Q Okay.
- 21 A I, I cannot say they're the same ones.
- 22 Q All right. And do you know if they were even sent to
- 23 SLED?
- 24 A I do not know if they were or not. I know we had looked
- 25 specifically at the shoe for its color configuration. We also

1 looked at the, at the footwear for the, for the soles of it
2 to, to look at any potential lifts that were done from the
3 stores. As I mentioned earlier, we dusted the floors in the
4 store to try and get footwear lifts. The problem on that side
5 of it is, you've also got a lot of first responders that came
6 in to help, and in helping we contaminate our own scene
7 sometimes from that standpoint.

8 Q Sure.

9 A So --

10 Q And you don't have any matches for any footwear or tire
11 treads or fingerprints, DNA, nothing; right? Am I right on
12 that?

13 A I believe so. I don't believe we have any definitive
14 match on anything.

15 Q Okay. Now, the vehicle that you've described, you cannot
16 say definitively that it is the same vehicle in all the
17 pictures that you've entered in, can you, because you don't
18 have the license tag, the front tag, the VIN number, any of
19 those things; correct?

20 A I did not, but the Highway Patrol MAIT Team was able to
21 come up pieces from the video that were consistent with the
22 vehicle we recovered.

23 Q Certainly consistent and certainly similar, but as far as
24 you being able to say, "This car that I see passing here is
25 the same as this car that I see over here", you can't really

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1 say that yourself; can you?

2 A I myself could not say that. No.

3 Q And you can't see who's driving or who's in the vehicle;
4 correct?

5 A You see at one point, you see James going to the vehicle.
6 Yes.

7 Q Right. It, it, but yes, I, I'm sorry. Maybe I asked
8 that question badly, and I apologize, Lieutenant. You don't
9 see, in the car moving, you can't see who's in it, how many is
10 in it or anything else, can you, because of the window
11 configuration?

12 A No, ma'am. I could not tell.

13 Q Okay. And you don't actually see these two gentlemen,
14 McKinley and J.J., get out or get into that vehicle; do you?

15 A That's correct. I do not see them enter or exit the
16 vehicle.

17 MS. PRATT: Beg the Court's indulgence. I just want to
18 check my notes.

19 BY MS. PRATT:

20 Q You yourself do not make the determination that it is a
21 Malibu; do you? You just make the determination, I believe
22 from your testimony, that it was a Chevy, and it had unusual
23 wheel spokage or the five points that are there; is that
24 right?

25 A No, ma'am. That's not correct.

1 Q Okay.

2 A From the 905 and Red Bluff Road, the first time you see
3 that car come on camera, when it pulls into the side of the
4 building and we saw the photo yesterday of the headlight and
5 we see somebody come out and, and we now know it's, it's James
6 that, that comes into the store at that time, that is the
7 first indication to me that that car is a Chevy Malibu, and I
8 was not sure of the color from that particular photograph, but
9 I was sure in my mind it was a Malibu, and the reason why I
10 was sure is my nephew drives an identical car. So the
11 frontend configuration of it looked exactly like my nephew's
12 car. So when I saw the car come on camera, the first thought
13 that came to my mind was that's a Chevy Malibu, and I even had
14 a date range in mind of what I believed it to be.

15 Q Okay. And I wasn't sure that that was exactly how you
16 testified yesterday. I know you'd mentioned the headlight,
17 but you had talked more about the Chevy front part?

18 A That's correct. I didn't mention the fact that I had
19 believed the car to be a Malibu and based on how I knew it was
20 but it, it, it was solely based on the fact that, like I said,
21 my nephew had a car of that exact same type. So it just stuck
22 out in my mind when I saw that frontend pull in.

23 Q Okay. All right. That's fair. That's all I have for
24 you, Lieutenant. Thank you so much.

25 A Thank you, ma'am.

Peter Cestare - Redirect by Mr. Hixson

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1 REDIRECT EXAMINATION

2 BY MR. HIXSON:

3 Q Let's talk about the relevance of DNA collection testing
4 for a second. Specifically, if you were looking for my shoes,
5 black dress shoes, and you went to my house and found them in
6 my house, would it surprise you if I had DNA on these shoes in
7 my house?

8 MS. PRATT: Your Honor, I'm going to object to the
9 leading question and the form of the question.

10 THE COURT: Rephrase your question, please.

11 MS. PRATT: Thank you, Your Honor.

12 BY MR. HIXSON:

13 Q Is it probative to test for DNA items that are recovered
14 from a known person's house that's not relevant to the crime
15 scene?

16 MS. PRATT: Objection. Calls for a conclusion by this
17 witness. It's not within his purview.

18 THE COURT: Sustained. Rephrase your question.

19 MS. PRATT: Thank you.

20 BY MR. HIXSON:

21 Q Let me ask you this question. As a lieutenant for crime
22 scenes and a homicide detective in New York City for 13 years,
23 with a universe of DNA evidence that is out there to collect,
24 what investigative techniques do you use to determine whether
25 collecting this item is relative to the, relevant to the case

1 or irrelevant to, to a case?

2 A That's a very difficult question to answer. It's, it's
3 very broad based. If I were collecting items in a particular
4 case that I believed belonged to you, I don't think there
5 would be a need for me to look for DNA. I mean, if I'm
6 collecting them from your residence, from your closet, I know
7 they're or I would believe at that point they're yours. So
8 wasting the State's resources to tell me, yes, in fact, you
9 know, that item belongs to you is not something I want to use
10 their resources for the good of what I'm looking for and, and
11 you know, in, in the cases of what Agent Cromer testified to
12 yesterday with casings and so forth, you know, I want to know
13 what type of gun fired them, were they fired by the same gun,
14 were the projectiles fired from the same gun. Those are the
15 things that are important to me. If I were able to get a DNA
16 profile off of the cash register drawers that you saw removed
17 in the 905 and Red Bluff Road store, things of that nature,
18 that to me is more significant than trying to get DNA off of
19 your shoe to tell me your shoe belongs to you.

20 Q If -- you recovered -- I think Jill Domogauer testified
21 that she recovered a black hooded sweatshirt from [REDACTED] Goose
22 Bay Road, Goose Bay Drive?

23 A Yes, sir.

24 Q And based on your investigation, is it your understanding
25 that McKinley Daniels and arguably, argument James Daniels

Peter Cestare - Redirect by Mr. Hixson

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1 lived at that location?

2 A Yes, sir. That was my understanding at the time. Yes.

3 Q And as such, per the investigation, wouldn't you expect
4 there to be DNA evidence from the people that live there in
5 that location?

6 MS. PRATT: Objection. Calls for a conclusion from the
7 witness, facts not in evidence.

8 THE COURT: Sustained.

9 MS. PRATT: Thank you, Your Honor.

10 BY MR. HIXSON:

11 Q Would you expect to get DNA evidence out of someone's
12 home, of the home that it belongs to?

13 A Yes, exactly. I mean, if, if I were -- if you were
14 collecting DNA from my residence, you're going to find my DNA
15 all over it. You're also going to find anybody else that
16 resides there or may have visited there, you know, and
17 depending upon what you tried to collect it from and where in
18 the home you collected it from or, or in a business, wherever,
19 whatever the case may be, I would expect to find that there.
20 Yes.

21 Q And is it the case that DNA evidence becomes more
22 relevant when you're trying to make a DNA test on a location
23 where that DNA should not be?

24 MS. PRATT: Objection. Let's see, form of the question,
25 conclusion by the witness.

1 THE COURT: Sustained.

2 MS. PRATT: Thank you.

3 MR. HIXSON: I have no further questions, Your Honor.

4 THE COURT: All right. Re-cross? Re-cross?

5 RE-CROSS EXAMINATION

6 BY MS. PRATT:

7 Q Just one, in this case, the State is trying to make a
8 conclusion about different people wearing the same clothing.
9 So would it not have been useful to have tested, for example,
10 the shoes to see whose actually got DNA on them?

11 A No, ma'am. I don't believe it would be because if we're
12 seeing them worn by multiple persons, then we're going to --
13 the assumption would be that we're going to get multiple
14 contributors and we're not going to get a definitive answer.

15 Q But what if there are two different pairs of shoes, then
16 you'd have -- wouldn't it be important to find out whether
17 there are two people on one set of shoes or just one person
18 and that may mean there's a different pair of shoes out there?

19 A No, because based on the video and the footage that we've
20 seen, those shoes were worn multiple times by different
21 people. So I'm, I'm still seeing that or thinking that the,
22 the, the objective at that point is to try and go with the
23 hard physical evidence, the casings and, and the potential
24 touch DNA from the cash drawers, from the counters was going
25 to be more, more of a definitive help to us than, than an

Peter Cestare - Re-cross by Ms. Pratt

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1 article of clothing. The clothing appeared to be the same
2 from the photos. So that's where we stayed with that.

3 Q So you're saying that that's the only pair of shoes in
4 Horry County that look like that?

5 A No, ma'am. I'm just saying --

6 Q Okay. Well, then --

7 A -- they're significant.

8 Q -- there could be two; couldn't there?

9 A Of course.

10 Q All right. And do you only get to submit five items up
11 and that's all and then you have to stop, kind of like the
12 number of questions you're allowed to ask in a deposition or
13 something?

14 A Actually, that's correct, but it's not five items. With
15 a homicide you're allowed eight items. Once those are tested
16 and results are back, you are then allowed to, to submit
17 additional items, but initially, you're only allowed a certain
18 number of items per investigation.

19 Q But by now, three years later, in the middle of a, you
20 know, a serious homicide trial, you would have been able to
21 submit them as additional items; wouldn't you?

22 A You may or may not have based on the time and based on
23 how backlogged the lab is.

24 Q Thank you, Lieutenant.

25 A Yes, ma'am.

1 THE COURT: All right. Thank you. You can step down,
2 Lieutenant.

3 A Yes, sir. Thank you. Thank you.

4 THE COURT: All right. Let's stand up, everybody. All
5 my jurors stand up, stretch, twist. I think all that sugar
6 went to your brains. All right. Twist around, stretch, do
7 something, stay with us. All right. Who's next?

8 MR. HIXSON: I have a -- just move an exhibit in under
9 judicial notice, Your Honor.

10 THE COURT: Okay. What number is it?

11 MR. HIXSON: That is State's 145.

12 THE COURT: All right.

13 MR. HIXSON: Would you care to publish it or --

14 MS. PRATT: May I see it? I don't know what it is by the
15 number, Scott.

16 (Mr. Hixson and Ms. Pratt confer.)

17 MR. HIXSON: May I approach the bench, Your Honor?

18 THE COURT: Yes.

19 (Whereupon, a bench conference is held in the presence
20 but out of the hearing of the jury.)

21 THE COURT: All right. Any objection?

22 MS. PRATT: No objection, Your Honor.

23 THE COURT: Okay. You can publish.

24 MR. HIXSON: Your Honor, at this time, the State would
25 ask the Court to take judicial notice of an established fact.

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1 That's State's 145 we're moving into evidence. This is a data
2 compilation, Your Honor, from the Weather Underground. It's
3 the same data site that State Law Enforcement Division uses in
4 order to determine temperature at certain times, and we'd draw
5 the Court's attention to and ask the Court to take judicial
6 notice of the fact on Sunday, January 25th at 2015, at 9:35
7 P.M., it was 37 degrees in Conway, South Carolina at that
8 time, and it remained 37 degrees at 9:55, as well as 10:15, it
9 maintained 37 degrees in Conway at the time of Trish Stull's
10 death.

11 THE COURT: Okay.

12 (State's Exhibit Number 145 [Temperature Compilation]
13 entered into evidence and appropriately marked.)

14 MR. HIXSON: At this time, we'd call Trooper Luther from
15 the South Carolina Highway Patrol MAIT Team.

16 Whereupon, Tyler Jennings Luther is called to the stand,
17 duly sworn by the clerk and testifies as follows:

18 CLERK: Please state your name and spell your last name
19 for the Court.

20 MR. LUTHER: My name is Tyler Jennings Luther. That's L-
21 U-T-H-E-R.

22 DIRECT EXAMINATION

23 BY MR. HIXSON:

24 Q Good morning, sir. How are you?

25 A Good. How are you?

1 Q Please tell this jury what you do for a living.

2 A I'm a collision reconstructionist for the South Carolina
3 Highway Patrol. I have been employed with the Highway Patrol
4 since January of 2000. I have been on the Multidisciplinary
5 Accident Investigation Team since 2011, and what we do with
6 the MAIT, as we call it, the acronym, we are trained to
7 reconstruct collisions, advanced collisions, hit and runs with
8 death, felony DUIs with death, anything that's worse than what
9 a normal road trooper could handle, and in the time since I've
10 been on MAIT, I've had over a thousand hours of advanced
11 reconstruction training, have investigated well over a
12 thousand fatal collisions, some of, like I said, were hit and
13 run with death where we had to track cars down based off of
14 car parts, surveillance videos, different facets, avenues that
15 we could try to track cars down.

16 Q Okay. Let me focus your attention on one aspect of what
17 you just discussed and that is trying to identify vehicles
18 after a hit and run to try to determine year, make and model.
19 Describe a little bit more detail the process you go through
20 for that.

21 A Generally, what we do is if we can get a surveillance
22 video, for instance, we'll take that surveillance video back
23 to the office. We'll sit down, go through it, play it, replay
24 it, back it up. We look for characteristics on cars. Being a
25 trooper for the last 19 and a half or 18 and a half years, you

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1 see a lot of cars. So you, you know specific Chevrolet
2 models. So if let's for instance or Ford models, but if you
3 see a Chevrolet body style, you know that there's only so many
4 cars that would fit this body style. So then you narrow it
5 down to those specific models, and you look for
6 characteristics that stick out in the video, whether it be a
7 headlight pattern, a door crease, the width of the pillar on
8 the side view of the car. You just look for characteristics
9 and looking at a video over and over and over and playing it
10 in slow motion and playing it, just taking still shots of it,
11 opening up Google, typing in different year Chevrolets and
12 looking at images, comparing different images, taking the
13 information to a Chevrolet dealer saying what, you know, "What
14 do you have that has this particular light on it," for
15 instance. You just narrow it down based on that.

16 Q Do you also look into, for instance, if you identify
17 through your analysis of a vehicle that you believe may fit
18 your criteria, do you see what -- how many cars, pull DMV
19 records to see how many cars there are in the area that fit
20 that general criteria?

21 A Yes. Generally, if we can narrow it down to a year, make
22 and model or a range, for that matter, we call what -- the
23 Fusion Center with the State Law Enforcement Division and say,
24 "Hey, can you run me a DMV list from 2000 to 2003," or
25 whatever year range you have for certain counties. They can

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1 do it by county, they can do it by state, they can do it by
2 mileage from your collision scene, and then they'll generate a
3 list.

4 Q Okay. So were you requested -- were your services
5 requested by Horry County Police in the investigation of the
6 Cultra Road incident where Trish Stull was, as well as the 905
7 Red Bluff incident?

8 A Yes. We were. We were notified by Lieutenant Cestare
9 that, that he had some video, surveillance video that he
10 wanted us to look at to see if we could identify a car on that
11 video. He had an idea of what he wanted -- of what he was
12 looking for. He wanted us to confirm or tell him that's not
13 what you need to be looking for, and we --

14 Q And if you can, just for a second, I want to get to it.
15 I don't want you to give any opinion or a conclusion. Did you
16 provide him with any suggestions of makes and models that he
17 should be looking for?

18 A Yes. We did.

19 Q And what was that suggestion that you gave him?

20 A We told him that what he was looking for was an '08 to a,
21 to a 2012 Chevrolet Malibu.

22 Q Okay. As it relates to you looking for DMV records of
23 2008 to 2012 Chevy Malibus here, did you generate a list of
24 folks, of those type cars that were registered for folks in
25 this area?

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1 A Yes. The DMV list came from SLED. Yes.

2 Q Okay. And were you able to determine -- do you also
3 pull, for instance, traffic tickets and DMV records for
4 license plates that match a -- the car that you suggested that
5 Pete -- that Lieutenant Cestare and the county police continue
6 to look at?

7 A Yes. What we do when we -- before we finalize our
8 report, we put the driver's DMV records. We also have the
9 license plate for that particular car. We'll pull the plate
10 history and that goes into the, into the MAIT packet. Yes.

11 Q Okay. And so in this particular case did you find a
12 traffic ticket or anything that matched the description of a
13 2012 silver Chevy Malibu with a license plate that you had
14 pulled from the DMV registration records?

15 A Yes. After, after Lieutenant Cestare called us and said
16 he had a suspect or one of the suspects in the case, we used
17 that -- we took that name, then pulled the DMV records. Also
18 we have access to DMV where we can pull any prior traffic
19 tickets or any prior collisions that the people were involved
20 in. After using -- looking for the name, we actually found a
21 traffic ticket that was issued in --

22 Q Hold on just a second. Let me get this authenticated
23 properly before you say anything. Okay.

24 MR. HIXSON: State's 172, Your Honor, it's a certified, a
25 true copy document.

1 All right. May I approach, Your Honor?

2 MS. PRATT: I do not object, Your Honor --

3 THE COURT: Okay.

4 MS. PRATT: -- to those two pages.

5 (Whereupon, a bench conference is held in the presence
6 but out of the hearing of the jury.)

7 THE COURT: All right. You all step back to your jury
8 room. Do not discuss the case and keep an open mind. We'll
9 be back with you in just a few moments.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. So what we have, the jury is out
13 of the room now, is State's Exhibit Number 172. State's
14 Exhibit Number 172 appears to be a certified true copy of a
15 uniform traffic ticket apparently issued to James Elbert
16 Daniels, Jr., in Horry County on or about September the 9th of
17 2014 by -- I'm not sure who the arresting officer was.

18 MR. HIXSON: Trooper Rowell, Rowell, R-O-W-E-L-L.

19 THE COURT: Trooper Rowell, he was given a ticket for
20 speeding. The ticket says he was doing 85 in a 55, but he
21 wrote him for 71 in a 55. So he could have charged him with a
22 six point. He charged him with a four point for a ticket of
23 133. The ticket further shows that on or about October the
24 15th of 2014, about a month later, he appeared in court. He
25 was found guilty, and he was given a fine.

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1 All right. So I'm -- I understand that this shows that
2 he was in -- of course, the car and the address is a Chevy
3 2012, license number JWW184, which I assume is the silver
4 Chevy Malibu; is that right?

5 MR. HIXSON: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HIXSON: Jill Domogauer admits the photograph of a
8 license plate on the search warrant for that.

9 THE COURT: Okay.

10 MR. HIXSON: That is the exact Chevy Malibu --

11 THE COURT: Okay.

12 MR. HIXSON: -- that was searched.

13 THE COURT: All right. So what is the purpose of this
14 document is what I don't understand?

15 MR. HIXSON: That document is conclusive proof that James
16 Daniels is in possession of a 2012 Chevy Malibu.

17 THE COURT: In September of 2014.

18 MR. HIXSON: Correct, prior to it. It's circumstantial
19 evidence, obviously.

20 THE COURT: It's in -- it's, it's evidence that he was in
21 possession of a vehicle on one day in September of 2014.

22 MR. HIXSON: That's correct, Your Honor, and certainly as
23 it relates to relevance, that fact makes it more likely than
24 not that he was in possession of it a year -- January of 2015
25 because --

1 THE COURT: Under what theory in the world does that --
2 does me driving a car today -- if I drive my law clerk's car
3 today, that means that four months from now, I can -- that
4 means I drove her car on that day, too?

5 MR. HIXSON: No. It does not mean that you did.
6 Circumstantially, it means that you had access to the car.

7 THE COURT: No. It doesn't. No. It doesn't. I mean,
8 that, that is the biggest leap I've heard in the past six
9 months of my life in court. The fact that he drove a car on
10 September, September the 9th of 2014 does not mean that he
11 drove that car anytime in the future. Now, in his statement
12 he admits to driving that car.

13 MR. HIXSON: That's correct.

14 THE COURT: He goes through this whole thing about his
15 car is in the shop and this part's broken and somebody is
16 trying to get it fixed and they're talking about it and he's
17 driving a car because his car is in the shop. I think the
18 girlfriend tells the cops, too, that he was driving the car
19 during that time. That's one thing, but the fact that he
20 drove a car on September the 9th of 2014 is not conclusive of
21 anything other than he was speeding on September the 9th of
22 2014 in Horry County.

23 MR. HIXSON: Let me, I, I -- maybe I misstated. I didn't
24 mean it was conclusive proof that he was driving it on the
25 night of the killing. I mean it's conclusive proof that he

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1 was driving at the time that he was ticketed. I apologize
2 that linkage. I did not mean that linkage.

3 THE COURT: Well, I mean, it's conclusive proof that he
4 was driving it on September the 9th of 2014.

5 MR. HIXSON: That's, that's what I meant. I did not mean
6 2015.

7 THE COURT: But I mean, I don't -- there's no evidence in
8 this case though -- there's no evidence that prior to January
9 2nd, 2015, they all got together, and I mean I'm going to take
10 that back. There's no evidence that any part of this case
11 occurred in September of 2014.

12 MR. HIXSON: Absolutely right, that's correct, Your
13 Honor. As you know, we have to prove the Defendant's intent
14 to provide his role in the crime, and we've asserted through
15 opening statements across the board that his -- he is the case
16 man and the driver.

17 THE COURT: Right.

18 MR. HIXSON: He brings to the table access to a silver
19 Malibu.

20 THE COURT: Right.

21 MR. HIXSON: How we prove that he has access to the
22 silver Malibu are two different ways. One is through his
23 statement. Two is through a certified document that he was
24 arrested by a trooper in a silver Malibu. Without that, we
25 only have his statement where he says, "Yeah. I was driving

1 the car." That -- I'm -- and I'm not trying to -- I'm not
2 trying to get in the information concerning his guilt. I'll
3 redact that from the ticket. I took the back pages off where
4 it said he pled guilty to the fine, and so we'll avoid a 403
5 issue, 403(b) issue, but we have to prove his intent through
6 circumstantial evidence and he brought the getaway vehicle to
7 the table. We can prove it through a ticket that a year prior
8 he had access to his girlfriend's car at the Ware Drive
9 address. That's the relevance for it is access
10 circumstantially to the getaway vehicle, and it's the only
11 document we have that shows JJ111 -- I think it's 147, if my
12 memory is correct?

13 THE COURT: JJ -- JWW184.

14 MR. HIXSON: Excuse me, that is the same car identical on
15 the license plate number because none of the videos show the
16 license plate number of the Malibu in the parking lot. That's
17 the only document that showed that.

18 THE COURT: So, so instead of dealing with all this
19 ticket issue and whether he's guilty or not guilty, do you all
20 agree -- could you agree that on September the 9th of 2014 he
21 was driving this vehicle?

22 MS. PRATT: Certainly, Your Honor, and the jury can draw
23 their own conclusions of that.

24 THE COURT: Right, and the jury could draw whatever
25 conclusions they want to.

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1 MR. HIXSON: That's correct. That's correct.

2 THE COURT: But we don't have to get into he got a ticket
3 or he committed a crime or he went to court or he pled guilty,
4 and I think it's -- I mean, I think a fair, a fair process
5 through that is a stipulation that on September the 9th of
6 2014, in Horry County, he was driving the silver Chevy Malibu
7 with the license tag number.

8 MR. HIXSON: That is the purpose for the evidence. I
9 apologize to make it more complicated.

10 THE COURT: Okay. Okay. All right. Cool. Okay. Good.

11 MR. HIXSON: How would you like to, as a stipulation or a
12 redaction or just straight testimony?

13 THE COURT: I think the easiest way to do is just do a
14 stipulation.

15 MR. HIXSON: And I'll work on that as the statements are
16 being played if that's okay.

17 THE COURT: Okay. Perfect. Okay. You got an issue or
18 you going to get the jury? Okay.

19 MR. HIXSON: And I just have one other piece to, to put
20 in through.

21 THE COURT: Okay. All right. Cool. Let's go grab the
22 jury, please.

23 MS. PRATT: I think we need to look at this one, Your
24 Honor.

25 THE COURT: Okay.

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1 (Whereupon, a bench conference is held.)

2 THE COURT: Would you walk right there, Trooper, and when
3 that deputy shows up with the jury tell them to hold on one
4 second?

5 A Yes, sir.

6 THE COURT: Thank you very much.

7 (Whereupon, a bench conference is held.)

8 THE COURT: They can come in now. Thank you, Trooper.

9 A Yes, sir, not a problem.

10 THE COURT: Sorry I jumped the gun.

11 A That's okay.

12 (The following takes place in the presence of the jury.)

13 THE COURT: Okay.

14 MR. HIXSON: Thank you, Your Honor.

15 BY MR. HIXSON:

16 Q So in addition to pulling DMV records, once you generated
17 a known individual that may or may not have been in possession
18 of a vehicle at that time, do you generate a driving record
19 and a driver's license information, I should say driver's
20 license information on a known individual?

21 A Yes. Like I said, once Lieutenant Cestare gave us the,
22 the suspects' names, then we pulled DMV record for that. Yes,
23 sir.

24 Q Okay. I'm showing the, the witness what's been marked as
25 State's Exhibit 171. Do you generally recognize what that is?

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1 A Yes, sir. This is a certified copy of a Department of
2 Motor Vehicles 10 year driving record.

3 Q Okay. And is that a certified copy of that record?

4 A Yes, sir. It is.

5 Q Okay. It's got a seal located on the face of the record?

6 A Yes, sir. It does.

7 MR. HIXSON: We'd move State's 171 into evidence under
8 902.

9 THE COURT: Any objection?

10 MS. PRATT: As we've agreed to modify it --

11 A Yes, sir.

12 MS. PRATT: -- I have no objection, Your Honor.

13 THE COURT: Great. 102 or 171 is in, please.

14 (State's Exhibit Number 171 [Ten Year Driving Record]
15 admitted into evidence and appropriately marked.)

16 BY MR. HIXSON:

17 Q And I want you to publish this to the jury. I'll, I'll --
18 -- just don't talk about that.

19 A Yes, sir.

20 Q Okay? And what is that, a certified -- who, who does
21 that certify -- who does that driving record belong to?

22 A State's Exhibit 171 is a certified 10 year driving record
23 for James Elbert Daniels, Jr.

24 Q Okay.

25 A Yes, sir.

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1 Q And what address is listed as his current address?

2 A His current address is listed as [REDACTED] Ware Drive in
3 Nichols, South Carolina.

4 Q Okay. And then can you please go back to the previous
5 and give me the dates and addresses that he listed and the
6 dates of address changes?

7 A Yes, sir. He had an address change in, let's see,
8 February 11th of 2009 from [REDACTED] Kings Crest Drive in Loris,
9 South Carolina, and it was changed to [REDACTED] Goose Bay in Loris,
10 South Carolina, and then changed again 4-6 of 2011 to [REDACTED] East
11 Carolina Avenue in Hartsville.

12 Q Okay. And then the last address change?

13 A Okay. And it was changed again to [REDACTED] Goose Bay Drive in
14 Loris. That was-- that change was made on June 13th of 2013.

15 Q So as of June 13th of 2014 -- '13; is that correct?

16 A Yes, sir. And then the last change was made April 25th,
17 2014, and I'm assuming that would be to [REDACTED] Ware Drive in
18 Nichols. Yes, sir.

19 Q So his address was listed at 2013 as Goose -- the Goose
20 Bay Drive address?

21 A The [REDACTED] Goose Bay. Yes, sir.

22 Q Thank you.

23 THE COURT: Is that it for -- okay.

24 MR. HIXSON: Yeah, that's it, Your Honor.

25 THE COURT: Okay.

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1 MR. HIXSON: No further questions.

2 THE COURT: No problem. Ms. Pratt?

3 MS. PRATT: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. PRATT:

6 Q And I missed your rank? I'm sorry.

7 A Corporal.

8 Q Corporal Luther.

9 A Yes, ma'am.

10 Q Thank you so much for being here. I know you were here
11 yesterday and had to come back in the morning and I apologize
12 for that for you. I just want to talk for a minute about the
13 driving record. So when you pull a 10-year driving record and
14 that's done at the DMV?

15 A Yes, ma'am.

16 Q But you can do it from your little computer --

17 A We can do it from our computers. Yes.

18 Q -- system there. The address that shows up at the top of
19 the, of the driving record, which in this case would be [REDACTED]
20 Ware Drive --

21 A Yes, correct.

22 Q -- is the address that the person says they live at;
23 correct?

24 A Yes. Correct.

25 Q Supposed to be their physical address?

1 A Yes.

2 Q All right. Is it your experience as a highway patrolman
3 that people more often don't change their address than do?

4 A I mean, they're supposed to.

5 Q Yeah.

6 A By law you have 10 days to make an address change once
7 you move.

8 Q Ten?

9 A Yes, ma'am.

10 Q I thought it was 45?

11 A Ten.

12 Q Uh-oh. All right, then. So no question when somebody
13 makes an affirmative change to an address they are stating to
14 you that that's where they live?

15 A Yes.

16 Q And that one was made in, let's see --

17 A That should be the last one.

18 Q -- which is what date?

19 A April 25th, 2014.

20 Q 2014. Okay. And then no question on this record we have
21 the Hartsville address?

22 A Correct.

23 Q And you weren't present in the courtroom yesterday or
24 were you when Jill Domogauer testified that there was a
25 driving license which was kind of beat up that had the

Tyler Jennings Luther - Redirect by Mr. Hixson

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1 Hartsville address on it found in a black wallet?

2 A I was. Yes.

3 Q Okay. And that would be probably the one that's
4 mentioned here as the Carolina Avenue one; correct?

5 A Correct.

6 Q And when was that address?

7 A It says June 13th, 2013.

8 Q Okay. All right. So that is a beat up older address
9 then; isn't it?

10 A I don't know about the beat up address, but I didn't, I
11 didn't see the picture that you guys were talking about so.

12 Q Okay. I apologize. And is it common for people to use
13 an address of a parent if they are moving around a lot, kids
14 that are younger?

15 A I mean, that's opinionated.

16 Q Have you run into that in your experience?

17 A I've run into people not changing their address. Yes.

18 Q Okay. Thank you. I've got nothing else for this
19 witness.

20 REDIRECT EXAMINATION

21 BY MR. HIXSON:

22 Q So the -- give me the -- do you mind giving us the issue
23 date and the expiration date on the last address change? I
24 know there's a Hartsville address?

25 A The last address change was April 25th, 2014.

1 Q And I draw your attention to the first page of the
2 current driver's license. That's on the very top.

3 A The address?

4 Q The issue date?

5 A The issue date.

6 Q What is the issue date on -- right here?

7 A Okay. The -- it was modified -- first issue date -- this
8 issue date was April 25th, 2014, on the modified license, the
9 current function.

10 Q Okay. And so that driver's license is still current; is
11 that correct?

12 A That is correct.

13 Q And its expiration date is when?

14 A 11-20 of 2021.

15 Q Okay. Thank you. No further questions.

16 RE-CROSS EXAMINATION

17 BY MS. PRATT:

18 Q I'm just a little confused, as we've just bandied about
19 three addresses and four dates, are you now saying the same
20 thing that you said before that the address change to Ware
21 Drive was April of 2014?

22 A Correct.

23 Q Thank you. Okay.

24 MS. PRATT: That's all I've got, Your Honor.

25 THE COURT: Have a good day, Corporal.

Tyler Jennings Luther - Re-cross by Ms. Pratt

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1 A Thank you.

2 THE COURT: All right. Call your next witness.

3 MR. HIXSON: Senior Detective Greg Lent from the Horry
4 County Police Department.

5 THE COURT: Okay. Let's go ahead -- let's go -- let's go
6 ahead and take our morning break. I know you all just took a
7 short break, but court staff hasn't had a break, and I know
8 this witness is going to be -- is not going to be a short
9 witness. So let's go ahead and take our full morning break so
10 my court reporter and all my court staff and everybody can use
11 the restroom and get some water and stuff. It's 11:05ish.
12 Let's start back at about 11:15 or so. Okay? All right.
13 Everyone else -- keep an open mind. Do not discuss the case.
14 We'll be back with you in just a few moments.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Let's take a break.

18 MS. PRATT: We're going to be here for a while.

19 OFF THE RECORD

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Can you all approach real quick?

23 (Whereupon, a bench conference is held.)

24 THE COURT: Let's bring them in.

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen. Thank you very much. And one thing we're going to
4 start with before we start with the next witness is a
5 stipulation. So as I told you in the beginning, there are
6 times in cases, both civil cases and criminal cases, where the
7 attorneys agree on certain facts. Okay? And that's called a
8 stipulation, and what a stipulation is is a fact or facts that
9 are agreed upon by both sides. No other proof of these facts
10 are necessary. So I'm going to read you a stipulation now.
11 The attorneys have actually gotten together and drafted this,
12 So they both know what I'm about to say, and so I want to
13 read you a stipulation now.

14 The stipulation states that on or -- on September the 9th
15 of 2014 James Daniels had in his possession a 2012 Chevy
16 Malibu bearing the license plate number JWW-184 and belonging
17 to Loretta Chestnut while in Horry County. Okay. And Mr.
18 Hixson, you may call your next witness.

19 MR. HIXSON: Thank you. Senior Detective Greg Lent for
20 the Horry County Police Department.

21 Whereupon, Gregory Lent is called to the stand, duly
22 sworn by the clerk and testified as follows:

23 CLERK: Please be seated. Thank you. Please state your
24 name and spell your last name for the Court.

25 MR. LENT: Gregory Lent, L-E-N-T.

Gregory Lent - Direct by Mr. Hixson

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1 DIRECT EXAMINATION

2 BY MR. HIXSON:

3 Q Good, good morning, sir. How are you?

4 A Good.

5 Q Please tell this jury what you do for a living.

6 A I'm a Senior Detective with the Horry County Police
7 Department. I'm assigned to the Investigative Division. I've
8 been in that division since 2012. I spend time investigating
9 violent crimes, homicides, rapes, armed robberies, as well as
10 any other crime that would be investigated by a detective.

11 Q So you were working in January of 2015?

12 A I was.

13 Q Were you -- let's talk -- we'll just talk a little
14 differently and just go in chronological order now since we've
15 had so much discussion about the other things already. Okay.
16 So were you working January 2nd of 2015?

17 A I was not.

18 Q You were not. Okay. Did you come to find out that there
19 was a robbery of a convenience store on Red Bluff Road and
20 Highway 905?

21 A I did.

22 Q Okay. Tell us about that as, as we go forward, just your
23 involvement in that moving towards January 25th.

24 A On the night or on January 2nd, 2015, I was out of town
25 visiting family. The next morning, on January 3rd, I was

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1 alerted to the fact that there was an armed robbery at the
2 Sunhouse on Highway 905. I returned back to Conway, South
3 Carolina, on that Monday, which I believe would have been the
4 5th. From the 5th until the night of January 25th, I was
5 tasked with working nightshifts conducting an armed robbery
6 task force trying to prevent armed robberies in Horry County.
7 Myself and a number of uniformed patrol officers would spend
8 the nights going from store to store helping the employees
9 close the stores, walk them to their cars as well as try to
10 follow up on any leads that we had obtained from the Red Bluff
11 Sunhouse robbery and homicide.

12 Q Okay. Just to streamline it, let's just fast forward now
13 to January 25th of 2015. In that interim period of time, from
14 the 2nd to the 25th, have you done any substantive
15 investigative work on this case, and if you have, please
16 describe it to us.

17 A Other than -- no. Other than running around just, again,
18 acting as a preventative measure.

19 Q Okay. Now, on January 25th of 2015 tell us about that
20 day. Is it your understanding there were two incidents that
21 occurred that day that we're in court for now?

22 A There were.

23 Q Tell us about those and your involvement in those.

24 A So on the night of January 25th, it was my shift, I was
25 working that night on the armed robbery task force along with

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1 a, with a group of patrol officers. I was in the Carolina
2 Forest area when I received a phone call stating that a
3 Scotchman Store on Lake Arrowhead had just been robbed. I
4 proceeded to that store, met with the patrol officers that
5 were working with me as well as the responding officer from
6 that sector, and we conducted an investigation of that armed
7 robbery. When I got there, I learned that two individuals had
8 come in, one of whom, at least one of whom being armed, had
9 come into the store, presented the weapon to the clerk, forced
10 her behind the counter and then robbed the store of money and
11 cigarettes, fled out from the store and that was all the
12 information that I had at that time.

13 Q Have you seen video stills from -- or video and video
14 stills from that incident?

15 A I have.

16 Q From the Lake Arrowhead Road incident?

17 A I have.

18 Q And I'm going to show you State's 72 to 82. I just want
19 you to take one look at this and see if that's the scene and
20 the case that you investigated back on January 25th of 2018.
21 I'm showing the witness State's 75. Just look at 75, that's
22 enough. It'll --

23 A Yeah. That's a still shot from a surveillance camera at
24 the Lake Arrowhead Scotchman.

25 Q That's State's 75. So you investigated that one?

1 A I did.

2 Q Okay. Then tell us what happened. We've heard a lot
3 about it already. So just tell us what you did.

4 A We were on scene at Lake Arrowhead and finished the work
5 that we had there. The patrol officers, I'm sorry. You'll
6 have to excuse me for one second. We conducted our
7 investigation at that store. As we finished it, I had
8 probably just about gotten out of the parking lot, maybe a
9 short distance up Lake Arrowhead Road headed back toward
10 Highway 17 when I received a phone call from one of the patrol
11 officers that I was working with, who told me, "Hey, panic
12 alarm has just come out over the radio in central precinct."
13 I switched over to that radio, and I heard the responding
14 officers going there.

15 As they arrived on scene, they entered the store and
16 found the store clerk shot. As we had further information as
17 I was in route, I was alerted to the fact that the clerk had
18 deceased -- had -- was pronounced dead. I continued there,
19 notified my chain of command and started to get other
20 detectives, as well as supervisors and crime scene and
21 everybody else headed over to the Sunhouse at Oak Street and
22 Cultra Road in Conway.

23 Q Did you ultimately arrive to that location?

24 A I did.

25 Q Okay. And tell us what just generally you did when you

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1 got into the store?

2 A When I first walked into the store, made sure that the
3 scene was secured by the patrol officers that had responded,
4 added further patrol units that had arrived there as well to
5 help secure the scene. The first thing that I, that I had
6 done, when we go into a scene, I want to make sure that where
7 I'm walking I'm not going to tamper with or contaminate any
8 type of evidence.

9 Q If I could -- if I interrupt you and guide you just for a
10 second --

11 A Sure.

12 Q -- let me show you what's been marked as State's Exhibit
13 28 into evidence. Take a look at that. Do you recognize
14 that?

15 A I do. That's a picture from the back of the Sunhouse.

16 Q And that's the Oak Street, Cultra Road Sunhouse you
17 responded to?

18 A It is, and it's facing -- it's from the back of the store
19 facing the front door.

20 Q And the front of the store, that area?

21 A Yes.

22 Q Is that the area the clerk was found?

23 A Yeah. It was the area where the clerk was found, and I
24 can see the front doors in this picture.

25 Q And who is that standing in the background of that

1 picture?

2 A That's, that's me, and I'm on the phone.

3 Q State's 28. Please continue, sir. Go ahead. I know the

4 --

5 A Well --

6 Q Let me, let me streamline it just for a second for you.

7 We've had testimony from the crime scene and the items

8 recovered and things like that. How about this, when you

9 cleared the scene, did you have some direction on your

10 investigation and what follow-ups did you do once you cleared

11 that scene?

12 A Yes. Well so amongst the many things that happened that

13 night, at the Scotchman Store on Lake Arrowhead, we were able

14 to review some of the surveillance video. When I was at the

15 Oak Street and Cultra Road Sunhouse, I was also while inside

16 the store able to review some of that surveillance video,

17 which was, which was later -- the machine was later taken and

18 you all have seen the videos that were obtained from it.

19 As soon as I, as soon as I watched the video from Oak

20 Street and Cultra, I was immediately able to tell that the two

21 individuals that had robbed that store and shot the clerk were

22 I believed to be the same two that had robbed Lake Arrowhead

23 which I had just left and which they had just robbed within an

24 hour of me being at the Sunhouse.

25 From January 25th on to that period, again, we continued

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1 to follow up with any lead that we had. Any lead that was
2 called in, at that time, we, we reached out to the public and
3 to anybody that could help, and we did receive an awful lot of
4 leads. We conducted investigations on all those. At the same
5 time as Lieutenant Cestare has testified, we had detectives,
6 myself, others and especially Lieutenant Cestare review that
7 video for any, for any information that he would have been
8 able to glean from it.

9 There came a point in that investigation, we had a
10 conference room that, again, about the size, maybe a little
11 bit smaller than this courtroom where we had a couple of TVs
12 set up, and we played those surveillance videos it seemed like
13 every day for hours. As time went on, obviously more and more
14 either investigators or police officers were involved and on
15 -- as we were playing one of the videos from the Sunhouse on
16 Highway 905, an individual was on screen, having been in --
17 was in that store making a purchase, and another officer --

18 MS. PRATT: Objection, Your Honor. Hearsay. Same
19 objection as yesterday.

20 MR. HIXSON: I'll, I'll just tiptoe through this, Your
21 Honor.

22 THE COURT: Okay.

23 BY MR. HIXSON:

24 Q You can't say what the officer said for hearsay purposes.

25 A Okay.

1 Q So just don't say what he said.

2 A Sure.

3 Q You can tell what he did or gestured but not what he
4 said.

5 A I was alerted to the fact that the individual in the
6 store making the purchase was a male by the name of James
7 Daniels. I was further --

8 Q Based on that information.

9 A -- based on that information, based on that information
10 and the fact that, as well as being told that it was James
11 Daniels, that there was a -- Lieutenant Cestare had identified
12 a vehicle that he believed was going to be part and parcel
13 with, with these crimes. So not only was I alerted to the
14 fact that this was James Daniels in the store, but I was also
15 advised that Mr. Daniels' girlfriend drove a vehicle or had a
16 vehicle matching that vehicle.

17 From there, we obtained information on the vehicle;
18 normal checks, running DMV checks; everything else, and myself
19 and a number of detectives drove out to an address in Nichols.
20 We went there in order to make contact with Mr. Daniels, his
21 girlfriend who had the car to find if the car was there, to
22 talk to anybody who might have been there that might have been
23 able to help, and at this point, I had probably spoken to 50
24 to a hundred people. So we went out there, and we pulled up
25 in the yard, and there was a Chevy Malibu that -- and it was a

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1 Chevy Malibu, so any Chevy Malibu. It matched what we had
2 seen in that video.

3 Q Let me show you a couple of photographs that are admitted
4 in evidence, State's 50, 51 and 52. See if you recognize
5 those.

6 A That's the vehicle that was, that was in the yard.

7 Q And could you just read the license tag off State's 51?

8 A JWW184.

9 Q Okay. And please continue. You said the Malibu was in
10 the yard?

11 A So the Malibu was in, was in the yard. We made contact
12 at the residence, and inside the residence was a Ms. Lashana
13 [spelled phonetically] Chestnut as well as, I believe, her
14 mother and some small children. Ms. Chestnut advised that her
15 --

16 MS. PRATT: Objection, hearsay.

17 A Okay.

18 THE COURT: Can we ask him questions instead of just one
19 question and let him ramble on?

20 MR. HIXSON: Yes, sir.

21 THE COURT: Thank you.

22 MR. HIXSON: Sure. Thank you. Thank you.

23 THE COURT: Sustained.

24 MS. PRATT: Thank you.

25 MR. HIXSON: That'll be good.

1 BY MR. HIXSON:

2 Q Did you come in contact with the owner of the car?

3 A I did.

4 Q Okay. And did you interview Ms. Lashana Chestnut at the
5 Ware address?

6 A I did.

7 Q Okay. And was that interview memorialized in any way,
8 recorded or --

9 A It was audio recorded.

10 Q Okay. And while you were there, you also indicated that
11 you -- did you ask about the whereabouts of James Daniels at
12 that period in time?

13 A I did.

14 Q Okay. And did you receive information that indicated
15 that those individuals knew where Mr. Daniels was?

16 A Yes. He was -- I was told that he was at work at a
17 Subway Restaurant and that was contained within the Walmart
18 over by the Lake Arrowhead, Highway 22, that, that area of the
19 county.

20 Q Okay. And at some point in time, after this initial
21 interview, did you come in contact with James Daniels at this
22 Nichols address?

23 A Yes. While, while at that residence, Mr. Daniels pulled
24 up in a vehicle.

25 Q Okay. What vehicle did he pull up in there?

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1 A I don't, I don't recall.

2 Q Was it the Chevy Malibu?

3 A No. It was not the Chevy Malibu.

4 Q Okay. Now, at the time that you came in contact with
5 James Daniels, was he under arrest at that time?

6 A No.

7 Q What was the purpose for the contact? I think you
8 already testified to it but it's a nice segue into the next.

9 So the -- give us the nature of the contact between Ms.
10 Chestnut, the Malibu and there at that moment in Nichols?

11 A Well, we wanted to, we wanted to find out if there was
12 any information that needed to be -- that we needed to learn
13 from, from anybody at that residence associated with the
14 vehicle or Mr. Daniels having been -- having seen him on video
15 at that Sunhouse -- at the Sunhouse store on Highway 905.

16 Q Okay. And did you ask if you could interview Mr.
17 Daniels?

18 A I did.

19 Q Did he agree to that?

20 A Yes. He agreed to ride with -- he, he agreed to ride
21 with us, come down to the West Precinct.

22 Q And now, when you say the West Precinct, where is that
23 located?

24 A In the Green Sea area of Horry County.

25 Q Okay. It's a good bit far away from here; is that safe

1 to say?

2 A A little bit from here, not quite as far from where we
3 were that night.

4 Q Okay. So did in -- did Mr. Daniels accompany you to
5 Green Sea? Describe that.

6 A He did. He came, he came to the West Precinct with us.
7 He rode down there voluntarily. We drove down in an unmarked
8 or we all drove back to the precinct in unmarked detective
9 vehicles. There were no patrol vehicles there. We just drove
10 down in our regular cars. So we drove back to the precinct in
11 those vehicles.

12 Q Did Ms. Chestnut accompany you all as well?

13 A She did. She also came to the West Precinct to continue
14 speaking with us.

15 Q Okay. And once again to clarification, was he in custody
16 at that time?

17 A No.

18 Q Was he under arrest at that time?

19 A No.

20 Q Okay. Describe the setting and the way you took Mr.
21 Daniels for this interview?

22 A Well, the West Precinct is a -- it's not really a
23 precinct at that time. It was just a few offices off of the
24 Green Sea Magistrate's Office. I think there were like three
25 or four offices down a hallway. The patrol officers would use

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1 some. There's some computers set up there to write reports.
2 One office was for two detectives that are assigned there and
3 then an office for the lieutenant and an office for the
4 captain.

5 Q Okay. Now, at the -- did you -- I think I -- you already
6 answered this question. Did, did you memorialize this
7 interview with Mr. Daniels in any way?

8 A Yes. I did. That interview was also audio-recorded.

9 Q Okay. And was any other officers present with you during
10 the time that you had an interview with Mr. Daniels?

11 A Yes. At that time during that interview, Sergeant Tom
12 Delpercio, who was the sergeant over the homicide, violent
13 crimes unit, was also in the room during the interview.

14 Q Okay. And approximately how long do you think the
15 interview lasted with Mr. Daniels?

16 A An hour and a half, I believe, an hour, a little bit
17 more, maybe.

18 Q Okay. I think you testified previously that at this
19 onset of the interview you were just seeking any information
20 you can to help; was that correct?

21 A Correct.

22 Q During the course of the interview, did your attitude
23 towards the nature of the interview change?

24 A Yes. At one point during the course of the interview,
25 it, it became apparent to me that there was most likely

1 further information that Mr. Daniels was going to provide
2 that, that would cause me to place him under arrest, that
3 there was definitely a possibility of that. So at that time I
4 advised him of his Miranda Rights.

5 Q Are the, are the advisement of Miranda Rights on the
6 recording that the jury will hear?

7 A They are.

8 Q Okay. Now, outside the, outside the audio recording, did
9 you promise Mr. Daniels or threaten him in any way to give a
10 statement?

11 A No, not at all.

12 Q Was Mr. Daniels' statement voluntarily given to, to you
13 after Miranda Warnings were provided?

14 A Yes.

15 Q Okay. Did you provide him with drinks and breaks, if
16 needed be?

17 A We did offer him some drinks. I don't remember if he
18 took them or not, and there was -- I know I walked out of the
19 room a time or two to ask a question or get some other
20 information. It was, it was a very casual conversation for
21 the most part.

22 Q And at the end of that interview, did you take any action
23 in regard to Mr. Daniels?

24 A Yes. Mr. Daniels was advised that he was going to be
25 placed under arrest. He was placed into handcuffs and then

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1 transported from the West Precinct.

2 Q Okay. Let's fast forward just since we're up here. The
3 next day, did you have a subsequent interaction and interview
4 with Mr. Daniels?

5 A I did. I traveled to the J. Reuben Long Detention Center
6 and conducted a second interview, which was also audio-
7 recorded.

8 Q Okay. Now, Mr. Daniels was in custody and under arrest
9 in the second interview; is that correct?

10 A Yes. At that point, he was, he was at the county
11 detention center, so he was in custody.

12 Q Okay. In that interview did you provide Miranda Warnings
13 to him prior to giving any statement?

14 A I did.

15 Q And did he voluntarily waive those rights?

16 A He did.

17 Q And did he give a statement to you?

18 A Yes.

19 Q Okay. And that statement is recorded as well?

20 A It is.

21 Q And have you -- what is the approximate length of the
22 second statement?

23 A Thirty minutes maybe, around there.

24 Q Okay. Let me show you what's been marked, but let me ask
25 you another foundational question prior to this. In the, in

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1 the magistrate's office in Green Sea, do you recall what type
2 of clothing or upper clothing that Mr. Daniels was wearing?

3 A Dark gray or gray dark hooded sweatshirt.

4 Q Let me show you a couple of photographs what's State's
5 Exhibit 169 and 170. Do you recognize those?

6 A Yes. These were the items collected from Mr. Daniels the
7 night of the interview.

8 Q Okay. Let me show you what's --

9 MR. HIXSON: Move 169 and 170 into evidence, Your Honor?

10 MS. PRATT: No objection, Your Honor.

11 THE COURT: 169 and 170 without objection.

12 (State's Exhibit Number 169 and 170 [Photographs] entered
13 into evidence and appropriately marked.)

14 MR. HIXSON: May I publish to the jury, Your Honor?

15 THE COURT: You may.

16 BY MR. HIXSON:

17 Q Let me show you what's been marked as State's Exhibit
18 169 [sic], see if you recognize that?

19 A Yes. This is a DVD containing a, a redacted version of a
20 statement that I obtained from Mr. Daniels, and I see my
21 initials on the disc where I had previously reviewed it.

22 Q Okay. And so this is a fair and accurate representation
23 of the recording that you had of the interview that you had
24 with James Daniels in the Green Sea Magistrate's Office prior
25 to his arrest?

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1 A It is.

2 MR. HIXSON: May I publish this to the jury -- well,
3 first we would like to move 169 into evidence.

4 THE COURT: I thought 169 was a photo?

5 COURT REPORTER: It's 167.

6 MR. HIXSON: Oh, I apologize. Goodness, my glasses are
7 struggling. I apologize, 167.

8 THE COURT: Okay.

9 BY MR. HIXSON:

10 Q And that's the number, Mr. Lent, make sure proffering it.

11 A My glasses.

12 Q Do you want to borrow mine? It's not working.

13 A It's -- yeah -- I mean, it's -- it could be 167.

14 MR. HIXSON: Let's make sure we're good 167.

15 COURT REPORTER: It is. It's 167.

16 THE COURT: Okay.

17 MR. HIXSON: May -- we'd move 167 into evidence, Your
18 Honor.

19 THE COURT: All right.

20 MS. PRATT: Your Honor, I have previously objected to
21 this, the introduction of this. I would like to be able to
22 cross examine as, as to the issue of voluntariness. I don't
23 know if you wish me to do that before it is published if you
24 allow it in or not?

25 THE COURT: Well, I'll allow you to cross examine on

1 that. I think that he -- I am going to admit it over, over
2 your objection, but I will allow you to cross him on
3 voluntariness just at the normal time when you cross him.

4 MS. PRATT: Thank you, Your Honor.

5 THE COURT: Okay. Uh-huh.

6 (State's Exhibit Number 167 [DVD - Interview] admitted
7 into evidence and appropriately marked.)

8 MR. HIXSON: Your Honor, may we take up the issue
9 relating to transcripts I provided?

10 THE COURT: Oh, yeah. Okay. And you have a copy of what
11 we're giving them?

12 MS. PRATT: I have the same.

13 THE COURT: All right. Ladies and gentlemen, so what
14 you're about to listen to is an audio-recording. Okay? And
15 this is an audio-recording as you just heard from Detective
16 Lent, and you're about -- there, there is no video associated
17 with this. So this is purely audio. So the State has made a
18 transcript of the audio-recording. So let's talk about this
19 transcript. Okay?

20 Number one, it's not an official court reporter, court
21 certified transcript. Okay? Number two, the transcript is
22 not in evidence. Okay? The evidence, the piece of evidence
23 is the audio recording. Okay? Because as you all know from
24 your life experiences, people can say things with inflection
25 in their voice or change the way they say or the transcript

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1 doesn't reflect how long it took somebody to answer or pauses
2 or things like that. So we're giving you a transcript today,
3 and the Defense has seen a copy of this, I've seen a copy of
4 this, as a guide to help you follow along. I don't want you
5 just reading the transcript. I want you listening and
6 following along in the transcript.

7 The transcript will not be with you during jury
8 deliberations. Okay? The piece of evidence is the audio
9 recording, which I've just admitted, which is Number 167.
10 Now, during your deliberations, you will have access to be
11 able to play this audio-recording or any other audio-
12 recordings or the videos that you've seen as much as you want
13 to. So you can watch them as much as you want to. You can
14 fast forward and rewind and spend as much time with them as
15 you need to to go through the evidence, but we're giving you a
16 transcript today as a guide to kind of follow along with you.
17 Okay? Does that make sense? Okay. Is that fair enough, Ms.
18 Pratt?

19 MS. PRATT: It is, Your Honor. Thank you.

20 THE COURT: Okay. Is that good, Mr. Hixson?

21 MR. HIXSON: Yes, sir. Excellent.

22 THE COURT: Okay. Thank you. So we've made you all a
23 copy. Okay?

24 (State's Exhibit Number 167 played in open court.)

25 THE COURT: All right. We need to stop. Stop the

1 THE COURT: All right.

2 MR. HIXSON: Other folks asked.

3 THE COURT: Yeah. You can run if you need to, run to the
4 restroom real quick or you can do it while they're listening
5 to the recording. Yeah.

6 MR. HIXSON: Okay. Very good. That's a better idea.
7 Thank you, Your Honor.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: I'm sorry about that unexpected break. I had
11 a housekeeping issue that I needed to take up real quick. I
12 do sincerely apologize. We're going to roll the tape back
13 about 30 or 45 seconds just to make sure you didn't miss
14 anything. Are we able to do that? Okay. All right. So
15 we'll jump right back into where we were before. We'll go, go
16 back a little bit just in case. I'm not sure exactly where it
17 stopped. All right.

18 (State's Exhibit Number 167 played in open court.)

19 THE COURT: Is that it?

20 MR. HIXSON: There's some more, but it's just they're
21 booking questions. We can stop -- there's --

22 THE COURT: Okay. You okay with stopping?

23 MS. PRATT: Yes, sir.

24 THE COURT: Okay. All right. Let's go ahead and stop.
25 We've been going for a long time and haven't had a break.

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1 that'll be just fine. So, okay, thank you for being back. We
2 were working through a couple of issues to streamline things
3 this afternoon, and that's what -- why we started a few
4 minutes late. We got some issues streamlined. So I'll be
5 telling you about that in a second, but we're going to
6 continue now with Detective Lent's direct testimony. Mr.
7 Hixson, the floor is yours.

8 MR. HIXSON: Thank you.

9 BY MR. HIXSON:

10 Q You mentioned prior after the first statement was over
11 that you had a second statement?

12 A Correct.

13 Q I think we laid a foundation for that. State's 168, do
14 you recognize that?

15 A I do. This is a DVD containing a redacted copy of the
16 second interview that I did with James Daniels, and I
17 recognize my initials on that disc.

18 Q And that's a fair and accurate representation of the
19 interview you made with him --

20 A It is.

21 Q -- on the Green Sea -- actually J. Reuben?

22 A J. Reuben Long Detention Center.

23 MR. HIXSON: May we publish this for Your Honor --
24 publish this for the jury, Your Honor?

25 THE COURT: Yes, sir.

1 MR. HIXSON: Fair enough.

2 MS. PRATT: Subject to the same objections, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. PRATT: And which exhibit number was that, Scott? I
5 didn't hear you.

6 MR. HIXSON: I'm sorry. State's 168.

7 MS. PRATT: 168.

8 THE COURT: All right. So 168 is admitted over Defense's
9 objection the Court has already previously been through.

10 (State's Exhibit Number 168 [DVD - Interview 2] admitted
11 into evidence and appropriately marked.)

12 MR. HIXSON: And for clarification for the record, we
13 have provided the jurors a copy of the redacted transcripts --

14 THE COURT: Okay.

15 MR. HIXSON: -- as the first date, similar to the first
16 date.

17 THE COURT: All right. So you've got a different
18 transcript now; is that right?

19 JUROR: Yes, sir. Yes, sir.

20 THE COURT: Okay. And the same rules as I told you about
21 the transcript that applied before apply now. This is just a
22 guide. Don't read ahead. Don't read too fast. I want you to
23 listen. I want you to hear it. The audio will be back with
24 you. The transcript will not. Okay. You with me? JUROR:
25 Okay.

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1 THE COURT: Okay. Thank you very much.

2 (State's Exhibit Number 168 played in open court.)

3 THE COURT: All right. Can everybody pass in their
4 transcripts? Okay. Thank you very much. Mr. Hixson, you may
5 continue.

6 MR. HIXSON: Thank you.

7 BY MR. HIXSON:

8 Q Just a few kind of follow-up questions. I'm going to
9 take you back in time a little bit to the first interview, and
10 if I can direct your attention to the, to the period of time
11 concerning the 905 Red Bluff store. I think there's a point
12 in time you referred about where you pointed to a map of some
13 kind where the Defendant was talking about parking near a
14 bridge.

15 A Yes.

16 Q Do you recall that point in time?

17 A I do.

18 Q I want to show you a larger view of State's Exhibit 11
19 and is this a -- generally a, a, a map that you, I think, in
20 the transcript you hear talking about pulling up a picture on
21 a phone or something like that; is that correct?

22 A Yes. On the phone and then I logged into a computer and
23 brought up a, a larger picture.

24 Q Okay. Can you kind of show, since we can't see what you
25 were pointing to because it's a transcript or, or -- can you,

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1 can you show us what you were referring to in that statement?

2 A Sure. The Sunhouse store on Highway 905 is right here,
3 Highway 905 here, Red Bluff or Highway 31, they -- it -- go by
4 both names. During the interview he says that he'd gone back
5 down toward the bridge. The bridge is the bridge over the
6 Waccamaw River. During the course of the interview, we speak
7 about some woods and some houses that they pulled up alongside
8 of, and it was this area that we were speaking about.. It's
9 right behind the store here.

10 Q Okay. Did you also do the same and pull up a map
11 relating to Lake Arrowhead, the -- on Lake Arrowhead Road?

12 A Yes.

13 Q And I think, if I could bring your attention to an area
14 you referred to discussing some apartments and campgrounds, do
15 you recall that in the audio you just heard?

16 A I do.

17 Q I'm going to show the witness what's been marked as
18 State's Nine. See if that aids your testimony concerning the
19 statement we just heard.

20 A Yes. You have the Scotchman store on Lake Arrowhead at
21 the intersection here. We were speaking about -- you have
22 these apartments here, and there's some entry -- entryways
23 there and there's a little commercial strip mall, a couple of
24 businesses here in this parking lot, but we -- he was speaking
25 about some apartments and these were the apartments that he

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1 was speaking about.

2 Q Okay. And specifically, do you recall what Mr. Daniels
3 referred to nonverbally when he was on the recording about
4 when they were coming running down the road and had cigarettes
5 in their hand?

6 A He's, he's talking about this area, this road here, Lake
7 Arrowhead Road, going back to those apartments.

8 Q Okay. So from the store to the right; is that correct?

9 A Yes. They would have -- right. They would have come out
10 and ran to the right and then down the road.

11 Q Okay. And last one, specifically direct your attention
12 to the Oak Street store, and I'll bring your attention to the
13 segment of the testimony turning around on a little auction
14 place and coming back; do you recall that in the, in the
15 statement that was played?

16 A I do.

17 Q Let me show you what's been marked State's Exhibit 10.
18 Will that aid your testimony concerning nonverbal
19 communication you had during the course of the statement?

20 A Yes. Well, as he's --

21 Q However you want to orient it for yourself.

22 A No. You, you were fine with it the first time. You were
23 fine with it the first time. This here is the Sunhouse store,
24 Cultra Road going back towards the post office, going back
25 towards 501 Bypass and Walmart, which has been previously

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1 mentioned. When he mentions the auction shop, that's Teddy
2 Henry's Auction Shop, which is just about back here this way.
3 It's on this side of the road, and he mentions going down
4 there and turning around and coming back. If he would have
5 come back this way from the surveillance video when we watched
6 the, the two individuals that go into the store, they come in
7 from this direction and leave going back in that direction.

8 Q Okay. Thank you. You mentioned, I think, during the
9 course of that interview, you referred several times to
10 photographs of suspects inside, and, and if -- refresh my
11 recollection about identifications that were made using
12 photographs. Do you recall that?

13 A Yes. We had some still photos, which Lieutenant Cestare
14 had testified previously to showing the two individuals inside
15 the stores, and I was showing Mr. James Daniels those pictures
16 asking him who is this person, who is that person, who is this
17 and who is that.

18 Q Let's start with 905 store. Could you look through
19 these? I marked them -- I'm showing the, the witness State's
20 116 to 120. Can you leaf through those and see if you --
21 excuse me, that's Mr. Daniels. I apologize, Dixie, State's
22 134 through 144. Can you leaf through those and identify
23 stills that you used to identify with Mr. Daniels, identify
24 what he said was McKinley and J.J., and if you find the one,
25 please give out the Court's Exhibit for that, please? Okay.

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1 A It would have been State's Exhibit 135.

2 Q Okay. And he positively identified the individuals in
3 there as J.J. and McKinley Daniels?

4 A He did.

5 Q I believe the transcript indicated you showed several
6 photographs of individuals wearing gray and red pants, I
7 think; is that correct?

8 A Correct.

9 Q I'll start with these. Let's start with Lake Arrowhead
10 Road. Could you do -- please do the same thing with that, and
11 if you can recall the photographs that you showed Mr. Daniels
12 during the course of his interview and asked him if he could
13 identify individuals in them?

14 A It would be State's Exhibit Number 74.

15 Q Thank you. He identified those individuals, which one is
16 which in there?

17 A The one in the red pants is Jerome Jenkins and then the
18 one in the black is McKinley Daniels.

19 Q And then finally, as it relates to the Cultra Road and
20 Oak Street robbery and murder, did you show photographs of
21 that situation as well?

22 A I did.

23 Q Would you please take a look at those, State's 102
24 through 115, and see if you recognize the photo that you used
25 during the course of Mr. Daniels' interview?

1 A It would be State's Exhibit 103.

2 Q Thank you. And similar, can you describe the one he
3 identified as James Daniel or, excuse me, J.J. and McKinley?

4 A Jerome Jenkins here in the red pants and McKinley Daniels
5 there in the black and white.

6 Q Now, you mentioned during the course of your interview
7 you asked a question. I'll draw your attention to an
8 appearance, whether Mr., Mr. James Daniels has the same
9 general appearance as McKinley; is that correct? Do you
10 recall that point in your -- in the recording?

11 A Yes. I remember asking him if they looked alike.

12 Q And specifically, you reference long hair?

13 A Yes.

14 Q At the time that you interviewed Mr. Daniels, what was
15 his hairstyle at that time?

16 A He had long braids, not dreadlocks, braid, long braids is
17 what I would describe them as.

18 Q Let me show you what's State's Exhibit 171. See if you
19 recognize that photo.

20 A It's a South Carolina DMV photo of James Daniels.

21 Q Okay. And what -- can you describe his hairstyle for the
22 record for the jury?

23 A He would have long hair, long hair, braids, twists.

24 MR. HIXSON: Beg the Court's indulgence just for a
25 moment, Your Honor.

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1 THE COURT: Yes, sir.

2 BY MR. HIXSON:

3 Q Oh, one last little bit. If you're -- during -- early on
4 in your testimony when you were talking about the work
5 schedule with Mr. Daniels, do you recall that segment of the
6 statement?

7 A Yes.

8 Q Okay. And I think you specifically discussed that he
9 worked at a Subway; is that correct?

10 A Correct..

11 Q Do you know where the location of that Subway was that
12 Mr. Daniels said that he worked?

13 A It was in the Walmart there on I think it's Kings Road.
14 It's right there where Highway 22 comes into 17 and if you
15 just cross over 17 there's a Wendy's and a Walmart and some
16 other -- the Tanger Outlets are right across the street.

17 Q Now, is the Subway a separate building or is it inside
18 the actual Walmart?

19 A I -- it's inside.

20 Q Okay. Let me show you what's been marked State's 16, and
21 if you can orient that where the Walmart is in relation to the
22 Scotchman robbery at Lake Arrowhead Road.

23 A The Walmart here, Kings Road comes down and the Scotchman
24 Store is right there at the intersection of Lake Arrowhead
25 Road, Kings Road.

1 Q Just as a clarification, we've been saying it enough but
2 905, the Lake Arrowhead robbery and Oak Street, all those
3 locations are in Horry County; correct?

4 A They are.

5 MR. HIXSON: I have no further questions, Your Honor.

6 THE COURT: All right. Cross examination?

7 MS. PRATT: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. PRATT:

10 Q Detective Lent, I want to take you back to the night of
11 these statements that my client gave, if that's okay with you?

12 A Yes, ma'am.

13 Q As I understand it, earlier in the day, you had
14 information that led you all to believe that James might have
15 information for you; correct?

16 A We had information that he was identified as being a
17 person in the store making a purchase not long prior.

18 Q And he actually, according to your report, was identified
19 as a potential suspect; isn't that right?

20 A There was a comment that was made. Yes, ma'am.

21 Q Okay. And that was in your report that you wrote?

22 A It was.

23 Q Okay.

24 A Uh-huh (affirmative response).

25 Q And so you came to the home that James lived at at [REDACTED]

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1 Ware Road in Loris; correct?

2 A Correct.

3 Q But you didn't come alone; did you?

4 A No.

5 Q Okay. There were at least four cars unmarked, I believe,
6 but several detectives, one or two in each car. So there must
7 have been between four and eight of you; is that correct?

8 A I would say there were multiple cars with a number of
9 detectives.

10 Q Okay. Lots?

11 A A number.

12 Q And it was -- okay, well, more than four?

13 A Or four.

14 Q Okay. So you come to the house, and it's somewhere about
15 8 or 8:30 at night, it's dark; correct?

16 A It is dark when we get there.

17 Q All right. And you all all pull up into the yard of this
18 particular house where my client's baby momma, for want of a
19 better term, lives with him; correct?

20 A The mother of his, the mother of his child lived there.

21 We pulled into the driveway, and I believe there was some cars
22 parked out in the street.

23 Q Okay. And I keep calling her baby momma, and I know
24 that's probably not a very politically correct term, but she's
25 certainly the mother of a child because we heard Sergeant

1 Delpercio talking about a little girl?

2 A Yes.

3 Q And then we also know that she's pregnant; right?

4 A She was.

5 Q She's showing pregnant?

6 A I believe at the time, yes, she was.

7 Q Sure. You knew.

8 A It's been, it's been a while. I knew she was pregnant.

9 Q I understand. Yeah. You knew she was quite pregnant,
10 and this is fairly late at -- well, it's 8 or 8:30; right?

11 A Correct.

12 Q So you start there. You talk to her. You see the
13 Malibu. You decide you're going to seize the Malibu, get a
14 search warrant; correct?

15 A Yes, ma'am. We, we knew we were going to go ahead and
16 take that vehicle. It's a vehicle. We got a search warrant
17 to take it. Vehicles aren't like houses. They can move and
18 disappear. So we were going to hold on to it while we were
19 there and we, and we saw it.

20 Q Sure. So at the time -- and then somebody, and it may
21 have been Lashana, the mother of his children, or it may have
22 been her mom or aunt or whoever else was in the house, lets my
23 client know that you all are at the house; correct?

24 A I assume, yes. That somebody had called him and said
25 that we were there.

Gregory Lent - Cross by Ms. Pratt

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1 Q So he comes from work to the house where there's a bunch
2 of police. We're not sure how many, but there's a bunch, and
3 we have his pregnant baby momma with the child after dark in
4 the house; correct?

5 A Correct.

6 Q Okay. So he comes. Now, you have taken the car and you
7 have now put Lashana into the back of the police car, correct,
8 because you're going to go down to Green Sea?

9 A Well, not to be argumentative, no. I don't know that the
10 time when Mr. James Daniels arrived in the yard that the
11 Malibu had been towed at that point or not. I knew, I knew it
12 was going to be towed.

13 Q Right.

14 A But I also know that when we left to go to the West
15 Precinct there was still people left at the house because
16 there was work still to be done there. We were seizing the
17 car. We had a search warrant for the residence. As far as
18 Ms. Chestnut riding in the backseat of a police car, no, she
19 would have ridden there in an unmarked detective vehicle, and
20 since there's no cage, we would have had her ride in the front
21 seat.

22 Q But she's in a police car. I mean, you call it an
23 unmarked detective vehicle. I call it a police car, potato,
24 potato?

25 A It's, it's owned, it's owned by the Horry County Police

1 Department.

2 Q Okay. So she's in a police car, and you put my client
3 into a police car; correct?

4 A Yes, when he got there. I believe, if I recall
5 correctly, when I asked him to come to the West Precinct to
6 speak with us, I was already seated in a car or whatever else.
7 He drove down there with us in another vehicle that was owned
8 by the Horry County Police Department.

9 Q Okay. And he asked you if he could go in his own vehicle
10 and you told him no?

11 A I don't recall if he asked me that or not.

12 Q Umm, okay, but no question, you leave Loris and go down
13 Highway 9 to Green Sea?

14 A We do.

15 Q Which is 20 minutes, half an hour, maybe?

16 A I don't know.

17 Q Okay. Certainly it's not like you went a half a block
18 down the street; right?

19 A Yeah. I mean, if I was going to drive somewhere for an
20 half hour, 40 minutes, we would have probably gone to the M.L.
21 Brown Building. The West Precinct was much closer to Mr.
22 Daniels and Ms. Chestnut's residence.

23 Q Okay. And then you have -- you get into the West
24 Precinct. You've got his baby momma, and now it's closer to
25 9:30 probably at night in another room and away from my

Gregory Lent - Cross by Ms. Pratt

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1 client; correct?

2 A Correct. We did -- we spoke to them separately once we
3 got back to the West Precinct. It's not normal habit to have,
4 to have -- to speak to them together.

5 Q And no question that you started my client's interview
6 somewhere around 10 o'clock at night because at the end of the
7 interview you say, "It's 11:30 now"; right?

8 A Yes. We do hear that. Yes.

9 Q All right. And then you, you talk to him for a good hour
10 and a half?

11 A Approximately.

12 Q Okay. All right. And he's got his baby momma in another
13 room that he has not been allowed to speak to, correct,
14 because she's in another spot?

15 A Correct. She was sitting in another office, and they did
16 not have the opportunity to speak to one another.

17 Q And it wasn't until the end of the interview that he
18 actually knows that she's not arrested; correct?

19 A Correct. I think it was at the end of the interview was
20 the only time that he asked what her status was or where she
21 was or to check on her.

22 Q Because he knew she was there and he knew she was in
23 another room; correct?

24 A Correct.

25 Q Okay.

1 A He knew that she was at the West Precinct and that she
2 was with officers.

3 Q All right. Throughout the statement my client tells you
4 that he did not know what was going on; is that correct?

5 A He stated multiple times. He stated -- he made a number
6 of statements throughout that interview, some of which were
7 that he did not know what was going on.

8 Q Okay.

9 A At one point he stated that he didn't see anybody come
10 out of the store with a cash drawer.

11 Q Well, and, and that's not really responsive to my
12 question. Several times he says, "I didn't know what was
13 going on"?

14 A He does.

15 Q Okay. And he also in response to some things that you
16 say tells you that he is very afraid for the safety of his
17 family; correct?

18 A Correct.

19 Q In fact, you say that McKinley is more insane than
20 anybody you know, again, as a question?

21 A I did, I, I did say that during the interview.

22 Q And you -- and my client later on throughout the
23 interview makes comments like he's scared of what's going to
24 happen to his family; right?

25 A He does make those comments.

Gregory Lent - Cross by Ms. Pratt

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1 Q He tells you that his brother has already threatened to
2 kill him?

3 A He does say that.

4 Q He says that his brother has shot at him?

5 A Yes. I believe he did say that.

6 Q And hit him in the head with a gun; right?

7 A Yes.

8 Q Okay. And even throughout the end, and you heard his
9 interchange with Sergeant Delpercio while you were, I think,
10 out talking to Lashana and then coming back. He says, "I just
11 want to protect my family. I'm worried about my family. My
12 family needs to be taken care of. Can you all help me take
13 care of my family?" Right?

14 A Absolutely.

15 Q Okay. So no question all of that is going on. My client
16 tells you that he was working two jobs; correct?

17 A Yes.

18 Q Working at Shorty's Grill as a cook and also working at
19 the Subway; is that right?

20 A Correct. He told me both those things.

21 Q Okay. I think that's all the question I want to ask you.
22 Detective, thank you for your answers.

23 A Thank you.

24 THE COURT: Okay. Redirect?

25 MR. HIXSON: Yes, just briefly.

1 REDIRECT EXAMINATION

2 BY MR. HIXSON:

3 Q Defense counsel had talked to you about threats or
4 potential duress during the course of his statement, and I
5 want to ask you a couple of questions about your perception of
6 him that we can't see on the video. Specifically, as it
7 relates to, we hear the questions that are answered. Did he
8 appear cogent and reacting emotionally appropriate to the
9 questions that you asked to him?

10 A Yes. He did. In the beginning of the interview, you can
11 tell that it's a pretty lax conversation. We're just speaking
12 about dates when he worked and everything else. It was at a
13 certain point when we started hitting around certain dates
14 that I was able to see his demeanor change.

15 Q Okay. And so while you're -- he clearly understands that
16 you're a police officer from Horry County at the beginning of
17 the interview; is that correct?

18 A Yes.

19 Q And that the safety and the security of the police
20 department is present at that period of time; is that safe to
21 say?

22 A Yes.

23 Q Okay. Now, towards the end of the statement, after you
24 had elicited a fair amount of information concerning him being
25 present at several robberies, to my recollection, does he

Gregory Lent - Redirect by Mr. Hixson

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1 mention any fears or threats or duress prior to those
2 admissions?

3 MS. PRATT: Your Honor, I'd object to the form of the
4 question. It doesn't say fears or duress from whom?

5 THE COURT: Okay. Sustained. Rephrase your question.

6 BY MR. HIXSON:

7 Q Does he acknowledge being fearful for anyone involved in
8 the case or anybody relating to these statements during the
9 course of the interview?

10 MS. PRATT: Again, Your Honor, same problem.

11 THE COURT: I don't follow your question.

12 MR. HIXSON: I'm just trying not to lead him. I'm trying
13 to --

14 THE COURT: Okay.

15 BY MR. HIXSON:

16 Q When is the first time during the course of an hour and a
17 half that this Defendant expresses any concerns or fear
18 relating to J.J. and McKinley?

19 A After he starts speaking about their involvement in the
20 armed robberies and the homicides.

21 Q Does he make any comment to you about being forced to do
22 anything from January 2nd to January 25th?

23 A No.

24 Q I have no further questions.

25 MS. PRATT: No re-cross, Your Honor.

1 THE COURT: Okay. All right. Thank you, Detective Lent,
2 you may step down, and as he's stepping down and we're getting
3 organized for the next witness, I have a couple more
4 stipulations to read to you. So as I -- remember as I told
5 you earlier today, a stipulation is a fact that is agreed upon
6 by both sides. So I actually try not to write these things.
7 I let the lawyers write them because that means they both
8 looked at it and read it and they both approved it and they
9 both know what I'm going to say. So these are two
10 stipulations. I'll read both of them to you one after the
11 other, and again, no other proof of any of these facts are
12 necessary. So you are -- these are stipulations of fact.
13 Okay?

14 Stipulation of fact number one is State's Exhibit Number
15 174, and what it says is there is no evidence in the trial
16 record, nor does the State assert that James Elbert Daniels
17 fired the handgun that killed the victim, Trisha Stull, in the
18 Oak Street armed robbery. Okay?

19 Stipulation number two is State's Exhibit Number 175, and
20 what it says is this, the manner of death for Trisha Dawn
21 Stull was homicide caused by a single gunshot wound to the
22 left chest which traveled left to right through the ribcage
23 and penetrated major blood vessels, including the aorta and
24 the vena cava. A second gunshot wound to the foot did not
25 contribute to death. Okay?

Marque Scott - Direct by Mr. Richardson

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1 So those are two stipulations, State's Exhibit 174 and
2 175. Okay?

3 (State's Exhibit Number 174 and 175 [Stipulations]
4 admitted into evidence and appropriately marked.)

5 THE COURT: And you may call your next witness.

6 MR. RICHARDSON: Thank you, Your Honor. The State calls
7 Marque Scott.

8 THE COURT: Thank you. All right. Mr. Scott, if you
9 would please come forward and be sworn.

10 Whereupon, Marque Scott is called to the stand, duly
11 sworn by the clerk and testified as follows:

12 CLERK: Thank you. Please state your name and spell your
13 last name for the court.

14 MR. SCOTT: Okay. Corporal Marque Scott, S-C-O-T-T, with
15 J. Reuben Long Detention Center.

16 COURT REPORTER: Spell your first name, please?

17 MR. SCOTT: M-A-R-Q-U-E.

18 COURT REPORTER: Thank you.

19 DIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q Corporal Scott, how long have you been with J. Reuben
22 Long Detention Center?

23 A Seven years.

24 Q And what are your duties there?

25 A I'm currently a supervisor corporal. At the time I was a

1 unit officer.

2 Q You say at the time, are we talking about April 11th,
3 2015?

4 A Yes, sir.

5 Q All right. Tell us what, if anything, stood out in your
6 mind about that day, where you were at?

7 A Well, I was running a housing unit. It was time to lock
8 the unit down. I noticed Mr. Daniels, McKinley, he was in the
9 unit that I was working in. He was kind of staring at, you
10 know, just kind of odd for an inmate to just keep staring at
11 you. So I figured it was something that was going on that,
12 you know, he was trying to, to do. So I pretty much kept an
13 eye on him. I was walking around the unit locking everybody
14 down, and I saw him trying to communicate with his brother,
15 which was in an adjacent unit, which he was on a cleanup crew
16 in the other unit. So that's why he was out. So I kind of
17 kept an eye on him. I went upstairs to secure some doors, and
18 I saw Mr. McKinley Daniels receive some, some type of content
19 through the door with Mr. James Daniels, and I called
20 Lieutenant Anderson, my supervisor, to let him know that what
21 I saw and see if they could look at the camera to, you know,
22 verify what I saw. So he did that, and shortly after, he sent
23 someone down to search the cell and search the inmates that
24 was in that particular cell.

25 Q All right. After calling Anderson, do you know whether

Marque Scott - Direct by Mr. Richardson

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1 or not he was able to retrieve that portion of video?

2 A Yes, sir. Afterwards, he -- well, before he sent
3 Corporal Wilhelm and Kidder down, he called and told me that,
4 you know, he looked at the video and he was sending someone
5 down to, you know, search -- have them search the cell and the
6 inmates, and later on, I viewed the video footage.

7 Q All right. And I want to pass you what's been, I think
8 it's already in evidence --

9 A Uh-huh.

10 Q -- as State's Exhibit Five and Six.

11 A Okay.

12 Q Take a look at that and tell me if you recognize those
13 photographs?

14 A Yes, sir.

15 Q All right.

16 A Exhibit Five, I can see Mr. James Daniels passing --

17 Q All right. Hold on, don't say anything else. Let me
18 hold them a second.

19 A Okay. Okay.

20 MR. RICHARDSON: Five and Six. Without objection?

21 MS. PRATT: Without objection.

22 THE COURT: All right. State's Number Five and State's
23 Number Six are admitted without objection.

24 (Whereupon, State's Exhibit Number Five and Six

25 [Photographs] admitted into evidence and appropriately

Marque Scott - Direct by Mr. Richardson

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1 marked.)

2 MR. RICHARDSON: Thank you, Your Honor.

3 THE COURT: We've got so many now, I had to --

4 MR. RICHARDSON: Yeah. Yeah.

5 THE COURT: -- I had to go back and double check. So I
6 apologize.

7 BY MR. RICHARDSON:

8 Q All right. Describe what you see in Five, please?

9 A Okay. In Five, I see Mr. James Daniels, he's sliding
10 something through the crack of the rec yard door, which is the
11 Delta 3 rec yard door, which is the unit that I was working
12 in.

13 Q And was James in D-3 or D-4?

14 A James was in Delta 4.

15 Q Okay.

16 A At the time, I was locking my unit down, and his unit was
17 about to come out for rec.

18 Q All right. Describe what you see in State's Exhibit Six,
19 please?

20 A Okay. I can see Mr. McKinley, he's receiving this stuff
21 through the crack of the door, and once he received the stuff
22 through the crack of the door, he went immediately to his cell
23 and came back out to do pod cleanup.

24 Q Okay.

25 MR. RICHARDSON: Your Honor, permission to publish?

Marque Scott - Cross by Ms. Pratt

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1 THE COURT: Yes, sir.

2 BY MR. RICHARDSON:

3 Q I have no further questions. If you'd answer any
4 questions Ms. Pratt has for you.

5 A Okay.

6 THE COURT: Cross examination?

7 MS. PRATT: Just one question, Your Honor. Thank you.

8 CROSS EXAMINATION

9 BY MS. PRATT:

10 Q Officer Scott, just to make sure I understand your
11 testimony, what you saw was something being passed through the
12 door from the rec yard between my client through to McKinley,
13 his brother; is that right?

14 A Yes, ma'am.

15 Q That's all I needed to ask you. Thanks.

16 THE COURT: Redirect?

17 MR. RICHARDSON: Nothing from the State, Your Honor.

18 THE COURT: All right. Thank you very much, Corporal
19 Scott.

20 A Okay.

21 THE COURT: Have a nice day.

22 A Thank you.

23 THE COURT: You may call your next witness.

24 MR. RICHARDSON: We'd call Todd Kidder to the stand.

25 THE COURT: All right. Please come forward, Corporal

Todd Kidder - Direct by Mr. Richardson

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1 Kidder, and be sworn.

2 Whereupon, Todd Kidder is called to the stand, duly sworn
3 by the clerk and testified as follows:

4 CLERK: Please state your name and spell your last name
5 for the Court.

6 MR. KIDDER: Corporal Todd James Kidder, work for Horry
7 County Detention Center, J. Reuben Long.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q How long have you been with J. Reuben Long?

11 A Ten and a half years.

12 Q Were you working on April the 11th, 2015?

13 A I was, sir.

14 Q All right. And what happened on that day? Did you hear
15 from Officer Anderson?

16 A Lieutenant Anderson, I sure did.

17 Q Okay.

18 A He called me on the radio to respond to Delta 3 to pat
19 down a certain individual in the cell.

20 Q All right. And who did you end up patting down?

21 A Mr. Daniels.

22 Q Was that McKinley Daniels or James Daniels?

23 A James Daniels.

24 Q All right. Did you find any papers?

25 A I did.

Todd Kidder - Cross by Ms. Pratt

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1 Q Where were the papers located?

2 A Once I patted, patted the inmate down, I found papers in
3 his left breast pocket, and then when I searched his cell, I
4 found one or papers in the trashcan wrinkled up.

5 Q All right. And no doubt but that the papers were already
6 in the cell? The person that you patted down was not in the
7 rec yard?

8 A No, sir.

9 Q Okay.

10 A He was in the cell.

11 Q Okay. Okay. What do you do with the papers?

12 A Oh, I gave them to my supervisor, Mr. Wilhelm and Mr.
13 Wilhelm or Corporal Wilhelm at the time to Lieutenant
14 Anderson.

15 Q Okay. I have no further questions. If you would answer
16 any questions Ms. Pratt has for you.

17 THE COURT: Ms. Pratt?

18 CROSS EXAMINATION

19 BY MS. PRATT:

20 Q Officer Kidder, I think I'm a little confused. Did you
21 say that you patted down James Daniels, my client, or McKinley
22 Daniels, who received the papers in those pictures?

23 A McKinley Daniels.

24 Q It was McKinley?

25 A Yeah.

- 1 Q No question?
- 2 A Yeah.
- 3 Q Okay.
- 4 A My bad.
- 5 Q So that's okay --
- 6 A They're brothers though. My bad.
- 7 Q You just scared me there for a minute. I thought I had
- 8 it wrong.
- 9 A I'm sorry.
- 10 Q All right. So you found papers on his person; correct?
- 11 A Yes.
- 12 Q And you found papers in his cell?
- 13 A Correct.
- 14 Q Okay. And that was your total involvement in this?
- 15 A Yes, ma'am.
- 16 Q Thank you.
- 17 THE COURT: Redirect?
- 18 MR. RICHARDSON: Nothing, Your Honor.
- 19 THE COURT: Thank you very much, Corporal Kidder, have a
- 20 nice day.
- 21 A Yes, sir.
- 22 THE COURT: You may call your next witness.
- 23 MR. RICHARDSON: The State calls Lieutenant William
- 24 Anderson.
- 25 Whereupon, William Anderson is called to the stand, duly

William Anderson - Direct by Mr. Richardson

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1 sworn by the clerk and testified as follows:

2 CLERK: Please be seated. Please state your name and
3 spell your last name for the Court.

4 MR. ANDERSON: My name is William Anderson, A-N-D-E-R-S-
5 O-N. I'm a lieutenant with the Horry County Sheriff's
6 Department assigned to J. Reuben Long Detention Center where
7 I'm the A Squad Shift Commander.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q All right. Lieutenant Anderson, were you working on the
11 11th of April, 2015?

12 A Yes, sir. I was.

13 Q All right. Did you get a call from Marque Scott?

14 A Yes, sir. I did.

15 Q Was that over a radio?

16 A It was over the phone.

17 Q Okay. What did, what did you do upon getting that call?

18 A He asked me if I'd review the cameras, and in my office,
19 I have a camera system. So I went back and reviewed the
20 cameras for his housing unit at the time that he had asked me
21 to look at.

22 Q And what, if anything, did you find on the camera system
23 with regard to the two inmates?

24 A I saw two inmates at the rec yard door for D-3, and they
25 were passing paper through the door.

1 Q Okay. Were you able to cut that clip?

2 A Yes, sir. I was.

3 Q I want to pass to you what has been marked as State's
4 Number 146.

5 MR. RICHARDSON: Without objection?

6 MS. PRATT: No objection, Your Honor.

7 THE COURT: What number is it?

8 MR. RICHARDSON: 146, Your Honor.

9 THE COURT: Okay. State's 146 without objection.

10 (State's Exhibit Number 146 [Video] admitted into
11 evidence and appropriately marked.)

12 BY MR. RICHARDSON:

13 Q All right. Lieutenant Anderson, do you recognize that
14 DVD?

15 A Yes, sir. I do. It has my initials on it.

16 Q All right, sir. Is that true and accurate of what it was
17 reflecting on that day on April the 11th, 2015?

18 A Yes, sir. It is.

19 Q All right.

20 MR. RICHARDSON: Your Honor, the State would ask
21 permission to publish?

22 THE COURT: Yes, sir.

23 (State's Exhibit Number 146 played in open court.)

24 BY MR. RICHARDSON:

25 Q Lieutenant Anderson, did someone working at J. Reuben

William Anderson - Direct by Mr. Richardson

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1 Long bring you what was passed?

2 A Yes, sir. They did.

3 Q I'm going to pass -- hand up to you what has been marked
4 as State's Exhibit Two and Three.

5 MR. RICHARDSON: No objection, Barbara?

6 MS. PRATT: I don't think you're introducing it.

7 THE COURT: Marking them.

8 MS. PRATT: You're going to show it to him, mark it.

9 THE COURT: Yes.

10 MS. PRATT: I think they're already marked, Your Honor.

11 THE COURT: Show them to him and mark them for ID.

12 BY MR. RICHARDSON:

13 Q State's Exhibit Two and Three for ID purposes, do you
14 recognize those?

15 A Yes, sir. I do.

16 Q What is that?

17 A These were the papers that were brought to me by Corporal
18 Wilhelm after him and Corporal Kidder had searched the cell in
19 D-3, cell 101.

20 Q Okay. And did these go into his file?

21 A No, sir. I hung on to them and made the video and then
22 contacted OPS, and it was turned over to them.

23 Q All right. Thank you, sir. No further questions. If
24 you would answer any questions Ms. Pratt has.

25 MS. PRATT: I have no questions for this witness.

John Allan Jamieson - Direct by Mr. Richardson

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1 THE COURT: All right. Thank you, Lieutenant Anderson.
2 Have a nice day. All right. You may call your next witness.

3 MR. HIXSON: The State of South Carolina calls Jack
4 Jamieson, Special Agent from the State Law Enforcement
5 Division.

6 Whereupon, John Allan Jamieson is called to the stand,
7 duly sworn by the clerk and testified as follows:

8 CLERK: Okay. Please be seated. Thank you. Please
9 state your name and spell your last name for the Court.

10 MR. JAMIESON: My name is John Allan Jamieson. Allan is
11 spelled A-L-L-A-N. My last name is J-A-M-I-E-S-O-N, and I
12 normally go by Jack.

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Let's -- you're employed with SLED?

16 A Yes, sir.

17 Q Tell the jury what you do there at SLED?

18 A I'm employed as a questioned document examiner for SLED.
19 My duties include the examination and comparison of
20 handwriting, handprinting, signatures and numerals, the
21 examination and comparison of pens, papers, inks and pencils,
22 the decipherment of alterations, obliterations and erasures,
23 as well as testimony in court.

24 Q All right. Will you please go through some of your
25 qualifications to -- trying to get you established as an

John Allan Jamieson - Direct by Mr. Richardson

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1 expert.

2 A Yes, sir. I have a Bachelor of Science in Biochemistry
3 and Chemistry as well as a Certificate in Criminology. I
4 started training as a questioned document examiner in June of
5 1981. It was -- the training was conducted at the Provincial
6 Crime Lab, i.e. the State Crime Lab in Ontario, Canada. My
7 training consisted of a two-year apprenticeship type program,
8 as there are no schools for questioned document examinations,
9 and I studied under the tutelage of senior questioned document
10 examiners. My studies included numerous quizzes, both oral
11 and written, as well as doing test cases, reviews of
12 literature, reading books and such and attempting or learning
13 how to perform the duties of a questioned document examiner.
14 At the end of the first year, there was a board examination.
15 The board consisted of the director as well as the deputy
16 director as well as my section chief, where I presented a mock
17 case in front of them. It was actually a case that had been
18 arranged for me. I did not know the answers. So I worked the
19 case, and then I came up with the right answer, the
20 anticipated conclusion, and they cross examined me, and I
21 presented the case as a questioned document examiner, and I
22 obviously passed. My training was a total of two years, and
23 from then on I've worked for the Ministry of the Solicitor
24 General for the Province of Ontario. I've worked for the
25 Ontario Lottery Corporation as the questioned document

1 examiner. I've also worked for the Commonwealth of Virginia as
2 a questioned document examiner, and as I've stated, I started
3 in June of '81. So this will be 37 years in the field.

4 Q Have you ever testified in a court of law as an expert?

5 A Yes, sir. I've testified over 250 times, but this will
6 be my first time in the State of South Carolina.

7 Q On those 250, have you ever been qualified as an expert?

8 A In each and every time.

9 Q Okay. So you have been qualified as an expert over 250
10 times?

11 A Yes, sir.

12 MR. RICHARDSON: Barbara, do you have any questions?

13 THE COURT: Would you like to voir dire, Ms. Pratt?

14 MS. PRATT: None, Your Honor.

15 THE COURT: Do you have any objections?

16 MS. PRATT: None, Your Honor.

17 THE COURT: Okay. All right. Ladies and gentlemen,
18 normally when a person testifies, as I've told you before,
19 they're not allowed to give their opinion, and then when a
20 person testifies, they have to testify as to what they saw or
21 they heard or they did or they touched or they sensed by
22 smell, something of that nature. However, there is an
23 exception, as I've told you before, under the rules when
24 someone is qualified because of education or experience, that
25 person is permitted to give their opinion in certain areas if

John Allan Jamieson - Direct by Mr. Richardson

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1 I qualify them in that way. So Mr. Jamieson will be qualified
2 as an expert in the area of questioned documents examination.
3 Is that a fair statement of your specialty?

4 A Yes, Your Honor.

5 THE COURT: Okay. He will be allowed to give opinion
6 testimony in that area. Now, that doesn't mean that you have
7 to accept his opinion, but it is evidence for you to use in
8 any way that you see fit and give it the weight and
9 credibility that you believe is appropriate as you are
10 required to do with each and every witness that appears before
11 you. Okay? Mr. Solicitor?

12 MR. RICHARDSON: Thank you, Your Honor.

13 BY MR. RICHARDSON:

14 Q Mr. Jamieson, explain to the jury why handwriting is
15 identifiable?

16 A Well, handwriting is as, as, as -- excuse me, is as
17 individual as your own fingerprints and DNA. It's a
18 characteristic of yourself. Handwriting is a process of it
19 being learned, practiced and modified over the years to become
20 individual to you as the individual yourself. Because of this
21 individuality I can then make comparisons between writings to
22 determine whether or not they're the same individual. That --
23 that's why handwriting is identifiable because I normally pick
24 or I'm normally submitted known writings of an individual, and
25 I compare them to questioned writings, and I determine whether

1 or not they have -- they were written by the same person.

2 Q Are there a range of options or grades for
3 predictability?

4 A Yes, sir. Within my range of opinions I express, it's
5 much like a spectrum. On either end of the spectrum, we have
6 the person either did or did not write the questioned passage.
7 In the middle, we have I don't know whether or not the person
8 did or did not write it. Moving out from the middle a bit, we
9 have indications the person either did or did not write it.
10 That's a limited opinion. It's based on limitations within
11 the known or the questioned writings that won't allow me to
12 progress any further in, in my certainty. Moving out further
13 from the indications, we have the person probably either did
14 or did not write the questioned documents. That means there's
15 a high degree of likelihood that the person either did or did
16 not write the writings. Moving further out, just below
17 identification or elimination, we have strong indications.
18 That means that I'm almost certain that the person either did
19 or did not write it, and then we at the end of the spectrum,
20 again, we have the elimination or identification portion.

21 Q Mr. Jamieson, were you called upon to answer the question
22 of whether or not James Daniels had written certain papers?

23 A Yes, sir.

24 Q And were you given a packet of known samples?

25 A Yes, sir.

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1 Q I want to pass to you what's been marked as Court's
2 Exhibit Number Two. I also want to pass to you -- I'm going
3 to give you the originals, but what's been marked as copies of
4 that. Okay?

5 A Okay.

6 Q State's Exhibit Two and State's Exhibit Three are copies
7 and these are the originals.

8 A Okay. All right. Okay. Let's deal with State's
9 Exhibits Two and Three. State's Exhibit Three is --
10 corresponds or is a copy of one of the questioned documents I
11 examined. It was item 22 in my examination. I recognize it
12 because there's a case number, item number and my initials in
13 blue gel pen. So that's one of the questioned documents I
14 examined. The other questioned document, which corresponds to
15 State's Exhibit Number Two, I marked that as item 25, again,
16 with the case number and my initials, and this is the original
17 I examined and State's Exhibit Two is a copy of it. I will
18 note that State's Exhibit Number Two does have some lines that
19 have been obscured for whatever purpose.

20 Q All right.

21 A Okay.

22 Q Let me ask you, did you put together a report for this
23 jury?

24 A Can we get on with the -- let me --

25 Q All right.

- 1 A -- go through the known.
- 2 Q Sir?
- 3 A Let me go through the known to make sure.
- 4 MS. PRATT: Objection, Your Honor.
- 5 THE COURT: Okay. Hold, hold on.
- 6 MR. RICHARDSON: Yeah.
- 7 THE COURT: Yeah. Yeah. Hang on just a second. Okay.
- 8 BY MR. RICHARDSON:
- 9 Q Let's --
- 10 A Okay.
- 11 Q -- let's don't say anything about except that they are
- 12 known?
- 13 A That's correct.
- 14 Q Can we do that?
- 15 A Yes.
- 16 Q All right.
- 17 A Yes.
- 18 Q All right.
- 19 A Yes.
- 20 Q Based upon the known, you conducted a series of tests and
- 21 hold those down, if you will, on number 22, your item 22 and
- 22 25?
- 23 A Yes, sir.
- 24 Q Okay. Were you able to come up with a prediction as to
- 25 whether or not your item 22 and your item 25, I think it's

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1 State's Item Two and Three, were you able to determine who
2 wrote Two and Three?

3 A Yes. They were written by the writer of the known
4 documents that were presented to me as being the writings of
5 Mr. Daniels, James Daniels.

6 Q Okay. And on that spectrum that you talked about, where
7 does this fall on the spectrum for having known that this is
8 Mr. Daniels?

9 A In my expert opinion, based on my training and
10 experience, they're one in the same writer.

11 Q Okay.

12 MR. RICHARDSON: Permission to publish, Your Honor? Oh,
13 I want to move in State's Exhibit Two and Three.

14 THE COURT: All right. Any objection?

15 MS. PRATT: Let me see what he's going to be moving in.

16 THE COURT: Yes, ma'am.

17 MS. PRATT: May we approach, Your Honor?

18 (Whereupon, a bench conference is held in the presence
19 but out of the hearing of the jury.)

20 THE COURT: All right. So State's Exhibit Number Two and
21 Three are admitted without objection; is that right?

22 MS. PRATT: Yes, Your Honor. That's correct.

23 MR. RICHARDSON: Thank you, Your Honor.

24 (State's Exhibit Number Two [Redacted Jail Letter] and
25 State's Exhibit Number Three [Copy of Jail letter] admitted

1 into evidence and appropriately marked.)

2 MR. RICHARDSON: And we'll just -- Your Honor, we'll just
3 -- we're not going to publish them then. We'll just send them
4 back.

5 THE COURT: You're welcome to hand them to the jury, but
6 we're not going to read it.

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: You all can -- these are -- these items are
9 in evidence. We can have them -- pass them around right now.
10 You can have the opportunity to read them in more detail once
11 you're back in the jury room, but we can certainly pass them
12 around right now, but we're not going to, we're not going to
13 read them to you. So you, you can all read and write.

14 MR. HIXSON: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury.)

18 THE COURT: Okay. All right. Is that it for direct?

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 THE COURT: Okay. Cross examination, Ms. Pratt?

21 MS. PRATT: I have no questions for this witness, Your
22 Honor.

23 THE COURT: Okay. All right. Mr. Jamieson, thank you
24 very much. You are excused from your subpoena.

25 A Thank you, Your Honor.

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1 THE COURT: All right. You may call your next witness.

2 MR. HIXSON: I beg the Court's indulgence for just one
3 moment, Your Honor?

4 THE COURT: Yes, sir. Everybody stand up, kind of
5 stretch, twist, turn.

6 MR. HIXSON: Your Honor, at this time, the State rests.

7 THE COURT: Okay. All right. Ladies and gentlemen, grab
8 a seat for one quick second. I'm going to give you some
9 instructions, and then we're going to move you out of here.
10 Okay? So at this point in time, the State has rested its
11 case. Okay? There are some legal issues that I am required
12 by law to take up with them that I'm required to take up
13 outside of your presence. Okay? So it's four, almost 4:30.
14 Okay? So what we're going to do is instead of start working
15 tonight, we are going to stop for the day and come back fresh
16 tomorrow morning. Okay? So you've heard a lot of testimony
17 today. You've listened to audio-recordings. You've seen
18 documents, all those kind of things. So we're going to go
19 ahead and stop. It's a good stopping place in the case, and
20 I'm going to release you for the evening.

21 Now, as I release you for the evening, let me remind you
22 of the oath that you have made to me, the oath that you have
23 made to each other, the oath that you have made to yourself,
24 the oath that you have made to the parties and the lawyers in
25 this case and that is this, that you will not discuss this

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1 THE COURT: Okay. Now, do you want to talk to Ms. Pratt
2 any more at this time?

3 MR. DANIELS: No, sir.

4 THE COURT: Okay. And do you agree with that, Ms. Pratt?

5 MS. PRATT: Yes, Your Honor.

6 THE COURT: Okay. And do you wish to testify, Mr.
7 Daniels?

8 MR. DANIELS: No, sir. No, sir.

9 THE COURT: Okay. Thank you very much. So when I tell
10 the jury what the law is in the case, which will be almost at
11 the very end of the case, I will read this entire three or
12 four paragraphs to them about how they cannot hold the fact
13 that you did not testify against you, and they cannot even
14 discuss it in the jury room. Do you understand that?

15 MR. DANIELS: Yes, sir. Yes, sir.

16 THE COURT: Okay. Thank you very much.

17 All right. Ms. Pratt, what's your intention on calling
18 witnesses? You can sit down, Mr. Daniels. Thank you very
19 much for being respectful. What's your intention on calling
20 witnesses?

21 MS. PRATT: Your Honor, because my client has determined
22 that he does not wish to testify, the Defense would not call
23 any other witnesses and we would rest.

24 THE COURT: Okay. Great.

25 MS. PRATT: And renew all of our motions as appropriate.

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1 THE COURT: Okay. Wonderful. All right. So the
2 tentative plan for the morning will be when the jury comes
3 back in I'll ask Ms. Pratt if she wishes to call any
4 witnesses. I'll remind them that she does not to have because
5 the burden of proof is upon the State. She will rest and then
6 I will -- and then at that point in time say, "I move to renew
7 all my previous objections that I previously made," so that
8 that's protected on the record at that time, and then we'll go
9 right into closing arguments. Okay? All right.

10 So since the Defense did not put on any evidence, just so
11 that everybody's clear, even though I've read State v. Beaty
12 multiple times, I still feel like I'm confused after I finish
13 it. Don't write that down, Dixie. The State, the State will
14 open in full and then the Defense will have the final
15 argument. Okay? All right. So that's the order of the
16 closing arguments. Okay? Now, we're going to provide a clean
17 computer for the jurors to be able to listen to audio and
18 watch videos; is that right?

19 MR. HIXSON: That's correct, Your Honor.

20 THE COURT: Okay.

21 MR. HIXSON: We have it in the courtroom now.

22 THE COURT: I don't need it now. I just need to make
23 sure we have it in the morning.

24 MR. HIXSON: Yes, sir.

25 THE COURT: Okay? And then before we do the charge

1 MR. HIXSON: James Daniels, McKinley Daniels, Jerome
2 Jenkins, a highly, highly efficient armed robbery and murder
3 crew, a murder team, highly efficient.

4 It's an interesting scene; isn't it? James, McKinley and
5 J.J., it's all part of a plan and you know what this little
6 analogy here is a perfect analogy for the plan and for this
7 trial. See, James is sitting over there by himself. The
8 other two guys, you don't see them. James is very used to
9 being by himself throughout this plan, and James is used to
10 being the first. He's always the first in this plan. This
11 analogy is almost perfect but for a couple of things, and it'd
12 be a little bit more perfect if instead of a chair James was
13 sitting in the driver's seat of a Chevy Malibu. Instead of a
14 couple of pieces of paper representing McKinley and J.J., it'd
15 be better if McKinley was -- his name was written on a black
16 hooded sweatshirt and J.J.'s was on a blue bandana. Then that
17 analogy would be complete.

18 So let's talk about the plan. Let's talk about going
19 first. Okay? Specifically, entering the Malibu first, James
20 Daniels was the one that has the access to the Malibu. James
21 Daniel is the one that initiates the interaction. He takes
22 Lashana's car. The car is not registered to him, drives to
23 pick up his brother McKinley and his brother J.J., and where
24 does he go pick them up at, [REDACTED] Goose Bay Road, the house
25 they had in common until he moved in with Lashana and then

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1 changed his address and back and forth to [REDACTED] and the Ware
2 Drive address. He initiates. He's the first.

3 He gets J.J., and they go down to 905 and begin the
4 execution of that perfect plan. Now, you remember, you're not
5 allowed to see the other two guys. They got to stay in the
6 background. All right? You've got to create separation
7 between the two. So the first person you see is James Daniels
8 by himself executing his plan. Let's talk for a second before
9 we get into it. How do we know it was a plan? Do you have to
10 -- divine, it's perfectly appropriate to think about
11 circumstantial evidence. In other words, see how well oiled
12 they were to see that a plan exists. We've got a little bit
13 more than that. When you listen to the transcript, when you
14 were reading the transcript as you listened to the evidence of
15 his statement, you'll recall Detective Lent specifically
16 saying -- excuse me, James Daniels saying, "I went to Blue
17 Moon to one of my homey -- to one of my homey boy's house
18 because we had, we had a meeting ourselves." Greg Lent,
19 "Okay. Do you guys, you know, drink, smoke?" "Yeah," excuse
20 my language, "normal shit." James Daniels, "Normal. Just
21 have talks like what we supposed to be doing, whose supposed
22 to be doing this, whose supposed to be doing that, stuff like
23 that." That's a plan. That's a plan.

24 Subsequent to that, you'll hear on the tape, "I picked up
25 the car from Lashana. I went to pick up McKinley, and then we

1 went to a meeting." That's a plan.

2 Now that everybody's in the Chevy Malibu, James Daniels
3 goes in first to evaluate the situation at 905. I'm going to
4 focus a lot on 905 and talk about Cultra Road here in a second
5 because they're identical. There's an old movie that used to
6 say, "Identical." I always wanted to be able to use that in
7 the courtroom once, exactly the identical plan, spooky
8 identical.

9 Let's show you a couple of things. Let's look at the
10 layout of the road of the place that they picked. Look at the
11 crossroads of the first one, 905, four ways in, four ways out.
12 Look at this one, four ways in, four ways out.

13 "Got to go in, got to see who's in there, got to see
14 where the cameras are, got to see how we're going to get in,
15 get out and see who's in there." The first thing that I got
16 to know is how many people are in that building. If I'm
17 staking out the jury, I've got to figure out how many people
18 are in this jury box so I can account for them when they leave
19 because the one thing I do not want to have happen is some
20 accounted for guy with a concealed weapon permit would put a
21 round mind when I think I got the situation under control. So
22 I've got to know who's in there, who's not in there, and do
23 you know how good James Daniels is with it? Well, he gives us
24 a clue about that.

25 During the course of this we listened to a lot. So

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1 there's a lot of information out there, but let's go
2 specifically to this line. Before giving any of this
3 progressive truth telling that we hear, you know what James
4 Daniels says, before he event admitted to being in the, in the
5 905 store, he said, "I was coming way -- coming on to work. I
6 stopped at Red Bluff." Greg Lent says, "Okay. Okay. Okay."
7 Three years later, more than three years later, James Daniels
8 tell the police, "Three people in there, if I'm not mistaken,
9 the dude that runs the store, another old man and somebody
10 else that was in there buying something."

11 Now, when I go into a convenience store or perhaps you, I
12 ask them where the Coca Cola is, man. I can't even find it in
13 the back. Three years later, he knows exactly who's in that
14 store. He knows exactly what the threats are. He knows
15 exactly what he has to do to tell the guys you're not supposed
16 to see what to do. Do it yourself. After the store is staked
17 out, you've got to maintain eye contact in that store because
18 if you drive and leave you don't know who comes and goes
19 anymore. Right? So if I go to lunch and I come back to this
20 courtroom, man, when I left there were 12, 14, how many left,
21 we lost an alternate. So all the jurors were accounted for,
22 but now, if I lose eye contact on that store, I don't remember
23 who the cars were, I got to re-scout it because the team's
24 changed. So I got to go back and forth, and back and forth,
25 and back and forth and wait, but I got to go long enough so

1 they won't go back on the video far enough to see me scouting
2 it, and isn't it amazing that both of them are nearly exactly
3 30 minutes apart, almost like the real times. The first one
4 is 9:35, second was 9:39. The interim is 23 minutes later and
5 31 minutes later both times. Amazing.

6 Before I was a Prosecutor, I believed in coincidences.
7 That belief has thus been history. The guys go in. We have
8 absorbed so many pictures and so many videos and things that
9 I'm not going to use those. They're all going to be back
10 there for you, but I submit to you, each one of you know
11 exactly what happened on the videos. It's burned in your
12 memory, unfortunately, and I apologize that you have to
13 remember that, but it's there. It's there. So we're not
14 going to play it again. If you want to see it again, go
15 ahead. We're going to talk some still photos. We're going to
16 talk about that to bring out some points about the level of
17 perfection, near perfection, but for one thing, a random
18 police officer with a dedicated police officer going back
19 hours and hours over video just to see if there's something
20 that connects this thing, but for that, we wouldn't be here.
21 Thirty minutes wasn't enough or dedication was too much. I
22 don't know which one. Either way, we're both here and we are
23 firmly convinced that we know exactly what happened, part of a
24 plan resulting in two armed robberies and a murder.

25 So let's talk about some of the indications of

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1 premeditation in detail. If you want to watch the videos,
2 fine. That's why I did all the still photos so you can look
3 at them yourself and become firmly convinced. The direction
4 of entry on every one is consistent. Go in where James
5 Daniels said he parked the car from that angle. Come out
6 where he said he parked the car. They got to know where the
7 entry is and they go right back to the getaway car, both of
8 them. Specifically, you'll see the direction of entry on the
9 Oak Street. James testified, indicated that he went down here
10 this way by Teddy Henry's, excuse me, and turned around, this
11 way. They enter from this direction and they exit the same
12 direction back to where they know the car is, both times.

13 And this one, if you recall, James says, "I just dropped
14 them off. I had no idea what they were doing. Of course, I
15 dropped them off and they had guns. Drop down, go down by the
16 bridge, wait, come back up." The reason why there's such a
17 large volumes of still photographs from the surveillance video
18 of the Malibu is to show you those time stamps and the
19 repeated direction of travel changes. They go this way. Ten
20 minutes later they come back this way. Three minutes later,
21 go back this way. Four minutes later, come back this way.
22 That's maintaining surveillance to make sure they understand
23 what's going to happen and be in a position to pick them up
24 and get them out of there. When's the only time that Malibu
25 changed speeds? The last photo, when it is getting up and

1 going back towards Goose Bay and running that red light.
2 You'll see that in the stills if you want to go through that,
3 and you'll see it in the video if you want to see it live.
4 Entry, exits are exactly the same. Let's talk about the
5 roles that they play, and everyone, now we're talking about
6 all three. If you recall, the video machine was not taken
7 from the Lake Arrowhead property. It was not a loss of life.
8 Horry County Police testified they did not want to take and
9 shut that place down because they were investigating an armed
10 robbery, not a murder. When it is a murder and a loss of
11 life, and unfortunately for the Sunhouse Corporation, Sunhouse
12 Company, they lost two. They lost two, and there's a lot of
13 compassion in them and they shut those businesses down for a
14 while and said, "Take the machine. Take it. We've got to
15 figure out what's going on," and that's what enabled Pete
16 Cestare to spend all the time on the actual machine looking
17 through these camera angles over and over again to figure
18 something out, but when you look at those, every time the
19 fellow that James Daniels identified as Jerome Jenkins, the
20 first one in 905, he is a gunman and the heavy hitter. He
21 watches. He never handles money. He goes directly in and
22 then stays and provides security for McKinley Daniels, and
23 McKinley Daniels goes in, directs the clerk, goes behind the
24 counter, gets the cigarettes, gets the cash drawer, is yelling
25 at her and doesn't touch anything. Stands there, "Dump it in

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1 here. Dump it in here." What he does, he takes the whole
2 drawer with him. J.J.'s out. McKinley's out. He's waiting
3 for the car. They're on the road. Happens at 905 and watch
4 it. Happens at Lake Arrowhead, watch it if you want to, and
5 unfortunately, it happens with Trish Stull.

6 We specifically know, and we'll talk about these. These
7 are the only ones I want to talk about, but these are able to
8 go back with you. These are actually summaries of three crime
9 scenes of specific details to show you the comparison of each
10 one as one continuous plan, one continuous act. The legal
11 term we call it common scheme or plan.

12 And this one, let's get this little tidbit. This one is
13 discussing the clothing, specifically the fact that James
14 Daniels in the 905 case is wearing red pants and the gray
15 fleecy sweatshirt. That's what Pete Cestare first sees, and
16 he says, "Man, James must have given those clothes to Jerome
17 Jenkins because they look identical to me, absolutely
18 identical." How do we know that happened? Well, first, look
19 at it. Now, certainly, certainly, there are more than one
20 gray hooded sweatshirt and one red pair of pants in Horry
21 County, but how many are worn every time someone's shot and
22 killed after an armed robbery? Boy, that narrows it down
23 quite a bit; doesn't it? All right.

24 Let's talk about two things. One is his specific
25 statement. The second statement, if you recall, that James

1 Daniels said, Detective Lent, "Who was with you in the Conway
2 store?" "J.J. and McKinley." Remember the Conway store is
3 Cultra and Oak. Okay. "Were you guys switching clothes or
4 anything during any of these robberies?" "No, probably had
5 some clothes in the car though." "So in the back seat."
6 "Well, that's what I was thinking because, you know, you don't
7 want to get pulled over wearing the clothes that you were
8 wearing in the robbery. You must have some." "Yeah, I", this
9 is James Daniels, "Yeah. I understand. I probably had some
10 clothes in the backseat." Detective Lent, "So were they --
11 they were throwing different clothes on just, just so they
12 look different when they're in the store?" "Well, I think
13 J.J. probably switched styles because he did have an Army
14 fatigue shirt on." "And what about the red pants?" "Well,
15 I'm not quite sure if he had red pants on in the car." That's
16 proof of switching clothes and that's proof of his knowledge
17 of switching clothes to avoid detection. It's part of the
18 plan, and guess what, not only did he understand and accept
19 and participate in the plan, he was arrested in a gray hooded
20 sweatshirt. J.J. give it back to him. The picture's in
21 evidence. You can look at it. You can compare it. Not only
22 -- let me finish this and close this point. The reason that I
23 put in 37 degrees on January 25th of -- at 9:35 in the
24 morning, look at that video. He comes in a half hour early.
25 It's 37 degrees. Everybody in the video is bundled up in